

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

HOUSE BILL 1572

5 By: Representatives Kerr, Rice, Barnett, Jean, Lea, S. Meeks, D. Altes  
6 By: Senator J. Key  
7

## For An Act To Be Entitled

9 AN ACT TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS  
10 AND INVESTMENTS UNDER THE ARKANSAS PREPAID FUNERAL  
11 BENEFITS LAW; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

14 TO REGULATE PREPAID FUNERAL BENEFITS  
15 CONTRACTS AND INVESTMENTS UNDER THE  
16 ARKANSAS PREPAID FUNERAL BENEFITS LAW.  
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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 23-40-103(10), concerning the definition of  
23 a prepaid funeral benefits contract, is amended to read as follows:

24 (10)(A) "Prepaid funeral benefits contract" or "prepaid  
25 contract" means a contract or agreement for the prepayment and sale in this  
26 state of funeral services or funeral merchandise, including without  
27 limitation caskets, grave vaults, and all other articles of merchandise and  
28 services incidental to funeral services, at an agreed-upon price, to be  
29 delivered at an undetermined future date depending upon the death of the  
30 contract beneficiary. ~~It does not include a prearrangement;~~

31 (B) "Prepaid funeral benefits contract" or "prepaid  
32 contract" includes a nonspecified prepaid contract.

33 (C) "Prepaid funeral benefits contract" or "prepaid  
34 contract" does not include a prearrangement.  
35

36 SECTION 2. Arkansas Code § 23-40-103, concerning definitions under the



1 Arkansas Prepaid Funeral Benefits Law, is amended to add an additional  
 2 subdivision to read as follows:

3 (14) "Nonspecified prepaid contract" means a prepaid contract  
 4 that:

5 (A) Does not select specific funeral merchandise or  
 6 funeral services when the contract is executed;

7 (B) Permits the selection of funeral merchandise or  
 8 funeral services at the time of need; and

9 (C) Applies contract funds to the cost of funeral  
 10 merchandise or funeral services selected at the time of need.

11  
 12 SECTION 3. Arkansas Code § 23-40-112 is amended to read as follows:

13 23-40-112. ~~Sales contracts for prepaid~~ Prepaid funeral benefits  
 14 contracts.

15 (a)(1) The Insurance Commissioner shall approve forms for ~~sales~~  
 16 ~~contracts for~~ prepaid funeral benefits contracts.

17 (2)(A) A nonspecified prepaid contract shall not be approved  
 18 unless the nonspecified prepaid contract provides the contract holder with  
 19 interest or earnings during the term of the nonspecified prepaid contract if  
 20 the nonspecified prepaid contract is not canceled under § 23-40-122.

21 (B) If the nonspecified prepaid contract is canceled under  
 22 § 23-40-122, the seller may retain the interest accumulated on the deposit or  
 23 the cash surrender value of the insurance policy used to purchase the  
 24 nonspecified prepaid contract in excess of the amount paid by the purchaser.

25 (C) The commissioner by rule may establish additional  
 26 requirements for a nonspecified prepaid contract.

27 (b)(1) ~~All contracts for sale of prepaid funeral benefits must~~ Prepaid  
 28 funeral benefits contracts shall be in writing.

29 (2) and must A prepaid contract for specified benefits shall set  
 30 forth the specific merchandise and services to be provided by the seller and  
 31 the prepaid contract price.

32 (c)(1) All forms ~~of sales contracts~~ for prepaid funeral benefits  
 33 contracts shall contain the provisions incidental to the orderly  
 34 administration of this chapter as set forth in the rules ~~as~~ prescribed by the  
 35 commissioner.

36 (2) No A prepaid contract form shall not be used without prior

1 approval of the commissioner.

2 (d)(1) ~~All contracts for sale of prepaid funeral benefits~~ A prepaid  
3 contract for specified benefits shall provide that the seller shall furnish  
4 to the buyer the merchandise and services as set forth in the prepaid  
5 contract at the prepaid contract price, regardless of the cost of the  
6 merchandise or services at the date of the beneficiary's death.

7 (2)(A) However, the seller shall not be required to furnish at  
8 the prepaid contract price other items incidental to the funeral and  
9 disposition of the beneficiary that are clearly identified in the prepaid  
10 contract as cash accommodation items.

11 (B) The seller may charge the difference between the cash  
12 accommodation fund balance, including accrued interest, and the market price  
13 of the cash accommodation items as of the date of the beneficiary's death.

14 (C) ~~In the event~~ If the total funds on deposit ~~shall~~  
15 exceed the market price of the cash accommodation items, the seller shall  
16 return the excess to the buyer or his or her estate.

17 (e) The seller shall not be entitled to enforce a prepaid contract  
18 made in violation of this chapter, but the purchaser, or his or her heirs, or  
19 his or her legal representative shall be entitled to recover all amounts paid  
20 to the seller under any prepaid contract made in violation ~~hereof~~ of this  
21 chapter.

22 (f)(1) This chapter ~~shall~~ does not prohibit the assignment or transfer  
23 of insurance contracts as consideration for prepaid funeral benefits  
24 furnished in accordance with ~~the provisions of~~ this chapter or the  
25 designation of an organization licensed pursuant to ~~the provisions of~~ this  
26 chapter as beneficiary of a funeral expense or other insurance policy.

27 (2) Such an assignment, transfer, or designation shall not be  
28 deemed to be a prepaid contract.

29 (g) The prepaid contract shall contain a provision in substantially  
30 the following form:

31 "NOTICE: If this contract is irrevocable and you choose to transfer this  
32 contract to a substitute provider, the entire amount of the contract will not  
33 be transferred and you may have to pay more to obtain 100% of the services  
34 provided for in the contract."

35 (h) Each seller shall provide advance written notice to the prepaid  
36 contract purchaser that the seller intends to procure a single payment whole

1 life insurance policy or annuity on the contract beneficiary to fund the  
 2 prepaid funeral benefit contract for less money than the total amount of the  
 3 cash payment if:

4 (1) The prepaid funeral benefits contract was originally  
 5 intended by the contract purchaser to be fully paid in cash; and

6 (2) The amount of the single premium payment to the insurer by  
 7 the seller is less than the cash payment provided to the seller by the  
 8 contract purchaser.

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 10 SECTION 4. Arkansas Code § 23-40-115(a)(1)(C)(i), concerning  
 11 permissible investments in bonds under the Arkansas Prepaid Funeral Benefits  
 12 Law, is amended to read as follows:

13 (C)(i)(a) Corporate, state, municipal, or political  
 14 subdivision bonds or obligations ~~which~~ that at the time of purchase are rated  
 15 ~~Aa A~~ or better by Moody's or ~~AA A~~ or better by Standard & Poor's rate  
 16 services.

17 (b) The Insurance Commissioner by rule may  
 18 permit the continued investment in a bond purchased in compliance with  
 19 subdivision (a)(1)(C)(i)(a) of this section that is subsequently downgraded  
 20 for the time and in the amounts established by the commissioner; or

21  
 22 SECTION 5. Arkansas Code § 23-40-115(b)(1), concerning permissible  
 23 investments in bonds under the Arkansas Prepaid Funeral Benefits Law, is  
 24 repealed.

25 ~~(1) Not less than one hundred thousand dollars (\$100,000) of the~~  
 26 ~~trust fund shall be invested in investments described in subdivision (a)(1)~~  
 27 ~~of this section. However, if the total amount of the trust fund is less than~~  
 28 ~~one hundred thousand dollars (\$100,000), then all of the trust fund shall be~~  
 29 ~~invested in investments described in subdivision (a)(1) of this section;~~