



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2364

Introduced 2/14/2008, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

225 ILCS 45/1a	from Ch. 111 1/2, par. 73.101a
225 ILCS 45/1a-1	
225 ILCS 45/1a-2 new	
225 ILCS 45/1b	from Ch. 111 1/2, par. 73.101b
30 ILCS 105/5.708 new	

Amends the Illinois Funeral or Burial Funds Act. Removes references to finance charges from the definition of "sales proceeds" and "purchase price". Allows a purchaser to cancel a pre-need contract within 30 days after all parties have signed the contract and receive 100% of all payments made under the contract. Creates the Pre-need Funeral Contract Guarantee Fund, into which \$5 from each pre-need contract sold by a licensee under the Act shall be deposited. Provides that the Fund shall be used by the Comptroller to pay restitution to purchasers who are unable to receive the benefits of a pre-need contract or to receive the funds due by reason of cancellation of a pre-need contract. Removes an exception that allows a trustee to be the seller or provider of funeral services or merchandise. Makes other changes. Amends the State Finance Act to establish the new Fund.

LRB095 19535 RAS 46148 b

FISCAL NOTE ACT
MAY APPLY

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 1a, 1a-1, and 1b and by adding
6 Section 1a-2 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 "Beneficiary" means the person specified in the pre-need
12 contract upon whose death funeral services or merchandise shall
13 be provided or delivered.

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

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

23 "Parent company" means a corporation owning more than 12

1 cemeteries or funeral homes in more than one state.

2 "Person" means any person, partnership, association,
3 corporation, or other entity.

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

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

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

19 "Sales proceeds" means the entire amount paid to a seller,
20 exclusive of sales taxes paid by the seller, ~~finance charges~~
21 ~~paid by the purchaser,~~ and credit life, accident or disability
22 insurance premiums, upon any agreement or contract, or series
23 or combination of agreements or contracts, for the purpose of
24 performing funeral services or furnishing personal property,
25 merchandise, or services of any nature in connection with the
26 final disposition of a dead human body, including, but not

1 limited to, the retail price paid for such services and
2 personal property and merchandise.

3 "Purchase price" means sales proceeds ~~less finance charges~~
4 ~~on retail installment contracts.~~

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

8 "Trustee" means a person authorized to hold funds under
9 this Act.

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

11 (225 ILCS 45/1a-1)

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

13 (a) It shall be unlawful for any seller doing business
14 within this State to accept sales proceeds from a purchaser,
15 either directly or indirectly by any means, unless the seller
16 enters into a pre-need contract with the purchaser which meets
17 the following requirements:

18 (1) It states the name and address of the principal
19 office of the seller and the parent company of the seller,
20 if any.

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

24 (2.5) If the provider has branch locations, the
25 contract gives the purchaser the opportunity to identify

1 the branch at which the funeral will be provided.

2 (3) It contains a complete description of the funeral
3 merchandise and services to be provided and the price of
4 the merchandise and services, and it clearly discloses
5 whether the price of the merchandise and services is
6 guaranteed or not guaranteed as to price.

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

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

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

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

1 (C) If a non-guaranteed price contract may
2 subsequently become guaranteed, the contract shall
3 clearly disclose the nature of the guarantee and the
4 time, occurrence, or event upon which the contract
5 shall become a guaranteed price contract.

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

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

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

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

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

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

1 result of failure to make payments; (iii) penalties to
2 be incurred or moneys or refunds to be received as a
3 result of cancellations; and (iv) all relevant
4 information concerning what occurs and whether any
5 entitlements or obligations arise if there is a
6 difference between the proceeds of the particular
7 funding arrangement and the amount actually needed to
8 pay for the funeral at-need.

9 (D) The method of changing the provider.

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

13 (b-5) A purchaser may cancel a pre-need contract within 30
14 days after all parties have signed the contract and shall
15 receive 100% of all payments made under the contract. In the
16 case of a pre-need contract funded by a pre-need insurance
17 policy, the cancellation period under this subsection (b-5)
18 shall continue until 30 days after signing the contract or 30
19 days plus the period for free cancellation of the policy under
20 the terms of the policy or applicable law, whichever is later.
21 No fee, surcharge, penalty, or liquidated damages may be
22 imposed upon this right to cancel.

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 which 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. 92-419, eff. 1-1-02.)

16 (225 ILCS 45/1a-2 new)

17 Sec. 1a-2. Pre-need Funeral Contract Guarantee Fund.

18 (a) Each licensee shall pay a fee of \$5 out of the funds
19 received for each pre-need contract sold and shall forward this
20 sum to the Comptroller within 10 days after (i) the funds
21 required to be placed in trust pursuant to Section 1b of this
22 Act are deposited into the trust account or (ii) the funds are
23 used to purchase a pre-need insurance policy. The pre-need
24 contract shall be recorded by the Comptroller. Within 10 days
25 after receiving the fee, the Comptroller must notify the

1 purchaser by mail of the recording of the pre-need contract.
2 Fees collected under this Section shall be deposited into the
3 Pre-need Funeral Contract Guarantee Fund, which is hereby
4 created as a special fund in the State treasury. Moneys in the
5 Fund may be expended to purchase insurance to cover losses
6 guaranteed by the Fund.

7 (b) In the event that the purchaser is unable to receive
8 the benefits of his or her pre-need contract or to receive the
9 funds due by reason of cancellation of the contract, the
10 purchaser may apply to the Comptroller on a form prescribed by
11 the Comptroller for restitution from the Pre-need Funeral
12 Contract Guarantee Fund. Upon a finding by the Comptroller that
13 the benefits or return of payment is not available to the
14 purchaser, the Comptroller may cause restitution to be paid to
15 the purchaser from the Pre-need Funeral Contract Guarantee
16 Fund.

17 (c) In all such cases where a purchaser is paid restitution
18 from the Fund, the Comptroller shall be subrogated to that
19 purchaser's claims against the licensee for all amounts paid
20 from the Fund. If the licensee's liability for default is
21 subsequently proven, any award made by a court of law shall be
22 made payable to the Pre-need Funeral Contract Guarantee Fund up
23 to the amount paid to the purchaser from the Fund and the
24 Comptroller shall request that the Attorney General engage in
25 all reasonable post-judgment collection steps to collect such
26 claims from the judgment debtor and reimburse the Fund.

1 (d) The Fund shall not be applied toward any restitution
2 for losses in any lawsuit initiated by the Attorney General or
3 Comptroller or with respect to any claim made on a pre-need
4 contract that occurred prior to the effective date of this
5 amendatory Act of the 95th General Assembly.

6 (e) Notwithstanding any other provision of this Section,
7 the payment of restitution from the Fund shall be a matter of
8 grace and not of right and no purchaser shall have any vested
9 rights in the Fund as a beneficiary or otherwise.

10 (f) The Fund may not be allocated for any purpose other
11 than that specified in this Act.

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

13 Sec. 1b. (a) Whenever a seller receives sales proceeds
14 under a pre-need contract that the purchaser elects to fund by
15 a trust agreement, the seller may retain an initial amount
16 equal to 5% of the purchase price of the services, personal
17 property or merchandise, or 15% of the purchase price of outer
18 burial containers. Thereafter, a seller shall deposit into
19 trust the amounts specified in this Section so that no later
20 than upon the final payment on the contract, the trust shall
21 equal or exceed 95% of the purchase price of all services,
22 personal property, or merchandise, except for outer burial
23 containers, and 85% of the purchase price of outer burial
24 containers.

25 (b) In the event that sales proceeds to be deposited into a

1 trust are received pursuant to a cash sale or an ~~a retail~~
2 installment contract, the seller may retain the initial
3 percentage authorized by subsection (a) of this Section ~~and any~~
4 ~~finance charge paid by the purchaser~~, and thereafter shall
5 deposit into the trust the entire balance of sales proceeds
6 received.

7 (c) In the event that the deposits into a trust required by
8 this Section do not, after final payment by the consumer,
9 result in the trust containing at least 95% of the sales price
10 of all services, personal property or merchandise, except for
11 outer burial containers and 85% of the purchase price of outer
12 burial containers, the seller shall make an additional deposit
13 into the trust in an amount sufficient to meet these
14 percentages.

15 (d) The trustee may not be the seller or provider of
16 funeral services or merchandise ~~unless the seller holds sales~~
17 ~~of less than \$500,000 in trust, and deposits funds for which~~
18 ~~the seller is acting as trustee in (1) withdrawable accounts of~~
19 ~~State chartered or federally chartered savings and loan~~
20 ~~associations insured by the Federal Deposit Insurance~~
21 ~~Corporation; (2) deposits or certificates of deposits in State~~
22 ~~or federal banks insured by the Federal Deposit Insurance~~
23 ~~Corporation; or (3) share accounts or share certificate~~
24 ~~accounts in a State or federal credit union, the accounts of~~
25 ~~which are insured as required by the Illinois Credit Union Act~~
26 ~~or the Federal Credit Union Act, as applicable.~~

1 (Source: P.A. 88-477.)

2 Section 90. The State Finance Act is amended by adding
3 Section 5.708 as follows:

4 (30 ILCS 105/5.708 new)

5 Sec. 5.708. The Pre-need Funeral Contract Guarantee Fund.