

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/10/03

A Bill

Act 987 of 2003
HOUSE BILL 2183

5 By: Representative House
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For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PREPAID FUNERAL
10 BENEFITS LAW TO REQUIRE WRITTEN NOTICE WHEN AN
11 ORGANIZATION OBTAINS A SINGLE PAY LIFE POLICY OR
12 ANNUITY LESS THAN THE CASH AMOUNT PAID; TO
13 AUTHORIZE REPARATION PAYMENTS IN BULK; TO
14 AUTHORIZE PROHIBITION OF DISBURSEMENTS FROM
15 DEFICIENT TRUST ACCOUNTS; AND FOR OTHER PURPOSES.
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Subtitle

17 AN ACT TO AMEND THE ARKANSAS PREPAID
18 FUNERAL BENEFITS LAW.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 23-40-111(a) and (b) concerning the
25 cancellation or denial of a permit to sell prepaid funeral benefits, are
26 amended to read as follows:

27 (a)(1) The Insurance Commissioner may issue a permit conditioned upon
28 satisfactory completion of all requirements of this chapter prior to the
29 applicant's offering for sale or selling prepaid funeral benefits.

30 (2) In addition, prior to the issuance of either an initial or
31 renewal permit, the applicant must be deemed by the commissioner to be
32 competent, trustworthy, and financially responsible to engage in the sale of
33 prepaid funeral contracts in this state.

34 (b)(1) The commissioner may ~~cancel a permit,~~ deny an initial
35 application ~~for permit, refuse to renew a permit~~ for failure to meet the
36 requirements of subsection (a) of this section, or for the applicant's



1 failure to comply with any material provision of this chapter or any valid
2 rule and regulation which the commissioner has prescribed, after:

3 (A) Thirty (30) days' notice to the applicant or permittee
4 setting forth the grounds for such cancellation, denial of application for
5 initial permit, or refusal to renew; and

6 (B) A hearing if the applicant or permittee requests a
7 hearing.

8 (2) ~~No organization shall be entitled to a new permit for a~~
9 ~~period of one (1) year after cancellation or refusal by the commissioner to~~
10 ~~renew its permit, but shall thereafter be entitled to a new permit upon~~
11 ~~satisfactory proof of compliance with this chapter. After notice to the~~
12 licensee and after hearing, the commissioner may suspend any permit under
13 this chapter for up to thirty-six (36) months, or may revoke or refuse to
14 continue any permit under this chapter, if he or she finds that:

15 (A) The licensee has failed to comply with any material
16 provision of this chapter or any valid rule and regulation or order which the
17 commissioner has prescribed;

18 (B) The licensee has obtained its permit through
19 misrepresentation or fraud;

20 (C) An officer, director, or owner of the licensee has
21 improperly withheld, misappropriated, or converted any moneys or properties
22 received in the course of prepaid funeral contracts business to the
23 licensee's own use;

24 (D) An officer, director, or owner of the licensee has
25 been found to have committed any unfair trade practice or fraud during the
26 course of prepaid funeral contracts business;

27 (E) The licensee has failed to provide a written response
28 after receipt of a written inquiry from the commissioner or his or her
29 representative as to transactions under the license within thirty (30) days
30 after receipt thereof, unless the commissioner or his or her representative
31 knowingly waives the timely response requirement in writing;

32 (F) The licensee has refused to be examined or produce any
33 of his or her accounts, records, and files for examination or has failed to
34 cooperate with the commissioner in an investigation when requested by the
35 commissioner or his or her representative; or

36 (G) The licensee is in violation of any grounds under §

1 23-40-114(a) sufficient to subject the organization to delinquency
2 proceedings.

3 (3)(A) If the commissioner finds that one (1) or more grounds
4 exist for the suspension or revocation of any license, the commissioner may
5 impose upon the licensee an administrative penalty in the amount of up to one
6 thousand (\$1,000) dollars per violation.

7 (B) If the commissioner finds willful misconduct or
8 willful violation on the part of the licensee the commissioner may impose
9 upon the licensee an administrative penalty of up to five thousand dollars
10 (\$5,000) per violation.

11 (C) In addition to either penalty imposed under
12 subdivision (b)(3)(A) or (B) of this section, the commissioner may also order
13 restitution of actual losses to affected persons.

14 (4) If the commissioner finds in his or her order that the
15 public health, safety, or welfare imperatively requires emergency action, he
16 or she may summarily suspend any license issued by him or her, but shall
17 promptly hold an administrative hearing regarding the suspension.

18 (5)(A) Upon notice and hearing, if the commissioner finds that
19 the licensee has violated a provision of the prepaid funeral benefits laws of
20 this state or any rule, regulation, or order of the commissioner and that the
21 licensee has previously violated provisions of the prepaid funeral benefits
22 laws of this state or any rule, regulation, or order of the commissioner, the
23 commissioner may:

24 (i) Take judicial notice of previous orders against
25 the licensee; and

26 (ii) Enhance or increase the penalties ordered in
27 the current proceeding against the licensee.

28 (B) The commissioner may enter an order under subdivision
29 (b)(5)(A) of this section by his or her order, or by an order entered with
30 the consent of the parties.

31 (C) The commissioner shall incorporate a finding under
32 subdivision (b)(5)(A) of this section in any order issued under subdivision
33 (b)(5) of this section.

34
35 SECTION 3. Arkansas Code § 23-40-112, concerning sales contracts for
36 prepaid funeral benefits, is amended to add an additional subsection to read

1 as follows:

2 (h) Each seller shall provide advance written notice to the contract
3 purchaser that the seller intends to procure a single payment whole life
4 insurance policy or annuity on the contract beneficiary to fund the prepaid
5 funeral benefit contract for less money than the total amount of the cash
6 payment if:

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

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

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13 SECTION 4. Arkansas Code § 23-40-114, concerning trusts created from
14 prepaid funeral benefits, is amended to add a new subsection to read as
15 follows:

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

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23 SECTION 5. Arkansas Code § 23-40-122 is amended to read as follows:
24 23-40-122. Cancellation.

25 A purchaser may cancel or transfer a prepaid contract as provided under
26 this section, whether revocable or irrevocable, or whether cash funded or
27 funded by insurance or an annuity, at any time prior to performance of the
28 contract by the seller, subject to the following conditions:

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

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

34 (B) After death, if the prepaid contract is revocable, the
35 purchaser, or his representative, shall be entitled to receive one hundred
36 percent (100%) of the amount paid to the seller by the purchaser, not to

1 exceed the contract price; or

2 (C) If the prepaid contract is irrevocable, the purchaser shall
3 not have the right to a refund of any funds paid by him or proceeds paid to
4 the seller, but shall have the right to change the provider of the contract
5 services and merchandise to a substitute provider, in which event the seller
6 shall transfer to the substitute provider not less than one hundred percent
7 (100%) of the amount paid to the seller by the purchaser, not to exceed the
8 contract price;

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

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

15 (B) After the death of the contract beneficiary, if the prepaid
16 contract is revocable, the purchaser, or his designee, shall be entitled to
17 receive not less than one hundred percent (100%) of the policy proceeds paid
18 to the seller, not to exceed the original face amount of the policy; or

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

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

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

34 (A) Prior to the death of the contract beneficiary, if the
35 prepaid contract is revocable, the purchaser shall be entitled to receive a
36 refund of not less than one hundred percent (100%) of the annuity value, not

1 to exceed the premium paid by the purchaser for the annuity funding the
2 prepaid contract;

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

7 (C)(i) Prior to the death of the contract beneficiary, if the
8 prepaid contract is irrevocable, the purchaser shall not have the right to a
9 refund of any funds paid to the seller, but shall have the right to change
10 the provider of the prepaid contract services and merchandise to a substitute
11 provider, in which event the seller shall assign or transfer to the
12 substitute provider, as directed by the contract owner, the annuity policy
13 used to fund the prepaid contract, which shall be in an amount of not less
14 than one hundred percent (100%) of the annuity value, not to exceed the
15 premium paid by the purchaser.

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

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21 SECTION 6. Arkansas Code § 23-40-125(j) through (l), concerning claims
22 for reimbursement for losses incurred due to the action of a prepaid funeral
23 organization, and concerning the Prepaid Funeral Contracts Recovery Program
24 Board, are amended to read as follows:

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

28 (2) The commissioner may approve one (1) application that
29 includes more than one (1) reparation claim for the benefit of purchasers of
30 prepaid contracts of a licensee ordered liquidated under § 23-40-123, as part
31 of a plan to arrange for another licensee to assume the obligations of the
32 licensee being liquidated, if the commissioner finds the plan is reasonable
33 and in is the best interests of the contract beneficiaries, and the plan is
34 approved by a court.

35 (k)(1) In the event reimbursement is made to an applicant under this
36 section, the commissioner, on behalf of the state, shall be subrogated in the

1 reimbursed amount and may bring any action the commissioner deems advisable
2 for the program against any person, including a prepaid licensee.

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

8 (1)~~(A)~~(1) There is hereby created the Prepaid Funeral Contracts
9 Recovery Program Board.

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

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

16 ~~(iii)~~~~(a)~~(C)(i) Each member of the board may serve up to
17 two (2) consecutive four (4) year terms.

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

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

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/s/ House

APPROVED: 3/31/2003