



Rep. Jay Hoffman

Filed: 3/27/2019

10100HB0469ham002

LRB101 03394 SMS 58673 a

1 AMENDMENT TO HOUSE BILL 469

2 AMENDMENT NO. _____. Amend House Bill 469 by replacing
3 everything after the enacting clause with the following:

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

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

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

11 "Agent" means a person authorized by a seller to offer,
12 sell, or solicit the sale of a pre-need sales contract on
13 behalf of the seller and includes an employee or independent
14 contractor of the seller.

15 "Beneficiary" means the person specified in the pre-need
16 contract upon whose death funeral services or merchandise shall

1 be provided or delivered.

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

4 "Outer burial container" means any container made of
5 concrete, steel, wood, fiberglass or similar material, used
6 solely at the interment site, and designed and used exclusively
7 to surround or enclose a separate casket and to support the
8 earth above such casket, commonly known as a burial vault,
9 grave box or grave liner, but not including a lawn crypt as
10 defined in the Illinois Pre-need Cemetery Sales Act.

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

13 "Person" means any person, partnership, association,
14 corporation, or other entity.

15 "Pre-need contract" means any agreement or contract, or any
16 series or combination of agreements or contracts, whether
17 funded by trust deposits or life insurance policies or
18 annuities, which has for a purpose the furnishing or
19 performance of funeral services or the furnishing or delivery
20 of any personal property, merchandise, or services of any
21 nature in connection with the final disposition of a dead human
22 body. Nothing in this Act is intended to regulate the content
23 of a life insurance policy or a tax-deferred annuity.

24 "Provider" means a person who is obligated for furnishing
25 or performing funeral services or the furnishing or delivery of
26 any personal property, merchandise, or services of any nature

1 in connection with the final disposition of a dead human body.

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

4 "Sales proceeds" means the entire amount paid to a seller,
5 exclusive of sales taxes paid by the seller, finance charges
6 paid by the purchaser, and credit life, accident or disability
7 insurance premiums, upon any agreement or contract, or series
8 or combination of agreements or contracts, for the purpose of
9 performing funeral services or furnishing personal property,
10 merchandise, or services of any nature in connection with the
11 final disposition of a dead human body, including, but not
12 limited to, the retail price paid for such services and
13 personal property and merchandise.

14 "Purchase price" means sales proceeds less finance charges
15 on retail installment contracts.

16 "Seller" means the person who sells or offers to sell the
17 pre-need contract to a purchaser, whether funded by a trust
18 agreement, life insurance policy, or tax-deferred annuity.

19 "Trustee" means a person authorized to hold funds under
20 this Act.

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

22 (225 ILCS 45/1a-1)

23 Sec. 1a-1. Pre-need contracts.

24 (a) It shall be unlawful for any seller doing business
25 within this State to accept sales proceeds from a purchaser,

1 either directly or indirectly by any means, unless the seller
2 or seller's agent enters into a pre-need contract with the
3 purchaser which meets the following requirements:

4 (1) It states the name, ~~and~~ address, and telephone
5 number of the principal office of the seller and the parent
6 company of the seller, if any.

7 (1.3) The contract is ratified within 10 business days
8 by a licensed funeral director who is employed, at the time
9 the contract is drafted, by the licensee responsible for
10 providing the funeral goods and services.

11 (1.5) If funded by a trust, it clearly identifies the
12 trustee's name and address and the primary state or federal
13 regulator of the trustee as a corporate fiduciary and the
14 seller or seller's agent deposits the funds into the trust
15 or trusts within 10 business days after execution of the
16 contract.

17 (1.7) If funded by life insurance, it clearly
18 identifies the life insurance provider and the primary
19 regulator of the life insurance provider.

20 (2) It clearly identifies the provider's name and
21 address, the purchaser, and the beneficiary, if other than
22 the purchaser.

23 (2.5) If the provider has branch locations, the
24 contract gives the purchaser the opportunity to identify
25 the branch at which the funeral will be provided.

26 (3) It contains a complete description of the funeral

1 merchandise and services to be provided and the price of
2 the merchandise and services, and it clearly discloses
3 whether the price of the merchandise and services is
4 guaranteed or not guaranteed as to price.

5 (A) Each guaranteed price contract shall contain
6 the following statement in 12 point bold type:

7 THIS CONTRACT GUARANTEES THE BENEFICIARY THE
8 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO
9 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED
10 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE INCURRED
11 FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT LIMITED TO,
12 CASH ADVANCES, SHIPPING OF REMAINS FROM A DISTANT
13 PLACE, OR DESIGNATED HONORARIA ORDERED OR DIRECTED BY
14 SURVIVORS.

15 (B) Except as provided in subparagraph (C) of this
16 paragraph (3), each non-guaranteed price contract
17 shall contain the following statement in 12 point bold
18 type:

19 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE
20 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR
21 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A
22 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE
23 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES
24 MAY BE REQUIRED.

25 (C) If a non-guaranteed price contract may
26 subsequently become guaranteed, the contract shall

1 clearly disclose the nature of the guarantee and the
2 time, occurrence, or event upon which the contract
3 shall become a guaranteed price contract.

4 (4) It provides that if the particular supplies and
5 services specified in the pre-need contract are
6 unavailable at the time of delivery, the provider shall be
7 required to furnish supplies and services similar in style
8 and at least equal in quality of material and workmanship.

9 (5) It discloses any penalties or restrictions,
10 including but not limited to geographic restrictions or the
11 inability of the provider to perform, on the delivery of
12 merchandise, services, or pre-need contract guarantees.

13 (6) Regardless of the method of funding the pre-need
14 contract, the following must be disclosed:

15 (A) Whether the pre-need contract is to be funded
16 by a trust, life insurance, or an annuity;

17 (B) The nature of the relationship among the person
18 funding the pre-need contract, the provider, and the
19 seller; and

20 (C) The impact on the pre-need contract of (i) any
21 changes in the funding arrangement including but not
22 limited to changes in the assignment, beneficiary
23 designation, or use of the funds; (ii) any specific
24 penalties to be incurred by the contract purchaser as a
25 result of failure to make payments; (iii) penalties to
26 be incurred or moneys or refunds to be received as a

1 result of cancellations; and (iv) all relevant
2 information concerning what occurs and whether any
3 entitlements or obligations arise if there is a
4 difference between the proceeds of the particular
5 funding arrangement and the amount actually needed to
6 pay for the funeral at-need.

7 (D) The method of changing the provider.

8 (7) The contract states that the seller is responsible
9 and liable for the veracity and competency of the agent.

10 An agent acting on behalf of a seller must be properly
11 authorized to act as an agent for the seller as required under
12 this Act.

13 An agent must provide to the purchaser a written statement
14 containing:

15 (A) The capacity of the agent to act and whether the
16 agent is acting for the seller as an agent; and

17 (B) notice that the seller is the only person or entity
18 authorized to provide the services or merchandise called
19 for by the contract.

20 (b) All pre-need contracts are subject to the Federal Trade
21 Commission Rule concerning the Cooling-Off Period for
22 Door-to-Door Sales (16 CFR Part 429).

23 (c) No pre-need contract shall be sold in this State unless
24 there is a provider for the services and personal property
25 being sold. If the seller is not a provider, then the seller
26 must have a binding agreement with a provider, and the identity

1 of the provider and the nature of the agreement between the
2 seller and the provider shall be disclosed in the pre-need
3 contract at the time of the sale and before the receipt of any
4 sales proceeds. The failure to disclose the identity of the
5 provider, the nature of the agreement between the seller and
6 the provider, or any changes thereto to the purchaser and
7 beneficiary, or the failure to make the disclosures required in
8 subdivision (a)(1), constitutes an intentional violation of
9 this Act.

10 (d) All pre-need contracts must be in writing in at least
11 11 point type, numbered, and executed in duplicate. A signed
12 copy of the pre-need contract must be provided to the purchaser
13 at the time of entry into the pre-need contract. The
14 Comptroller may by rule develop a model pre-need contract form
15 that meets the requirements of this Act.

16 (e) The State Comptroller shall by rule develop a booklet
17 for consumers in plain English describing the scope,
18 application, and consumer protections of this Act. After the
19 adoption of these rules, no pre-need contract shall be sold in
20 this State unless (i) the seller distributes to the purchaser
21 prior to the sale a booklet promulgated or approved for use by
22 the State Comptroller; (ii) the seller explains to the
23 purchaser the terms of the pre-need contract prior to the
24 purchaser signing; and (iii) the purchaser initials a statement
25 in the contract confirming that the seller has explained the
26 terms of the contract prior to the purchaser signing.

1 (f) All sales proceeds received in connection with a
2 pre-need contract shall be deposited into a trust account as
3 provided in Section 1b and Section 2 of this Act, or shall be
4 used to purchase a life insurance policy or tax-deferred
5 annuity as provided in Section 2a of this Act.

6 (g) No pre-need contract shall be sold in this State unless
7 it is accompanied by a funding mechanism permitted under this
8 Act, and unless the seller is licensed by the Comptroller as
9 provided in Section 3 of this Act. Nothing in this Act is
10 intended to relieve sellers of pre-need contracts from being
11 licensed under any other Act required for their profession or
12 business, and being subject to the rules promulgated to
13 regulate their profession or business, including rules on
14 solicitation and advertisement.

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

16 (225 ILCS 45/1c new)

17 Sec. 1c. Prohibited relationships between sellers and
18 trustees. A seller may not be an affiliate, a parent company,
19 or a subsidiary organization of the trustee acting as a
20 fiduciary of a trust to hold consideration paid for services or
21 merchandise subject to a contract entered into under this Act
22 by the seller or seller's agent and a purchaser.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."