



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5578

by Rep. Dan Brady

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Funeral or Burial Funds Act. Limits certain provisions concerning payment under pre-need contracts to pre-need contracts entered into prior to the effective date of the amendatory Act. Makes changes to the definition of "seller". Provides that, before a seller and purchaser enter into a pre-need contract or pre-need sales contract, the seller must disclose and fully explain certain funding options. Provides that an agreement or contract for or a private sale of a casket, urn, or floral arrangement shall not be deemed a pre-need sales contract or a pre-need sale under specified circumstances. Provides that, if a pre-need contract includes the sale of funeral services and merchandise: (1) the seller must be a funeral director licensed under the Funeral Directors and Embalmers Licensing Code who is employed at the time of the sale of the contract by the funeral establishment through which the funeral services and merchandise will be provided, (2) the contract must be filled out by a funeral director licensed under the Funeral Directors and Embalmers Licensing Code, and (3) the contract may only be executed by a funeral director licensed under the Funeral Directors and Embalmers Licensing Code. Amends the Illinois Pre-Need Cemetery Sales Act. Provides that sellers of pre-need sales contracts must be licensed by the Department of Financial and Professional Regulation, and requires specified continuing education. Limits certain provisions concerning payment under pre-need contracts to pre-need contracts entered into prior to the effective date of the amendatory Act. Provides that, before a seller and purchaser enter into a pre-need contract or pre-need sales contract, the seller must disclose and fully explain certain funding options. Makes other changes. Effective immediately.

LRB100 20127 XWW 35410 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Funeral or Burial Funds Act is  
5 amended by changing Sections 1 and 1a and by adding Section 1c  
6 as follows:

7 (225 ILCS 45/1) (from Ch. 111 1/2, par. 73.101)

8 Sec. 1. Payment under pre-need contract. Except as  
9 otherwise provided in this Section, all sales proceeds paid to  
10 any person, partnership, association or corporation with  
11 respect to merchandise or services covered by this Act, upon  
12 any agreement or contract, or any series or combination of  
13 agreements or contracts, which has for a purpose the furnishing  
14 or performance of funeral services, or the furnishing or  
15 delivery of any personal property, merchandise, or services of  
16 any nature in connection with the final disposition of a dead  
17 human body, including, but not limited to, outer burial  
18 containers, urns, combination casket-vault units, caskets and  
19 clothing, for future use at a time determinable by the death of  
20 the person or persons whose body or bodies are to be so  
21 disposed of, shall be held to be trust funds, and shall be  
22 placed in trust in accordance with Sections 1b and 2, or shall  
23 be used to purchase life insurance or annuities in accordance

1 with Section 2a. The person, partnership, association or  
2 corporation receiving said payments under a pre-need contract  
3 is hereby declared to be a trustee thereof until deposits of  
4 funds are made in accordance with Section 1b or 2a of this Act.

5 This Section applies only to pre-need contracts entered  
6 into prior to the effective date of this amendatory Act of the  
7 100th General Assembly.

8 Nothing in this Act shall be construed to prohibit the  
9 inclusion of outer burial containers in sales contracts under  
10 the Illinois Pre-Need Cemetery Sales Act.

11 (Source: P.A. 96-879, eff. 2-2-10.)

12 (225 ILCS 45/1a) (from Ch. 111 1/2, par. 73.101a)

13 Sec. 1a. For the purposes of this Act, the following terms  
14 shall have the meanings specified, unless the context clearly  
15 requires another meaning:

16 "Beneficiary" means the person specified in the pre-need  
17 contract upon whose death funeral services or merchandise shall  
18 be provided or delivered.

19 "Licensee" means a seller of a pre-need contract who has  
20 been licensed by the Comptroller under this Act.

21 "Outer burial container" means any container made of  
22 concrete, steel, wood, fiberglass or similar material, used  
23 solely at the interment site, and designed and used exclusively  
24 to surround or enclose a separate casket and to support the  
25 earth above such casket, commonly known as a burial vault,

1 grave box or grave liner, but not including a lawn crypt as  
2 defined in the Illinois Pre-need Cemetery Sales Act.

3 "Parent company" means a corporation owning more than 12  
4 cemeteries or funeral homes in more than one state.

5 "Person" means any person, partnership, association,  
6 corporation, or other entity.

7 "Pre-need contract" means any agreement or contract, or any  
8 series or combination of agreements or contracts, whether  
9 funded by trust deposits or life insurance policies or  
10 annuities, which has for a purpose the furnishing or  
11 performance of funeral services or the furnishing or delivery  
12 of any personal property, merchandise, or services of any  
13 nature in connection with the final disposition of a dead human  
14 body. Nothing in this Act is intended to regulate the content  
15 of a life insurance policy or a tax-deferred annuity.

16 "Provider" means a person who is obligated for furnishing  
17 or performing funeral services or the furnishing or delivery of  
18 any personal property, merchandise, or services of any nature  
19 in connection with the final disposition of a dead human body.

20 "Purchaser" means the person who originally paid the money  
21 under or in connection with a pre-need contract.

22 "Sales proceeds" means the entire amount paid to a seller,  
23 exclusive of sales taxes paid by the seller, finance charges  
24 paid by the purchaser, and credit life, accident or disability  
25 insurance premiums, upon any agreement or contract, or series  
26 or combination of agreements or contracts, for the purpose of

1 performing funeral services or furnishing personal property,  
2 merchandise, or services of any nature in connection with the  
3 final disposition of a dead human body, including, but not  
4 limited to, the retail price paid for such services and  
5 personal property and merchandise.

6 "Purchase price" means sales proceeds less finance charges  
7 on retail installment contracts.

8 "Seller" means a ~~the~~ person, licensed as a funeral director  
9 or a funeral director and embalmer under the Funeral Directors  
10 and Embalmers Licensing Code, who sells or offers to sell the  
11 pre-need contract to a purchaser, whether funded by a trust  
12 agreement, life insurance policy, ~~or~~ tax-deferred annuity, or  
13 other means agreed to by the purchaser and seller in the  
14 pre-need contract.

15 "Trustee" means a person authorized to hold funds under  
16 this Act.

17 (Source: P.A. 92-419, eff. 1-1-02.)

18 (225 ILCS 45/1c new)

19 Sec. 1c. Disclosures; contract requirements. Before a  
20 seller and purchaser enter into a pre-need contract for funeral  
21 services or merchandise, the seller must disclose and fully  
22 explain what financial plans are offered by the seller and the  
23 funeral establishment.

24 If a pre-need contract includes the sale of funeral  
25 services and merchandise: (1) the seller must be a funeral

1 director licensed under the Funeral Directors and Embalmers  
2 Licensing Code who is employed at the time of the sale of the  
3 contract by the funeral establishment through which the funeral  
4 services and merchandise will be provided, (2) the contract  
5 must be filled out by a funeral director licensed under the  
6 Funeral Directors and Embalmers Licensing Code, and (3) the  
7 contract may only be executed by a funeral director licensed  
8 under the Funeral Directors and Embalmers Licensing Code.

9 Section 10. The Illinois Pre-Need Cemetery Sales Act is  
10 amended by changing Sections 4, 15, and 17 and by adding  
11 Section 15.5 as follows:

12 (815 ILCS 390/4) (from Ch. 21, par. 204)

13 Sec. 4. Definitions. As used in this Act, the following  
14 terms shall have the meaning specified:

15 (A) "Pre-need sales contract" or "Pre-need sales" means any  
16 agreement or contract or series or combination of agreements or  
17 contracts which have for a purpose the sale of cemetery  
18 merchandise, cemetery services or undeveloped interment,  
19 entombment or inurnment spaces where the terms of such sale  
20 require payment or payments to be made at a currently  
21 determinable time and where the merchandise, services or  
22 completed spaces are to be provided more than 120 days  
23 following the initial payment on the account. An agreement or  
24 contract for or a private sale of a casket, urn, floral

1 arrangement, memorial, marker, or monument shall not be deemed  
2 a "pre-need sales contract" or a "pre-need sale" if the casket,  
3 urn, floral arrangement, memorial, marker, or monument is  
4 delivered within 180 days following initial payment on the  
5 account and work thereon commences a reasonably short time  
6 after initial payment on the account.

7 (B) "Delivery" occurs when:

8 (1) Physical possession of the merchandise is  
9 transferred or the easement for burial rights in a  
10 completed space is executed, delivered and transferred to  
11 the buyer; or

12 (2) Following authorization by a purchaser under a  
13 pre-need sales contract, title to the merchandise has been  
14 transferred to the buyer and the merchandise has been paid  
15 for and is in the possession of the seller who has placed  
16 it, until needed, at the site of its ultimate use; or

17 (3) Following authorization by a purchaser under a  
18 pre-need sales contract, the merchandise has been  
19 permanently identified with the name of the buyer or the  
20 beneficiary and delivered to a licensed and bonded  
21 warehouse and both title to the merchandise and a warehouse  
22 receipt have been delivered to the purchaser or beneficiary  
23 and a copy of the warehouse receipt has been delivered to  
24 the licensee for retention in its files; except that in the  
25 case of outer burial containers, the use of a licensed and  
26 bonded warehouse as set forth in this paragraph shall not

1           constitute delivery for purposes of this Act. Nothing  
2           herein shall prevent a seller from perfecting a security  
3           interest in accordance with the Uniform Commercial Code on  
4           any merchandise covered under this Act.

5           All warehouse facilities to which sellers deliver  
6           merchandise pursuant to this Act shall:

7                   (i) be either located in the State of Illinois or  
8                   qualify as a foreign warehouse facility as defined  
9                   herein;

10                   (ii) submit to the Comptroller not less than  
11                   annually, by March 1 of each year, a report of all  
12                   cemetery merchandise stored by each licensee under  
13                   this Act which is in storage on the date of the report;

14                   (iii) permit the Comptroller or his designee at any  
15                   time to examine stored merchandise and to examine any  
16                   documents pertaining thereto;

17                   (iv) submit evidence satisfactory to the  
18                   Comptroller that all merchandise stored by said  
19                   warehouse for licensees under this Act is insured for  
20                   casualty or other loss normally assumed by a bailee for  
21                   hire;

22                   (v) demonstrate to the Comptroller that the  
23                   warehouse has procured and is maintaining a  
24                   performance bond in the form, content and amount  
25                   sufficient to unconditionally guarantee to the  
26                   purchaser or beneficiary the prompt shipment of the



1 cemetery merchandise.

2 (C) "Cemetery merchandise" means items of personal  
3 property normally sold by a cemetery authority not covered  
4 under the Illinois Funeral or Burial Funds Act, including but  
5 not limited to:

6 (1) memorials,

7 (2) markers,

8 (3) monuments,

9 (4) foundations, and

10 (5) outer burial containers.

11 (D) "Undeveloped interment, entombment or inurnment  
12 spaces" or "undeveloped spaces" means any space to be used for  
13 the reception of human remains that is not completely and  
14 totally constructed at the time of initial payment therefor in  
15 a:

16 (1) lawn crypt,

17 (2) mausoleum,

18 (3) garden crypt,

19 (4) columbarium, or

20 (5) cemetery section.

21 (E) "Cemetery services" means those services customarily  
22 performed by cemetery or crematory personnel in connection with  
23 the interment, entombment, inurnment or cremation of a dead  
24 human body.

25 (F) "Cemetery section" means a grouping of spaces intended  
26 to be developed simultaneously for the purpose of interring

1 human remains.

2 (G) "Columbarium" means an arrangement of niches that may  
3 be an entire building, a complete room, a series of special  
4 indoor alcoves, a bank along a corridor or part of an outdoor  
5 garden setting that is constructed of permanent material such  
6 as bronze, marble, brick, stone or concrete for the inurnment  
7 of human remains.

8 (H) "Lawn crypt" means a permanent underground crypt  
9 usually constructed of reinforced concrete or similar material  
10 installed in multiple units for the entombment of human  
11 remains.

12 (I) "Mausoleum" or "garden crypt" means a grouping of  
13 spaces constructed of reinforced concrete or similar material  
14 constructed or assembled above the ground for entombing human  
15 remains.

16 (J) "Memorials, markers and monuments" means the object  
17 usually comprised of a permanent material such as granite or  
18 bronze used to identify and memorialize the deceased.

19 (K) "Foundations" means those items used to affix or  
20 support a memorial or monument to the ground in connection with  
21 the installation of a memorial, marker or monument.

22 (L) "Person" means an individual, corporation,  
23 partnership, joint venture, business trust, voluntary  
24 organization or any other form of entity.

25 (M) "Seller" means any person selling or offering for sale  
26 cemetery merchandise, cemetery services or undeveloped

1 interment, entombment, or inurnment spaces in accordance with a  
2 pre-need sales contract. The seller must be licensed in the  
3 State of Illinois by the Department of Financial and  
4 Professional Regulation and shall attend at least 24 hours of  
5 continuing education in every 2-year period. The continuing  
6 education shall be approved by the Department of Financial and  
7 Professional Regulation.

8 (N) "Religious cemetery" means a cemetery owned, operated,  
9 controlled or managed by any recognized church, religious  
10 society, association or denomination or by any cemetery  
11 authority or any corporation administering, or through which is  
12 administered, the temporalities of any recognized church,  
13 religious society, association or denomination.

14 (O) "Municipal cemetery" means a cemetery owned, operated,  
15 controlled or managed by any city, village, incorporated town,  
16 township, county or other municipal corporation, political  
17 subdivision, or instrumentality thereof authorized by law to  
18 own, operate or manage a cemetery. "Municipal cemetery" also  
19 includes a cemetery placed in receivership pursuant to this Act  
20 while such cemetery is in receivership.

21 (O-1) "Outer burial container" means a container made of  
22 concrete, steel, wood, fiberglass, or similar material, used  
23 solely at the interment site, and designed and used exclusively  
24 to surround or enclose a separate casket and to support the  
25 earth above such casket, commonly known as a burial vault,  
26 grave box, or grave liner, but not including a lawn crypt.

1           (P) "Sales price" means the gross amount paid by a  
2 purchaser on a pre-need sales contract for cemetery  
3 merchandise, cemetery services or undeveloped interment,  
4 entombment or inurnment spaces, excluding sales taxes, credit  
5 life insurance premiums, finance charges and Cemetery Care Act  
6 contributions.

7           (Q) (Blank).

8           (R) "Provider" means a person who is responsible for  
9 performing cemetery services or furnishing cemetery  
10 merchandise, interment spaces, entombment spaces, or inurnment  
11 spaces under a pre-need sales contract.

12           (S) "Purchaser" or "buyer" means the person who originally  
13 paid the money under or in connection with a pre-need sales  
14 contract.

15           (T) "Parent company" means a corporation owning more than  
16 12 cemeteries or funeral homes in more than one state.

17           (U) "Foreign warehouse facility" means a warehouse  
18 facility now or hereafter located in any state or territory of  
19 the United States, including the District of Columbia, other  
20 than the State of Illinois.

21           A foreign warehouse facility shall be deemed to have  
22 appointed the Comptroller to be its true and lawful attorney  
23 upon whom may be served all legal process in any action or  
24 proceeding against it relating to or growing out of this Act,  
25 and the acceptance of the delivery of stored merchandise under  
26 this Act shall be signification of its agreement that any such

1 process against it which is so served, shall be of the same  
2 legal force and validity as though served upon it personally.

3 Service of such process shall be made by delivering to and  
4 leaving with the Comptroller, or any agent having charge of the  
5 Comptroller's Department of Cemetery and Burial Trusts, a copy  
6 of such process and such service shall be sufficient service  
7 upon such foreign warehouse facility if notice of such service  
8 and a copy of the process are, within 10 days thereafter, sent  
9 by registered mail by the plaintiff to the foreign warehouse  
10 facility at its principal office and the plaintiff's affidavit  
11 of compliance herewith is appended to the summons. The  
12 Comptroller shall keep a record of all process served upon him  
13 under this Section and shall record therein the time of such  
14 service.

15 (Source: P.A. 96-879, eff. 2-2-10.)

16 (815 ILCS 390/15) (from Ch. 21, par. 215)

17 Sec. 15. (a) Whenever a seller receives anything of value  
18 under a pre-need sales contract, the person receiving such  
19 value shall deposit 50% of all proceeds received into one or  
20 more trust funds maintained pursuant to this Section, except  
21 that, in the case of proceeds received for the purchase of  
22 outer burial containers, 85% of the proceeds shall be deposited  
23 into one or more trust funds. Such deposits shall be made until  
24 the amount deposited in trust equals 50% of the sales price of  
25 the cemetery merchandise, cemetery services and undeveloped

1 spaces included in such contract, except that, in the case of  
2 deposits for outer burial containers, deposits shall be made  
3 until the amount deposited in trust equals 85% of the sales  
4 price. In the event an installment contract is factored,  
5 discounted or sold to a third party, the seller shall deposit  
6 an amount equal to 50% of the sales price of the installment  
7 contract, except that, for the portion of the contract  
8 attributable to the sale of outer burial containers, the seller  
9 shall deposit an amount equal to 85% of the sales price.  
10 Proceeds required to be deposited in trust which are  
11 attributable to cemetery merchandise and cemetery services  
12 shall be held in a "Cemetery Merchandise Trust Fund". Proceeds  
13 required to be deposited in trust which are attributable to the  
14 sale of undeveloped interment, entombment or inurnment spaces  
15 shall be held in a "Pre-construction Trust Fund". If  
16 merchandise is delivered for storage in a bonded warehouse, as  
17 authorized herein, and payment of transportation or other  
18 charges totaling more than \$20 will be required in order to  
19 secure delivery to the site of ultimate use, upon such delivery  
20 to the warehouse the seller shall deposit to the trust fund the  
21 full amount of the actual or estimated transportation charge.  
22 Transportation charges which have been prepaid by the seller  
23 shall not be deposited to trust funds maintained pursuant to  
24 this Section. As used in this Section, "all proceeds" means the  
25 entire amount paid by a purchaser in connection with a pre-need  
26 sales contract, including finance charges and Cemetery Care Act

1 contributions, but excluding sales taxes and credit life  
2 insurance premiums.

3 (b) The seller shall act as trustee of all amounts received  
4 for cemetery merchandise, services, or undeveloped spaces  
5 until those amounts have been deposited into the trust fund.  
6 All trust deposits required by this Act shall be made within 30  
7 days following the end of the month of receipt. The seller must  
8 retain a corporate fiduciary as an independent trustee for any  
9 amount of trust funds. Upon 30 days' prior written notice from  
10 the seller to the Comptroller, the seller may change the  
11 trustee of the trust fund. Failure to provide the Comptroller  
12 with timely prior notice is an intentional violation of this  
13 Act.

14 (c) A trust established under this Act must be maintained  
15 with a corporate fiduciary as defined in Section 1-5.05 of the  
16 Corporate Fiduciary Act or with a foreign corporate fiduciary  
17 recognized by Article IV of the Corporate Fiduciary Act.

18 (d) Funds deposited in the trust account shall be  
19 identified in the records of the seller by the name of the  
20 purchaser. Nothing shall prevent the trustee from commingling  
21 the deposits in any such trust fund for purposes of the  
22 management thereof and the investment of funds therein as  
23 provided in the "Common Trust Fund Act", approved June 24,  
24 1949, as amended. In addition, multiple trust funds maintained  
25 pursuant to this Act may be commingled or commingled with other  
26 funeral or burial related trust funds, provided that all record

1 keeping requirements imposed by or pursuant to law are met.

2 (e) In lieu of a pre-construction trust fund, a seller of  
3 undeveloped interment, entombment or inurnment spaces may  
4 obtain and file with the Comptroller a performance bond in an  
5 amount at least equal to 50% of the sales price of the  
6 undeveloped spaces or the estimated cost of completing  
7 construction, whichever is greater. The bond shall be  
8 conditioned on the satisfactory construction and completion of  
9 the undeveloped spaces as required in Section 19 of this Act.

10 Each bond obtained under this Section shall have as surety  
11 thereon a corporate surety company incorporated under the laws  
12 of the United States, or a State, the District of Columbia or a  
13 territory or possession of the United States. Each such  
14 corporate surety company must be authorized to provide  
15 performance bonds as required by this Section, have paid-up  
16 capital of at least \$250,000 in cash or its equivalent and be  
17 able to carry out its contracts. Each pre-need seller must  
18 provide to the Comptroller, for each corporate surety company  
19 such seller utilizes, a statement of assets and liabilities of  
20 the corporate surety company sworn to by the president and  
21 secretary of the corporation by January 1 of each year.

22 The Comptroller shall prohibit pre-need sellers from doing  
23 new business with a corporate surety company if the company is  
24 insolvent or is in violation of this Section. In addition the  
25 Comptroller may direct a pre-need seller to reinstate a  
26 pre-construction trust fund upon the Comptroller's



1 determination that the corporate surety company no longer is  
2 sufficient security.

3 All performance bonds issued pursuant to this Section must  
4 be irrevocable during the statutory term for completing  
5 construction specified in Section 19 of this Act, unless  
6 terminated sooner by the completion of construction.

7 (f) Whenever any pre-need contract shall be entered into  
8 and include 1) items of cemetery merchandise and cemetery  
9 services, and 2) rights to interment, inurnment or entombment  
10 in completed spaces without allocation of the gross sale price  
11 among the items sold, the application of payments received  
12 under the contract shall be allocated, first to the right to  
13 interment, inurnment or entombment, second to items of cemetery  
14 merchandise and cemetery services, unless some other  
15 allocation is clearly provided in the contract.

16 (g) Any person engaging in pre-need sales who enters into a  
17 combination sale which involves the sale of items covered by a  
18 trust or performance bond requirement and any item not covered  
19 by any entrustment or bond requirement, shall be prohibited  
20 from increasing the gross sales price of those items not  
21 requiring entrustment with the purpose of allocating a lesser  
22 gross sales price to items which require a trust deposit or a  
23 performance bond.

24 (h) This Section applies only to pre-need sales entered  
25 into prior to the effective date of this amendatory Act of the  
26 100th General Assembly.

1 (Source: P.A. 96-879, eff. 2-2-10; 97-593, eff. 8-26-11.)

2 (815 ILCS 390/15.5 new)

3 Sec. 15.5. Disclosures; options. Beginning on the  
4 effective date of this amendatory Act of the 100th General  
5 Assembly, before a seller and purchaser enter into a pre-need  
6 sales contract, the seller must disclose and fully explain that  
7 the purchaser may fund the pre-need sales contract by choosing  
8 one of the following options:

9 (1) depositing funds into a local banking institution  
10 of the purchaser's choosing;

11 (2) depositing funds into a trust program operated by  
12 the seller; or

13 (3) other means offered by the seller.

14 The purchaser shall then choose one of those options.

15 (815 ILCS 390/17) (from Ch. 21, par. 217)

16 Sec. 17. ~~(a)~~ The principal and undistributed income of the  
17 trust created pursuant to Section 15 or Section 15.5 of this  
18 Act shall be paid to the seller if:

19 (1) the seller certifies by sworn affidavit to the  
20 trustee that the purchaser or the beneficiary named in the  
21 pre-need contract has deceased and that seller has fully  
22 delivered or installed all items included in the pre-need  
23 contract and fully performed all pre-need cemetery  
24 services he is required to perform under the pre-need

1 contract; or

2 (2) the seller certifies by sworn affidavit to the  
3 trustee that seller has made full delivery, as defined  
4 herein.

5 (Source: P.A. 84-239; revised 11-8-17.)

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.

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Statutes amended in order of appearance

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