



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0815

Introduced 2/9/2009, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

225 ILCS 45/1	from Ch. 111 1/2, par. 73.101
225 ILCS 45/1a	from Ch. 111 1/2, par. 73.101a
225 ILCS 45/1c new	
815 ILCS 390/4	from Ch. 21, par. 204
815 ILCS 390/15	from Ch. 21, par. 215
815 ILCS 390/15.5 new	
815 ILCS 390/17	from Ch. 21, par. 217

Amends the Illinois Funeral or Burial Funds Act and the Illinois Pre-Need Cemetery Sales 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 that the purchaser may fund the contract by choosing one of the following options: depositing the funds into a local banking institution; depositing the funds into a trust program; or other means offered by the seller. Provides that the purchaser shall then choose one of those options. Provides that sellers of pre-need sales contracts must be licensed by the Department of Financial and Professional Regulation. Makes other changes. Effective immediately.

LRB096 04021 KTG 14059 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

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 Persons holding less than \$500,000 in trust funds may continue
6 to act as the trustee after the funds are deposited in
7 accordance with subsection (d) of Section 1b.

8 This Section applies only to pre-need contracts entered
9 into prior to the effective date of this amendatory Act of the
10 96th General Assembly.

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

14 (Source: P.A. 91-7, eff. 1-1-2000.)

15 (225 ILCS 45/1a) (from Ch. 111 1/2, par. 73.101a)

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

19 "Beneficiary" means the person specified in the pre-need
20 contract upon whose death funeral services or merchandise shall
21 be provided or delivered.

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

24 "Outer burial container" means any container made of
25 concrete, steel, wood, fiberglass or similar material, used

1 solely at the interment site, and designed and used exclusively
2 to surround or enclose a separate casket and to support the
3 earth above such casket, commonly known as a burial vault,
4 grave box or grave liner, but not including a lawn crypt as
5 defined in the Illinois Pre-need Cemetery Sales Act.

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

8 "Person" means any person, partnership, association,
9 corporation, or other entity.

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

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

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

25 "Sales proceeds" means the entire amount paid to a seller,
26 exclusive of sales taxes paid by the seller, finance charges

1 paid by the purchaser, and credit life, accident or disability
2 insurance premiums, upon any agreement or contract, or series
3 or combination of agreements or contracts, for the purpose of
4 performing funeral services or furnishing personal property,
5 merchandise, or services of any nature in connection with the
6 final disposition of a dead human body, including, but not
7 limited to, the retail price paid for such services and
8 personal property and merchandise.

9 "Purchase price" means sales proceeds less finance charges
10 on retail installment contracts.

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

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

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

21 (225 ILCS 45/1c new)

22 Sec. 1c. Disclosures; options. Beginning on the effective
23 date of this amendatory Act of the 96th General Assembly,
24 before a seller and purchaser enter into a pre-need contract,
25 the seller must disclose and fully explain that the purchaser

1 may fund the pre-need contract by choosing one of the following
2 options:

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

5 (2) depositing funds into a trust program operated by
6 the seller; or

7 (3) other means offered by the seller.

8 The purchaser shall then choose one of those options.

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 a memorial, marker, or monument shall not be

1 deemed a "pre-need sales contract" or a "pre-need sale" if the
2 memorial, marker, or monument is delivered within 180 days
3 following initial payment on the account and work thereon
4 commences a reasonably short time after initial payment on the
5 account.

6 (B) "Delivery" occurs when:

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

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

16 (3) Following authorization by a purchaser under a
17 pre-need sales contract, the merchandise has been
18 permanently identified with the name of the buyer or the
19 beneficiary and delivered to a licensed and bonded
20 warehouse and both title to the merchandise and a warehouse
21 receipt have been delivered to the purchaser or beneficiary
22 and a copy of the warehouse receipt has been delivered to
23 the licensee for retention in its files; except that in the
24 case of outer burial containers, the use of a licensed and
25 bonded warehouse as set forth in this paragraph shall not
26 constitute delivery for purposes of this Act. Nothing

1 herein shall prevent a seller from perfecting a security
2 interest in accordance with the Uniform Commercial Code on
3 any merchandise covered under this Act.

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

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

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

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

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

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

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

- 5 (1) memorials,
- 6 (2) markers,
- 7 (3) monuments,
- 8 (4) foundations, and
- 9 (5) outer burial containers.

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

- 15 (1) lawn crypt,
- 16 (2) mausoleum,
- 17 (3) garden crypt,
- 18 (4) columbarium, or
- 19 (5) cemetery section.

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

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

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

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

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

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

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

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

24 (M) "Seller" means any person selling or offering for sale
25 cemetery merchandise, cemetery services or undeveloped
26 interment, entombment, or inurnment spaces in accordance with a

1 pre-need sales contract. The seller must be licensed in the
2 State of Illinois by the Department of Financial and
3 Professional Regulation, and shall attend at least 24 hours of
4 continuing education every two year period, that shall be
5 approved by the Department of Financial and Professional
6 Regulation.

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

13 (O) "Municipal cemetery" means a cemetery owned, operated,
14 controlled or managed by any city, village, incorporated town,
15 township, county or other municipal corporation, political
16 subdivision, or instrumentality thereof authorized by law to
17 own, operate or manage a cemetery.

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

24 (P) "Sales price" means the gross amount paid by a
25 purchaser on a pre-need sales contract for cemetery
26 merchandise, cemetery services or undeveloped interment,

1 entombment or inurnment spaces, excluding sales taxes, credit
2 life insurance premiums, finance charges and Cemetery Care Act
3 contributions.

4 (Q) (Blank).

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

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

12 (T) "Parent company" means a corporation owning more than
13 12 cemeteries or funeral homes in more than one state.

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

18 A foreign warehouse facility shall be deemed to have
19 appointed the Comptroller to be its true and lawful attorney
20 upon whom may be served all legal process in any action or
21 proceeding against it relating to or growing out of this Act,
22 and the acceptance of the delivery of stored merchandise under
23 this Act shall be signification of its agreement that any such
24 process against it which is so served, shall be of the same
25 legal force and validity as though served upon it personally.

26 Service of such process shall be made by delivering to and

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

12 (Source: P.A. 91-7, eff. 1-1-00; 91-357, eff. 7-29-99; 92-16,
13 eff. 6-28-01; 92-419, eff. 1-1-02.)

14 (815 ILCS 390/15) (from Ch. 21, par. 215)

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

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

1 (b) All trust deposits required by this Act shall be made
2 within 30 days following the end of the month of receipt.

3 (c) A trust established under this Act must be maintained:

4 (1) in a trust account established in a bank, savings
5 and loan association or credit union authorized to do
6 business in Illinois where such accounts are insured by an
7 agency of the federal government;

8 (2) in a trust company authorized to do business in
9 Illinois; or

10 (3) in an investment company authorized to do business
11 in Illinois insured by the Securities Brokers Insurance
12 Corporation.

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

23 (e) In lieu of a pre-construction trust fund, a seller of
24 undeveloped interment, entombment or inurnment spaces may
25 obtain and file with the Comptroller a performance bond in an
26 amount at least equal to 50% of the sales price of the

1 undeveloped spaces or the estimated cost of completing
2 construction, whichever is greater. The bond shall be
3 conditioned on the satisfactory construction and completion of
4 the undeveloped spaces as required in Section 19 of this Act.

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

17 The Comptroller shall prohibit pre-need sellers from doing
18 new business with a corporate surety company if the company is
19 insolvent or is in violation of this Section. In addition the
20 Comptroller may direct a pre-need seller to reinstate a
21 pre-construction trust fund upon the Comptroller's
22 determination that the corporate surety company no longer is
23 sufficient security.

24 All performance bonds issued pursuant to this Section must
25 be irrevocable during the statutory term for completing
26 construction specified in Section 19 of this Act, unless

1 terminated sooner by the completion of construction.

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

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

19 (h) This Section applies only to pre-need sales entered
20 into prior to the effective date of this amendatory Act of the
21 96th General Assembly.

22 (Source: P.A. 91-7; eff. 1-1-2000.)

23 (815 ILCS 390/15.5 new)

24 Sec. 15.5. Disclosures; options. Beginning on the
25 effective date of this amendatory Act of the 96th General

1 Assembly, before a seller and purchaser enter into a pre-need
2 sales contract, the seller must disclose and fully explain that
3 the purchaser may fund the pre-need sales contract by choosing
4 one of the following options:

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

7 (2) depositing funds into a trust program operated by
8 the seller; or

9 (3) other means offered by the seller.

10 The purchaser shall then choose one of those options.

11 (815 ILCS 390/17) (from Ch. 21, par. 217)

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

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

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

23 (Source: P.A. 84-239.)

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