

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 97

5 By: Senator D. Wallace  
6 By: Representative Joey Carr  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS PREPAID FUNERAL BENEFITS  
10 LAW; TO REGULATE PREPAID BENEFITS CONTRACTS; TO  
11 REDUCE BURDENS ON THE ADMINISTRATION OF PREPAID  
12 BENEFITS CONTRACTS; TO CLARIFY CONTROL OF PREPAID  
13 BENEFITS CONTRACTS; TO ENHANCE THE ADMINISTRATION OF  
14 THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; AND FOR  
15 OTHER PURPOSES.  
16  
17

## Subtitle

19 TO AMEND THE ARKANSAS PREPAID FUNERAL  
20 BENEFITS LAW; TO REGULATE PREPAID  
21 BENEFITS CONTRACTS; AND TO ENHANCE THE  
22 ADMINISTRATION OF THE ARKANSAS PREPAID  
23 FUNERAL BENEFITS LAW.  
24  
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

28 SECTION 1. Arkansas Code § 19-5-1106(b)(3), concerning the  
29 administration of the State Insurance Department Prepaid Trust Fund, is  
30 amended to read as follows:

31 (3) The State Insurance Department Prepaid Trust Fund shall also  
32 consist of the assets of the Prepaid Funeral Contracts Recovery Program Fund,  
33 there to be administered by the ~~Insurance Commissioner and the Prepaid~~  
34 ~~Funeral Contracts Recovery Program Board as set out in § 23-40-125~~  
35 commissioner.  
36



1 SECTION 2. Arkansas Code § 23-40-111(b), concerning the cancellation  
2 or denial of a permit to sell prepaid funeral benefits under the Arkansas  
3 Prepaid Funeral Benefits Law, is amended to add additional subdivisions to  
4 read as follows:

5 (6)(A)(i) If a licensee's permit has lapsed or is suspended or  
6 revoked, then the licensee shall surrender to the commissioner:

7 (a) Any existing nonfulfilled prepaid  
8 contracts;

9 (b) Contract files;

10 (c) Inventory reports;

11 (d) In-force reports; and

12 (e) Any other documentation pertaining to the  
13 administration of the licensee's prepaid funeral benefits business.

14 (ii)(a) If the licensee's permit has lapsed, then  
15 the licensee shall surrender the documentation under subdivision (b)(6)(A)(i)  
16 of this section within thirty (30) days of the date of the expiration of the  
17 permit.

18 (b) If the licensee renews the licensee's  
19 permit, then at the time the renewal is approved, the commissioner shall  
20 return the documentation to the licensee.

21 (iii)(a) If the licensee's permit is suspended, then  
22 the licensee shall surrender the documentation under subdivision (b)(6)(A)(i)  
23 of this section within thirty (30) days of the date the commissioner's order  
24 is entered or within thirty (30) days after the deadline to appeal the  
25 commissioner's order.

26 (b) At the end of the period of suspension, if  
27 no other action is taken against the licensee, then the commissioner shall  
28 return the documentation to the licensee.

29 (c) If the permit is subsequently revoked,  
30 then the commissioner shall not return any documentation to the licensee.

31 (iv) If the licensee's permit is revoked, then the  
32 licensee shall surrender the documentation under subdivision (b)(6)(A)(i) of  
33 this section within thirty (30) days of the date the commissioner's order is  
34 entered or within thirty (30) days after the deadline to appeal the  
35 commissioner's order.

36 (B) The licensee's failure to surrender all the

1 documentation under subdivision (b)(6)(A)(i) of this section if there has  
 2 been a lapse of a permit, suspension, or revocation, shall subject the  
 3 licensee to an administrative penalty of:

4 (i) One thousand dollars (\$1,000) per violation if  
 5 the licensee fails to comply with the applicable thirty-day timeline to  
 6 surrender the documentation under this subdivision (b)(6); and

7 (ii) Five thousand dollars (\$5,000) per violation if  
 8 the licensee:

9 (a) Fails to comply with the applicable  
 10 thirty-day timeline to surrender the documentation under this subdivision  
 11 (b)(6); and

12 (b) The commissioner finds willful misconduct  
 13 or a willful violation of this subdivision (b)(6).

14  
 15 SECTION 3. Arkansas Code § 23-40-119(a), concerning the annual report  
 16 and annual report fee under the Arkansas Prepaid Funeral Benefits Law, is  
 17 amended to read as follows:

18 (a) Each organization shall file an annual report and an annual report  
 19 fee with the Insurance Commissioner on or before March 15 of each year in  
 20 such form as the commissioner may require, showing ~~the~~:

21 (1) ~~Names or account~~ The names or contract numbers, or both, of  
 22 all persons with whom contracts for prepaid funeral benefits have been made  
 23 ~~prior to~~ before January 1 of that year that had not been fully discharged on  
 24 January 1;

25 (2) ~~Date~~ The date of contract;

26 (3) ~~Name~~ If the prepaid contract is funded by cash or trust,  
 27 the:

28 (A) Name of the trustee holding the trust fund; and

29 ~~(4)(B)~~ Amount in the trust fund under each contract on the  
 30 preceding December 31~~r~~; and

31 (4) If the prepaid contract is funded by an insurance policy or  
 32 an annuity, the:

33 (A) Information required under subdivisions (a)(1) and (2)  
 34 of this section;

35 (B) Name of the insurance company or third party  
 36 administrator holding the insurance policy or annuity;



1 as follows:

2 (f)(1) Notwithstanding the provisions of § 23-40-107, if there are any  
 3 unused funds from fees collected from organizations under subsections (c) and  
 4 (d) of this section not disbursed for personal services, operating expenses,  
 5 maintenance and operations, and support and improvements for the Division of  
 6 Prepaid Funeral Benefits, ~~such~~ the excess funds, if any, may be transferred  
 7 to the Prepaid Funeral Contracts Recovery Program Fund to provide reparations  
 8 to purchasers of prepaid funeral contracts who have purchased cash-funded,  
 9 insurance-funded, or annuity-funded prepaid funeral contracts from  
 10 organizations that have been:

11 (A) Declared insolvent by a state or federal court of  
 12 competent jurisdiction; or

13 (B) Determined by either the commissioner or a state or  
 14 federal court of competent jurisdiction to have fund account deficiencies.  
 15

16 SECTION 6. Arkansas Code § 23-40-122(a), concerning the cancellation  
 17 or transfer of a prepaid contract under the Arkansas Prepaid Funeral Benefits  
 18 Law, is amended to read as follows:

19 (a) A purchaser may cancel or transfer a prepaid contract under this  
 20 section, whether revocable or irrevocable, or whether cash-funded or funded  
 21 by insurance or an annuity, at any time before performance of the contract by  
 22 the seller, under the following conditions:

23 (1) In the case of a cash-funded or trust-funded prepaid  
 24 contract:

25 (A) Before the death of the contract beneficiary, if the  
 26 prepaid contract is revocable, the purchaser is entitled to receive a refund  
 27 of not less than one hundred percent (100%) of all sums paid to the seller by  
 28 the purchaser, not to exceed the contract price;

29 (B) After the death of the contract beneficiary, if the  
 30 prepaid contract is revocable, the purchaser or, ~~his or her representative~~ if  
 31 the purchaser is someone other than the prepaid contract beneficiary, the  
 32 contract beneficiary's family member or responsible party as determined under  
 33 § 20-17-102(d), is entitled to receive one hundred percent (100%) of the  
 34 amount paid to the seller by the purchaser, not to exceed the contract price;

35 ~~or~~

36 (C) ~~If~~ Before the death of the contract beneficiary, if

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

8 (D)(i) After the death of the contract beneficiary, if the  
 9 prepaid contract is irrevocable, the purchaser or, if the purchaser is  
 10 someone other than the prepaid contract beneficiary, the contract  
 11 beneficiary's family member or responsible party as determined under § 20-17-  
 12 102(d), does not have the right to a refund of any funds paid by the  
 13 purchaser or proceeds paid to the seller but does have the right to change  
 14 the provider of the contract services and merchandise to a substitute  
 15 provider.

16 (ii) If a substitute provider is used under  
 17 subdivision (a)(1)(D)(i) of this section, then the seller shall transfer to  
 18 the substitute provider one hundred percent (100%) of the amount paid to the  
 19 seller by the purchaser, not to exceed the contract price;

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

21 (A) Before the death of the contract beneficiary, if the  
 22 prepaid contract is revocable, the purchaser shall have the right to receive  
 23 not less than one hundred percent (100%) of the cash surrender value of the  
 24 policy used to fund the prepaid contract, not to exceed the premium paid by  
 25 the purchaser;

26 (B) After the death of the contract beneficiary, if the  
 27 prepaid contract is revocable, the purchaser, if the purchaser is someone  
 28 other than the prepaid contract beneficiary, or his or her designee is  
 29 entitled to receive not less than one hundred percent (100%) of the policy  
 30 proceeds paid to the seller, not to exceed the original face amount of the  
 31 policy; or

32 (C)(i) Before the death of the contract beneficiary, if  
 33 the contract is irrevocable, the ~~prepaid contract~~ purchaser shall not have  
 34 the right to a refund of any funds paid to the seller or the insurance  
 35 company but shall have the right to change the provider of the prepaid  
 36 contract services and merchandise to a substitute provider, in which event

1 the seller shall assign or transfer to the substitute provider, as directed  
 2 by the prepaid contract ~~owner~~ purchaser, the life insurance policy used to  
 3 fund the prepaid contract or funds in an amount not less than one hundred  
 4 percent (100%) of the cash surrender value of the policy used to fund the  
 5 prepaid contract, not to exceed the premium paid by the purchaser.

6 (ii) After the death of the contract beneficiary, if  
 7 the contract is irrevocable, the seller shall transfer to the substitute  
 8 provider not less than one hundred percent (100%) of the policy proceeds paid  
 9 to the seller, not to exceed the original face amount of the policy; or

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

11 (A) Before the death of the contract beneficiary, if the  
 12 prepaid contract is revocable, the purchaser is entitled to receive a refund  
 13 of not less than one hundred percent (100%) of the annuity value, not to  
 14 exceed the premium paid by the purchaser for the annuity funding the prepaid  
 15 contract;

16 (B) After the death of the contract beneficiary, if the  
 17 prepaid contract is revocable, the purchaser, if the purchaser is someone  
 18 other than the prepaid contract beneficiary, or his or her designee is  
 19 entitled to receive not less than one hundred percent (100%) of the annuity  
 20 proceeds received by the seller, not to exceed the premium paid by the  
 21 purchaser; or

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

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

35  
 36 SECTION 7. Arkansas Code § 23-40-125 is amended to read as follows:

1           23-40-125. Prepaid Funeral Contracts Recovery Program Fund – Created –  
2 ~~Prepaid Funeral Contracts Recovery Program Board – Established.~~

3           (a) There is established within the State Insurance Department Prepaid  
4 Trust Fund an account to be known as the “Prepaid Funeral Contracts Recovery  
5 Program Fund”, ~~hereinafter “fund”.~~

6           (b) No money is to be appropriated from this fund for any purpose  
7 except for expenses and payment of claims of the Prepaid Funeral Contracts  
8 Recovery Program at the direction of the Insurance Commissioner ~~and the~~  
9 ~~Prepaid Funeral Contracts Recovery Program Board.~~

10          (c) The fund shall be invested under the direction of the commissioner  
11 and the Treasurer of State, with advice from the Chief Fiscal Officer of the  
12 State as needed from time to time.

13          (d)(1) All income derived through investment of the fund, including,  
14 but not limited to, fees, interest, and dividends shall be credited as  
15 investment income to the fund and deposited therein.

16          (2) All income derived from fund transfers, subrogation awards,  
17 grants, orders or judgments of restitution, refunds, voluntary reimbursements  
18 or restitution, and gifts shall be credited as investment income to the fund  
19 and deposited therein.

20          (e) Further, all moneys deposited into the fund shall not be subject  
21 to any deduction, tax, levy, or any other type of assessment except as may be  
22 provided in this subchapter.

23          (f)(1) The fund shall be administered by the commissioner, ~~with advice~~  
24 ~~from the Prepaid Funeral Contracts Recovery Program Board, hereinafter~~  
25 ~~“board”.~~

26          (2) The purpose of the fund is to reimburse purchasers of  
27 preneed funeral contracts who have suffered financial loss as a result of the  
28 impairment, insolvency, business interruption, or improper inactivity of a  
29 prepaid funeral organization licensed in this state under this chapter.

30          (g)(1) From the fee for each preneed funeral contract as required by §  
31 23-40-119(d)(1)(A) and from any funds transferred to the fund pursuant to §  
32 23-40-119(f)(1), the commissioner ~~with board advice and consultation~~ shall  
33 administer the ~~Prepaid Funeral Contracts Recovery Program~~ program.

34          (2) The commissioner may suspend fees or unused funds transfers  
35 or deposits into the fund at any time and for any period for which the  
36 commissioner determines that a sufficient amount is available to meet likely



1 disbursements and to maintain an adequate reserve in compliance with a rule  
2 of the commissioner.

3 (h) The commissioner ~~with board assistance~~ shall adopt procedures  
4 governing management of the fund, the presentation and processing of  
5 applications for reimbursement, and subrogation or assignment of the rights  
6 of any reimbursed applicant.

7 (i)(1) The commissioner may expend moneys in the fund for the  
8 following purposes:

9 (A) To make reimbursements on approved applications; and

10 (B) To pay related expenses involved in operating the  
11 program as permitted under state law.

12 (2) Reimbursements from the fund shall be made only to the  
13 extent to which such losses are not bonded or otherwise covered, protected,  
14 or reimbursed, and only after the applicant has complied with all applicable  
15 rules of the fund.

16 (j)(1) The commissioner, or his or her representatives, shall  
17 investigate all applications made and may reject or allow the claims, in  
18 whole or in part, to the extent that moneys are available in the fund.

19 (2) The commissioner may approve one (1) application that  
20 includes more than one (1) reparation claim for the benefit of purchasers of  
21 prepaid contracts of a licensee ordered liquidated under § 23-40-123, as part  
22 of a plan to arrange for another licensee to assume the obligations of the  
23 licensee being liquidated, if:

24 (A) The commissioner finds that the plan is reasonable and  
25 is in the best interests of the contract beneficiaries; and

26 (B) The plan is approved by a court.

27 (k)(1) In the event reimbursement is made to an applicant under this  
28 section, the commissioner, on behalf of the state, shall be subrogated in the  
29 reimbursed amount and may bring any action the commissioner deems advisable  
30 for the program against any person, including a prepaid licensee.

31 (2) The commissioner may enforce any claims that the program, on  
32 behalf of the state, may have for restitution or otherwise and may employ and  
33 compensate consultants, agents, legal counsel, accountants, and any other  
34 persons that the commissioner deems appropriate. Payments shall be made from  
35 the fund for such services.

36 (l)(1) ~~There is created the Prepaid Funeral Contracts Recovery Program~~

1 Board.

2 ~~(2)(A) Members of the board shall consist of no fewer than five~~  
 3 ~~(5) nor more than nine (9) members of various licensed Arkansas prepaid~~  
 4 ~~funeral organizations, including one (1) consumer member selected from the~~  
 5 ~~Arkansas public at large.~~

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

8 ~~(C)(i) Each member of the board may serve up to two (2)~~  
 9 ~~consecutive four-year terms.~~

10 ~~(ii) Vacancies on the board shall be filled for the~~  
 11 ~~remaining period of the term by a majority vote of the remaining board~~  
 12 ~~members, subject to approval of the commissioner.~~

13 ~~(D) In approving selections to the board, the commissioner~~  
 14 ~~shall consider, among other things, whether all member licensees are fairly~~  
 15 ~~represented.~~

16 ~~(m)(1) The board shall assist the commissioner and come under the~~  
 17 ~~immediate supervision of the commissioner and shall be subject to the~~  
 18 ~~applicable provisions of the laws of this state.~~

19 ~~(2) The fund, as well as board action, shall be is subject to~~  
 20 ~~examination and regulation by the commissioner.~~

21 ~~(3)(A)(2)(A) The board commissioner, or his or her~~  
 22 ~~representatives, shall prepare and submit to the commissioner~~ each year, not  
 23 later than one hundred twenty (120) days after the program's fiscal year, a  
 24 financial report in a form approved by the commissioner and a report of  
 25 program activities during the preceding fiscal year.

26 (B) Upon request of a licensed prepaid funeral  
 27 organization in this state, the commissioner shall provide the member prepaid  
 28 funeral organization with a copy of the report.

29 ~~(n)(m)~~ There shall be no liability on the part of and no cause of  
 30 action of any nature shall arise against ~~any member of the board,~~ the  
 31 commissioner, or his or her representatives, agents, or employees for any act  
 32 or omission by them in the performance of their powers and duties under this  
 33 chapter, or in its administration, dispensation, handling, or collection of  
 34 funds for the program.

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