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2 94th General Assembly
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4

As Engrossed: S3/7/23

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

18 TO AMEND THE ARKANSAS PREPAID FUNERAL
19 BENEFITS LAW; TO REGULATE PREPAID
20 BENEFITS CONTRACTS; AND TO ENHANCE THE
21 ADMINISTRATION OF THE ARKANSAS PREPAID
22 FUNERAL BENEFITS LAW.
23
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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)(a) Under § 23-40-110(c), a licensee's permit expires
6 on June 1 of each year.

7 (b) For each licensee that has not renewed a
8 permit by June 1, the commissioner shall send a notice to the licensee that
9 the licensee is required to renew the permit within thirty (30) days of June
10 1.

11 (c) If a licensee's permit is not renewed
12 within thirty (30) days of June 1 or is suspended or is revoked, then the
13 licensee shall surrender to the commissioner:

14 (1) Any existing nonfulfilled prepaid
15 contracts;

16 (2) Contract files;

17 (3) Inventory reports;

18 (4) In-force reports; and

19 (5) Any other documentation pertaining
20 to the administration of the licensee's prepaid funeral benefits business.

21 (ii)(a) If the licensee's permit has lapsed, then
22 the licensee shall surrender the documentation under subdivision
23 (b)(6)(A)(i)(c) of this section within thirty (30) days of the date of the
24 expiration of the permit.

25 (b) If the licensee renews the licensee's
26 permit, then at the time the renewal is approved, the commissioner shall
27 return the documentation to the licensee.

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

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

36 (c) If the permit is subsequently revoked,

1 then the commissioner shall not return any documentation to the licensee.

2 (iv) If the licensee's permit is revoked, then the
 3 licensee shall surrender the documentation under subdivision (b)(6)(A)(i)(c)
 4 of this section within thirty (30) days of the date the commissioner's order
 5 is entered or within thirty (30) days after the deadline to appeal the
 6 commissioner's order.

7 (B) The licensee's failure to surrender all the
 8 documentation under subdivision (b)(6)(A)(i)(c) of this section if there has
 9 been a nonrenewal within thirty (30) days of June 1 of a permit, suspension,
 10 or revocation, shall subject the licensee to an administrative penalty of:

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

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

16 (a) Fails to comply with the applicable
 17 thirty-day timeline to surrender the documentation under this subdivision
 18 (b)(6); and

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

21
 22 SECTION 3. Arkansas Code § 23-40-119(a), concerning the annual report
 23 and annual report fee under the Arkansas Prepaid Funeral Benefits Law, is
 24 amended to read as follows:

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

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

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

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

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

36 ~~(4)-(B)~~ Amount in the trust fund under each contract on the

1 preceding December 31~~r~~; and

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

4 (A) Information required under subdivisions (a)(1) and (2)
 5 of this section;

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

8 (C) Insurance policy number;

9 (D) Date the insurance policy or annuity is issued; and

10 (E) Amount of the insurance policy or annuity.

11
 12 SECTION 4. Arkansas Code § 23-40-119(d)(1), concerning the per-
 13 contract fee under the Arkansas Prepaid Funeral Benefits Law, is amended to
 14 read as follows:

15 (d)(1)(A)(i)(a) Effective for all prepaid funeral benefits contracts
 16 executed on and after April 1, 1997, each licensee selling a prepaid funeral
 17 benefits contract shall remit to the State Insurance Department a one-time,
 18 per-contract fee of not less than five dollars (\$5.00) for each prepaid
 19 funeral benefits contract, including any amendments thereto, entered into by
 20 the licensee, whether cash or trust funded or funded by an insurance policy
 21 or annuity contract, unless the per-contract fees are otherwise eliminated or
 22 suspended by the commissioner pursuant to a rule.

23 (b) However, the per-contract fees once
 24 eliminated or suspended by rule of the commissioner may be reinstated by
 25 subsequent rule of the commissioner adopted upon a public hearing at a later
 26 date upon the commissioner's determination that these fees are essential and
 27 necessary to the operation of the Division of Prepaid Funeral Benefits of the
 28 State Insurance Department.

29 (ii) On and after July 1, 2001, the commissioner
 30 shall then transfer from each per-contract fee remitted to the department,
 31 into the Prepaid Funeral Contracts Recovery Program Fund pursuant to this act
 32 a portion of the fee in an amount to be determined by rules of the
 33 commissioner and thereafter to be administered by the commissioner ~~with~~
 34 ~~advice from the Prepaid Funeral Contracts Recovery Program Board, pursuant to~~
 35 ~~the provisions of~~ under this subchapter.

36 (B) The per-contract fees shall be remitted ~~quarterly~~

1 annually to the department for each ~~quarter~~ month of the calendar year with a
2 ~~quarterly fee~~ the annual report form as prescribed by the commissioner.

3 ~~(C) The fees shall be remitted to the department no later~~
4 ~~than forty five (45) days after each quarter.~~

5
6 SECTION 5. Arkansas Code § 23-40-119(f)(1), concerning unused funds
7 from fees under the Arkansas Prepaid Funeral Benefits Law, is amended to read
8 as follows:

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

18 (A) Declared insolvent by a state or federal court of
19 competent jurisdiction; or

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

22
23 SECTION 6. Arkansas Code § 23-40-122(a), concerning the cancellation
24 or transfer of a prepaid contract under the Arkansas Prepaid Funeral Benefits
25 Law, is amended to read as follows:

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

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

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

36 (B) After the death of the contract beneficiary, if the

1 prepaid contract is revocable, the purchaser or, ~~his or her representative if~~
2 the purchaser is someone other than the prepaid contract beneficiary, the
3 contract beneficiary's family member or responsible party as determined under
4 § 20-17-102(d), is entitled to receive one hundred percent (100%) of the
5 amount paid to the seller by the purchaser, not to exceed the contract price;
6 ~~or~~

7 (C) ~~If~~ Before the death of the contract beneficiary, if
8 the prepaid contract is irrevocable, the purchaser shall not have the right
9 to a refund of any funds paid by him or her or proceeds paid to the seller
10 but shall have the right to change the provider of the contract services and
11 merchandise to a substitute provider, in which event the seller shall
12 transfer to the substitute provider not less than one hundred percent (100%)
13 of the amount paid to the seller by the purchaser, not to exceed the contract
14 price; or

15 (D)(i) After the death of the contract beneficiary, if the
16 prepaid contract is irrevocable, the purchaser or, if the purchaser is
17 someone other than the prepaid contract beneficiary, the contract
18 beneficiary's family member or responsible party as determined under § 20-17-
19 102(d), does not have the right to a refund of any funds paid by the
20 purchaser or proceeds paid to the seller but does have the right to change
21 the provider of the contract services and merchandise to a substitute
22 provider.

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

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

28 (A) Before the death of the contract beneficiary, if the
29 prepaid contract is revocable, the purchaser shall have the right to receive
30 not less than one hundred percent (100%) of the cash surrender value of the
31 policy used to fund the prepaid contract, not to exceed the premium paid by
32 the purchaser;

33 (B) After the death of the contract beneficiary, if the
34 prepaid contract is revocable, the purchaser, if the purchaser is someone
35 other than the prepaid contract beneficiary, or his or her designee is
36 entitled to receive not less than one hundred percent (100%) of the policy

1 proceeds paid to the seller, not to exceed the original face amount of the
2 policy; or

3 (C)(i) Before the death of the contract beneficiary, if
4 the contract is irrevocable, the ~~prepaid contract~~ purchaser shall not have
5 the right to a refund of any funds paid to the seller or the insurance
6 company but shall have the right to change the provider of the prepaid
7 contract services and merchandise to a substitute provider, in which event
8 the seller shall assign or transfer to the substitute provider, as directed
9 by the prepaid contract owner purchaser, the life insurance policy used to
10 fund the prepaid contract or funds in an amount not less than one hundred
11 percent (100%) of the cash surrender value of the policy used to fund the
12 prepaid contract, not to exceed the premium paid by the purchaser.

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

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

18 (A) Before the death of the contract beneficiary, if the
19 prepaid contract is revocable, the purchaser is entitled to receive a refund
20 of not less than one hundred percent (100%) of the annuity value, not to
21 exceed the premium paid by the purchaser for the annuity funding the prepaid
22 contract;

23 (B) After the death of the contract beneficiary, if the
24 prepaid contract is revocable, the purchaser, if the purchaser is someone
25 other than the prepaid contract beneficiary, or his or her designee is
26 entitled to receive not less than one hundred percent (100%) of the annuity
27 proceeds received by the seller, not to exceed the premium paid by the
28 purchaser; or

29 (C)(i) Before the death of the contract beneficiary, if
30 the prepaid contract is irrevocable, the purchaser shall not have the right
31 to a refund of any funds paid to the seller but shall have the right to
32 change the provider of the prepaid contract services and merchandise to a
33 substitute provider, in which event the seller shall assign or transfer to
34 the substitute provider, as directed by the contract ~~owner~~ purchaser, the
35 annuity policy used to fund the prepaid contract, which shall be in an amount
36 of not less than one hundred percent (100%) of the annuity value, not to

1 exceed the premium paid by the purchaser.

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

6
7 SECTION 7. Arkansas Code § 23-40-125 is amended to read as follows:

8 23-40-125. Prepaid Funeral Contracts Recovery Program Fund – Created –
9 ~~Prepaid Funeral Contracts Recovery Program Board – Established.~~

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

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

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

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

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

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

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

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

1 (g)(1) From the fee for each preneed funeral contract as required by §
2 23-40-119(d)(1)(A) and from any funds transferred to the fund pursuant to §
3 23-40-119(f)(1), the commissioner ~~with board advice and consultation~~ shall
4 administer the ~~Prepaid Funeral Contracts Recovery Program~~ program.

5 (2) The commissioner may suspend fees or unused funds transfers
6 or deposits into the fund at any time and for any period for which the
7 commissioner determines that a sufficient amount is available to meet likely
8 disbursements and to maintain an adequate reserve in compliance with a rule
9 of the commissioner.

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

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

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

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

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

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

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

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

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

34 (k)(1) In the event reimbursement is made to an applicant under this
35 section, the commissioner, on behalf of the state, shall be subrogated in the
36 reimbursed amount and may bring any action the commissioner deems advisable

1 for the program against any person, including a prepaid licensee.

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

7 ~~(1)(1) There is created the Prepaid Funeral Contracts Recovery Program~~
8 ~~Board.~~

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

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

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

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

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

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

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

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

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

36 ~~(n)(m) There shall be no liability on the part of and no cause of~~

1 action of any nature shall arise against ~~any member of the board~~, the
2 commissioner, or his or her representatives, agents, or employees for any act
3 or omission by them in the performance of their powers and duties under this
4 chapter, or in its administration, dispensation, handling, or collection of
5 funds for the program.

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/s/D. Wallace