



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4979

Introduced 1/27/2022, by Rep. Natalie A. Manley

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Insurance Code. Provides that an insured or any other person who may be the owner of rights under a policy of life insurance may make an irrevocable assignment of all or a part of his or her rights under the policy to a funeral home in accordance with a specified provision of the Illinois Funeral or Burial Funds Act. Provides that a policy owner who executes a designation beneficiary form irrevocably waives and cannot exercise certain rights. Amends the Illinois Funeral or Burial Funds Act. In a provision concerning pre-need contracts funded through the purchase of a life insurance policy or tax-deferred annuity contract, provides that nothing shall prohibit the purchaser from irrevocably assigning ownership of the policy or annuity to a person or trust or from irrevocably assigning the benefits of the policy or annuity to a funeral home for the purpose of obtaining favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program. Requires the insured or any other person who may be the owner of rights under the policy of whole life insurance to sign a guaranteed pre-need contract with the provider that describes the cost of the goods and services to be provided upon the person's death, up to \$6,774, except that any portion of a contract that clearly represents the purchase of burial space is exempt regardless of value. Amends the Medical Assistance Article of the Illinois Public Aid Code. In a provision requiring the Department of Healthcare and Family Services to exempt certain prepaid funeral or burial contracts from consideration when making an eligibility determination for medical assistance, provides that at any time after submitting an application for medical assistance and before the Department makes a final determination of eligibility, an applicant may use available resources to purchase one of the exempted prepaid funeral or burial contracts. Exempts up to \$6,774 (rather than \$5,874) in funds under an irrevocable prepaid funeral or burial contract when determining an individual's resources and eligibility for medical assistance. Contains provisions concerning exemptions; irrevocable designation of beneficiary forms; and other matters.

LRB102 22458 KTG 31598 b

A BILL FOR

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 and have an
13 individual policy issued in accordance with paragraphs (G),
14 (H), and (K) of Section 231.1. Subject to the terms of the
15 policy or a contract relating to the policy, including, but
16 not limited to, a prepaid funeral or burial contract, an
17 irrevocable assignment by an insured or other owner of rights
18 under a policy made before or after the effective date of this
19 amendatory Act of the 102nd General Assembly is valid for the
20 purpose of vesting in the assignee, in accordance with the
21 policy or contract as to the time at which it is effective, all
22 rights assigned. That irrevocable assignment is, however,
23 without prejudice to the company on account of any payment it

1 makes or individual policy it issues in accordance with
2 paragraphs (G), (H), and (K) of Section 231.1 before receipt
3 of notice of the assignment. The insurance company shall
4 within 15 business days notify the funeral home and owner of
5 the policy of its receipt of the form. A policy owner who
6 executes a designation of beneficiary form pursuant to Section
7 2b of the Illinois Funeral or Burial Funds Act also
8 irrevocably waives and cannot exercise the following rights:

9 (1) The right to collect from the insurance company
10 the net proceeds of the policy when it becomes a claim by
11 death.

12 (2) The right to surrender the policy and receive the
13 cash surrender value of the policy.

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

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

17 (5) The right to collect or receive income,
18 distributions, or shares of surplus, dividend deposits,
19 refunds of premium, or additions to the policy.

20 This amendatory Act of the 102nd General Assembly
21 acknowledges, declares, and codifies the existing right of
22 assignment of interests under life insurance policies.

23 Section 10. The Illinois Funeral or Burial Funds Act is
24 amended by changing Section 2a and by adding Section 2b as
25 follows:

1 (225 ILCS 45/2a)

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

3 (a) If a purchaser selects the purchase of a life
4 insurance policy or tax-deferred annuity contract to fund the
5 pre-need contract, the application and collected premium shall
6 be mailed within 30 days of signing the pre-need contract.

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

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

1 contract provider shall be named the owner or the beneficiary
2 of the policy or annuity.

3 (d) If a life insurance policy or annuity contract is used
4 to fund a pre-need contract, except for guaranteed price
5 contracts permitted in Section 4(a) of this Act, the pre-need
6 contract must be revocable, and any assignment provision in
7 the pre-need contract must contain the following disclosure in
8 12 point bold type:

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

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

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

24 (225 ILCS 45/2b new)

25 Sec. 2b. Irrevocable designation of beneficiary of

1 existing whole life insurance.

2 (a) In accordance with Section 245.3 of the Illinois
3 Insurance Code, an insured or any other person who may be the
4 owner of rights under an existing policy of whole life
5 insurance may make an irrevocable assignment of all or a part
6 of his or her rights under the policy to a provider in
7 consideration for signing a guaranteed pre-need contract for
8 the purpose of obtaining favorable consideration for Medicaid,
9 Supplemental Security Income, or another public assistance
10 program. The form prepared by the Department of Healthcare and
11 Family Services under paragraph (4) of subsection (c) of
12 Section 3-1.2 of the Illinois Public Aid Code or by the
13 insurance company shall provide for an irrevocable designation
14 of beneficiary of one or more life insurance policies. The
15 insured or any other person who may be the owner of rights
16 under an existing policy of whole life insurance shall sign a
17 guaranteed pre-need contract with the provider that describes
18 the cost of the funeral goods and services to be provided upon
19 the person's death, up to \$6,774, except that any portion of a
20 contract that clearly represents the purchase of burial space,
21 as that term is defined for purposes of the Supplemental
22 Security Income program, is exempt regardless of value. This
23 amount shall be adjusted annually by the Department of Human
24 Services for any increase in the Consumer Price Index. The
25 guaranteed pre-need contract must provide a complete
26 description and cost of the goods and services. More than one

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

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

19 (c) Upon the death of the insured, the proceeds of the life
20 insurance policies subject to this Section shall be paid to
21 the provider, who shall apply such proceeds in the following
22 order or priority:

23 (1) first, to the provider in an amount equal to the
24 lesser of:

25 (A) the amount of the guaranteed pre-need
26 contract; or

1 (B) the actual value of the personal property,
2 merchandise, and services provided;

3 (2) second, to the State of Illinois, up to an amount
4 equal to the total medical assistance paid on behalf of
5 the insured; and

6 (3) third, payment of proceeds to a secondary
7 beneficiary (if any) listed on the policy, or to the
8 estate of the decedent if no secondary beneficiary is
9 named on the policy in the event the proceeds exceed the
10 lesser of the prearranged costs or actual value of the
11 personal property, merchandise, and services provided and
12 the total medical assistance paid on behalf of the
13 insured.

14 (d) The provider shall receive and disburse these proceeds
15 notwithstanding any other prohibition in law against serving
16 as a trustee.

17 (e) Further assignment. The rights and obligations of the
18 provider subject to the irrevocable designation of beneficiary
19 may be assigned to another provider upon the choice of the
20 insured or the approved representative or the power of
21 attorney for property of the insured, or upon the insolvency
22 or bankruptcy of the provider. The assignee provider shall:
23 (i) be bound to the terms of the irrevocable designation of
24 beneficiary; (ii) notify the insurance company or companies of
25 the assignment; (iii) notify the Department of Healthcare and
26 Family Services of the change in provider; and (iv) retain a

1 copy of the assignment for inspection by the Comptroller.

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

4 (305 ILCS 5/3-1.2) (from Ch. 23, par. 3-1.2)

5 Sec. 3-1.2. Need.

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

23 (b) Subject to federal approval, resources (for example,
24 land, buildings, equipment, supplies, or tools), including

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

24 (c) In determining the resources of an individual or any
25 dependents, the Department shall exclude from consideration
26 the value of funeral and burial spaces, funeral and burial

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

13 Prepaid funeral or burial contracts are exempt to the
14 following extent:

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

21 (2) Funds in an irrevocable prepaid funeral or burial
22 contract are exempt up to \$6,774 ~~\$5,874~~, except that any
23 portion of a contract that clearly represents the purchase
24 of burial space, as that term is defined for purposes of
25 the Supplemental Security Income program, is exempt
26 regardless of value. This amount shall be adjusted

1 annually for any increase in the Consumer Price Index. The
2 amount exempted shall be limited to the price of the
3 funeral goods and services to be provided upon death. The
4 contract must provide a complete description of the
5 funeral goods and services to be provided and the price
6 thereof. Any amount in the contract not so specified shall
7 be treated as a transfer of assets for less than fair
8 market value.

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

1 provides the funeral goods and services specified under
2 the contract. The irrevocable assignment of ownership of
3 the insurance policy must be acknowledged by the insurance
4 company.

5 (4) Existing life insurance policies are exempt if
6 there has been an irrevocable declaration of proceeds at
7 the death of the insured in compliance with this
8 subsection. A person shall sign a contract with a funeral
9 home that describes the cost of the funeral goods and
10 services to be provided upon the person's death, up to
11 \$6,774, except that any portion of a contract that clearly
12 represents the purchase of burial space, as that term is
13 defined for purposes of the Supplemental Security Income
14 program, is exempt regardless of value. This amount shall
15 be adjusted annually for any increase in the Consumer
16 Price Index. The contract must provide a complete
17 description of the goods and services to be provided and
18 the price thereof. The person shall sign an irrevocable
19 designation of beneficiary form declaring that any amounts
20 payable from the policies not used for goods and services
21 as set forth in the contract shall be received by the
22 State, up to an amount equal to the total medical
23 assistance paid on behalf of the person; any funds
24 remaining after payment to the State shall be paid to a
25 secondary beneficiary (if any) listed on the policy, or to
26 the estate of the purchaser if no secondary beneficiary is

1 named on the policy in the event the proceeds exceed the
2 prearranged costs of merchandise and services and the
3 total medical assistance paid on behalf of the insured.
4 More than one policy may be subject to this subsection if
5 the total face value of the policies is necessary to pay
6 the amount described in the contract with the funeral
7 home; policies that are not necessary to pay the amount
8 described in the contract are not exempt. The Department
9 of Healthcare and Family Services shall adopt rules and
10 forms to implement this Section.

11 (d) Notwithstanding any other provision of this Code to
12 the contrary, an irrevocable trust containing the resources of
13 a person who is determined to have a disability shall be
14 considered exempt from consideration. A pooled trust must be
15 established and managed by a non-profit association that pools
16 funds but maintains a separate account for each beneficiary.
17 The trust may be established by the person, a parent,
18 grandparent, legal guardian, or court. It must be established
19 for the sole benefit of the person and language contained in
20 the trust shall stipulate that any amount remaining in the
21 trust (up to the amount expended by the Department on medical
22 assistance) that is not retained by the trust for reasonable
23 administrative costs related to wrapping up the affairs of the
24 subaccount shall be paid to the Department upon the death of
25 the person. After a person reaches age 65, any funding by or on
26 behalf of the person to the trust shall be treated as a

1 transfer of assets for less than fair market value unless the
2 person is a ward of a county public guardian or the State
3 Guardian pursuant to Section 13-5 of the Probate Act of 1975 or
4 Section 30 of the Guardianship and Advocacy Act and lives in
5 the community, or the person is a ward of a county public
6 guardian or the State Guardian pursuant to Section 13-5 of the
7 Probate Act of 1975 or Section 30 of the Guardianship and
8 Advocacy Act and a court has found that any expenditures from
9 the trust will maintain or enhance the person's quality of
10 life. If the trust contains proceeds from a personal injury
11 settlement, any Department charge must be satisfied in order
12 for the transfer to the trust to be treated as a transfer for
13 fair market value.

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

26 (f) Occasional or irregular gifts in cash, goods or

1 services from persons who are not legally responsible
2 relatives which are of nominal value or which do not have
3 significant effect in meeting essential requirements shall be
4 disregarded.

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

11 (h) The Illinois Department may, after appropriate
12 investigation, establish and implement a consolidated standard
13 to determine need and eligibility for and amount of benefits
14 under this Article or a uniform cash supplement to the federal
15 Supplemental Security Income program for all or any part of
16 the then current recipients under this Article; provided,
17 however, that the establishment or implementation of such a
18 standard or supplement shall not result in reductions in
19 benefits under this Article for the then current recipients of
20 such benefits.

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

1 INDEX

2 Statutes amended in order of appearance

3 215 ILCS 5/245.3 new

4 225 ILCS 45/2a

5 225 ILCS 45/2b new

6 305 ILCS 5/3-1.2 from Ch. 23, par. 3-1.2