

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S3/16/15
A Bill

SENATE BILL 767

5 By: Senator Rapert
6 By: Representative Collins
7

8 **For An Act To Be Entitled**

9 AN ACT TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS
10 UNDER THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO
11 DEFINE A NONGUARANTEED PREPAID CONTRACT; TO DECLARE
12 AN EMERGENCY; AND FOR OTHER PURPOSES.
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15 **Subtitle**

16 TO REGULATE PREPAID FUNERAL BENEFITS
17 CONTRACTS UNDER THE ARKANSAS PREPAID
18 FUNERAL BENEFITS LAW; TO DEFINE A
19 NONGUARANTEED PREPAID CONTRACT; AND TO
20 DECLARE AN EMERGENCY.
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 23-40-103(10)(B), concerning the definition
26 of a "prepaid funeral benefits contract" under the Arkansas Prepaid Funeral
27 Benefits Law, is amended to read as follows:

28 (B) "Prepaid funeral benefits contract" or "prepaid
29 contract" includes a nonguaranteed prepaid contract and a nonspecified
30 prepaid contract.
31

32 SECTION 2. Arkansas Code § 23-40-103, concerning the definitions under
33 the Arkansas Prepaid Funeral Benefits Law, is amended to add an additional
34 subdivision to read as follows:

35 (15) "Nonguaranteed prepaid contract" means a prepaid contract
36 for the selection of merchandise or services that does not guarantee the



1 price of the merchandise or services at the time of need.

2
3 SECTION 3. Arkansas Code § 23-40-112(a)(2), concerning the interest or
4 earnings of a nonspecified prepaid contract, is amended to read as follows:

5 (2)(A) A Except as provided in subdivision (a)(2)(B) of this
6 section, a nonguaranteed prepaid contract or a nonspecified prepaid contract
7 shall ~~not~~ be approved ~~unless~~ if the ~~nonspecified~~ prepaid contract provides
8 the contract holder with interest or earnings during the term of the
9 ~~nonspecified~~ prepaid contract ~~if the nonspecified prepaid contract is not~~
10 ~~canceled under § 23-40-122.~~

11 (B) If ~~the a nonspecified~~ prepaid contract is canceled
12 under § 23-40-122, the seller may retain the ~~interest~~ accumulated interest on
13 the deposit or the cash surrender value of the insurance policy used to
14 purchase the ~~nonspecified~~ prepaid contract in excess of the amount paid by
15 the purchaser.

16 (C) The commissioner by rule may establish additional
17 requirements for a nonguaranteed prepaid contract or a nonspecified prepaid
18 contract.

19
20 SECTION 4. Arkansas Code § 23-40-112(b), concerning the requirements
21 of a prepaid funeral benefits contract, is amended to add an additional
22 subdivision to read as follows:

23 (3)(A) A nonguaranteed prepaid contract for specified benefits
24 shall state that the prepaid contract is not guaranteed.

25 (B) A nonguaranteed prepaid contract may:

26 (i) State the specific merchandise and services to
27 be provided by the seller; and

28 (ii) Name the prepaid contract price.

29
30 SECTION 5. Arkansas Code § 23-40-112(d)(1), concerning the specified
31 benefits under a prepaid funeral benefits contract, is amended to read as
32 follows:

33 (d)(1)(A) A seller of a prepaid contract for specified benefits shall
34 ~~provide that the seller shall~~ furnish to the buyer the merchandise and
35 services as ~~set forth~~ stated in the prepaid contract at the prepaid contract
36 price, regardless of the cost of the merchandise or services at the date of

1 the contract beneficiary's death.

2 (B) A nonguaranteed prepaid contract shall state that the
3 prepaid contract price is not guaranteed.

4
5 SECTION 6. Arkansas Code § 23-40-114(h), concerning the suspension of
6 trust fund disbursements or withdrawals, is repealed.

7 ~~(h) Pending a promptly scheduled hearing, the commissioner or his or~~
8 ~~her authorized representative may immediately suspend or prohibit~~
9 ~~disbursements or withdrawals from the trust fund by an organization if the~~
10 ~~commissioner or his or her authorized representative determines that the~~
11 ~~organization has violated § 23-40-114(a) in a manner sufficient to subject~~
12 ~~the organization to delinquency proceedings.~~

13
14 SECTION 7. Arkansas Code § 23-40-123 is amended to read as follows:

15 23-40-123. Delinquency proceedings.

16 (a) The If it appears upon sufficient grounds or evidence satisfactory
17 to the Insurance Commissioner that a person or a licensee has engaged in or
18 is about to engage in an act or a practice that violates this chapter or a
19 rule adopted or an order issued under this chapter or that the assets or
20 capital of a licensee are impaired or the licensee's affairs are in an unsafe
21 condition, then the commissioner may apply to a court of competent
22 jurisdiction for an order appointing him or her in his or her official
23 capacity as receiver of and directing him or her to conserve, rehabilitate,
24 or liquidate a prepaid funeral benefits contracts licensee upon one (1) or
25 more of the following grounds order summarily a person or a licensee to cease
26 and desist and take control of and administer *the prepaid funeral benefits*
27 *contracts business* operations of a licensee that sells prepaid funeral
28 benefits, if the commissioner finds:

29 (1) It is in the public interest necessary to ensure the orderly
30 and proper handling of outstanding prepaid funeral benefits contracts to
31 protect the interest and rights of active contract holders upon a revocation,
32 suspension, or a lapse of a prepaid funeral benefits permit;

33 (2) It is necessary to prevent loss, waste, dissipation, theft,
34 or conversion of assets that are required by law to be held and used for the
35 benefit and protection of the purchasers of prepaid funeral benefits
36 contracts under this chapter;

1 ~~(3) The licensee has not maintained trust funds received from~~
2 ~~contracts in the manner required by~~ seller failed to deposit or remit moneys
3 according to § 23-40-114(a);

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

8 ~~(3) The licensee is impaired or insolvent;~~

9 (4) The licensee seller has refused to submit its books,
10 records, accounts, or affairs to reasonable examination by the commissioner
11 misappropriated, converted, illegally withheld or refused to pay on demand
12 any moneys entrusted to the seller that belong to a beneficiary under a
13 prepaid funeral benefits contract; or

14 (5) The licensee or any officer, director, or manager of the
15 licensee has seller refused to be examined under oath concerning the
16 licensee's affairs an examination by the commissioner;.

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

22 ~~(7) The licensee has failed to file its annual report within the~~
23 ~~time required by law and, after written demand by the commissioner, has~~
24 ~~failed to promptly give an adequate explanation for such failure.~~

25 ~~(b)(1) Circuit courts shall have original jurisdiction of all~~
26 ~~delinquency proceedings under this chapter, and any such court is authorized~~
27 ~~to make all necessary or appropriate orders to carry out the purposes of this~~
28 ~~chapter~~ If the commissioner determines that immediate action is required to
29 protect the public health, safety, or welfare of the holders of the prepaid
30 funeral benefits contracts, the commissioner may issue an order to a licensee
31 to cease and *desist prepaid funeral benefits contracts operations.*

32 (2) An order issued under subdivision (b)(1) of this section
33 shall:

34 (A) State the findings that the commissioner relied upon
35 that required emergency action; and

36 (B) Provide the licensee with a reasonable amount of time

1 as determined by the commissioner to respond or appeal an order issued under
2 subdivision (b)(1) of this section.

3 (3) A licensee and any named party immediately shall be served
4 with notice and a copy of the order.

5 (4) The order issued under subdivision (b)(1) of this section
6 may:

7 (A) Direct the commissioner or his or her designee to take
8 possession, custody, and control of the property, books, accounts, documents,
9 and other records of the licensee as to its prepaid funeral benefits
10 contracts operations; or

11 (B) Require the commissioner or his or her designee to
12 limit the disruption to the operations of the licensee by:

13 (i) Prohibiting a licensee from making a
14 disbursement of withdrawal from the licensee's trust fund;

15 (ii) Making a disbursement from the trust fund for
16 any valid claim;

17 (iii) Procuring a substitute provider that is
18 licensed under this chapter to service the prepaid funeral benefits
19 contracts;

20 (iv) Terminating or modifying a trust fund
21 agreement; or

22 (v) Authorizing the commissioner to bring and
23 prosecute a suit in the name of the commissioner that may be necessary to
24 collect debts or preserve assets and property for the benefit of creditors
25 and any interested person.

26 (5) The commissioner shall maintain control of the licensee
27 until the order is modified or vacated by the commissioner.

28 (6) The commissioner may order a licensee to relinquish any
29 property of the licensee in connection with prepaid funeral benefits
30 contracts to the State Insurance Department.

31 (c) The commissioner may apply to a court of competent jurisdiction
32 for an order to appoint him or her, in an official capacity, as receiver of
33 the licensee to conserve, rehabilitate, or liquidate a prepaid funeral
34 benefits contract, if:

35 (1) A licensee:

36 (A) Has not maintained trust funds from prepaid funeral

1 benefit contracts under § 23-40-114;

2 (B) Is impaired or insolvent;

3 (C) Refuses to submit its books, records, accounts, or
4 affairs to an examination by the commissioner;

5 (D) Has refused to be examined under oath concerning the
6 affairs of the licensee or any officer, director, or manager of the licensee
7 refuses to be examined; or

8 (E) Has failed to file the licensee's annual report within
9 the time and according to the insurance laws of this state and does not have
10 an adequate explanation for failure to file the annual report after written
11 demand by the commissioner; or

12 (2) The commissioner has reasonable cause to believe that there
13 has been embezzlement, misappropriation, or other wrongful misapplications or
14 use of trust funds or fraud affecting the ability of the licensee to perform
15 its obligations under prepaid funeral benefits contracts sold or assumed by
16 the licensee.

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

20 ~~(e)~~(e) The venue of delinquency proceedings against a licensee shall
21 be in the Pulaski County Circuit Court.

22 ~~(d)~~(f) Delinquency proceedings instituted ~~pursuant to~~ under this
23 chapter shall not constitute the sole and exclusive method of liquidating,
24 rehabilitating, or conserving a licensee, and ~~no~~ a court shall not entertain
25 a petition for the commencement of such proceedings unless the petition ~~has~~
26 been is filed in the name of the state on the relation of the commissioner.

27 ~~(e)-(1)~~(g)(1) The commissioner shall commence any such proceeding by
28 application to the court for an order directing the licensee to show cause
29 why the commissioner should not have the relief prayed for in the
30 application.

31 (2) On the return of the order to show cause, and after a full
32 hearing, the court shall either deny the application or grant the
33 application, together with such other relief as the nature of the case and
34 the interests of the prepaid contracts purchaser, contract beneficiaries, or
35 the public may require.

36 ~~(f)~~(h) An appeal shall lie to the Supreme Court from an order granting

1 or refusing rehabilitation, liquidation, or conservation, and from every
2 other order in delinquency proceedings having the character of a final order
3 as to the particular portion of proceedings embraced therein.

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5 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
6 General Assembly of the State of Arkansas that prepaid funeral organizations
7 that are operating in this state may be in jeopardy of suffering from
8 financial distress and may not be able to fulfill its outstanding prepaid
9 funeral contracts; that the threat to an insured's benefits under a prepaid
10 funeral contract is a real possibility if a prepaid funeral organization
11 fails and that may have immense consequences; that by providing the
12 Insurance Commissioner the authority to assist a failing or delinquent
13 prepaid funeral organization, the insured or contract beneficiary is better
14 protected concerning benefits; and that this act is immediately necessary
15 because if a prepaid funeral organization fails, an insured or contract
16 beneficiary is in danger of losing benefits or may be harmed if the prepaid
17 funeral organization fails. Therefore, an emergency is declared to exist,
18 and this act being immediately necessary for the preservation of the public
19 peace, health, and safety shall become effective on:

20 (1) The date of its approval by the Governor;

21 (2) If the bill is neither approved nor vetoed by the Governor,
22 the expiration of the period of time during which the Governor may veto the
23 bill; or

24 (3) If the bill is vetoed by the Governor and the veto is
25 overridden, the date the last house overrides the veto.

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27 /s/Rapert

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30 **APPROVED: 04/01/2015**