

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Bearden

A Bill

SENATE BILL 581

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE §§ 23-40-101 AND 23-40-111
9 PERTAINING TO THE SALE OF PREPAID FUNERAL BENEFITS; TO ADD
10 DEFINITIONS OF CONSIDERATION AND PREPAID CONTRACT OR
11 SALES CONTRACT; AND FOR OTHER PURPOSES."

Subtitle

14 "AN ACT TO AMEND THE ARKANSAS CODE
15 PERTAINING TO THE SALE OF PREPAID
16 FUNERAL BENEFITS."

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

19
20 SECTION 1. Arkansas Code § 23-40-101 is amended to read as follows:
21 "23-40-101. Definitions.

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

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

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

31 (3) Contract proceeds means the portion of the contract price
32 collected by the seller from a contract for the sale of prepaid funeral
33 benefits;

34 (4) Liquid investments means investments which can be sold at
35 cost or greater, liquidated without penalty, and collected within five (5)

1 banking days;

2 (5) Net investment income means:

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

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

7 (6) Seller means the organization selling prepaid funeral
8 benefits or owning any interest in any contract for prepaid funeral benefits
9 pursuant to this chapter;

10 (7) Surplus means the funds or other property in excess of the
11 undistributed net investment income and aggregate contract proceeds held in
12 the trust fund;

13 (8) Trustee means a state or national bank or savings and loan
14 association in this state;

15 (9) Net worth means the difference between the applicant's
16 total assets and total liabilities as reflected in a balance sheet prepared
17 in accordance with generally accepted accounting principles.

18 (10) Consideration means all cash, securities or the power to
19 control any of these items, whether by trust or otherwise, which are paid as
20 consideration for a prepaid funeral or as a portion of the contract price.
21 Funds provided to the seller from an insurance policy or annuity contract
22 shall not be considered as consideration for purposes of computing the
23 contract price or contract proceeds unless:

24 (A) such proceeds arise from an insurance policy or an
25 annuity contract owned by the seller of the prepaid funeral benefits; or

26 (B) seller is the irrevocably appointed beneficiary of
27 that insurance policy or annuity contract and such beneficiary status is made
28 known to the seller in writing by the purchaser.

29 (11) Prepaid contract or sales contract means a written
30 agreement wherein the seller agrees to provide future funeral benefits to the
31 purchaser for consideration. A prepaid contract exists when the seller is in
32 receipt of consideration or a prepaid contract has been executed by the
33 purchaser and seller."

34

35 SECTION 2. Arkansas Code § 23-40-111 is amended to read as follows:

1 "23-40-111. Trust funds - Creation - Deposits, withdrawals, and
2 transfers of funds.

3 (a) All contract proceeds collected under contracts for prepaid
4 funeral benefits, including funds collected under contracts entered into
5 before June 28, 1985, shall be deposited with a trustee within forty-five
6 (45) days after collection, to be held, invested, and administered in a trust
7 fund for the benefit and protection of the contract purchasers pursuant to
8 this chapter.

9 (b) Each trust fund shall be created by a letter or written agreement
10 which shall be filed with and approved by the State Securities Department
11 prior to placement of funds.

12 (c) The seller may deposit money or property as surplus at any time.

13 (d) The Securities Commissioner shall prescribe by regulation proper
14 affidavits and forms for the withdrawal of funds from the trust fund.

15 (e) The commissioner shall approve and authorize by order any transfer
16 of funds from an existing trustee to a proposed new trustee if the proposed
17 new trustee meets the requirements of this chapter and the rules promulgated
18 thereunder.

19 (f) The permittee shall file a request for a transfer of funds,
20 together with a filing fee of fifty dollars (\$50.00) and any other
21 information required by rule.

22 (g) Notwithstanding the requirements of subsection (a) of this
23 section, no contract proceeds collected after the date of services performed
24 pursuant to the prepaid contract shall be required to be deposited with a
25 trustee, nor shall such proceeds be subject to the requirements of § 23-40-
26 112 or § 23-40-113."

27

28 SECTION 3. All provisions of this act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

31

32 SECTION 4. If any provision of this act or the application thereof to
33 any person or circumstance is held invalid, such invalidity shall not affect
34 other provisions or applications of the act which can be given effect without
35 the invalid provision or application, and to this end the provisions of this

1 act are declared to be severable.

2

3 SECTION 5. All laws and parts of laws in conflict with this act are
4 hereby repealed.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

1
2
3
4