

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 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/1/01

A Bill

Act 1043 of 2001
HOUSE BILL 1657

5 By: Representatives Bookout, House
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF ARKANSAS'
10 PREPAID FUNERAL CONTRACTS LAWS; TO INCREASE FINES AND
11 PENALTIES FOR VIOLATIONS OF PREPAID FUNERAL SERVICE
12 CONTRACT LAWS; TO HARMONIZE VIOLATOR PENALTY SECTIONS
13 OF THE PREPAID FUNERAL SERVICE CONTRACTS SUBCHAPTER;
14 TO ESTABLISH A PREPAID FUNERAL CONTRACTS RECOVERY
15 PROGRAM AND A PREPAID FUNERAL CONTRACTS RECOVERY
16 PROGRAM FUND TO ASSIST ARKANSAS CONTRACT HOLDERS IN
17 THE EVENT OF A FINANCIAL INSOLVENCY OR BUSINESS
18 INTERRUPTION OF THE ISSUING PREPAID FUNERAL
19 ORGANIZATION; TO ESTABLISH A PREPAID FUNERAL CONTRACTS
20 RECOVERY PROGRAM BOARD TO HELP THE INSURANCE
21 COMMISSIONER ADMINISTER THAT PROGRAM AND PROCESS
22 CONTRACT HOLDER CLAIMS THEREON AFTER INSOLVENCIES OR
23 BUSINESS INTERRUPTIONS OF THE ISSUERS; TO AUTHORIZE
24 FUND TRANSFERS OF A PERCENTAGE OF PREPAID FUNERAL
25 ORGANIZATION FEE COLLECTIONS TO THE PREPAID FUNERAL
26 CONTRACTS RECOVERY PROGRAM FUND, IN AMOUNTS
27 ESTABLISHED BY THE INSURANCE COMMISSIONER BY RULE AND
28 REGULATION; TO AUTHORIZE TRANSFERS OF EXCESS
29 OPERATIONAL FUNDS FROM THE INSURANCE DEPARTMENT
30 PREPAID FUNERAL DIVISION FUND TO THE PREPAID FUNERAL
31 CONTRACTS RECOVERY PROGRAM FUND AS NEEDED; AND FOR
32 OTHER PURPOSES.
33

Subtitle

34 TO UPDATE THE CURRENT PREPAID FUNERAL
35 SERVICE CONTRACT LAWS; AND TO ESTABLISH
36

1 THE PREPAID FUNERAL CONTRACTS RECOVERY
2 PROGRAM FOR CONSUMER RELIEF UPON THE
3 INSOLVENCY OF PREPAID FUNERAL CONTRACT
4 ISSUERS.
5
6

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
8

9 SECTION 1. Arkansas Code 23-40-106(a)(1), concerning penalties for
10 prepaid funeral licensee violations, is amended to read as follows:

11 (a)(1) Any officer, director, agent, or employee of any organization
12 subject to the terms of this ~~chapter~~ subchapter who makes, or attempts to
13 make, any contract in violation of this ~~chapter,~~ subchapter, or refuses to
14 allow an inspection of the organization's records, ~~or who violates any other~~
15 ~~provisions of this chapter,~~ shall be punished by a fine of not less than ~~one~~
16 ~~hundred dollars (\$100) and not more than five hundred dollars (\$500),~~ one
17 thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000), or
18 by imprisonment in the county jail for not less than ~~one (1) month and not~~
19 ~~more than six (6) months,~~ and not more than twelve (12) months, or by both
20 fine and imprisonment.
21

22 SECTION 2. Arkansas Code 23-40-107(j), concerning transfers of unused
23 operations monies of the State Insurance Department Prepaid Trust Fund, is
24 amended to read as follows:

25 (j) However, as needed, ~~at the end of each fiscal year,~~ the
26 commissioner shall ~~cause to be transferred~~ transfer from the State Insurance
27 Department Prepaid Trust Fund to the ~~General Revenue Fund Account of the State~~
28 ~~Apportionment Fund ten percent (10%) of the fees collected under this Chapter.~~
29 Prepaid Funeral Contracts Recovery Program Fund a sum or sums sufficient to
30 administer and provide reparations to persons as provided under §§ 23-40-119
31 (d)(1)(A) and (f)(1), as amended.
32

33 SECTION 3. Arkansas Code 23-40-114(a), concerning licensee deposits for
34 investment of prepaid funeral contract proceeds, is amended to read as
35 follows:

36 (a) All contract proceeds collected under contracts for prepaid funeral

1 benefits, including funds collected under contracts entered into before June
2 28, 1985, shall be deposited with a trustee within ~~forty five (45) days after~~
3 ~~collection,~~ twenty (20) business days after receipt of proceeds, to be held,
4 invested, and administered in a trust fund for the benefit and protection of
5 the contract purchasers pursuant to this ~~chapter~~ subchapter.

6
7 SECTION 4. Arkansas Code 23-40-118(b), concerning designation of an
8 agent for collection of funeral contract proceeds, is amended to read as
9 follows:

10 (b) If any person acting on behalf of the seller collects any contract
11 proceeds under a contract for prepaid funeral benefits and fails to deliver it
12 within ten (10) days after collection to a designated agent or if any
13 designated agent fails to deposit the contract proceeds ~~within forty five (45)~~
14 ~~days after collection,~~ within twenty (20) days after receipt of proceeds, he
15 ~~shall be guilty of a misdemeanor and shall be punished as prescribed in this~~
16 ~~chapter in § 23-40-106(a)(2) as amended by this act.~~

17
18 SECTION 5. Arkansas Code 23-40-119(d), concerning transfer of monies to
19 the new Prepaid Funeral Contracts Recovery Program, is amended to read as
20 follows:

21 (d)(1)(A) Effective for all prepaid funeral benefits contracts executed
22 on and after April 1, 1997, each licensee selling a prepaid funeral benefits
23 contract shall remit to the State Insurance Department a one-time per contract
24 fee of not less than five dollars (\$5.00) for each prepaid funeral benefits
25 contract, including any amendments thereto, entered into by the licensee
26 whether cash or trust funded or funded by an insurance policy or annuity
27 contract unless the per contract fees are otherwise eliminated or suspended by
28 the Insurance Commissioner pursuant to a rule or regulation; however, the per
29 contract fees once eliminated or suspended by rule of the commissioner may be
30 reinstated by subsequent rule and regulation of the commissioner adopted upon
31 a public hearing at a later date upon his determination that these fees are
32 essential and necessary to the operation of the State Insurance Department
33 Prepaid Funeral Division. On and after the effective date of this act of 2001,
34 the Insurance Commissioner shall then transfer from each per contract fee
35 remitted to the department, into the Prepaid Funeral Contracts Recovery
36 Program Fund pursuant to this act, a portion of such fee, in an amount to be

1 determined by rules and regulations of the Insurance Commissioner, and
 2 thereafter to be administered by the commissioner with advice from the Prepaid
 3 Funeral Contracts Recovery Program Board, pursuant to the provisions of this
 4 subchapter.

5 (B) The per contract fees shall be remitted quarterly to
 6 the ~~fund~~ department for each quarter of the calendar year with a quarterly fee
 7 form as prescribed by the commissioner.

8 (C) The fees shall be remitted to the department no later
 9 than forty-five (45) days after each quarter.

10 (2)(A) The commissioner on and after the effective date of this
 11 act of 2001 may by rule or regulation eliminate, reduce, suspend or increase
 12 the per contract fee ~~or adjust the fee up to a maximum of fifteen dollars~~
 13 ~~(\$15.00) per contract, each year, after March 16, 1997~~ or the portion of the
 14 per contract fee allotted to the Prepaid Funeral Contracts Recovery Program
 15 Fund. The per contract fee may be charged to the purchaser of the contract.

16 (B) Any fee so charged and collected shall not be deemed to
 17 be included in the term "contract proceeds", as defined in § 23-40-103(4), and
 18 shall not be subject to the deposit requirements of § 23-40-114(a).

19
 20 SECTION 6. Arkansas Code 23-40-119(f), concerning unused monies for
 21 transfer to the Prepaid Funeral Contracts Recovery Program Trust Fund, is
 22 amended to read as follows:

23 (f)(1) Notwithstanding the provisions of §23-40-107, ~~after transferring~~
 24 ~~a portion of the funds to the Treasurer of State each fiscal year as required~~
 25 ~~under § 23-40-107(j),~~ if there are any unused funds from fees collected from
 26 organizations under subsections (c) and (d) of this section not disbursed for
 27 personal services, operating expenses, maintenance and operations, and support
 28 and improvements for the Division of Prepaid Funeral Benefits of the State
 29 Insurance Department, such excess funds, if any, may be ~~retained by the~~
 30 ~~commissioner the next annual year in his discretion, after public notice and~~
 31 ~~hearing, and expended to benefit operations of the division by providing~~
 32 ~~reparations to purchasers of prepaid funeral contracts who have purchased~~
 33 ~~cash funded prepaid funeral contracts from organizations who have been~~
 34 ~~declared insolvent by a court of competent jurisdiction, state or federal, or~~
 35 ~~who have been determined by either the department or a court of competent~~
 36 ~~jurisdiction, state or federal, to have trust fund account shortages~~

1 ~~insufficient to cover the funding of its prepaid funeral benefit contracts~~
 2 transferred to the Prepaid Funeral Contracts Recovery Program Fund to provide
 3 reparations to purchasers of prepaid funeral contracts who have purchased
 4 cash-funded prepaid funeral contracts from organizations which have been
 5 declared insolvent by a court of competent jurisdiction, state or federal, or
 6 which have been determined by either the Insurance Commissioner or a court of
 7 competent jurisdiction, state or federal, to have fund account deficiencies.

8 (2) Purchasers of prepaid funeral contracts requesting any
 9 discretionary relief from the ~~division trust fund~~ Prepaid Funeral Contracts
 10 Recovery Program Fund after the effective date of this act of 2001 may include
 11 the contract holder or his or her surviving family representative, or such
 12 other person as described in rules and regulations of the department.

13 (3) The commissioner may by rule and regulation describe the
 14 procedures, claim forms, qualifications, and process of filing a claim for
 15 aggrieved purchasers desiring to make a claim for reparations from any excess
 16 funds.

17 ~~(4) Should the commissioner, after public notice and hearing,~~
 18 ~~decide to retain moneys in the division fund for this purpose only the~~
 19 ~~following year to provide reparations for trust fund shortages, any purchaser~~
 20 ~~may petition the commissioner for a hearing to request reparations for cash~~
 21 ~~payment losses made to prepaid funeral organizations declared insolvent by a~~
 22 ~~court of competent jurisdiction or determined by the department to have trust~~
 23 ~~fund accounts insufficient to cover the organization's prepaid funeral~~
 24 ~~contracts.~~

25 ~~(4)(5)~~ (4) No purchaser is hereby provided in this section with any
 26 administrative right or legal or equitable right to any funds collected from
 27 fees collected under ~~subsections (c) and (d) of this section~~ to satisfy any
 28 judgment or economic loss of the purchaser from a prepaid funeral
 29 organization, except to the extent that the commissioner in his discretion has
 30 set aside funds to provide discretionary relief to purchasers of prepaid
 31 funeral contracts from insolvent prepaid funeral organizations or those
 32 organizations with trust fund account shortages, and subject to limits of the
 33 ~~division fund~~ Prepaid Funeral Contracts Recovery Program Fund and the
 34 claimant's actual contract payments made, excluding additional damages or
 35 interest or other equitable relief, or noneconomic damages.

36 ~~(6) If the commissioner provides to any person reparations under~~

~~this section, the State of Arkansas through the State Insurance Department shall be subrogated to all the rights of the purchaser or claimant to receive or recover from any prepaid funeral organization such funds to the extent that the reparations were awarded.~~

~~(7) No purchaser shall be entitled to reparations in excess of his or her prepaid funeral contract payments made to the organization, and in no event shall any purchaser or qualified representative receive an amount greater than an aggregate of one thousand dollars (\$1,000) from the fund, nor be entitled to ask or receive any noneconomic damages or interest on the original contract amount.~~

SECTION 7. Arkansas Code Title 23, Chapter 40, Subchapter 1 is amended to add an additional section to read as follows:

23-40-125. Prepaid Funeral Contracts Recovery Program Fund - Created; Prepaid Funeral Contracts Recovery Board - Established.

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

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

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

(d) All income derived through investment of the fund, including but not limited to fees, interest, and dividends shall be credited as investment income to the fund and deposited therein. All income derived from fund transfers, subrogation awards, grants, orders or judgments of restitution, refunds, voluntary reimbursements or restitution, and gifts shall be credited as investment income to the fund and deposited therein.

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

(f) The fund shall be administered by the Insurance Commissioner, with advice from the Prepaid Funeral Contracts Recovery Board, hereinafter "board".

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

5 (g) From the fee for each preneed funeral contract as required by §23-
6 40-119(d)(1)(A), and from any funds transferred to the fund, pursuant to § 23-
7 40-119(f)(1), the commissioner with board advice and consultation shall
8 administer the Prepaid Funeral Contracts Recovery Program. The Insurance
9 Commissioner may suspend fees or unused funds transfers or deposits into the
10 fund at any time and for any period for which he determines that a sufficient
11 amount is available to meet likely disbursements and to maintain an adequate
12 reserve in compliance with a rule and regulation of the commissioner.

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

17 (i) The commissioner may expend monies in the fund for the following
18 purposes:

19 (1) To make reimbursements on approved applications;

20 (2) To pay related expenses involved in operating the program as
21 permitted under state law;

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

26 (j) The commissioner shall investigate all applications made and may
27 reject or allow such claims in whole or in part to the extent that monies are
28 available in the fund. All payments shall be a matter of privilege and not of
29 right, and no person shall have any right in the fund as a third-party
30 beneficiary or otherwise. No attorney may be compensated by the board for
31 prosecuting an application for reimbursement.

32 (k) In the event reimbursement is made to an applicant under this
33 section, the commissioner, on behalf of the state, shall be subrogated in the
34 reimbursed amount and may bring any action the commissioner deems advisable
35 for the program against any person, including a prepaid licensee. The
36 commissioner may enforce any claims the program, on behalf of the state, may

1 have for restitution or otherwise, and may employ and compensate consultants,
2 agents, legal counsel, accountants, and any other persons the commissioner
3 deems appropriate. Payments shall be made from the fund for such services.

4 (l) There is hereby created the Prepaid Funeral Contracts Recovery
5 Board. Members of the board shall consist of no fewer than five (5) nor more
6 than nine (9) members of various licensed Arkansas prepaid funeral
7 organizations, including one consumer member selected from the Arkansas public
8 at large. The members of the board shall be selected by member licensees,
9 subject to approval of the commissioner. Vacancies on the board shall be
10 filled for the remaining period of the term by a majority vote of the
11 remaining board members, subject to approval of the commissioner. In approving
12 selections to the board, the commissioner shall consider, among other things,
13 whether all member licensees are fairly represented.

14 (m) The board shall assist the commissioner and come under the
15 immediate supervision of the commissioner and shall be subject to the
16 applicable provisions of the laws of this state. The fund, as well as board
17 action, shall be subject to examination and regulation by the commissioner.
18 The board shall prepare and submit to the commissioner each year, not later
19 than one hundred twenty (120) days after the program's fiscal year, a
20 financial report in a form approved by the commissioner and a report of
21 program activities during the preceding fiscal year. Upon request of a
22 licensed prepaid funeral organization in this state, the commissioner shall
23 provide the member prepaid funeral organization with a copy of the report.

24 (n) There shall be no liability on the part of and no cause of action
25 of any nature shall arise against any member of the board, the commissioner or
26 his representatives, agents or employees, for any act or omission by them in
27 the performance of their powers and duties under this chapter, or in its
28 administration, dispensation, handling, or collection of funds for the Prepaid
29 Funeral Contracts Recovery Program.

30
31 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General
32 Assembly that the Constitution of the State of Arkansas prohibits the
33 appropriation of funds for more than a two (2) year period; that the
34 effectiveness of this act on July 1, 2001 is essential to the operation of the
35 agency for which the appropriations in this act are provided, and that in the
36 event of an extension of the regular session, the delay in the effective date

1 of this act beyond July 1, 2001 could work irreparable harm upon the proper
2 administration and provision of essential governmental programs. Therefore, an
3 emergency is hereby declared to exist and this act being necessary for the
4 immediate preservation of the public peace, health and safety shall be in full
5 force and effect from and after July 1, 2001.

6 */s/ Bookout*

9 APPROVED: 3/22/2001

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