

**Title 23. Public Utilities and Regulated Industries**  
**Chapter IV. State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services, State Insurance Department, Department of Commerce**  
**Subchapter A. Generally**  
**Part 331. Rule Pertaining to Burial Associations**

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

"Section 49. Effective Date

This rule is effective after review and approval by the Arkansas Legislative Council, thirty (30) days after filing of the approved Rule with the Arkansas Secretary of State."

**Subpart 1. Generally**

**23 CAR § 331-101. Officers of associations.**

(a) All officials of burial associations must be members of the association of which they are officers.

(b) In the event a person holds office in more than one (1) association, he or she is required to hold membership in each association of which he or she is an officer.

(c) Total benefits which may be paid to such officer shall not exceed two thousand five hundred dollars (\$2,500).

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-102. Owner of funds.**

Since burial associations are nonprofit mutual benefit societies, all assessments, dues, or other funds of whatever kind or character collected or received by them over and above necessary expenses (which in no event may exceed twenty-five percent (25%) of its receipts for any given period) shall be and remain the property of the association for the use and benefit of its members only.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-103. Mortuary fund.**

(a)(1) At least seventy-five percent (75%) of the receipts of each association must be allocated to the mortuary fund, and, when so allocated can be used for no purpose other than to meet its losses.

(2) The associations may invest any portion of such seventy-five percent (75%) of the collections not needed for the immediate payment of benefits, or not needed for the reasonable anticipated payment of benefits.

(b) At least seventy-five percent (75%) of all interest derived from investments of burial association funds must be allocated to the mortuary fund and cannot be used for the payment of operating expenses.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-104. Expenses.**

(a)(1) Necessary expenses, including but not limited to printing, stationery, postage, office supplies, clerical work, and statutory fees may be paid by the association.

(2) No organization or promotional expense may be charged and in no event may expenses for any year exceed twenty-five percent (25%) of the gross receipts of

dues or assessments, interest, and noninterest investment income of the association for such year.

(b) Burial associations shall not be entitled to utilize any portion of twenty-five percent (25%) of gross receipts of dues, assessments, interest, or non-interest investment income when such utilization would reduce the balance of monies available in the mortuary fund to such a level that the association would be unable to pay benefits which accrue to the members of the association.

(c)(1) In the event the entire sum equaling such twenty-five percent (25%) is not expended as aforesaid, then the amount remaining unexpended shall be converted into the mortuary fund at the end of such year and shall not thereafter be used for expenses.

(2) Statutory fees (annual license fees) are not considered operating expenses.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-105. Surplus funds.**

Should any association have on hand, at the end of any calendar year, funds over and above its legal obligations said funds shall be retained by the association for the purpose of meeting its future losses.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-106. Association not to pledge asset.**

(a) No money may be borrowed from an association, nor can the association borrow money.

(b) The assets of the association may not be pledged for any purpose.

(c) The treasurer will be held accountable under his or her bond for any violation of this part.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-107. Fidelity bonds.**

(a) Associations with money on hand will be required to have a bond with an approved corporate surety on the secretary/treasurer and any other person or persons whose authorized signature is on the association's accounts.

(b) Bonds must be made in favor of the association, in the amount of the surplus of the association, less the moneys invested, as authorized by Arkansas Code § 23-78-101 et seq.

(c) However, the bond shall not be less than two thousand five hundred dollars (\$2,500).

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-108. Taxes.**

(a) In the event a burial association becomes liable for taxes, such taxes may be paid from the mortuary fund.

(b) Provided, however, that should penalties be imposed by the taxing authority, such penalties shall not be paid from the mortuary fund.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-109. Books and records.**

(a) All books, accounts, and records must be kept at the main office of the association and in such manner as to accurately reflect the condition of the association,

subject to inspection of any member of the association or representative of the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(b) Books of an association may be closed not more than thirty (30) days prior to an assessment, and all members receiving certificates more than thirty (30) days prior to an assessment shall be included in the assessment.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-110. Annual reports.**

(a) Each burial association or society licensed in this state shall file an annual report showing the actual financial condition of the association as of December 31 of each year on forms approved and provided by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(b) In addition to the accurate December annual report, other items or documents to be filed shall include, but are not limited to, the following:

(1) Annual fee of six hundred dollars (\$600) per association;

(2)(A) Membership fees of twenty cents (\$0.20) per member based on the number of members as of December 31.

(B) Membership fees are considered to be a component of the annual license fee;

(3) Minutes from the annual meeting for the calendar year;

(4) Proof of bond in good standing; and

(5) New Business 443 Reserves Report, if applicable.

(c)(1) If the report is not received in the office by March 15 of the next calendar year, then the report is delinquent and a one-hundred-dollar-per-day delinquent fee for a maximum period of ten (10) days will be assessed.

(2) Should it become necessary for the board's auditor to travel to the association to procure the report, the board's office shall recover expenses incurred as a result of the association's failure to file the report.

(3) These expenses shall be paid by the association from the allowable operating expenses and not from the mortuary fund.

(d)(1) The board may grant an extension of time to submit a report for good cause.

(2) A burial association or society shall file a request for an extension to the board in writing before the due date of the report.

**Authority.** Arkansas Code §§ 23-78-111, 23-78-121.

### **23 CAR § 331-111. Funeral directors.**

The bylaws of burial associations may provide that the secretary/treasurer, upon being notified of the death of a member, shall designate a funeral director to prepare the body for internment according to the terms of the certificate held by the member at time of death.

**Authority.** Arkansas Code § 23-78-121.

### **23 CAR § 331-112. Certificates of benefits.**

If at any time the contract funeral home customarily employed by the association cannot provide the service, then the secretary/treasurer shall pay the servicing funeral home which provides the service according to the member's contract in accordance with Arkansas Code § 23-78-112:

(1) For memberships issued after July 19, 1987, one hundred percent (100%) of the face amount of the certificate is paid to the servicing funeral home;

(2) For memberships issued before July 1, 1967, the benefit is paid to the servicing funeral home according to the agreement contained in the certificate of membership between the member and the burial association;

(3) For memberships issued between July 1, 1967, through August 5, 1976, the benefit is payable to the servicing funeral home outside of the service area of the contract funeral home at a minimum rate of seventy percent (70%) of the face amount of the certificate or seventy percent (70%) of the amount credited on the at-need or final billing statement, whichever is higher; and

(4) For memberships issued between August 5, 1976, through July 19, 1987, the benefit is payable to the servicing funeral home outside of the contract funeral home of the burial association's service area at a minimum rate of eighty percent (80%) of the certificate for benefit face amount or eighty percent (80%) of the amount credited on the at-need or final billing statement, whichever is higher.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-113. Minutes of meeting.**

(a) Minutes of the annual meeting shall be submitted to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services' office with the annual report.

(b) Minutes of a special meeting called to address changes in officers, rates, or other matters pertaining to the operation of a burial association shall be submitted to the office for approval within thirty (30) days.

(c) An approved copy will be returned to the association for its records.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-114. Advertisements.**

Advertisements, either in newspapers, by radio, by circulars, or by any other method, must be submitted to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services for approval before being published.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-115. Burial certificates.**

No association shall state in its certificate or advertise any particular type or make of merchandise that will be furnished by the association.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-116. Printing.**

Before new applications, forms, or certificates of membership are printed, the printer's copies should be submitted to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services office for approval.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-117. Applications.**

(a) Applications for membership must be kept on file in the office of the association in the order in which they are received and shall show the number of the certificate.

(b) A copy of the certificate of membership shall be kept with the application.

(c) The date of increase or an addition to the membership must be noted on permanent record cards in the files of the association and a copy of the new certificate of membership shall be kept with the application.

(d) All applications for membership must be signed by:

- (1) The applicant or his or her parent or legal representative; and
- (2) The soliciting agent.

(e)(1) In addition to the requirement of Article 12 of the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services' bylaws, burial associations shall:

- (A) Complete the following applications on each prospective burial association member; and
- (B) Comply with the underwriting guidelines established by the board.

(Included)

(2) Violation of any rule may result in sanctions as provided for by:

- (A) Arkansas Code § 23-78-101 et seq.; and
- (B) The rules promulgated pursuant to its enforcement by the board.

(f)(1) Only a burial association licensed by the board may write certificates of membership up to a maximum of two thousand five hundred dollars (\$2,500).

(2) All certificates must comply with the:

- (A) Minimum rates;
- (B) Reserve requirements contained in 23 CAR § 331-143; and
- (C) Underwriting guidelines established by 23 CAR § 331-141.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-118. Membership dues.**

(a) A minimum of four (4) assessments must be collected each year, or the sum of four (4) assessments, as required by the minimum rates established by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(b) For those associations which operate from the collection of dues, such dues must be collected at least four (4) times during each year as required by the minimum rates established by the board.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-119. Minimum rates.**

The following rates are the minimum rates which may be charged by a burial association in Arkansas per quarter:

<b>Age</b>	<b>\$100</b>	<b>\$500</b>	<b>\$1,000</b>	<b>\$1,500</b>	<b>\$2,000</b>	<b>\$2,500</b>
0-1	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
2	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
3	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
4	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
5	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
6	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
7	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
8	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
9	\$ 0.25	\$ 1.25	\$ 2.50	\$ 3.75	\$ 5.00	\$ 6.25
10	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
11	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50

12	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
13	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
14	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
15	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
16	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
17	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
18	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
19	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
20	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
21	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
22	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
23	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
24	\$ 0.30	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50
25	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
26	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
27	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
28	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
29	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
30	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
31	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
32	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
33	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00

34	\$ 0.40	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	\$ 10.00
35	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
36	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
37	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
38	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00

39	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
40	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
41	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
42	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
43	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
44	\$ 0.60	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00	\$ 15.00
45	\$ 0.80	\$ 4.00	\$ 8.00	\$ 12.00	\$ 16.00	\$ 20.00
46	\$ 0.80	\$ 4.00	\$ 8.00	\$ 12.00	\$ 16.00	\$ 20.00
47	\$ 0.80	\$ 4.00	\$ 8.00	\$ 12.00	\$ 16.00	\$ 20.00
48	\$ 0.80	\$ 4.00	\$ 8.00	\$ 12.00	\$ 16.00	\$ 20.00
49	\$ 0.80	\$ 4.00	\$ 8.00	\$ 12.00	\$ 16.00	\$ 20.00
50	\$ 1.00	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 25.00
51	\$ 1.00	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 25.00
52	\$ 1.00	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 25.00
53	\$ 1.00	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 25.00
54	\$ 1.00	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00	\$ 25.00
55	\$ 1.25	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00	\$ 31.25
56	\$ 1.25	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00	\$ 31.25
57	\$ 1.25	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00	\$ 31.25
58	\$ 1.25	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00	\$ 31.25
59	\$ 1.40	\$ 7.00	\$ 14.00	\$ 21.00	\$ 28.00	\$ 35.00
60	\$ 1.50	\$ 7.50	\$ 15.00	\$ 22.50	\$ 30.00	\$ 37.50
61	\$ 1.60	\$ 8.00	\$ 16.00	\$ 24.00	\$ 32.00	\$ 40.00
62	\$ 1.70	\$ 8.50	\$ 17.00	\$ 25.50	\$ 34.00	\$ 42.50

63	\$ 1.80	\$ 9.00	\$ 18.00	\$ 27.00	\$ 36.00	\$ 45.00
64	\$ 1.90	\$ 9.50	\$ 19.00	\$ 28.50	\$ 38.00	\$ 47.50
65	\$ 2.05	\$ 10.25	\$ 20.50	\$ 30.75	\$ 41.00	\$ 51.25

66	\$ 2.15	\$ 10.75	\$ 21.50	\$ 32.25	\$ 43.00	
67	\$ 2.30	\$ 11.50	\$ 23.00	\$ 34.50	\$ 46.00	
68	\$ 2.50	\$ 12.50	\$ 25.00	\$ 37.50	\$ 50.00	
69	\$ 2.65	\$ 13.25	\$ 26.50	\$ 39.75	\$ 53.00	
70	\$ 2.75	\$ 13.75	\$ 27.50	\$ 41.25	\$ 55.00	
71	\$ 2.90	\$ 14.50	\$ 29.00			
72	\$ 3.00	\$ 15.50	\$ 31.00			
73	\$ 3.30	\$ 16.50	\$ 33.00			
74	\$ 3.50	\$ 17.50	\$ 35.00			
75	\$ 3.70	\$ 18.50	\$ 37.00			
76	\$ 3.95	\$ 19.25	\$ 39.00			
77	\$ 4.20	\$ 21.00	\$ 42.00			
78	\$ 4.45	\$ 22.25	\$ 44.50			
79	\$ 4.75	\$ 23.75	\$ 47.50			
80	\$ 5.05	\$ 25.25	\$ 50.50			
81	\$ 5.40	\$ 27.00	\$ 54.00			
82	\$ 5.75	\$ 28.75	\$ 57.50			
83	\$ 6.15	\$ 30.75	\$ 61.50			
84	\$ 6.60	\$ 33.00	\$ 66.00			
85	\$ 7.15	\$ 33.75	\$ 71.50			
86	\$ 7.75	\$ 38.75	\$ 77.50			
87	\$ 8.50	\$ 42.50	\$ 85.00			
88	\$ 9.15	\$ 45.75	\$ 91.50			
89	\$ 10.00	\$ 50.00	\$100.00			

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-120. Applicants eighty (80) years of age and above.**

(a) A doctor's statement of health, signed by the family physician, must be obtained on all persons eighty (80) years of age and above who make application for membership.

(b) Any person who is a patient or resident of a state hospital or a nursing home must have a good health statement, signed by the attending physician, attached to and made a part of the application for membership.

(c) Persons in state hospitals or mental institutions can have their benefits increased if they get a good health statement signed by their doctor.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-121. Increase in benefits.**

(a) Any increase in benefits on present members may be written on a regular application form or on a printed form for this purpose.

(b) Such applications must be kept on file by the association, in the order in which they are received, and must show the number of the certificate and the date must be noted on the permanent record card of the association.

(c) A copy of the certificate of membership shall be kept with said application.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-122. Maximum benefits.**

No member may have more than five hundred dollars (\$500) in benefits for certificates issued prior to or on July 19, 1987, or two thousand five hundred dollars (\$2,500) for certificates issued after July 19, 1987.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-123. Grace period.**

(a) Each member of a burial association shall be entitled to a thirty-day grace period for payment of dues or assessments.

(b) The association shall be liable for payment of benefits for any member of the association who dies during the thirty-day grace period.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-124. Reinstatement of membership.**

(a) A member who has permitted his or her membership to lapse, for no longer than a period of forty-eight (48) months, may be reinstated for good cause as determined by the secretary/treasurer.

(b) In such case, the assessments or dues in arrears must be paid.

(c) Otherwise, the member shall be written at the new rate at his or her attained age.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-125. Certificates in two associations.**

(a) Should a person hold a certificate with two (2) different associations not in the same service area, the association whose contract funeral home provides the services shall be the only one required to honor its policy.

(b) The nonservicing association shall refund one hundred percent (100%) of all dues paid.

(c) Further, should any burial association knowingly solicit memberships from persons holding a certificate in another association, the soliciting association may be subject to disciplinary action by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-126. Agents.**

(a)(1) Every person soliciting for an association must be a licensed agent for the association.

(2) Application forms for such license will be furnished upon request to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services' office.

(b)(1) No agent shall be permitted to write applications for burial associations without a license to write such applications.

(2) The agent must have a separate license for each association for which he or she writes and cannot be licensed to write for more than one (1) association during any one (1) calendar year within the same service area.

(c) Any person who, without having obtained an agent's license, has solicited, sold, or attempted to sell membership certificates will be refused a license and may face sanctions.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-127. Agent applications.**

Applications to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services for an agent's license must be:

- (1) Filled out;
- (2) Signed before a notary public by the applicant and an officer of the association; and
- (3) Accompanied by the statutory fee.

**Authority.** Arkansas Code §§ 23-78-113, 23-78-121.

**23 CAR § 331-128. Agent license fees.**

(a) The agent's license, regardless of the date issued, expires January 1 but may be renewed at any time before February 1 upon written request by the association and payment of the fee.

(b) After February 1, the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services may require that a formal application be filed with an accompanying affidavit to the effect that no solicitations have been made by the applicant since his or her license expired.

**Authority.** Arkansas Code §§ 23-78-113, 23-78-121.

**23 CAR § 331-129. Misrepresentation of facts.**

(a) Any agent who solicits members for any association upon a misrepresentation of facts may have his or her license revoked.

(b) The certificate of authority of any burial association which shall knowingly permit or condone such conduct on the part of its agents may also be revoked.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-130. Incontestable benefits.**

Any certificate shall be incontestable, except for fraud, after the same has been in force for a period of one (1) year.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-131. Use of particular words.**

Burial associations may use the terms "premiums" and "policy" in lieu of "dues" and "certificates".

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-132. Refund of dues.**

In the event the secretary/treasurer of an association shall deem it advisable to refund a member any sum of money claimed due by such member, then such amount

of the refund claim that has been credited to the mortuary fund shall be paid from such mortuary fund and treated as a benefit paid.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-133. Deposits of membership dues — Shortages and overdrafts.**

(a)(1) All assessments, membership dues, or other funds collected by any burial association must be deposited by the secretary/treasurer of the association within twenty (20) business days from the date collected or received by the association.

(2) All collections must be deposited into the burial association's mortuary fund for payment of membership benefits or invested.

(b)(1) All accounts, records, and books reflecting the financial status of all burial associations shall be open to inspection by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services' auditor and employees of the board.

(2) Anytime a shortage is found in a burial association by the auditors, it shall be considered a prima facie violation of the Burial Association Act, and the board may initiate action to remove the secretary/treasurer and revoke or suspend the certificate of authority granted to the burial association.

(c) In addition, the board may immediately call upon the secretary/treasurer's bond.

(d)(1) Funds received by an agent of a burial association are considered to have been received by the association.

(2) Associations shall not permit agents to deduct the operating expense from collections prior to remitting them to the secretary/treasurer of the association.

(3) All funds collected must be deposited in the bank account of the association and all disbursements must be made by check, signed by the secretary/treasurer of the association.

(4) The exception to this section is that the membership fee may be paid directly to the secretary/treasurer or to some other person appointed by the association as agent and licensed by the board.

**Authority.** Arkansas Code §§ 23-78-111, 23-78-121.

**23 CAR § 331-134. Benefits owing.**

(a) If at the end of any calendar year the funds in the treasury of the association are insufficient to meet the losses, then the secretary/treasurer may cause an extra assessment to be levied.

(b) The association shall charge off the benefits owing if not paid by the following annual report and the contract funeral home shall absorb the loss.

(c) Payments owing to a servicing funeral home, other than the contract funeral home, shall have priority and paid as funds are available.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-135. Service area notification to members.**

All burial associations, upon notification of address change outside the service area, shall notify in writing that policy holder of changes in benefits, if any.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-136. Assumption of burial associations by insurance companies.**

(a) Burial associations petitioning the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services for approval for assumption by an insurance company shall submit the following documents to the board at least ninety (90) days prior to the proposed effective date of the assumption:

(1) A notarized copy of the minutes of the meeting at which the assumption was approved;

(2) A copy of the public notice announcing the meeting to discuss the assumption; and

(3) A notarized copy of the letter to be sent to all association policy holders stating the date, time, and place of the public meeting, as well as the particulars of the assumption.

(b) In order that an insurance company may assume a burial association, the following conditions must be met:

(1) The insurer must be a legal reserve or stipulated premium insurance company, actively engaged in business in the State of Arkansas, for the last two (2) years;

(2)(A) The assuming insurance company must conduct an independent actuarial study to determine the amount of money that is needed to reserve the policies of the burial association being assumed.

(B) This study is subject to board approval;

(3) The face amount of the policy issued by the insurance company, in lieu of the membership certificate, shall be in the same amount and at the same premium rate as the membership certificate;

(4) The assuming insurance company must state in its assumption agreement that all claims on behalf of a policyholder, will be paid in cash and in an amount not less than one hundred percent (100%) of the face amount of the benefit that the member was entitled to under the certificate of membership in the burial association;

(5) The owner of the policy shall have the exclusive right to name the beneficiary of his or her choice, and the owner may change the beneficiary at his or her option in writing;

(6) The insurance provider shall not require the policyholder to select either services or merchandise from any particular provider of such services or merchandise in order that the one hundred percent (100%) of the face amount of the policy, issued in lieu of membership certificates, be payable;

(7) The funds in the mortuary reserve fund will be disbursed as follows:

(A) All just claims, debts, and obligations of the burial association will be paid;

(B) A pro rata distribution will be made to the policyholders opting out of the assumption;

(C) The reserve amount, subdivision (b)(2) of this section, as determined by the independent actuarial study, will be paid to the assuming insurance company; and

(D) After all required disbursements are made, any funds remaining in the mortuary reserve shall be returned to the policyholders; and

(8) All holders of membership certificates in a burial association shall be assumed by the insurance company, in the same amount and at the same premium rate as under the membership certificate, without being required to submit proof of insurability.

(c)(1) Insurance companies wishing to assume a burial association shall submit the following documents to the board, at least ninety (90) days prior to the proposed effective date of the assumption:

(A) A petition for assumption;

(B) The plan of liquidation;

(C) The assumption agreement; and

(D) The assumption notice.

(2)(A) Upon receipt of the documents from both the burial association and the assuming insurance company, the executive secretary shall review the documents submitted for compliance with this section.

(B) Additionally, a copy of the documents shall be submitted to the State Insurance Department for review regarding the petitioners' compliance with the department rules.

(C) The secretary shall provide the board with a copy of the documents at least twenty (20) business days prior to the next regularly scheduled board meeting for consideration at that meeting.

(d) **Plan of liquidation.** The plan of liquidation shall include:

- (1) The effective date of the planned liquidation;
- (2) The transfer of the rights held under the membership certificate to the insurance company and that the burial association shall have no liabilities as of the effective date of the liquidation;
- (3) A plan to transfer the assets of the association as provided for in subdivision (b)(7) of this section;
- (4) The date of the closing of the burial association;
- (5) A statement that the insurance company accepts cession of the burial association membership certificates and that it assumes all liabilities of the membership certificates, together with all debts and obligations of the association being assumed, and further that the liabilities, debts, and obligations of the association shall not be greater than the association had prior to the assumption, except that there shall be no less than one hundred percent (100%) of the face amount of the policy payable in cash; and
- (6) That policies shall be issued by the insurance company stating the name of the insurance company, the names of the insured, the amount of coverage for each individual and the premium rates for each individual covered by the policy.

(e) **Assumption agreement.** The assumption agreement shall include that:

- (1) The benefits formerly contemplated under the membership certificates are now payable through the insurance company and that such benefits are payable in cash only;
- (2) The insurance company shall have the right to assume those assets of the burial association as provided for in subdivision (b)(7) of this section, in exchange for the liabilities of the association;
- (3)(A) If the holder of a membership certificate in a burial association does not desire to be assumed by the insurance company and "wishes to opt out", he or she may, within sixty (60) days, return the assumption notice and request this "opt out" pro rata share of the association's reserves as computed and certified by the assuming insurance company.

(B) Continued payment of premiums constitutes acceptance of the assumption;

(4) The coverage provided through the insurance company shall be in the same amount and at the same premium rate as that held under the certificate of membership in the association; and

(5) Those responsible for making funeral arrangements for the deceased policyholder shall have the freedom to choose a funeral home or other funeral service and merchandise provider of their choice, and further that such choice shall not diminish the face amount of the policy of such.

**(f) Assumption notice.**

(1) The assumption notice shall be mailed or provided to each member of the association being assumed.

(2) The notice of assumption shall be provided to each member in good standing, on the effective date of the assumption, without proof of insurability.

(3) The assumption notice shall provide the following:

(A) Effective date of the assumption;

(B) Information regarding the assumption including:

(i) Uninterrupted insurance coverage without proof of insurability;

(ii) Continued, same premium rate;

(iii) Proceeds payable in one hundred percent (100%) of the face amount, in cash; and

(iv) Exclusive right of the policyholder to name the beneficiary of his or her choice and right to change the beneficiary at his or her option, in writing; and

(C) Information regarding the opting out provisions, including a policyholder's right to a pro rata share of the mortuary fund reserves as determined by subdivision (b)(7) of this section.

**(g) Audit of burial association.** The board shall conduct an audit of the burial association being assumed by the insurance company within seven (7) days of the effective date of the assumption.

(h) All costs associated with the assumption of a burial association shall be paid by the assuming insurance company.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-137. Separation of accounts — Old business/new business.**

(a)(1) All burial association memberships written on or after July 1, 1987, shall be reserved based on the actuarial table approved by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(2) Collections and interest derived from Acts 1987, No. 443, new business must not be used in any manner to pay claims on old business.

(3) The excess revenue or mortuary fund derived from old business shall likewise not be used to pay claims on Acts 1987, No. 443, new business.

(b) Those associations with revenue insufficient to pay old business claims are required to conduct a fifth assessment each year, pay the contract funeral home a maximum of fifty percent (50%) of face amount of each certificate and take no expenses until the revenue reaches the point that no claims are written off and the board determines that the extra assessment, fifty-percent settlement, and forfeiture of expenses are no longer necessary.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-138. New business guaranty fund.**

(a) There is hereby established a fund to ensure the solvency of "new business", as that term is used in this part, which shall be known as the "New Business Emergency Guaranty Fund".

(b)(1) The assessments for the fund paid to the board shall be maintained in an interest-bearing account in a financial institution organized and operating under the laws of the State of Arkansas.

(2) The fund shall be under the exclusive control of the board.

(c) The fund shall be used at the board's sole discretion to pay claims if any that arise from new business written pursuant to the board's rules prior to an association's having sufficient funds in its new business account to satisfy such claims.

(d) The board specifically reserves the right to make such additional assessments for the fund as it deems reasonable and necessary based on its experience in administering the fund.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-139. Use of new business surplus funds.**

(a)(1) Each year following the annual report, any association having surplus funds from its new business, as that term is defined in this part, may apply to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services for authorization to transfer all or part of those surplus funds to its old business account if that old business, according to the association's annual report, has funds insufficient to meet the reserve requirements for its membership calculated according to the reserve table contained in 23 CAR § 331-143.

(2) Upon receipt of such a request, the board shall approve or disapprove the same within sixty (60) days, taking into consideration other remedial measures, if any, that have been invoked by the board.

(b) "Surplus funds", as that term is used in this part, means those new business funds held by an association, as reflected by its annual report, in excess of:

(1) The association's new business reserve requirements as determined pursuant to 23 CAR § 331-143;

(2) The association's new business claims that have been filed with or reported to the association prior to the annual report;

(3) The association's incurred but not reported claims, as determined by that association's actual experience over the preceding three (3) years; and

(4) The association's accounts, bills, and expenses that are unpaid as of the annual report.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-140. Prohibition from paying member assessments.**

Neither a funeral home nor any person employed by or otherwise associated with a funeral home may subsidize a member's benefit by paying all or a portion of any assessment.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-141. Medical guidelines.**

See Exhibit A [here](#).

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-142. Death within 24 months.**

(a) If death occurs within twenty-four (24) months of the date of issue from any reason other than an accident, the claim will be reviewed by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(b) If there has been a material misrepresentation prior to the date of issue of the certificate, or if the death is due to suicide:

- (1) The certificate will be ruled invalid; and
- (2) A refund of all dues paid will be made.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-143. Chamberlain table.**

See Exhibit B [here](#).

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-144. Penalties.**

(a) The secretary/treasurer of the burial association shall file the December annual report by March 15 of the next calendar year.

(b) All other required documents and the annual fee are due on or before March 15 of the next calendar year.

(c) Reports and fees not received in the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services' office by the due date will be delinquent and a one-hundred-dollar-per-day delinquent fee, for a maximum period of ten (10) days or one thousand dollars (\$1,000), will be levied.

(d) If the report is not received within ten (10) days of the due date, the board's auditor will be sent to procure the report.

(e) The board shall recover the fees associated pursuant to Arkansas Code § 23-78-120.

(f) The association cannot pay the delinquent fees or the cost to procure the report from the mortuary fund.

**Authority.** Arkansas Code §§ 23-78-117, 23-78-121.

**23 CAR § 331-145. Use of old business surplus funds.**

(a) Each year following the annual report required by 23 CAR § 331-110, any association having "surplus funds" from its old business, as that term is defined in 23 CAR § 331-139(b), may apply to the board for authorization to transfer all or part of those surplus funds to its new business account if that new business account, according to the association's annual report, has funds insufficient to meet the reserve requirements for its membership calculated according to the reserve table contained in 23 CAR § 331-143.

(b) Upon receipt of such request, the board shall approve or disapprove it within sixty (60) days, taking into consideration other remedial measures, if any that have been invoked by the board.

(c) "Surplus funds", as that term is used in this part, means those old business funds held by an association, as reflected by its annual report, in excess of the total face value of outstanding policies.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-146. Annual license fees.**

(a) The annual fee of six hundred dollars (\$600) will be due with the annual report.

(b) Annual membership fees based on the total actual membership count as of December 31 will be twenty cents (\$0.20) per member and will be due with the annual report.

(c) Annual membership fees are considered to be a component of the annual license fee.

**Authority.** Arkansas Code §§ 23-78-111, 23-78-121.

**23 CAR § 331-147. Mergers and acquisitions.**

(a) Mergers and acquisitions are allowed with State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services approval.

(b) Plans are required to be submitted to the board before twenty (20) days prior to a regular board meeting.

**Authority.** Arkansas Code § 23-78-121.

**23 CAR § 331-148. Dissolutions.**

(a) Dissolutions of burial associations are allowed with State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services approval after submitting plans for making the members whole.

(b) Plans are required to be submitted to the board before twenty (20) days prior to a regular board meeting.

**Authority.** Arkansas Code § 23-78-121.