

1 AN ACT concerning prepaid funeral or burial contracts.

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

4 Section 5. The Illinois Insurance Code is amended by
5 adding Section 245.3 as follows:

6 (215 ILCS 5/245.3 new)

7 Sec. 245.3. Irrevocable assignment of life insurance to a
8 funeral home. An insured or any other person who may be the
9 owner of rights under a policy of life insurance may make an
10 irrevocable assignment of all or a part of his or her rights
11 under the policy to a funeral home in accordance with Section
12 2b of the Illinois Funeral or Burial Funds Act. Subject to the
13 terms of the policy or a contract relating to the policy,
14 including, but not limited to, a prepaid funeral or burial
15 contract, an irrevocable assignment by an insured or other
16 owner of rights under a policy made before or after the
17 effective date of this amendatory Act of the 102nd General
18 Assembly is valid for the purpose of vesting in the assignee,
19 in accordance with the policy or contract as to the time at
20 which it is effective, all rights assigned. That irrevocable
21 assignment is, however, without prejudice to the company on
22 account of any payment it makes. The insurance company shall
23 within 15 business days notify the funeral home and owner of

1 the policy of its receipt of the form. A policy owner who
2 executes a designation of beneficiary form pursuant to Section
3 2b of the Illinois Funeral or Burial Funds Act also
4 irrevocably waives and cannot exercise the following rights:

5 (1) The right to collect from the insurance company
6 the net proceeds of the policy when it becomes a claim by
7 death.

8 (2) The right to surrender the policy and receive the
9 cash surrender value of the policy.

10 (3) The right to obtain a policy loan.

11 (4) The right to designate as primary beneficiary of
12 the policy anyone other than as provided in that Act.

13 (5) The right to collect or receive income,
14 distributions, or shares of surplus, dividend deposits,
15 refunds of premium, or additions to the policy.

16 This amendatory Act of the 102nd General Assembly
17 acknowledges, declares, and codifies the existing right of
18 assignment of interests under life insurance policies.

19 Section 10. The Illinois Funeral or Burial Funds Act is
20 amended by changing Section 2a and by adding Section 2b as
21 follows:

22 (225 ILCS 45/2a)

23 Sec. 2a. Purchase of insurance or annuity.

24 (a) If a purchaser selects the purchase of a life

1 insurance policy or tax-deferred annuity contract to fund the
2 pre-need contract, the application and collected premium shall
3 be mailed within 30 days of signing the pre-need contract.

4 (b) If life insurance or an annuity is used to fund a
5 pre-need contract, the seller or provider shall not be named
6 as the owner or beneficiary of the policy or annuity. No person
7 whose only insurable interest in the insured is the receipt of
8 proceeds from the policy or in naming who shall receive the
9 proceeds nor any trust acting on behalf of such person or
10 seller or provider shall be named as owner or beneficiary of
11 the policy or annuity.

12 (c) Nothing shall prohibit the purchaser from irrevocably
13 assigning ownership of the policy or annuity used to fund a
14 guaranteed price pre-need contract to a person or trust or
15 from irrevocably assigning the benefits of the policy or
16 annuity to a funeral home for the purpose of obtaining
17 favorable consideration for Medicaid, Supplemental Security
18 Income, or another public assistance program, as permitted
19 under federal law. The seller or contract provider may be
20 named a nominal owner of the life insurance policy only for
21 such time as it takes to immediately transfer the policy into a
22 trust. Except for this purpose, neither the seller nor the
23 contract provider shall be named the owner or the beneficiary
24 of the policy or annuity.

25 (d) If a life insurance policy or annuity contract is used
26 to fund a pre-need contract, except for guaranteed price

1 contracts permitted in Section 4(a) of this Act, the pre-need
2 contract must be revocable, and any assignment provision in
3 the pre-need contract must contain the following disclosure in
4 12 point bold type:

5 THIS ASSIGNMENT MAY BE REVOKED BY THE ASSIGNOR OR
6 ASSIGNOR'S SUCCESSOR OR, IF THE ASSIGNOR IS ALSO THE INSURED
7 AND DECEASED, BY THE REPRESENTATIVE OF THE INSURED'S ESTATE
8 BEFORE THE RENDERING TO THE CEMETERY SERVICES OR GOODS OR
9 FUNERAL SERVICES OR GOODS. IF THE ASSIGNMENT IS REVOKED, THE
10 DEATH BENEFIT UNDER THE LIFE INSURANCE POLICY OR ANNUITY
11 CONTRACT SHALL BE PAID IN ACCORDANCE WITH THE BENEFICIARY
12 DESIGNATION UNDER THE INSURANCE POLICY OR ANNUITY CONTRACT.

13 (e) Sales proceeds shall not be used to purchase life
14 insurance policies or tax-deferred annuities unless the
15 company issuing the life insurance policies or tax-deferred
16 annuities is licensed with the Illinois Department of
17 Insurance, and the insurance producer or annuity seller is
18 licensed to do business in the State of Illinois.

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

20 (225 ILCS 45/2b new)

21 Sec. 2b. Irrevocable designation of beneficiary of
22 existing life insurance.

23 (a) In accordance with Section 245.3 of the Illinois
24 Insurance Code, an insured or any other person who may be the
25 owner of rights under an existing policy of life insurance may

1 make an irrevocable assignment of all or a part of his or her
2 rights under the policy to a provider in consideration for
3 signing a guaranteed pre-need contract for the purpose of
4 obtaining favorable consideration for Medicaid, Supplemental
5 Security Income, or another public assistance program. The
6 form that shall effectuate the irrevocable assignment and
7 thereby provide for the irrevocable designation of beneficiary
8 of one or more life insurance policies, which shall comply
9 with all applicable federal laws and regulations, shall be
10 prepared by the Department of Healthcare and Family Services
11 under paragraph (4) of subsection (c) of Section 3-1.2 of the
12 Illinois Public Aid Code or such form, approved in advance by
13 the Department of Healthcare and Family Services, that has
14 been prepared by an insurance company licensed to operate in
15 the State of Illinois. The insured or any other person who may
16 be the owner of rights under an existing policy of life
17 insurance shall sign a guaranteed pre-need contract with the
18 provider that describes the cost of the funeral goods and
19 services to be provided upon the person's death, up to \$7,248,
20 except that any portion of a contract that clearly represents
21 the purchase of burial space, as that term is defined for
22 purposes of the Supplemental Security Income program, is
23 exempt regardless of value. This amount shall be adjusted
24 annually by the Department of Human Services for any increase
25 in the Consumer Price Index. The guaranteed pre-need contract
26 must provide a complete description and cost of the goods and

1 services and any cash advances. More than one policy may be
2 subject to this Section if the total face value of the policies
3 is necessary to pay the amount described in the guaranteed
4 pre-need contract with the provider. All policies shall be
5 listed on the form. The insured or any other person who may be
6 the owner of rights under an existing policy of life insurance
7 shall be given a copy of the executed form. The licensee shall
8 retain copies for inspection by the Comptroller and shall
9 report annually to the Comptroller the following: the name of
10 the insured, the insurance policy number, the amount of the
11 guaranteed pre-need contract, the current value of the policy
12 or benefits designated, and the name of the insurance company
13 issuing the policy.

14 (b) The insured or any other person who may be the owner of
15 rights under an existing policy of life insurance shall
16 acknowledge that by making this assignment irrevocable, the
17 policy cannot be canceled, although it does not affect the
18 right of the policy owner to cancel the insurance policy
19 within the examination period provided under the policy.

20 (c) No commission may be sought or received in connection
21 with any cash advance allowance included in the guaranteed
22 pre-need contract.

23 (d) For guaranteed pre-need contracts with cash advances,
24 the contract shall include a disclosure, in 12 point bold type
25 and located immediately above such cash advance allowance,
26 that states: "No interment, inurnment, or entombment right has

1 been selected or reserved with this allowance; cash advances
2 are merely an allowance toward the then-current costs for the
3 involved items, to be purchased after death. Burial space
4 allowances may only be excluded from resources under Medicaid
5 if a separate contract is executed for such burial space with a
6 cemetery."

7 (e) Upon the death of the insured, the proceeds of the life
8 insurance policies subject to this Section shall be paid to
9 the provider, who shall apply such proceeds in the following
10 order or priority:

11 (1) first, to the provider in an amount equal to the
12 lesser of:

13 (A) the amount of the guaranteed pre-need contract
14 for payment of all services, goods, and cash advances
15 in the amounts indicated on the pre-need contract; or

16 (B) the actual value of the services, goods, and
17 cash advances, not to exceed the amounts indicated in
18 the pre-need contract;

19 (2) second, to the State of Illinois, up to an amount
20 equal to the total medical assistance paid on behalf of
21 the insured; and

22 (3) third, payment of proceeds to a secondary
23 beneficiary (if any) listed on the policy, or to the
24 estate of the decedent if no secondary beneficiary is
25 named on the policy in the event the proceeds exceed the
26 amount of the pre-need contract for payment of all

1 services, goods and cash advances in the amounts indicated
2 on the pre-need contract and the total medical assistance
3 paid on behalf of the insured.

4 (f) The provider shall receive and disburse these proceeds
5 notwithstanding any other prohibition in law against serving
6 as a trustee. The provider shall promptly deposit these funds
7 into a non-interest bearing checking or share account that has
8 been established to receive proceeds of this type. These
9 proceeds shall not be commingled with any other account of the
10 provider. The account may contain the funds of more than one
11 client. The provider may disburse these funds to itself for
12 goods and services. The provider shall maintain a ledger
13 indicating the amount of proceeds received and the
14 disbursement of those proceeds. A copy of this ledger shall be
15 provided to the Comptroller and the Department of Healthcare
16 and Family Services, and to the estate or heirs of the insured,
17 as applicable, if requested by them. For the purpose of this
18 Section, the providers who receive and disburse these proceeds
19 from life insurance policies shall be funeral homes.

20 (g) Further assignment. The rights and obligations of the
21 provider subject to the irrevocable designation of beneficiary
22 may be assigned to another provider upon the choice of the
23 insured or the approved representative or the power of
24 attorney for property of the insured, or upon the insolvency
25 or bankruptcy of the provider. The assignee provider shall:
26 (i) be bound to the terms of the irrevocable designation of

1 beneficiary and the associated guaranteed pre-need contract;
2 (ii) notify the insurance company or companies of the
3 assignment; (iii) notify the Department of Healthcare and
4 Family Services of the change in provider; and (iv) retain a
5 copy of the assignment for inspection by the Comptroller.

6 Section 15. The Illinois Public Aid Code is amended by
7 changing Section 3-1.2 as follows:

8 (305 ILCS 5/3-1.2) (from Ch. 23, par. 3-1.2)

9 Sec. 3-1.2. Need.

10 (a) Income available to the person, when added to
11 contributions in money, substance, or services from other
12 sources, including contributions from legally responsible
13 relatives, must be insufficient to equal the grant amount
14 established by Department regulation for such person. In
15 determining earned income to be taken into account,
16 consideration shall be given to any expenses reasonably
17 attributable to the earning of such income. If federal law or
18 regulations permit or require exemption of earned or other
19 income and resources, the Illinois Department shall provide by
20 rule and regulation that the amount of income to be
21 disregarded be increased (1) to the maximum extent so required
22 and (2) to the maximum extent permitted by federal law or
23 regulation in effect as of the date this amendatory Act
24 becomes law. The Illinois Department may also provide by rule

1 and regulation that the amount of resources to be disregarded
2 be increased to the maximum extent so permitted or required.

3 (b) Subject to federal approval, resources (for example,
4 land, buildings, equipment, supplies, or tools), including
5 farmland property and personal property used in the
6 income-producing operations related to the farmland (for
7 example, equipment and supplies, motor vehicles, or tools),
8 necessary for self-support, up to \$6,000 of the person's
9 equity in the income-producing property, provided that the
10 property produces a net annual income of at least 6% of the
11 excluded equity value of the property, are exempt. Equity
12 value in excess of \$6,000 shall not be excluded. If the
13 activity produces income that is less than 6% of the exempt
14 equity due to reasons beyond the person's control (for
15 example, the person's illness or crop failure) and there is a
16 reasonable expectation that the property will again produce
17 income equal to or greater than 6% of the equity value (for
18 example, a medical prognosis that the person is expected to
19 respond to treatment or that drought-resistant corn will be
20 planted), the equity value in the property up to \$6,000 is
21 exempt. If the person owns more than one piece of property and
22 each produces income, each piece of property shall be looked
23 at to determine whether the 6% rule is met, and then the
24 amounts of the person's equity in all of those properties
25 shall be totaled to determine whether the total equity is
26 \$6,000 or less. The total equity value of all properties that

1 is exempt shall be limited to \$6,000.

2 (c) In determining the resources of an individual or any
3 dependents, the Department shall exclude from consideration
4 the value of funeral and burial spaces, funeral and burial
5 insurance the proceeds of which can only be used to pay the
6 funeral and burial expenses of the insured and funds
7 specifically set aside for the funeral and burial arrangements
8 of the individual or his or her dependents, including prepaid
9 funeral and burial plans, to the same extent that such items
10 are excluded from consideration under the federal Supplemental
11 Security Income program (SSI). At any time prior to or after
12 submitting an application for medical assistance and before a
13 final determination of eligibility has been made by the
14 Department, an applicant may use available resources to
15 purchase one of the prepaid funeral or burial contracts
16 exempted under this Section.

17 Prepaid funeral or burial contracts are exempt to the
18 following extent:

19 (1) Funds in a revocable prepaid funeral or burial
20 contract are exempt up to \$1,500, except that any portion
21 of a contract that clearly represents the purchase of
22 burial space, as that term is defined for purposes of the
23 Supplemental Security Income program, is exempt regardless
24 of value.

25 (2) Funds in an irrevocable prepaid funeral or burial
26 contract are exempt up to \$7,248 ~~\$5,874~~, except that any

1 portion of a contract that clearly represents the purchase
2 of burial space, as that term is defined for purposes of
3 the Supplemental Security Income program, is exempt
4 regardless of value. This amount shall be adjusted
5 annually for any increase in the Consumer Price Index. The
6 amount exempted shall be limited to the price of the
7 funeral goods and services to be provided upon death. The
8 contract must provide a complete description of the
9 funeral goods and services to be provided and the price
10 thereof. Any amount in the contract not so specified shall
11 be treated as a transfer of assets for less than fair
12 market value.

13 (3) A prepaid, guaranteed-price funeral or burial
14 contract, funded by an irrevocable assignment of a
15 person's life insurance policy to a trust or a funeral
16 home, is exempt. The amount exempted shall be limited to
17 the amount of the insurance benefit designated for the
18 cost of the funeral goods and services to be provided upon
19 the person's death. The contract must provide a complete
20 description of the funeral goods and services to be
21 provided and the price thereof. Any amount in the contract
22 not so specified shall be treated as a transfer of assets
23 for less than fair market value. The trust must include a
24 statement that, upon the death of the person, the State
25 will receive all amounts remaining in the trust, including
26 any remaining payable proceeds under the insurance policy

1 up to an amount equal to the total medical assistance paid
2 on behalf of the person. The trust is responsible for
3 ensuring that the provider of funeral services under the
4 contract receives the proceeds of the policy when it
5 provides the funeral goods and services specified under
6 the contract. The irrevocable assignment of ownership of
7 the insurance policy must be acknowledged by the insurance
8 company.

9 (4) Existing life insurance policies are exempt if
10 there has been an irrevocable assignment in compliance
11 with Section 2b of the Illinois Funeral or Burial Funds
12 Act. A person shall sign a contract with a funeral home,
13 which is licensed under the Illinois Funeral or Burial
14 Funds Act, that describes the cost of the funeral goods
15 and services to be provided upon the person's death, up to
16 \$7,248, except that any portion of a contract that clearly
17 represents the purchase of burial space, as that term is
18 defined for purposes of the Supplemental Security Income
19 program, is exempt regardless of value. This amount shall
20 be adjusted annually for any increase in the Consumer
21 Price Index. The contract must provide a complete
22 description of the goods and services and any cash
23 advances to be provided and the price thereof. The person
24 shall sign an irrevocable designation of beneficiary form
25 declaring that any amounts payable from the policies not
26 used for goods and services and any cash advances as set

1 forth in the contract shall be received by the State, up to
2 an amount equal to the total medical assistance paid on
3 behalf of the person; any funds remaining after payment to
4 the State shall be paid to a secondary beneficiary (if
5 any) listed on the policy, or to the estate of the
6 purchaser if no secondary beneficiary is named on the
7 policy in the event the proceeds exceed the prearranged
8 costs of merchandise and services and any cash advances
9 and the total medical assistance paid on behalf of the
10 insured. More than one policy may be subject to this
11 subsection if the total face value of the policies is
12 necessary to pay the amount described in the contract with
13 the funeral home; policies that are not necessary to pay
14 the amount described in the contract are not exempt. The
15 licensed funeral home to which the life insurance policy
16 benefits have been irrevocably assigned shall retain
17 copies for inspection by the Comptroller and shall report
18 annually to the Comptroller the following: the name of the
19 insured, the name of the insurance company and policy
20 number, an itemized account of the amount of the contract
21 for goods and services and any cash advances provided, and
22 the current value of the policy of benefits designated
23 with a record of all amounts paid back to the State or
24 other beneficiary. The Department of Healthcare and Family
25 Services shall adopt rules and forms to implement this
26 Section.

1 (d) Notwithstanding any other provision of this Code to
2 the contrary, an irrevocable trust containing the resources of
3 a person who is determined to have a disability shall be
4 considered exempt from consideration. A pooled trust must be
5 established and managed by a non-profit association that pools
6 funds but maintains a separate account for each beneficiary.
7 The trust may be established by the person, a parent,
8 grandparent, legal guardian, or court. It must be established
9 for the sole benefit of the person and language contained in
10 the trust shall stipulate that any amount remaining in the
11 trust (up to the amount expended by the Department on medical
12 assistance) that is not retained by the trust for reasonable
13 administrative costs related to wrapping up the affairs of the
14 subaccount shall be paid to the Department upon the death of
15 the person. After a person reaches age 65, any funding by or on
16 behalf of the person to the trust shall be treated as a
17 transfer of assets for less than fair market value unless the
18 person is a ward of a county public guardian or the State
19 Guardian pursuant to Section 13-5 of the Probate Act of 1975 or
20 Section 30 of the Guardianship and Advocacy Act and lives in
21 the community, or the person is a ward of a county public
22 guardian or the State Guardian pursuant to Section 13-5 of the
23 Probate Act of 1975 or Section 30 of the Guardianship and
24 Advocacy Act and a court has found that any expenditures from
25 the trust will maintain or enhance the person's quality of
26 life. If the trust contains proceeds from a personal injury

1 settlement, any Department charge must be satisfied in order
2 for the transfer to the trust to be treated as a transfer for
3 fair market value.

4 (e) The homestead shall be exempt from consideration
5 except to the extent that it meets the income and shelter needs
6 of the person. "Homestead" means the dwelling house and
7 contiguous real estate owned and occupied by the person,
8 regardless of its value. Subject to federal approval, a person
9 shall not be eligible for long-term care services, however, if
10 the person's equity interest in his or her homestead exceeds
11 the minimum home equity as allowed and increased annually
12 under federal law. Subject to federal approval, on and after
13 the effective date of this amendatory Act of the 97th General
14 Assembly, homestead property transferred to a trust shall no
15 longer be considered homestead property.

16 (f) Occasional or irregular gifts in cash, goods or
17 services from persons who are not legally responsible
18 relatives which are of nominal value or which do not have
19 significant effect in meeting essential requirements shall be
20 disregarded.

21 (g) The eligibility of any applicant for or recipient of
22 public aid under this Article is not affected by the payment of
23 any grant under the "Senior Citizens and Disabled Persons
24 Property Tax Relief Act" or any distributions or items of
25 income described under subparagraph (X) of paragraph (2) of
26 subsection (a) of Section 203 of the Illinois Income Tax Act.

1 (h) The Illinois Department may, after appropriate
2 investigation, establish and implement a consolidated standard
3 to determine need and eligibility for and amount of benefits
4 under this Article or a uniform cash supplement to the federal
5 Supplemental Security Income program for all or any part of
6 the then current recipients under this Article; provided,
7 however, that the establishment or implementation of such a
8 standard or supplement shall not result in reductions in
9 benefits under this Article for the then current recipients of
10 such benefits.

11 (i) The provisions under paragraph (4) of subsection (c)
12 are subject to federal approval. The Department of Healthcare
13 and Family Services shall apply for any necessary federal
14 waivers or approvals to implement by January 1, 2023 the
15 changes made to this Section by this amendatory Act of the
16 102nd General Assembly.

17 (Source: P.A. 97-689, eff. 6-14-12; 98-104, eff. 7-22-13.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.