

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H3/15/99*

## A Bill

Act 1249 of 1999  
HOUSE BILL 2270

5 By: Representatives House, Bookout  
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### For An Act To Be Entitled

9 "AN ACT TO AMEND THE ARKANSAS PREPAID FUNERAL BENEFITS  
10 LAW, CODIFIED IN ARKANSAS CODE 23-40-106, ARKANSAS  
11 CODE 23-40-107, ARKANSAS CODE 23-40-119 FOR  
12 REPARATIONS FOR PREPAID FUNERAL ORGANIZATION TRUST  
13 FUND SHORTAGES, TO IMPOSE CRIMINAL INSURANCE FRAUD  
14 JURISDICTION FOR TRUST FUND SHORTAGES; AND FOR OTHER  
15 PURPOSES. "  
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### Subtitle

17 "TO AMEND THE PREPAID FUNERAL BENEFITS  
18 LAW FOR PREPAID FUNERAL TRUST FUND  
19 SHORTAGES. "  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. *Arkansas Code 23-40-119 is amended to read as follows:*

26 *"23-40-119. Annual report and fee.*

27 *(a) Each organization shall file an annual report and an annual report*  
28 *fee with the Insurance Commissioner on or before March 15 of each year in such*  
29 *form as the Insurance Commissioner may require, showing the names or account*  
30 *numbers, or both, of all persons with whom contracts for prepaid funeral*  
31 *benefits have been made prior to January 1 of that year which had not been*  
32 *fully discharged on January 1, and also showing the date of contract, the name*  
33 *of the trustee holding the trust fund, and the amount in the trust fund under*  
34 *each contract on the preceding December 31.*

35 *(b) If any officer of any organization fails or refuses to file an*  
36 *annual report, or to cause it to be filed within thirty (30) days after he has*

1 been notified by the Insurance Commissioner that the report is due and has not  
 2 been received, then, upon a finding of such failure by a court of competent  
 3 jurisdiction, he shall be guilty of a misdemeanor and shall be punished as  
 4 prescribed in this chapter.

5 (c) Effective on and after March 15, 1997, the annual report fee shall  
 6 be based on the total amount of aggregate contracts for prepaid funeral  
 7 benefits outstanding and unfulfilled as of December 31 of each year and shall  
 8 be payable at the time the annual report is filed. The fee shall be based on  
 9 the following schedule and shall be payable to the State Insurance Department  
 10 Prepaid Trust Fund:

12 AGGREGATE AMOUNT OF OUTSTANDING	ANNUAL REPORT
13 PREPAID FUNERAL BENEFITS CONTRACTS	FEE DUE STATE
14 IN ARKANSAS	OF ARKANSAS
15 Up to \$250,000	\$200.00
16 Over \$250,001 to \$500,000	\$250.00
17 \$500,001 to \$1,000,000	\$500.00
18 \$1,000,001 to \$2,500,000	\$1,000.00
19 \$2,500,001 to \$5,000,000	\$2,000.00
20 \$5,000,001 to \$10,000,000	\$3,000.00
21 \$10,000,001 to \$20,000,000	\$4,000.00
22 \$20,000,001 to \$40,000,000	\$5,000.00
23 Over \$40,000,001	\$6,000.00

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 25 (d) Effective for all prepaid funeral benefits contracts executed on  
 26 and after April 1, 1997, each licensee selling a prepaid funeral benefits  
 27 contract shall remit to the State Insurance Department a one-time fee of five  
 28 dollars (\$5.00) for each prepaid funeral benefits contract (including any  
 29 amendments thereto) entered into by the licensee whether cash or trust funded  
 30 or funded by an insurance policy or annuity contract. The fees shall be  
 31 remitted quarterly to the State Insurance Department Prepaid Trust Fund for  
 32 each quarter of the calendar year with a quarterly fee form as prescribed by  
 33 the Insurance Commissioner. The fees shall be remitted to the State Insurance  
 34 Department no later than forty-five (45) days after each quarter. The  
 35 Insurance Commissioner may by rule or regulation reduce the per contract fee  
 36 or adjust the fee up to a maximum of fifteen dollars (\$15.00) per contract,

1 each year, after March 16, 1997. Such fee may be charged to the purchaser of  
2 the contract. Any fee so charged and collected shall not be deemed to be  
3 included in the term 'contract proceeds', as defined in § 23-40-103(4), and  
4 shall not be subject to the deposit requirements of § 23-40-114(a).

5 (e) Absent the Insurance Commissioner's approval of an extension for  
6 good cause shown, licensees failing to timely report and pay any  
7 administrative and financial regulations fees to the State Insurance  
8 Department Prepaid Trust Fund may be subject to a penalty of one hundred  
9 dollars (\$100) per day for each day of delinquency, payable to the State  
10 Insurance Department Prepaid Trust Fund. The Insurance Commissioner shall  
11 deposit all administrative and financial regulation fees and any penalties  
12 assessed under this section directly into the State Insurance Department  
13 Prepaid Trust Fund as special revenues.

14 (f) Notwithstanding the provisions of § 23-40-107, after transferring a  
15 portion of the funds to the State Treasurer each fiscal year as required under  
16 § 23-40-107(i), if there are any unused funds from fees collected from  
17 organizations under § 23-40-119(c) and § 23-40-119(d), not disbursed for  
18 personal services, operating expenses, maintenance and operations, and support  
19 and improvements for the State Insurance Department's Division of Prepaid  
20 Funeral Benefits, such excess funds, if any, may be retained by the Insurance  
21 Commissioner the next annual year in his discretion, after public notice and  
22 hearing, and expended to benefit operations of the division by providing  
23 reparations to purchasers of prepaid funeral contracts who have purchased cash  
24 funded prepaid funeral contracts from organizations who have been declared  
25 insolvent by a court of competent jurisdiction (state or federal) or who have  
26 been determined by either the State Insurance Department or a court of  
27 competent jurisdiction (state or federal) to have trust fund account shortages  
28 insufficient to cover the funding of its prepaid funeral benefit contracts.

29 (1) Purchasers of prepaid funeral contracts requesting any  
30 discretionary relief from the division trust fund may include the  
31 contractholder or his or her surviving family representative, or such other  
32 person as described in rules and regulations of the State Insurance  
33 Department.

34 (2) The commissioner may by rule and regulation describe the  
35 procedures, claim forms, qualifications, and process of filing a claim for  
36 aggrieved purchasers desiring to make a claim for reparations from any excess

1 funds.

2 (3) Should the commissioner, after public notice and hearing,  
3 decide to retain monies in the division fund for this purpose only the  
4 following year to provide reparations for trust fund shortages, any purchaser  
5 may petition the commissioner for a hearing to request reparations for cash  
6 payment losses made to prepaid funeral organizations declared insolvent by a  
7 court of competent jurisdiction or determined by the department to have trust  
8 fund accounts insufficient to cover the organization's prepaid funeral  
9 contracts.

10 (4) No purchaser is hereby provided in this section with any  
11 administrative right or legal or equitable right to any funds collected from  
12 fees collected under § 23-40-119(c) and § 23-40-119(d) to satisfy any judgment  
13 or economic loss of the purchaser from a prepaid funeral organization, except  
14 to the extent that the commissioner in his discretion has set aside funds to  
15 provide discretionary relief to purchasers of prepaid funeral contracts from  
16 insolvent prepaid funeral organizations or those organizations with trust fund  
17 account shortages, and subject to limits of the division fund and the  
18 claimant's actual contract payments made, excluding additional damages or  
19 interest or other equitable relief, or non-economic damages.

20 (5) If the Insurance Commissioner provides to any person  
21 reparations under this section, the State of Arkansas through the State  
22 Insurance Department shall be subrogated to all the rights of the purchaser or  
23 claimant to receive or recover from any prepaid funeral organization such  
24 funds to the extent that the reparations were awarded.

25 (6) No purchaser shall be entitled to reparations in excess of  
26 his or her prepaid funeral contract payments made to the organization, and in  
27 no event shall any purchaser or qualified representative receive an amount  
28 greater than an aggregate of one thousand dollars (\$1,000) from the fund; nor  
29 be entitled to ask or receive any non-economic damages or interest on the  
30 original contract amount."

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32 SECTION 2. Arkansas Code 23-40-107 is amended to read as follows:

33 "23-40-107. Division of Prepaid Funeral Benefits – State Insurance  
34 Department Prepaid Trust Funds.

35 The Insurance Commissioner shall be responsible for the regulation of  
36 the sale of prepaid funeral benefits and there is hereby established, within

1 the State Insurance Department, the Division of Prepaid Funeral Benefits. This  
2 division shall be funded annually by the fees required to be paid by  
3 organizations subject to this chapter, which shall be placed in trust and  
4 disbursed pursuant to this chapter.

5 (a) There is hereby established on the books of the Treasurer of State,  
6 the Auditor of State and the Chief Fiscal Officer of the State a fund to be  
7 known as the 'State Insurance Department Prepaid Trust Fund' to be used to pay  
8 the expenses of the State Insurance Department in the discharge of its  
9 regulation of prepaid funeral benefits contracts.

10 (b) No money shall be appropriated from this fund for any purpose other  
11 than to pay for personal services, operating expenses, maintenance and  
12 operations, and support of and improvements to the Division of Prepaid Funeral  
13 Benefits of the State Insurance Department, except as provided in § 23-40-  
14 119(f).

15 (c) The fund established pursuant to this section shall be  
16 administered, disbursed, and invested under the direction of the Insurance  
17 Commissioner and the Treasurer of the State.

18 (d) All income derived through the investment of the State Insurance  
19 Department Prepaid Trust Fund, including, but not limited to, interest and  
20 dividends, shall be credited as investment income to the State Insurance  
21 Department Prepaid Trust Fund.

22 (e) All income derived through grants, refunds, and gifts to the State  
23 Insurance Department Prepaid Trust Fund shall be credited as income to the  
24 State Insurance Department Prepaid Trust Fund.

25 (f) All moneys deposited to the aforementioned fund shall not be  
26 subject to any deduction, tax, levy, or any other type of assessment, except  
27 as provided in this chapter.

28 (g) All fees required to be paid by licensees pursuant to this chapter  
29 shall be deposited in the State Insurance Department Prepaid Trust Fund for  
30 the support, operation, and maintenance of the Division of Prepaid Funeral  
31 Benefits of the State Insurance Department and, when paid into the State  
32 Treasury by the Insurance Commissioner, shall be maintained by the State  
33 Treasurer as the State Insurance Department Prepaid Trust Fund, separate from  
34 all other funds, and available only for the payment of the expenses of the  
35 Division of Prepaid Funeral Benefits of the State Insurance Department, except  
36 as provided in § 23-40-119(f).

1 (h) The Auditor of State shall, upon proper voucher from the Insurance  
2 Commissioner, issue his warrant on the Treasurer of State in payment of all  
3 salaries and other expenses incurred by the Division of Prepaid Funeral  
4 Benefits of the State Insurance Department, or for any reparations awarded  
5 under § 23-40-119(f) in the administration of this chapter.

6 (i) The Insurance Commissioner shall, however, at the end of each  
7 fiscal year cause to be transferred from the State Insurance Department  
8 Prepaid Trust Fund to the General Revenue Fund Account of the State  
9 Apportionment Fund ten percent (10%) of the fees collected under this  
10 chapter."

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12 SECTION 3. Arkansas Code 23-40-106 is amended to read as follows:

13 "23-40-106. Violations - Penalties.

14 (a) Any officer, director, agent, or employee of any organization  
15 subject to the terms of this chapter who makes, or attempts to make, any  
16 contract in violation of this chapter, or refuses to allow an inspection of  
17 the organization's records, or who violates any other provisions of this  
18 chapter, shall be punished by a fine of not less than one hundred dollars  
19 (\$100) and not more than five hundred dollars (\$500), or by imprisonment in  
20 the county jail for not less than one (1) month and not more than six (6)  
21 months, or by both fine and imprisonment. Any officer, director, agent, or  
22 employee of any organization who collects contract proceeds on cash funded  
23 prepaid funeral contracts and fails to deposit such funds with a trustee as  
24 required under § 23-40-114 shall be guilty of a Class D felony. A person  
25 convicted of a violation of § 23-40-114 shall be ordered to pay restitution to  
26 persons aggrieved by the violation. Restitution shall be ordered in addition  
27 to a fine or imprisonment.

28 (b) Each violation of any provision of this chapter shall be deemed a  
29 separate offense and prosecuted individually.

30 (c) The Insurance Fraud Investigation Division shall have jurisdiction  
31 to investigate and prosecute any officer, director, agent, or employee of any  
32 organization who collects contract proceeds on cash funded prepaid funeral  
33 contracts and fails to deposit such funds with a trustee as required under §  
34 23-40-114."

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36 SECTION 4. All provisions of this act of a general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
2 Revision Commission shall incorporate the same in the Code.

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4 SECTION 5. If any provision of this act or the application thereof to  
5 any person or circumstance is held invalid, such invalidity shall not affect  
6 other provisions or applications of the act which can be given effect without  
7 the invalid provision or application, and to this end the provisions of this  
8 act are declared to be severable.

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10 SECTION 6. All laws and parts of laws in conflict with this act are  
11 hereby repealed.

12 /s/ House, et al

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15 APPROVED: BECAME LAW ON 4/8/1999, WITHOUT THE GOVERNOR'S SIGNATURE.  
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