

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter B. Life, Health, and Accident
Part 111. Preneed Insurance Replacement and Prepaid Funeral Benefits
Contract Cancellation Requirements

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 1. Authority

This Rule is issued based upon the authority granted the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. §§ 23-61-108, 23-66-307(c)(2) and the Arkansas Administrative Procedures Act, §§ 25-15-201, et seq., for those sections governing the replacement of preneed insurance. For those sections in this Rule which establish standards related to cancellation of prepaid funeral benefits contracts, this Rule is issued based upon the authority granted the Commissioner under Ark. Code Ann. § 23-40-108(d)."

"Section 15. Effective Date

This Rule shall be effective on or after June 30, 2010."

Subpart 1. Generally

23 CAR § 111-101. Scope.

(a) 23 CAR §§ 111-103 – 111-107 apply to insurers and insurance producers involved in the replacement of preneed insurance as defined in 23 CAR § 111-103.

(b) 23 CAR § 111-103 and 23 CAR §§ 111-106 – 111-113 apply to all persons engaged in the business of selling prepaid funeral benefits contracts under the Arkansas Prepaid Funeral Benefits Law, Arkansas Code § 23-40-101 et seq., as amended.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-102. Purpose.

(a) The purpose of this part is to increase written notice and disclosure to insureds who are replacing life insurance policies, certificates of life insurance coverage, or annuities that fund prepaid funeral benefits contracts.

(b) This part also provides standards for cancellations or transfers of prepaid funeral benefits contracts governed by Arkansas Code § 23-40-122, the funding mechanisms for such contracts, and revises forms for cancellations or transfers and releases of trust funds under Arkansas Code § 23-40-114.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-103. Definitions.

For the purposes of this part:

(1) "Cancellation" means the termination or transfer of a prepaid funeral benefits contract by the purchaser, prior to the seller's performance of the contract, as a result of action by the purchaser or his or her agents or assigns, including, but not limited to:

(A) Notifying the seller of the purchaser's intent to cancel the contract;

(B) Transferring or attempting to transfer the contract or funding mechanism to a substitute provider;

(C) Changing the beneficiary of a life insurance policy, certificate, or annuity contract used to fund a prepaid funeral benefits contract from the seller to a substitute provider or person; or

(D) Changing an assignment of rights to the proceeds from the seller to a substitute provider or person;

(2) "Contract beneficiary" means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services or funeral merchandise, or both, shall be:

- (A) Performed;
- (B) Provided; or
- (C) Delivered;

(3) "Existing insurer" means the insurance company whose policy or certificate or annuity contract is or will be changed or affected in a manner described within the definition of "replacement";

(4) "Existing policy or contract" means an individual life insurance policy (policy), group life insurance policy (or certificate evidencing coverage under a group life insurance policy), or annuity contract (contract) in force, including a:

- (A) Policy or certificate under a binding or conditional receipt; or
- (B) Policy, certificate, or annuity contract that is within an unconditional refund period;

(5)(A) "Financed purchase" means the purchase of a new insurance policy, certificate, or annuity contract involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy, certificate, or annuity contract to pay all or part of any premium due on the new:

- (i) Policy;
- (ii) Certificate; or
- (iii) Annuity contract.

(B) "Financed purchase" within the meaning of this part does not constitute an extension of consumer credit for purposes of state or federal law;

(6) "Preneed insurance" means any life insurance policy, certificate, or annuity contract that funds a prepaid funeral benefits contract as defined in Arkansas Code § 23-40-103(15);

(7) "Prepaid funeral benefits contract" means a contract as defined in Arkansas Code § 23-40-103(15);

(8) "Producer" means agents, brokers, and any other person who:

(A) Has received qualification for a licensure to sell, solicit, or negotiate life insurance under Arkansas Code § 23-64-507(a)(1); or

(B) Is permitted to sell funeral expense insurance under Funeral Expense Insurance, 23 CAR pt. 91;

(9) "Replacement" means a transaction in which a new policy or certificate or annuity contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or certificate or annuity contract has been or is to be:

(A) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(B) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) Reissued with any reduction in cash value; or

(E) Used in a financed purchase;

(10) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase; and

(11) "Seller" means the organization:

(A) Selling prepaid funeral benefits; or

(B) Owning any interest in any contract for prepaid funeral benefits.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-104. Replacement standards for life insurance policies, certificates, and annuity contracts funding prepaid funeral benefits contracts.

(a) The requirements in this section shall not apply to the replacement or cancellations of prepaid funeral benefits contracts funded by cash.

(b) **Producer.** In the event an existing policy, certificate, or annuity contract that is used to fund a prepaid funeral benefits contract is replaced with another policy, certificate, or annuity contract, or a prepaid funeral benefits contract is otherwise cancelled or transferred for the purpose of obtaining a new funeral provider, the producer who initiates the replacement or transaction shall comply with the following requirements:

(1) The producer shall:

(A)(i) Present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A in this part.

(ii) The notice shall be signed by both the applicant and the producer attesting that the:

(a) Notice has been read aloud by the producer; or

(b) Applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud);

(B) Leave a copy of the signed notice with the applicant; and

(C) Send a copy of the signed notice to the seller of the original prepaid funeral benefits contract along with the completed Form AID-FI-C3 as provided in 23 CAR § 111-106(d); and

(2) Compliance with subdivision (b)(1) of this section shall satisfy a producer's:

(A) Requirement to furnish to the policyholder a written memorandum meeting the requirements of Arkansas Code § 23-66-307(b)(1); and

(B) Compliance with the requirements of Life Insurance and Annuities Replacement, 23 CAR pt. 128.

(c) **Replacing insurer.** In the event an existing policy, certificate, or annuity contract that is used to fund a prepaid funeral benefits contract is replaced with another policy, certificate, or annuity contract that will be used to fund a prepaid funeral benefits contract, or a prepaid funeral benefits contract is otherwise cancelled or

transferred for the purpose of obtaining a new funeral provider, the replacing insurer shall comply with the following requirements:

(1) Verify that the required forms are received and are in compliance with this section;

(2) Notify any other existing insurer that may be affected by the proposed replacement within fifteen (15) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application; and

(3) Provide to the policy or contract owner written notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive:

(A) An unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges; or

(B) In the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-105. Violations and penalties.

(a) Any failure to comply with 23 CAR § 111-104 may be considered a violation of Arkansas Code § 23-66-206(2), subjecting the licensee to the penalties under Arkansas Code § 23-66-206(10).

(b) Examples of violations include, but are not limited to:

- (1) Any deceptive or misleading information set forth in sales material;
- (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- (3) The intentional incorrect recording of an answer;
- (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-106. Cancellation or transfer of prepaid funeral benefits contracts.

(a) State Insurance Department Rule 63, "Trust Fund Release Forms for Prepaid Funeral Benefits Contracts", is hereby repealed and replaced by this part.

(b)(1) The following release and cancellation or transfer forms for sellers and purchasers are attached as appendices to this part.

(2) They are the:

(A) Seller's Affidavit of Contract Performance: Request to Withdraw Funds or Proceeds, Form AID-FI-C1;

(B) Seller's Affidavit for Cancellation and Cash Surrender or Re-Assignment of Prepaid Funeral Benefits Contract Proceeds, Form AID-FI-C2;

(C) Affidavit and Request of Purchaser to Cancel a Prepaid Funeral Benefits Contract, Form AID-FI-C3; and

(D) Instructions for recordkeeping.

(c)(1) All prepaid funeral benefits contracts issued on and after July 1, 1995, shall be governed by Acts 1995, No. 852 (Arkansas Prepaid Funeral Benefits Law, Arkansas Code § 23-40-101 et seq., as amended).

(2) Pursuant to a consent judgment entered into by the State Insurance Department in *Denver Roller, Inc., et al. v. Lee Douglass, Arkansas Insurance Commissioner, et al.*, Sixth Division, Chancery Court of Pulaski County, #IJ-95-3835 (1995), Section 12 of Acts 1995, No. 852, amending Arkansas Code § 23-40-122, is not applicable to prepaid funeral benefit contracts executed prior to July 1, 1995.

(d)(1) In the case of prepaid funeral benefits contracts in which cancellation or transfer is sought under Arkansas Code § 23-40-122, the purchaser shall be entitled to cancel such contract with the seller or transfer it to a substitute provider consistent with

the rights under Arkansas Code § 23-40-122 by providing to the seller the cancellation or transfer request form adopted by this part, Form AID-FI-C3, along with any appendices required in this part.

(2) Upon receipt of the cancellation or transfer request forms for prepaid funeral benefits contracts funded by cash, the seller shall process and complete the cancellation or transfer request within forty (40) days of its receipt of the cancellation or transfer request form.

(3)(A) For prepaid funeral benefits contracts funded by a life insurance policy or annuity, the seller shall complete the Seller's Affidavit for Cancellation and Cash Surrender or Re-Assignment of Prepaid Funeral Benefits Contract Proceeds, Form AID-FI-C2, and forward it to the existing insurer along with a copy of the purchaser's cancellation or transfer request form, Form AID-FI-C3, within twenty (20) days after receipt of the purchaser's cancellation or transfer request forms.

(B) The existing insurer shall have thirty (30) days from receipt of Form AID-FI-C2 and Form AID-FI-C3 to:

- (i) Complete the cancellation or transfer request;
- (ii) Refund to the purchaser or transfer to the substitute provider the amounts specified in Arkansas Code § 23-40-122(a)(2) and (3); and
- (iii) Pay to the seller any funds exceeding those amounts.

(4)(A) In processing any cancellation or transfer request, the seller shall not require the purchaser to sign, acknowledge, or provide any releases, notices, or agreements of the seller beyond the forms required by this part.

(B) For prepaid funeral benefits contracts that are funded by life insurance or by annuities in which cancellation is sought under Arkansas Code § 23-40-122, the purchaser may, however, be required to execute or acknowledge the standard and approved forms of the insurer that effect a change of status, ownership, or beneficiary of the life insurance policy or an annuity.

(5) No seller or existing insurer shall be considered in violation of the time limits under this section, regardless of the manner of funding, if the completion of the

cancellation or transfer is delayed because of a delay or failure to act by a person or party not under the control of the seller or existing insurer.

(e) In the event an existing prepaid funeral contract is replaced with another prepaid funeral benefits contract, the substitute provider that initiates the replacement and the purchaser shall also execute and comply with the requirements in the form, Appendix B, to this part.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-107. Requirements of preneed insurers on cancellation or transfer requests of prepaid funeral benefits contracts.

(a)(1) For prepaid funeral benefits contracts that are funded by a life insurance policy, certificate, or an annuity contract in which cancellation is sought under Arkansas Code § 23-40-122 or effectuated by action of the purchaser, no existing insurer shall unreasonably delay changing the ownership, beneficiary, or status of a life insurance policy or annuity to a substitute funeral provider.

(2) Every existing preneed insurer shall require a purchaser who seeks to change either the beneficiary of a life insurance policy or annuity funding a prepaid funeral benefits contract to any party other than the seller or the assignment of benefits from the seller to another person or entity to follow the procedures in 23 CAR § 111-106(d).

(b) Whenever a preneed insurer is notified by a servicing funeral home or a representative of the purchaser of a prepaid funeral benefits contract that a funeral home other than the seller serviced the customer at the time of need, the preneed insurer shall be obligated to inform the seller of the original prepaid funeral benefits contract of the death claim and pay to the seller the amounts provided under Arkansas Code § 23-40-122.

(c)(1) Upon receipt of a request by a purchaser to cancel a policy, certificate, or annuity contract that is used to fund a prepaid funeral benefits contract, or upon notice that a prepaid funeral benefits contract is subject to cancellation based upon actions

taken by the customer, the insurer shall require the customer to execute Form AID-FI-C3 and to forward such form to the seller of the original prepaid funeral benefits contract.

(2) The insurer may withhold payment of any amounts due under Arkansas Code § 23-40-122 until it receives properly executed copies of Forms AID-FI-C2 and AID-FI-C3.

(3) Upon receipt of properly executed Forms AID-FI-C2 and AID-FI-C3, the insurer shall pay to the seller the amounts provided under Arkansas Code § 23-40-122.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-108. Permit requirements.

(a) Prior to entering into any prepaid funeral benefits contract, a seller shall obtain a permit from the State Insurance Department, as provided in Arkansas Code §§ 23-40-109 – 23-40-111.

(b) To obtain an initial permit to enter into a prepaid funeral benefits contract, the seller shall provide:

(1) The names, addresses, and telephone numbers of the seller's officers, directors, managers, or any other individuals holding a ten percent (10%) ownership interest in the seller;

(2) Proof of the seller's license to do business in the State of Arkansas;

(3) Proof that the seller will use the limits identified as appendices to this part;

and

(4) Sign a written agreement to abide by all:

(A) Provisions of this part; and

(B) Applicable Arkansas and federal statutes, including but not limited to those in Arkansas Code §§ 23-40-101 – 23-40-125.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-109. Sales contracts.

(a) **Disclosures.** The seller shall disclose to the contract beneficiary of the prepaid funeral benefits contract or in a separate statement provided before the signing of the prepaid funeral benefits contract all of the following:

(1) The prepaid funeral benefits contract shall be:

- (A) In writing;
- (B) In clear and understandable language; and
- (C) Printed in at least eight-point type;

(2) The prepaid funeral benefits contract shall identify the seller's:

- (A) Name;
- (B) Address; and
- (C) Telephone number;

(3)(A) The prepaid funeral benefits contract shall identify the purchaser's:

- (i) Name;
- (ii) Address; and
- (iii) Telephone number.

(B) If the purchaser is not the contract beneficiary, the prepaid funeral benefits contract shall also contain that information for the contract beneficiary.

(C) The prepaid funeral benefits contract shall also contain the Social Security number of the contract beneficiary so as to properly identify the contract beneficiary;

(4) The prepaid funeral benefits contract shall list all of the funeral goods and services purchased with such specificity as is required by state or federal law or regulation;

(5) The prepaid funeral benefits contract shall:

- (A) Be signed by both the purchaser and seller; and
- (B) Identify the date and place of execution of the contract;

(6) The seller shall be required to give a copy of the contract to the purchaser within fifteen (15) days of execution of the contract;

(7) The prepaid funeral benefits contract shall disclose whether it will be funded by insurance, an annuity, or trust funds;

(8) If the prepaid funeral benefits contract proceeds are used by the seller to purchase an insurance policy, certificate, or annuity contract, or if the purchaser elects to purchase an insurance policy, certificate, or annuity contract to fund the prepaid funeral benefits contract, a copy of the insurance or annuity application shall be attached to the prepaid funeral benefits contract;

(9) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose the name, address, and phone number of trustee/financial institution receiving the trust deposit;

(10) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose when the prepaid funeral benefits contract trust funds will be deposited with the trustee/financial institution;

(11) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose that one hundred percent (100%) of the contract proceeds will be deposited into the trust fund;

(12) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose who will be responsible for taxes generated by earnings on the trust account;

(13) If the prepaid funeral benefits contract is funded by a trust, the contract shall disclose if trustee fees or other administrative charges will be deducted from earnings of the trust funds;

(14) The prepaid funeral benefits contract shall disclose that if the price of the funeral goods and services provided in the contract is guaranteed, all funds in the trust account or the proceeds of the insurance policy, certificate, or annuity contract used to fund the prepaid funeral benefits contract shall be paid to the seller at the time of death if the prepaid funeral benefits contract so provides, consistent with Arkansas Code § 23-40-122;

(15) The prepaid funeral benefits contract shall disclose that even if the price of the funeral goods and services are guaranteed, there may be additional expenses that would not be covered by the contract;

(16)(A) The prepaid funeral benefits contract shall disclose how the purchase price is to be paid and, if the price is paid in installments, a disclosure to the consumer regarding what constitutes default under the installment contract and the consequences of the default.

(B) The prepaid funeral benefits contract shall disclose that if the purchaser is in default then the actual cost of the funeral goods and services shall be determined at the time of death;

(17) The prepaid funeral benefits contract shall disclose that a purchaser can exercise the right to cancel or transfer the contract to a substitute provider pursuant to Arkansas Code § 23-40-122 by sending an accurate and complete copy of Form AID-FI-C3 to the seller along with a signed copy of the notice described in Appendix A of this part and otherwise by complying with the requirements in this part;

(18) If the prepaid funeral benefits contract is revocable, the contract shall disclose the right of the consumer to cancel the prepaid funeral benefits contract and how the consumer may exercise that right;

(19)(A) The prepaid funeral benefits contract shall disclose under what circumstances cancellation fees will be imposed and how much those cancellation fees will be to the extent permitted under subdivision (d)(1) of this section.

(B) If a fee is permitted to be charged, the contract shall disclose that cancellation fees are in addition to amounts specified as payable to the seller under Arkansas Code § 23-40-122;

(20) If the prepaid funeral benefits contract is irrevocable, the contract shall disclose that the purchaser does not have a right to cancel the contract and receive a refund of the amounts allowed in Arkansas Code § 23-40-122 but may transfer the contract to a substitute provider under Arkansas Code § 23-40-122 and the procedures in this part;

(21) In order to make a prepaid funeral benefits contract irrevocable, the contract shall require a conspicuous notice that the contract will be irrevocable;

(22) The prepaid funeral benefits contract shall disclose that if the seller is unable to perform the prepaid funeral benefits contract due to the seller's financial condition, the consumer shall be entitled to a full refund of the contract proceeds;

(23) The prepaid funeral benefits contract shall disclose that the funeral provider may substitute goods and services of equal:

(A) Quality;

(B) Value; and

(C) Workmanship;

(24) The prepaid funeral benefits contract shall disclose that complaints regarding the prepaid funeral benefits contract may be made to the State Insurance Department's Pre-Paid Funeral Section at 1 Commerce Way, Ste. 502, Little Rock, Arkansas 72202, (501) 371-2640;

(25) The prepaid funeral benefits contract shall disclose that if the funeral benefits are insurance or annuity funded, the contract beneficiary shall be entitled to know:

(A) The name of the insurance company;

(B) The amount of the policy or annuity; and

(C) Whether there are any ownership rights retained by the contract beneficiary;

(26) The prepaid funeral benefits contract shall disclose the current price list value of the funeral benefits provided for in the prepaid funeral benefits contract;

(27) The prepaid funeral benefits contract shall disclose any discounts or credits against the price; and

(28) The prepaid funeral benefits contract shall disclose that Arkansas Code § 23-40-122 provides that the seller may retain amounts, if any, in excess of the premiums paid by the purchaser or the original face amount of the policy or annuity in the event of a cancellation or transfer.

(b) **Prohibited prepaid funeral benefits contract terms and practices.** The following are improper trade practices and shall not be allowed under the terms of a prepaid funeral benefits contract:

(1) A seller's failure to maintain the amount of proceeds paid into trust account, if applicable, except by decline in value of investments;

(2) A seller's failure to maintain a policy or certificate of insurance or annuity contract in the amount stated in the prepaid funeral benefits contract in full force and effect, so long as the:

(A) Prepaid funeral benefits contract requires the seller to do so; and

(B) Contract beneficiary has complied with his or her obligations in the prepaid funeral benefits contract;

(3) A seller's failure to notify the consumer that the contract is in default and the seller is not intending to be bound by the prices stated in the contract either:

(A) In the terms of the prepaid funeral benefits contract; or

(B) By a notice of default;

(4) Prepaid funeral benefits contracts cannot be funded with insurance in an initial face amount that exceeds the contract price unless the excess is payable to the buyer;

(5)(A) All proceeds paid by a buyer must be placed in a trust fund or be paid as premiums on a policy of insurance or annuity.

(B) Nothing in this part shall prevent insurance companies or annuity providers from paying the seller a commission for the sale of an insurance policy or annuity; and

(6)(A) No prepaid funeral benefits provider shall retain funds in excess of the amount specified in the prepaid funeral benefits contract after completion of performance of the prepaid funeral benefits contract, unless the keeping of such excesses is authorized by:

(i) The Arkansas Prepaid Funeral Benefits Law, Arkansas Code § 23-40-101 et seq.; or

(ii) This part.

(B) In the event funds received by a prepaid funeral benefits provider exceed the amount of the prepaid funeral benefits contract after completion of performance of the prepaid funeral benefits contract, the provider shall refund the excess to the appropriate party within thirty (30) days of completion of the contract.

(c) **Funding of contracts.** There are three (3) authorized options to fund a prepaid funeral benefits contract:

(1) **Trust-funded contracts.** The contract proceeds may be deposited into a trust account by the seller until such time as those funds are needed to pay for the benefits specified in the prepaid funeral benefits contract;

(2) **Funeral contract life insurance.** The contract proceeds may be used by the seller to purchase a life insurance policy or certificate on the life of the contract beneficiary that names the seller as the beneficiary of said insurance policy, the indemnity from which shall be used to pay for the funeral benefits specified in the prepaid funeral benefits contract, or the purchaser may elect to purchase a life insurance policy or certificate directly from the insurance carrier and then either name the seller as beneficiary or assign the death benefits to the seller in order to fund the prepaid funeral benefits contract; and

(3) **Funeral contract assigned annuity.** The contract proceeds may be used by the seller to purchase an annuity contract that names the seller as the beneficiary of said annuity contract, the proceeds of which shall be used to pay for the funeral benefits specified in the prepaid funeral benefits contract, or the purchaser may elect to purchase an annuity contract directly from the insurance carrier and then either name the seller as the beneficiary or assign the death benefits to the seller in order to fund the prepaid funeral benefits contract.

(d) **Cancellation and transfer of prepaid funeral benefits contracts.**

(1) A seller or insurer funding the prepaid funeral benefits contract may not charge a fee for cancelling or transferring the prepaid funeral benefits contract to another funeral service provider unless otherwise provided in Arkansas Code § 23-40-122.

(2) A purchaser may cancel or transfer a prepaid funeral benefits contract as provided under Arkansas Code § 23-40-122, whether revocable or irrevocable, or whether cash funded or funded by insurance or an annuity, at any time prior to performance of the contract by the seller, subject to the following conditions:

(A) In the case of a cash or trust funded prepaid funeral benefits contract:

(i) Prior to the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser shall be 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;

(ii) After death, if the prepaid funeral benefits contract is revocable, the purchaser or his or her representative shall be entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price; or

(iii) If the prepaid funeral benefits 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;

(B) In the case of a prepaid funeral benefits contract funded by life insurance:

(i) Prior to the death of the contract beneficiary, if the prepaid funeral benefits 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 funeral benefits contract, not to exceed the premium paid by the purchaser;

(ii) After the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser or his or her designee shall be 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

(iii)(a) Prior to the death of the contract beneficiary, if the contract is irrevocable, the prepaid funeral benefits contract 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 funeral benefits 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, the life insurance policy used to fund the prepaid funeral benefits 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 funeral benefits contract, not to exceed the premium paid by the purchaser.

(b) After the death of the contract beneficiary, 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

(C) In the case of a prepaid funeral benefits contract funded by an annuity:

(i) Prior to the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser shall be 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 funeral benefits contract;

(ii) After the death of the contract beneficiary, if the prepaid funeral benefits contract is revocable, the purchaser or his or her designee shall be 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

(iii)(a) Prior to the death of the contract beneficiary, if the prepaid funeral benefits 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 funeral benefits 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, the annuity policy used to fund the prepaid funeral benefits

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.

(b) 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.

(3) 23 CAR § 111-106(d) sets forth the procedures that must be followed if a purchaser desires to cancel or transfer a prepaid funeral benefits contract under Arkansas Code § 23-40-122.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-110. Change of ownership.

Change of ownership of the seller of a prepaid funeral benefits contract shall be governed in accordance with the provisions of Arkansas Code § 23-40-113.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-111. Solicitation.

All sellers and their employees, agents, or anyone soliciting on their behalf are prohibited from undertaking any of the following practices when engaging in the solicitation of prepaid funeral benefits contracts from consumers:

(1) The making of any untrue statements of material fact or omission of any material facts when engaged in prepaid funeral benefits contracts solicitation;

(2) The use of any advertisements or offers of prepaid funeral benefits contracts that are:

- (A) False;
- (B) Misleading;
- (C) Deceptive;
- (D) Unfair;

(E) Coercive; or

(F) Intimidating;

(3) The solicitation of potential prepaid funeral benefits contracts consumers by telephone any time between the hours of 9:00 p.m. and 8:00 a.m., unless the consumer specifically requests a solicitation during these hours; or

(4) The use of the term "trust" or "trust-funded" in any prepaid funeral benefits contracts advertisement or solicitation in any misleading way.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-112. Annual report.

Each seller shall file an annual report as provided in Arkansas Code § 23-40-119.

Authority. Arkansas Code § 23-66-307.

23 CAR § 111-113. Audit — Administration — Enforcement.

(a) Sellers of prepaid funeral benefits contracts shall be subject to audits as provided for in Arkansas Code § 23-40-120.

(b) The Insurance Commissioner for the State of Arkansas shall be responsible for the administration and regulation of the sale of prepaid funeral benefits contracts as provided in Arkansas Code §§ 23-40-107 and 23-40-108.

(c) The commissioner shall be responsible for the enforcement of the sale of prepaid funeral benefits contracts as provided in Arkansas Code § 23-40-101 et seq., including delinquency proceedings as provided in Arkansas Code § 23-40-123.

Authority. Arkansas Code § 23-66-307.

Appendix A. Notice - Replacement of Life Insurance or Annuities Used to Fund Prepaid Funeral Benefits Contracts

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/157/23CARpt.111AppendixA.pdf>

Appendix B. Rule 63 - Preneed Insurance Replacement and Prepaid Funeral Benefits Contract Cancellation Requirements

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/158/23CARpt.111AppendixB.pdf>