

State of Arkansas  
76th General Assembly  
Regular Session, 1987  
By: Representative Mahony

HOUSE BILL 1103

"AN ACT TO AMEND VARIOUS PROVISIONS OF ACT 156 OF 1985 TO  
TRANSFER THE ADMINISTRATIVE AND REGULATORY JURISDICTION OVER  
PREPAID FUNERAL EXPENSE ORGANIZATIONS FROM THE SECURITIES  
DEPARTMENT TO THE INSURANCE DEPARTMENT."

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

SECTION 1. Section 2 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1714 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 2. Any individual, firm, partnership, corporation, society or association (hereinafter called 'organization'), desiring to sell pre-arranged or prepaid funeral services, or funeral merchandise, (including caskets, grave vaults, and all other articles of merchandise incidental to funeral services) in this State under a sales contract providing for prepaid disposition of funeral benefits, or merchandise to be delivered at an undetermined future date depending upon the death of a contracting party (hereinafter called 'prepaid funeral benefits') or any organization desiring to purchase an interest in and/or assume the liability of any contract for prepaid funeral benefits shall obtain a permit from the Insurance Department authorizing the transaction of this type of business before entering into any such agreement or contract and/or prior to accepting money, property or any other direct or indirect consideration. An organization desiring to sell prepaid funeral benefits or otherwise own any interest in any contract for prepaid funeral benefits shall file proof of ownership of an establishment which is in the business of providing the funeral goods and/or services to be contracted for, and that the establishment is duly authorized and licensed to do such business in the State of Arkansas. It shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time the contract is made. The seller shall not be entitled to enforce a contract made in

violation of this Act, but the purchaser, or his heirs, or legal representative, shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof. This Act shall not prohibit the assignment of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with the provisions of this Act."

SECTION 2. Subsections (a) and (b) of section 4 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1716(a) and (b) (Cum. Supp. 1985), are hereby amended to read as follows:

"(a) This Act shall be administered by the Insurance Department. The Insurance Department is authorized to prescribe reasonable rules and regulations concerning keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this Act; and the Insurance Department shall approve forms for sales contracts for prepaid funeral benefits.

(b) All such contracts must be in writing setting forth the specific merchandise and/or services to be provided by seller and the contract price. All forms of sales contracts for funeral benefits shall contain the provisions incidental to the orderly administration of this Act as set forth in the rules as prescribed by the Insurance Department. No contract form shall be used without prior approval of the Insurance Commissioner."

SECTION 3. Section 5 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1717 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 5. (a) Each organization desiring to sell prepaid funeral benefits or any organization desiring to purchase an interest in and/or assume the liability of any contract for prepaid funeral benefits shall file an application for permit with the Arkansas Insurance Department. Each initial and renewal application for permit shall contain such information as the Insurance Commissioner by rule or regulation shall reasonably prescribe on forms furnished by the Arkansas Insurance Department. Each applicant shall, at the time of the application, pay a filing fee of One Hundred Dollars (\$100.00) for initial application and Fifty Dollars (\$50.00) for renewal application. Permits shall expire on June 1 of each year unless a renewal application is filed with and approved by the Insurance Commissioner prior to the permit expiration date. Each organization which has discontinued the sale

of prepaid funeral benefits, but which still has outstanding contracts, shall obtain a renewal of its permit until all such contracts have been performed and/or otherwise fully discharged. No filing fee shall be prorated.

(b) Each applicant for permit pursuant to the provisions of this Act shall, as of a date not preceding thirty (30) days of the application date, have a net worth in an amount equal to the greater of (i) Five Thousand Dollars (\$5,000), or (ii) three percent (3%) of the aggregate contract price of all contracts for prepaid funeral benefits outstanding and unfulfilled as of the end of the preceding calendar year, up to a maximum net worth of Two Hundred Fifty Thousand Dollars (\$250,000). Each applicant shall, at the time of application, file a sworn and notarized Certification of Net Worth form stating that the applicant satisfies the net worth requirements of this Act in a format as prescribed by the Insurance Commissioner, as evidence that the applicant has, at a minimum, the required net worth.

(c) The Insurance Commissioner may issue a permit conditioned upon satisfactory completion of all requirements of this Act prior to the applicant offering for sale or selling prepaid funeral benefits."

SECTION 4. Section 6 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1718 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 6. (a) The seller shall apply for change of ownership or control when:

- (1) the seller transfers all or a portion of the interest in any contract for prepaid funeral benefits;
- (2) the seller transfers one or more of its establishments for providing funeral goods and/or services;
- (3) all or a portion of the equity ownership of a seller has been transferred which will result in a change of:
  - (i) the controlling interest of a seller when the seller is a corporation;
  - (ii) ownership of a seller when the seller is other than a corporation.
- (4) the seller transfers all of its business assets relating to providing funeral goods and/or services;
- (5) the seller terminates its business of providing funeral goods and/or services;

(b) At least fifteen (15) days prior to the proposed occurrence of an event described in subsection (a) above, the seller shall file a verified change of ownership application with the Insurance Department which shall contain the following:

- (1) the name and address of the seller;
- (2) the name and address of the organization proposing to acquire property of the seller (hereinafter referred to as 'transferee');
- (3) a description of the property and of the proposed transaction as set forth in subsection (a) of this section;
- (4) an accounting of the trust fund and all outstanding contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date;
- (5) any required documents or amendments thereto relating to the trust fund;
- (6) a copy of any notice proposed to be sent to the contract buyers after the transfer;
- (7) a filing fee of One Hundred Dollars (\$100.00); and
- (8) such other information as may reasonably be required by the Insurance Commissioner pursuant to rule or order.

(c) The Insurance Commissioner shall approve seller's application for change of ownership by order if:

- (1) the transferee set forth in the application holds a valid, current permit pursuant to the provisions of this Act;
- (2) the accounting required is complete, accurate, and reflects the trust fund whole and intact; and
- (3) all required information and documents are filed and approved by the Insurance Commissioner.

(d) The Insurance Commissioner shall have the authority by rule or order to waive or reduce any or all the requirements contained in subsection (b) as not being necessary or appropriate in the public interest or for the protection of the contract buyers.

(e) The seller, or interest herein, shall remain liable for all funds and transactions to the effective date of such transfer. The Insurance Commissioner shall recover from seller, for the benefit and protection of contract buyers, all contract proceeds which seller has not properly accounted

for and deposited into the trust fund."

SECTION 5. Section 7 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1719 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 7. The Insurance Commissioner may cancel a permit, deny an initial application for permit, or refuse to renew a permit for failure to comply with any provision of this Act or any valid rule or regulation which the Insurance Commissioner has prescribed, after thirty (30) days notice to the applicant or permittee and after a hearing if the applicant or permittee requests a hearing.

No organization shall be entitled to a new permit for a period of one (1) year after cancellation, or refusal by the Insurance Department to renew its permit, but shall thereafter be entitled to a new permit upon satisfactory proof of compliance of this Act.

Any person aggrieved by the action of the Insurance Department may appeal therefrom to any State court of competent jurisdiction."

SECTION 6. Subsections (a) and (b) of section 8 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1720(a) and (b) (Cum. Supp. 1985), are hereby amended to read as follows:

"(a) All contract proceeds collected under contracts for prepaid funeral benefits, including funds collected under contracts entered into before June 28, 1985, shall be deposited with a trustee within forty-five (45) days after collection, to be held, invested and administered in a trust fund for the benefit and protection of such contract purchasers pursuant to this Act. Each trust fund shall be created by a letter or written agreement which shall be filed with and approved by the Arkansas Insurance Department prior to placement of funds. The seller may deposit money or property as surplus at any time.

(b) The trustee shall invest the trust fund only in the following:

(1) demand deposits, savings accounts, certificates of deposits and all other accounts which are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC);

(2) bonds and obligations which are insured by, fully guaranteed as to principal and interest by, and due from the United States government or any

of its agencies, including the Federal National Mortgage Association and the Government National Mortgage Association, and any repurchase obligations which are secured by any of the foregoing;

(3) corporate, state, municipal, or political subdivision bonds or obligations which are rated Aa or better by Moody's or AA or better by Standard & Poor's rating services; and

(4) mutual funds or common trust funds whose portfolio is made up of investments that are described in subsections (1), (2) and (3) above.

(5) purchase of investments as described in subsections (2), (3) and/or (4) of subsection (b) of this Section shall be purchased and held by the trustee which has trust powers under a trust agreement filed with and approved by the Insurance Commissioner.

(6) The Insurance Commissioner shall approve and authorize by order, transfer of funds from an existing trustee to a proposed new trustee, provided the proposed new trustee meets the requirements of the Act and rules promulgated thereunder. Permittee shall file a request for transfer of funds, together with a filing fee of Fifty Dollars (\$50.00), and other information as required by rule."

SECTION 7. Subsections (d) and (e) of section 8 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1720(d) and (e), are hereby amended to read as follows:

"(d) The trustee shall disburse money or other property from the trust fund only as follows:

(1) upon the death of the contract beneficiary and upon proper proof and documentation being submitted to and approved by the Insurance Commissioner, in which event the contract proceeds shall be paid to the seller;

(2) upon the cancellation of the contract by mutual agreement of the parties and with the approval of the Insurance Commissioner, in which event the contract proceeds shall be distributed pursuant to the agreement of the parties; provided, in no event shall the seller be entitled to retain from the contract proceeds more than fifteen percent (15%) of the contract price;

(3) upon the breach of contract by either party in which event the contract proceeds shall be paid according to a judgment of a court of competent jurisdiction;

(4) upon the withdrawal of net investment income or surplus by the seller, which may be made at any time and from time to time;

(5) upon the cancellation of the contract by the purchaser for the reason that the residence of the contract beneficiary is more than fifty (50) miles from all establishments providing funeral goods and/or services owned by the seller.

(e) The Insurance Commissioner shall prescribe by regulation proper affidavits and forms for the withdrawal of funds from the trust fund."

SECTION 8. Section 9 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1721 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 9. All contract proceeds held in trust pursuant to the provisions of this Act, and all income derived therefrom, shall be exempt from attachment, garnishment, execution, and claims of creditors, receivers or trustees in bankruptcy. The trust fund shall not be seized, taken, appropriated or applied to pay any debt or liability of the seller by any legal or equitable process or by operation of law. The seller shall notify the Insurance Commissioner within ten (10) days upon the filing of bankruptcy or upon becoming insolvent. Upon receipt of notification, the Insurance Commissioner shall notify the trustee(s) of the trust fund, and all income earned after that date shall be held in trust by the trustee, and disbursed only upon the direction of the Insurance Commissioner."

SECTION 9. Section 10 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1722 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 10. Each organization subject to this Act shall designate an agent, or agents, either by names of the individuals, or by titles of their offices or positions, who shall be responsible for deposit of contract proceeds collected under contracts for prepaid funeral benefits. The organization shall notify the Insurance Commissioner of such designation within ten (10) days after it becomes subject to this Act, and shall also notify the Insurance Commissioner of any changes in such designation within ten (10) days after such change occurs. If any person acting on behalf of the seller collects any contract proceeds under such a contract and fails to deliver it within ten (10) days after collection to a designated agent, or if any designated agent fails to deposit the contract proceeds within forty-five (45)

days after collection he shall be guilty of a misdemeanor and shall be punished as prescribed in this Act."

SECTION 10. Subsection (a) of section 11 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1723(a) (Cum. Supp. 1985), is hereby amended to read as follows:

"(a) Each organization shall file an annual report and an annual report fee in accordance with this Act with the Arkansas Insurance Department on or before March 15th of each year, in such form as the Insurance Commissioner may require, showing the names and/or account numbers of all persons with whom contracts for prepaid funeral benefits have been made prior to January 1st of that year which had not been fully discharged on January 1st, and, also, showing the date of contract, the name of the trustee holding the trust fund and the amount in the trust fund under each contract on the preceding December 31st. If any officer of any organization fails or refuses to file an annual report, or to cause it to be filed within thirty (30) days after he has been notified by the Arkansas Insurance Department that the report is due and has not been received, he shall be guilty of a misdemeanor and shall be punished as prescribed in this Act."

SECTION 11. Section 12 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1724 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 12. Each organization which has outstanding contracts for prepaid funeral benefits shall maintain within this State such records as the Insurance Commissioner may require to enable him to determine whether the organization is complying with the provisions of this Act. Such records shall be subject to examination by the Arkansas Insurance Commissioner, or his representatives, as often as he deems advisable and not less frequently than every three (3) years, provided, however, the Insurance Commissioner shall determine the date of original examination without regard to the date of the original permit. Each permittee examined shall pay a fee for each examination not to exceed One Hundred Dollars (\$100.00) per day, or Fifty Dollars (\$50.00) per half day or fraction thereof, that any examiner is absent from the Arkansas Insurance Department for the purpose of making such examination and in addition thereto shall pay the actual meals, hotel and traveling expenses of each authorized examiner from Little Rock and return. The fee and



expenses shall be prorated if more than one examination is made on an examination trip."

SECTION 12. Section 14 of Act 156 of 1985, the same being Ark. Stat. Ann. §67-1726 (Cum. Supp. 1985), is hereby amended to read as follows:

"Section 14. All filing fees and examination costs collected under this Act shall be credited to a separate fund in the State Treasury, to be known as the Commerce-Insurance Department Fund. The Insurance Department is authorized to employ such personnel as may be necessary to carry out the provisions of this Act and to fix their compensation within the amounts made available by appropriation."

SECTION 13. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 14. EMERGENCY. It is hereby found and determined by the General Assembly that it is critical to the health and welfare of the citizens of the State of Arkansas that the administration of this Act be transferred immediately from the Securities Department to the Insurance Department because the Securities Department lacks the necessary resources and authority to adequately oversee the development and distribution of prepaid funeral services and merchandise to the public. Therefore, in order to insure that consumers of such services and merchandise are adequately protected, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public health, safety, and welfare, shall be in full force and effect from the date of its passage and approval.

