

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4  
5 By: Senator Bradford

# A Bill

SENATE BILL 287

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE  
10 RELATED TO THE SALE OF PREPAID FUNERAL BENEFITS; AND FOR  
11 OTHER PURPOSES."

## Subtitle

14 "TO AMEND VARIOUS SECTIONS OF THE  
15 ARKANSAS CODE RELATED TO THE SALE OF  
16 PREPAID FUNERAL BENEFITS."

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

20 SECTION 1. Arkansas Code 23-40-103(7) is amended to read as follows:

21 "(7) Prearrangement means an arrangement whereby a person, for himself  
22 or on behalf of some other person, makes arrangement for funeral and burial  
23 services prior to the death of such person, without consideration and without  
24 an agreement or itemization specifying any particular service or merchandise,  
25 or the cost thereof, through the assignment or transfer, including such  
26 conditions as the assignor or transferor may choose to impose, of ownership to  
27 a licensee of an insurance policy or annuity contract, or proceeds thereof, or  
28 by the designation of a licensee as beneficiary of any such insurance policy  
29 or annuity contract; . An assignment of an insurance policy or annuity or the  
30 proceeds thereof to a funeral home or the designation of a funeral home as  
31 beneficiary as described herein is not a prepaid funeral benefits contract."

33 SECTION 2. Arkansas Code 23-40-103(10) is amended to read as follows:

34 "(10) Trustee means a state or national bank or savings and loan  
35 association in this state; ~~and~~ , or, in the reasonable discretion of the  
36 Insurance Commissioner upon such terms and conditions as he may require, a

1 securities brokerage firm licensed and in good standing with appropriate state  
2 and federal regulatory authorities."

3

4 SECTION 3. Arkansas Code 23-40-103 is amended by adding two additional  
5 subsections at the end thereof to read as follows:

6 "(12) Prepaid funeral benefits contract or prepaid contract means a  
7 contract or agreement for the prepayment and sale in this state of funeral  
8 services or funeral merchandise, including caskets, grave vaults, and all  
9 other articles of merchandise and services incidental to funeral services, at  
10 an agreed upon price, to be delivered at an undetermined future date depending  
11 upon the death of the contract beneficiary. It does not include a  
12 prearrangement.

13 (13) Contract beneficiary means any natural person designated in a  
14 prepaid funeral benefits contract upon whose death funeral services and/or  
15 funeral merchandise shall be performed, provided, or delivered."

16

17 SECTION 4. Arkansas code 23-40-107 is amended to read as follows:

18 "§ 23-40-107. Division of Prepaid Funeral Benefits.

19 The Insurance Commissioner shall be responsible for the regulation of  
20 the sale of prepaid funeral benefits and there is hereby established, within  
21 the State Insurance Department, the Division of Prepaid Funeral Benefits.  
22 This division shall be funded annually by the fees required to be paid by  
23 organizations subject to this chapter, which shall be placed in trust and  
24 disbursed pursuant to this chapter.

25 (a) There is hereby established on the books of the Treasurer of State,  
26 the Auditor of State and the Chief Fiscal Officer of the State a fund to be  
27 known as the State Insurance Department Prepaid Trust Fund to be used to pay  
28 the expenses of the State Insurance Department in the discharge of its  
29 regulation of prepaid funeral benefits contracts.

30 (b) No money shall be appropriated from this fund for any purpose other  
31 than to pay for personal services, operating expenses, maintenance and  
32 operations, and support of and improvements to the Division of Prepaid Funeral  
33 Benefits of the State Insurance Department.

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

1       (d) All income derived through the investment of the State Insurance  
2 Department Prepaid Trust Fund, including, but not limited to, interest and  
3 dividends, shall be credited as investment income to the State Insurance  
4 Department Prepaid Trust Fund.

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

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

11       (g) All fees required to be paid by licensees pursuant to this chapter  
12 shall be deposited in the State Insurance Department Prepaid Trust Fund for  
13 the support, operation, and maintenance of the Division of Prepaid Funeral  
14 Benefits of the State Insurance Department and, when paid into the State  
15 Treasury by the Insurance Commissioner, shall be maintained by the State  
16 Treasurer as the State Insurance Department Prepaid Trust Fund, separate from  
17 all other funds, and available only for the payment of the expenses of the  
18 Division of Prepaid Funeral Benefits of the State Insurance Department.

19       (h) The Auditor of State shall, upon proper voucher from the Insurance  
20 Commissioner, issue his warrant on the Treasurer of State in payment of all  
21 salaries and other expenses incurred by the Division of Prepaid Funeral  
22 Benefits of the State Insurance Department in the administration of this  
23 chapter.

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

29  
30       SECTION 5. Arkansas Code 23-40-110(b) is amended to read as follows:

31       "(b) Each applicant shall, at the time of the application, pay a filing  
32 fee of ~~one hundred dollars (\$100)~~ three hundred dollars (\$300) for the initial  
33 application and ~~fifty dollars (\$50.00)~~ two hundred dollars (\$200) for a  
34 renewal application."

35  
36       SECTION 6. Arkansas Code 23-40-113(b)(7) is amended to read as follows:

1           "(7) A filing fee of ~~one hundred dollars (\$100)~~ five hundred dollars  
 2 (\$500); and"

3

4           SECTION 7. Arkansas Code 23-40-114(f) is amended to read as follows:

5           "(f) The ~~permittee~~ licensee shall file a request for a transfer of  
 6 funds, together with a filing fee of ~~fifty dollars (\$50.00)~~ two hundred and  
 7 fifty dollars (\$250), and any other information required by rule or  
 8 regulation."

9

10          SECTION 8. Arkansas Code 23-40-119(c) is amended to read as follows:

11          "~~(c) The annual report fee shall be based upon the aggregate contract~~  
 12 ~~price of all contracts for prepaid funeral benefits outstanding and~~  
 13 ~~unfulfilled as of December 31 of each year and shall be payable at the time~~  
 14 ~~the annual report is filed. The annual report fee shall be fifty dollars~~  
 15 ~~(\$50.00) for one million dollars (\$1,000,000), or fraction thereof, plus~~  
 16 ~~twenty-five dollars (\$25.00) for each million, or fraction thereof, in excess~~  
 17 ~~of one million dollars (\$1,000,000), up to a maximum annual report fee of~~  
 18 ~~three hundred dollars (\$300).~~ Effective on and after March 15, 1997, the  
 19 annual report fee shall be based on the total amount of aggregate contracts  
 20 for prepaid funeral benefits outstanding and unfulfilled as of December 31 of  
 21 each year and shall be payable at the time the annual report is filed. The  
 22 fee shall be based on the following schedule and shall be payable to the State  
 23 Insurance Department Prepaid Trust Fund:

<u>AGGREGATE AMOUNT OF OUTSTANDING</u>	<u>ANNUAL REPORT</u>
<u>PREPAID FUNERAL BENEFITS CONTRACTS</u>	<u>FEE DUE STATE</u>
<u>IN ARKANSAS</u>	<u>OF ARKANSAS</u>
<u>Up to \$250,000</u>	<u>\$200.00</u>
<u>Over \$250,001 to \$500,000</u>	<u>\$250.00</u>
<u>\$500,001 to \$1,000,000</u>	<u>\$500.00</u>
<u>\$1,000,001 to \$2,500,000</u>	<u>\$1,000.00</u>
<u>\$2,500,001 to \$5,000,000</u>	<u>\$2,000.00</u>
<u>\$5,000,001 to \$10,000,000</u>	<u>\$3,000.00</u>
<u>\$10,000,001 to \$20,000,000</u>	<u>\$4,000.00</u>
<u>\$20,000,001 to \$40,000,000</u>	<u>\$5,000.00</u>
<u>Over \$40,000,001</u>	<u>\$6,000.00"</u>

36

1 SECTION 9. Arkansas Code 23-40-119 is amended by adding two additional  
2 subsections immediately following subsection (c) to read as follows:

3 "(d) Effective for all prepaid funeral benefits contracts executed on  
4 and after April 1, 1997, each licensee selling a prepaid funeral benefits  
5 contract shall remit to the State Insurance Department a one-time fee of five  
6 dollars (\$5.00) for each prepaid funeral benefits contract (including any  
7 amendments thereto) entered into by the licensee whether cash or trust funded  
8 or funded by an insurance policy or annuity contract. The fees shall be  
9 remitted quarterly to the State Insurance Department Prepaid Trust Fund for  
10 each quarter of the calendar year with a quarterly fee form as prescribed by  
11 the Insurance Commissioner. The fees shall be remitted to the State Insurance  
12 Department no later than forty-five (45) days after each quarter. The  
13 Insurance Commissioner may by rule or regulation reduce the per contract fee  
14 or adjust the fee up to a maximum of fifteen dollars (\$15.00) per contract,  
15 each year, after the effective date of this act. Such fee may be charged to  
16 the purchaser of the contract. Any fee so charged and collected shall not be  
17 deemed to be included in the term contract proceeds, as defined in Arkansas  
18 Code 23-40-103(3), and shall not be subject to the deposit requirements of  
19 Arkansas Code 23-40-114(a).

20 (e) Absent the Insurance Commissioners approval of an extension for  
21 good cause shown, licensees failing to timely report and pay any  
22 administrative and financial regulations fees to the State Insurance  
23 Department Prepaid Trust Fund may be subject to a penalty of one hundred  
24 dollars (\$100) per day for each day of delinquency, payable to the State  
25 Insurance Department Prepaid Trust Fund. The Insurance Commissioner shall  
26 deposit all administrative and financial regulation fees and any penalties  
27 assessed under this section directly into the State Insurance Department  
28 Prepaid Trust Fund as special revenues."

29

30 SECTION 10. The following section is added at the end of Chapter 40 of  
31 Title 23 of the Arkansas Code:

32 "§ 23-40-123. Delinquency Proceedings.

33 (a) The Insurance Commissioner may apply to a court of competent  
34 jurisdiction for an order appointing him in his official capacity as receiver  
35 of and directing him to conserve, rehabilitate or liquidate a prepaid funeral  
36 benefits contracts licensee upon one (1) or more of the following grounds:

1           (1) The licensee has not maintained trust funds received from  
2 contracts in the manner required by Arkansas Code 23-40-114;

3           (2) The licensee has allowed its permit to lapse, or be revoked  
4 in accordance with this chapter, and has not made a full and complete  
5 accounting and restitution, if appropriate, of all prepaid funeral benefits  
6 contracts funds deposited with it;

7           (3) The licensee is impaired or insolvent;

8           (4) The licensee has refused to submit its books, records,  
9 accounts or affairs to reasonable examination by the Insurance Commissioner;

10          (5) The licensee or any officer, director, or manager of the  
11 licensee has refused to be examined under oath concerning the licensee's  
12 affairs;

13          (6) There is reasonable cause to believe that there has been  
14 embezzlement, misappropriation or other wrongful misapplication or use of  
15 trust funds or fraud affecting the ability of the licensee to perform its  
16 obligations under prepaid funeral benefits contracts sold or assumed by the  
17 licensee;

18          (7) The licensee has failed to file its annual report within the  
19 time required by law and, after written demand by the Insurance Commissioner,  
20 has failed to promptly give an adequate explanation for such failure.

21          (b) Circuit courts shall have original jurisdiction of all delinquency  
22 proceedings under this chapter, and any such court is authorized to make all  
23 necessary or appropriate orders to carry out the purposes of this chapter.

24          (c) The venue of delinquency proceedings against a licensee shall be in  
25 the Circuit Court of Pulaski County.

26          (d) Delinquency proceedings instituted pursuant to this chapter shall  
27 constitute the sole and exclusive method of liquidating, rehabilitating, or  
28 conserving a licensee, and no court shall entertain a petition for the  
29 commencement of such proceedings unless the petition has been filed in the  
30 name of the state on the relation of the Insurance Commissioner.

31          (e) The Insurance Commissioner shall commence any such proceeding by  
32 application to the court for an order directing the licensee to show cause why  
33 the Insurance Commissioner should not have the relief prayed for in the  
34 application. On the return of such order to show cause, and after a full  
35 hearing, the court shall either deny the application or grant the application,  
36 together with such other relief as the nature of the case and the interests of

1 the prepaid contracts purchaser, contract beneficiaries or the public may  
2 require.

3 (f) An appeal shall lie to the Supreme Court from an order granting or  
4 refusing rehabilitation, liquidation, or conservation, and from every other  
5 order in delinquency proceedings having the character of a final order as to  
6 the particular portion of proceedings embraced therein."

7

8 SECTION 11. Compliance with this act shall be required for all  
9 licensees on and after March 16, 1997.

10

11 SECTION 12. All provisions of this act of a general and permanent  
12 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
13 Code Revision Commission shall incorporate the same in the Code.

14

15 SECTION 13. If any provision of this act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 act are declared to be severable.

20

21 SECTION 14. All laws and parts of laws in conflict with this act are  
22 hereby repealed.

23

24 SECTION . EMERGENCY. It is found and determined by the General  
25 Assembly of the State of Arkansas that Arkansas Code 23-40-116 requires all  
26 organizations which sell contracts for prepaid funeral benefits to file annual  
27 reports and submit annual report fees on or before March 15th of each year;  
28 that this act modifies the annual report fee schedule and should therefore  
29 become effective on March 16, 1997; and unless this emergency clause is  
30 adopted the provisions of this act will not become effective until several  
31 months after March 16, 1997. Therefore an emergency is declared to exist and  
32 this act being immediately necessary for the preservation of the public peace,  
33 health and safety shall become effective March 16, 1997.

34