

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

# A Bill

HOUSE BILL 1823

4 By: Representative Vess, *Ferguson, McGee, Ferrell and Willems*

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## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 23-40-101 AND 23-40-111,  
9 RELATING TO THE SALE OF PREPAID FUNERAL BENEFITS; AND FOR  
10 OTHER PURPOSES."

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## Subtitle

12 "RELATING TO THE SALE OF PREPAID FUNERAL  
13 BENEFITS."  
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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18 SECTION 1. Arkansas Code 23-40-101 is amended to read as follows:  
19 "23-40-101. Definitions.

20 As used in this chapter, unless the context otherwise requires:

21 (1) Cash accommodation items means flowers, honorariums, death  
22 certificates, sales taxes, grave opening and closing, cemetery charges, and  
23 other items incidental to the funeral and disposition of the beneficiary  
24 which are to be furnished or provided by a third party at the time of death;

25 (2) Consideration means all cash, securities, or the power to  
26 control any of these items, whether by trust or otherwise, which are paid as  
27 consideration for a prepaid funeral or as a portion of the contract price.  
28 Funds provided to the seller from an insurance policy or annuity contract  
29 shall not be considered as consideration for purposes of computing the  
30 contract price or contract proceeds unless:

31 (a) such proceeds arise from an insurance policy or an annuity  
32 contract owned by the seller of the prepaid funeral benefits; or

33 (b) seller is the appointed beneficiary of that insurance policy  
34 or annuity contract and such beneficiary status is made known to the seller  
35 in writing by the purchaser.

1           (3) Contract price means the aggregate moneys to be paid and the  
2 aggregate stated value of all other consideration to be assigned by  
3 purchasers of prepaid funeral benefits to the seller as provided in the  
4 contract, exclusive of any finance charge;

5           (4) Contract proceeds means the portion of the contract price  
6 collected by the seller from a contract for the sale of prepaid funeral  
7 benefits;

8           (5) Liquid investments means investments which can be sold at cost  
9 or greater, liquidated without penalty, and collected within five (5) banking  
10 days;

11          (6) Net investment income means:

12               (A) All revenue and earnings of the trust fund including, but  
13 not limited to, interest, dividends, capital gains; minus

14               (B) Investment expenses, trustee's fees, capital losses, and all  
15 revenue and earnings on cash accommodation funds;

16          (7) Prepaid contract or sales contract means an agreement wherein  
17 the seller agrees to provide future funeral benefits to the purchaser for  
18 consideration. A prepaid contract exists when the seller is in receipt of  
19 consideration. *For purposes of the creation, deposit, withdrawal, transfer,*  
20 *investment, disbursements, exemption and attachment of trust funds as*  
21 *provided for in this title, prepaid contract or sales contract does not*  
22 *include an agreement which expressly states that the contract is for the*  
23 *partial payment of funeral benefits and the seller receives consideration in*  
24 *the form of proceeds from an insurance policy or an annuity contract.*

25          (8) Seller means the organization selling prepaid funeral benefits  
26 or owning any interest in any contract for prepaid funeral benefits pursuant  
27 to this chapter;

28          (9) Surplus means the funds or other property in excess of the  
29 undistributed net investment income and aggregate contract proceeds held in  
30 the trust fund;

31          (10) Trustee means a state or national bank or savings and loan  
32 association in this state;

33          (11) Net worth means the difference between the applicant's total  
34 assets and total liabilities as reflected in a balance sheet prepared in  
35 accordance with generally accepted accounting principles."

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SECTION 2. Arkansas Code 23-40-111 is amended by adding a new subsection at the end to read as follows:

"(g) Notwithstanding the requirements of subpart (a) above, no contract proceeds collected after the date of services performed pursuant to the prepaid contract shall be required to be deposited with a trustee, nor shall such proceeds be subject to the requirements of 23-40-112 or 23-40-113; however the seller must file such proper affidavits and forms as prescribed by the Commissioner to verify the performance of services and merchandise as required by the prepaid contract."

*SECTION 3. Portability of Contracts. The assignment of rights and delegation of duties regarding the performance of a prepaid contract may be made to any licensed funeral home at any time prior to performance at the request of the purchaser or a representative of the purchaser's estate, provided that, the funeral home to which the contract is assigned and to which the duties are delegated agrees in writing to perform the terms of the contract at the original contract price.*

SECTION 4. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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

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

*/s/Rep. Vess, et al*

***As Engrossed: 3/13/95 3/14/95***

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