

A.C.A. § 23-40-112

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*** CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES ***
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Title 23 Public Utilities and Regulated Industries
Subtitle 2. Financial Institutions And Securities
Chapter 40 Sale of Prepaid Funeral Benefits

A.C.A. § 23-40-112 (2011)

23-40-112. Sales contracts for prepaid funeral benefits.

- (a) The Insurance Commissioner shall approve forms for sales contracts for prepaid funeral benefits.
- (b) All contracts for sale of prepaid funeral benefits must be in writing and must set forth the specific merchandise and services to be provided by the seller and the contract price.
- (c) All forms of sales contracts for prepaid funeral benefits shall contain the provisions incidental to the orderly administration of this chapter as set forth in the rules as prescribed by the commissioner. No contract form shall be used without prior approval of the commissioner.
- (d) (1) All contracts for sale of prepaid funeral benefits shall provide that the seller shall furnish to the buyer the merchandise and services as set forth in the contract at the contract price, regardless of the cost of the merchandise or services at the date of the beneficiary's death.
- (2) However, the seller shall not be required to furnish at the contract price other items incidental to the funeral and disposition of the beneficiary that are clearly identified in the contract as cash accommodation items. The seller may charge the difference between the cash accommodation fund balance, including accrued interest, and the market price of the cash accommodation items as of the date of the beneficiary's death. In the event the total funds on deposit shall exceed the market price of the cash accommodation items, the seller shall return the excess to the buyer or his or her estate.
- (e) The seller shall not be entitled to enforce a contract made in violation of this chapter, but the purchaser, or his or her heirs, or his or her legal representative shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof.
- (f) (1) This chapter shall not prohibit the assignment or transfer of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with the provisions of this chapter or the designation of an organization licensed pursuant to the provisions of this chapter as beneficiary of a funeral expense or other insurance policy.

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

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

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

(h) Each seller shall provide advance written notice to the contract purchaser that the seller intends to procure a single payment whole life insurance policy or annuity on the contract beneficiary to fund the prepaid funeral benefit contract for less money than the total amount of the cash payment if:

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

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

HISTORY: Acts 1985, No. 156, §§ 2, 4; A.S.A. 1947, §§ 67-1714, 67-1716; Acts 1995, No. 852, §§ 4, 12; 2003, No. 987, § 3[2].