



Adopted in House Comm. on May 04, 2005

09400SB0482ham001

LRB094 10608 AMC 45678 a

1 AMENDMENT TO SENATE BILL 482

2 AMENDMENT NO. _____. Amend Senate Bill 482 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 Section 1a-1 as follows:

6 (225 ILCS 45/1a-1)

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

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

13 (1) It states the name and address of the principal
14 office of the seller and the parent company of the seller,
15 if any.

16 (2) It clearly identifies the provider's name and
17 address, the purchaser, and the beneficiary, if other than
18 the purchaser.

19 (2.5) If the provider has branch locations, the
20 contract gives the purchaser the opportunity to identify
21 the branch at which the funeral will be provided.

22 (3) It contains a complete description of the funeral
23 merchandise and services to be provided and the price of
24 the merchandise and services, and it clearly discloses

1 whether the price of the merchandise and services is
2 guaranteed or not guaranteed as to price.

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

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

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

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

23 (C) If a non-guaranteed price contract may
24 subsequently become guaranteed, the contract shall
25 clearly disclose the nature of the guarantee and the
26 time, occurrence, or event upon which the contract
27 shall become a guaranteed price contract.

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

33 (5) It discloses any penalties or restrictions,
34 including but not limited to geographic restrictions or the

1 inability of the provider to perform, on the delivery of
2 merchandise, services, or pre-need contract guarantees.

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

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

7 (B) The nature of the relationship among the person
8 funding the pre-need contract, the provider, and the
9 seller; and

10 (C) The impact on the pre-need contract of (i) any
11 changes in the funding arrangement including but not
12 limited to changes in the assignment, beneficiary
13 designation, or use of the funds; (ii) any specific
14 penalties to be incurred by the contract purchaser as a
15 result of failure to make payments; (iii) penalties to
16 be incurred or moneys or refunds to be received as a
17 result of cancellations; and (iv) all relevant
18 information concerning what occurs and whether any
19 entitlements or obligations arise if there is a
20 difference between the proceeds of the particular
21 funding arrangement and the amount actually needed to
22 pay for the funeral at-need.

23 (D) The method of changing the provider.

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

27 (c) No pre-need contract shall be sold in this State unless
28 there is a provider for the services and personal property
29 being sold. If the seller is not a provider, then the seller
30 must have a binding agreement with a provider, and the identity
31 of the provider and the nature of the agreement between the
32 seller and the provider shall be disclosed in the pre-need
33 contract at the time of the sale and before the receipt of any
34 sales proceeds. A separate completed contract, as required by

1 the Illinois Pre-Need Cemetery Sales Act, shall be issued for
2 cemetery merchandise, cemetery services, or undeveloped
3 interment, entombment, or inurnment spaces, as defined in the
4 Illinois Pre-Need Cemetery Sales Act, and not covered by this
5 Act, unless the seller is licensed under both Acts and all
6 disclosures are in compliance with both Acts. The failure to
7 disclose the identity of the provider, the nature of the
8 agreement between the seller and the provider, or any changes
9 thereto to the purchaser and beneficiary, or the failure to
10 make the disclosures required in subdivision (a)(1),
11 constitutes an intentional violation of this Act.

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

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

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

34 (g) No pre-need contract shall be sold in this State unless

1 it is accompanied by a funding mechanism permitted under this
2 Act, and unless the seller is licensed by the Comptroller as
3 provided in Section 3 of this Act. Nothing in this Act is
4 intended to relieve sellers of pre-need contracts from being
5 licensed under any other Act required for their profession or
6 business, and being subject to the rules promulgated to
7 regulate their profession or business, including rules on
8 solicitation and advertisement.

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

10 Section 10. The Cemetery Care Act is amended by changing
11 Section 14 as follows:

12 (760 ILCS 100/14) (from Ch. 21, par. 64.14)

13 Sec. 14. The Comptroller may at any time investigate the
14 cemetery business of every licensee with respect to its care
15 funds. The Comptroller shall examine at least annually every
16 licensee who holds \$750,000 ~~\$250,000~~ or more in its care funds.
17 For that purpose, the Comptroller shall have free access to the
18 office and places of business and to such records of all
19 licensees and of all trustees of the care funds of all
20 licensees as shall relate to the acceptance, use and investment
21 of care funds. The Comptroller may require the attendance of
22 and examine under oath all persons whose testimony he may
23 require relative to such business and in such cases the
24 Comptroller or any qualified representative of the Comptroller
25 whom the Comptroller may designate, may administer oaths to all
26 such persons called as witnesses, and the Comptroller, or any
27 such qualified representative of the Comptroller, may conduct
28 such examinations. The cost of an initial examination shall be
29 borne by the cemetery authority if it has \$10,000 or more in
30 such fund; otherwise, by the Comptroller. The charge made by
31 the Comptroller for such examination shall be based upon the
32 total amount of care funds held by the cemetery authority as of

1 the end of the calendar or fiscal year for which a report is
2 required by Section 12 of this Act and shall be in accordance
3 with the following schedule:

- 4 less than \$10,000..... no charge;
- 5 \$10,000 or more but less than
- 6 \$50,000..... \$10;
- 7 \$50,000 or more but less than
- 8 \$100,000 \$40;
- 9 \$100,000 or more but less than
- 10 \$250,000 \$80;
- 11 \$250,000 or more \$100.

12 Any licensee which is not required to be examined annually
13 shall submit an annual report to the Comptroller containing
14 such information as the Comptroller reasonably may request.

15 The Comptroller may order additional audits or
16 examinations as he or she may deem necessary or advisable to
17 ensure the safety and stability of the trust funds and to
18 ensure compliance with this Act. These additional audits or
19 examinations shall only be made after good cause is established
20 by the Comptroller in the written order. The grounds for
21 ordering these additional audits or examinations may include,
22 but shall not be limited to:

- 23 (1) material and unverified changes or fluctuations in
- 24 trust balances;
- 25 (2) the licensee changing trustees more than twice in
- 26 any 12-month period;
- 27 (3) any withdrawals or attempted withdrawals from the
- 28 trusts in violation of this Act; or
- 29 (4) failure to maintain or produce documentation
- 30 required by this Act for deposits into trust accounts or
- 31 trust investment activities.

32 Prior to ordering an additional audit or examination, the
33 Comptroller shall request the licensee to respond and comment
34 upon the factors identified by the Comptroller as warranting

1 the subsequent examination or audit. The licensee shall have 30
2 days to provide a response to the Comptroller. If the
3 Comptroller decides to proceed with the additional examination
4 or audit, the licensee shall bear the full cost of that
5 examination or audit, up to a maximum of \$7,500. The
6 Comptroller may elect to pay for the examination or audit and
7 receive reimbursement from the licensee. Payment of the costs
8 of the examination or audit by a licensee shall be a condition
9 of receiving or maintaining a license under this Act. All
10 moneys received by the Comptroller for examination or audit
11 fees shall be maintained in a separate account to be known as
12 the Comptroller's Administrative Fund. This Fund, subject to
13 appropriation by the General Assembly, may be utilized by the
14 Comptroller for enforcing this Act and other purposes that may
15 be authorized by law.

16 (Source: P.A. 89-615, eff. 8-9-96.)

17 Section 15. The Illinois Pre-Need Cemetery Sales Act is
18 amended by changing Section 14 as follows:

19 (815 ILCS 390/14) (from Ch. 21, par. 214)

20 Sec. 14. Contract required.

21 (a) It is unlawful for any person doing business within
22 this State to accept sales proceeds, either directly or
23 indirectly, by any means unless the seller enters into a
24 pre-need sales contract with the purchaser which meets the
25 following requirements:

26 (1) A written sales contract shall be executed in at
27 least 11 point type in duplicate for each pre-need sale
28 made by a licensee, and a signed copy given to the
29 purchaser. Each completed contract shall be numbered and
30 shall contain: (i) the name and address of the purchaser,
31 the principal office of the licensee, and the parent
32 company of the licensee; (ii) the name of the person, if

1 known, who is to receive the cemetery merchandise, cemetery
2 services or the completed interment, entombment or
3 inurnment spaces under the contract; ~~and~~ (iii) specific
4 identification of such merchandise, type of services to be
5 held by cemetery or crematory personnel, or spaces to be
6 provided, if a specific space or spaces are contracted for,
7 and the price of the merchandise, services, or space or
8 spaces; (iv) the location of the spaces to be provided, if
9 a specific space is contracted for, indicated on a copy of
10 an overall map of the site or section of the interment,
11 entombment, or inurnment spaces; and (v) a description of
12 the type of care furnished by a provider holding a valid
13 license under the Cemetery Care Act that is being purchased
14 to maintain the interment, entombment, or inurnment space,
15 if a specific space is contracted for. If no care is
16 included in the contract, the contract shall state in
17 11-point type "This contract does not include maintenance
18 care.", and this statement shall be initialed by the
19 purchaser.

20 (1.5) Upon request by the purchaser, each contract may
21 include a current copy of the provider's rules and
22 regulations pertaining to the site of the completed
23 interment, entombment, or inurnment spaces, if such spaces
24 are to be provided under the contract.

25 (2) In addition, such contracts must contain a
26 provision in distinguishing typeface as follows:

27 "Notwithstanding anything in this contract to the
28 contrary, you are afforded certain specific rights of
29 cancellation and refund under the Illinois Pre-Need
30 Cemetery Sales Act, enacted by the 84th General Assembly of
31 the State of Illinois".

32 (3) All pre-need sales contracts shall be sold on a
33 guaranteed price basis. At the time of performance of the
34 service or delivery of the merchandise, the seller shall be

1 prohibited from assessing the purchaser or his heirs or
2 assigns or duly authorized representative any additional
3 charges for the specific merchandise and services listed on
4 the pre-need sales contract.

5 (4) Each contract shall clearly disclose that the price
6 of the merchandise or services is guaranteed and shall
7 contain the following statement in 12 point bold type:

8 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE SPECIFIC
9 GOODS, SERVICES, INTERMENT SPACES, ENTOMBMENT SPACES, AND
10 INURNMENT SPACES CONTRACTED FOR. NO ADDITIONAL CHARGES MAY
11 BE REQUIRED FOR DESIGNATED GOODS, SERVICES, AND SPACES.
12 ADDITIONAL CHARGES MAY BE INCURRED FOR UNEXPECTED
13 EXPENSES."

14 (5) The pre-need sales contract shall provide that if
15 the particular cemetery services, cemetery merchandise, or
16 spaces specified in the pre-need contract are unavailable
17 at the time of delivery, the seller shall be required to
18 furnish services, merchandise, and spaces similar in style
19 and at least equal in quality of material and workmanship.

20 (6) The pre-need contract shall also disclose any
21 specific penalties to be incurred by the purchaser as a
22 result of failure to make payments; and penalties to be
23 incurred or moneys or refunds to be received as a result of
24 cancellation of the contract.

25 (7) The pre-need contract shall disclose the nature of
26 the relationship between the provider and the seller.

27 (8) Each pre-need contract that authorizes the
28 delivery of cemetery merchandise to a licensed and bonded
29 warehouse shall provide that prior to or upon delivery of
30 the merchandise to the warehouse the title to the
31 merchandise and a warehouse receipt shall be delivered to
32 the purchaser or beneficiary. The pre-need contract shall
33 contain the following statement in 12 point bold type:

34 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO A

1 LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE
2 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE
3 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER MAY
4 PRECLUDE REFUND OF SALE PROCEEDS THAT ARE ATTRIBUTABLE TO
5 THE DELIVERED MERCHANDISE."

6 The purchaser shall initial the statement at the time
7 of entry into the pre-need contract.

8 (9) Each pre-need contract that authorizes the
9 placement of cemetery merchandise at the site of its
10 ultimate use prior to the time that the merchandise is
11 needed by the beneficiary shall contain the following
12 statement in 12 point bold type:

13 "THIS CONTRACT AUTHORIZES THE PLACEMENT OF MERCHANDISE AT
14 THE SITE OF ITS ULTIMATE USE PRIOR TO THE TIME THAT THE
15 MERCHANDISE IS NEEDED BY THE BENEFICIARY. DELIVERY OF THE
16 MERCHANDISE IN THIS MANNER MAY PRECLUDE REFUND OF SALE
17 PROCEEDS THAT ARE ATTRIBUTABLE TO THE DELIVERED
18 MERCHANDISE."

19 The purchaser shall initial the statement at the time
20 of entry into the pre-need contract.

21 (b) Every pre-need sales contract must be in writing. The
22 Comptroller may by rule develop a model pre-need sales contract
23 form that meets the requirements of this Act.

24 (c) To the extent the Rule is applicable, every pre-need
25 sales contract is subject to the Federal Trade Commission Rule
26 concerning the Cooling-Off Period for Door-to-Door Sales (16
27 CFR Part 429).

28 (d) No pre-need sales contract may be entered into in this
29 State unless there is a provider for the cemetery merchandise,
30 cemetery services, and undeveloped interment, inurnment, and
31 entombment spaces being sold. If the seller is not the
32 provider, then the seller must have a binding agreement with a
33 provider, and the identity of the provider and the nature of
34 the agreement between the seller and the provider must be

1 disclosed in the pre-need sales contract at the time of sale
2 and before the receipt of any sale proceeds. The purchaser
3 shall make personal contact with the provider and visit the
4 site of the undeveloped interment, inurnment, or entombment
5 spaces being sold, unless the purchaser waives his or her right
6 to do so. Each pre-need contract that is sold by a seller who
7 is not the provider shall contain the following statements in
8 12-point bold type and the applicable statements shall be
9 initialed by the purchaser:

10 "I HAVE MADE PERSONAL CONTACT WITH THE PROVIDER OF THE
11 CEMETERY MERCHANDISE, CEMETERY SERVICES, OR UNDEVELOPED
12 INTERMENT, INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS
13 CONTRACT.

14 I HAVE VISITED THE SITE OF THE UNDEVELOPED INTERMENT,
15 INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS CONTRACT.

16 I HAVE WAIVED MY RIGHT TO MAKE PERSONAL CONTACT AND/OR
17 VISIT THE PROVIDER OF THE CEMETERY MERCHANDISE, CEMETERY
18 SERVICES, OR UNDEVELOPED INTERMENT, INURNMENT, OR
19 ENTOMBMENT SPACES BEING SOLD IN THIS CONTRACT.

20 A COPY OF THE PROVIDER'S RULES AND REGULATIONS HAS BEEN
21 MADE AVAILABLE TO ME UPON MY REQUEST."

22 A separate completed contract shall be issued for funeral
23 merchandise or funeral services covered by the Illinois Funeral
24 or Burial Funds Act, and not covered by this Act, unless the
25 seller is licensed under both Acts and all disclosures are in
26 compliance with both Acts. The failure to disclose the identity
27 of the provider, the nature of the agreement between the seller
28 and the provider, or any changes thereto to the purchaser and
29 beneficiary, or the failure to make the disclosures required by
30 this Section constitutes an intentional violation of this Act.

31 (e) No pre-need contract may be entered into in this State
32 unless it is accompanied by a funding mechanism permitted under
33 this Act and unless the seller is licensed by the Comptroller
34 as provided in this Act. Nothing in this Act is intended to

1 relieve providers or sellers of pre-need contracts from being
2 licensed under any other Act required for their profession or
3 business or from being subject to the rules promulgated to
4 regulate their profession or business, including rules on
5 solicitation and advertisement.

6 (f) No pre-need contract may be entered into in this State
7 unless the seller explains to the purchaser the terms of the
8 pre-need contract prior to the purchaser signing and the
9 purchaser initials a statement in the contract confirming that
10 the seller has explained the terms of the contract prior to the
11 purchaser signing.

12 (g) The State Comptroller shall develop a booklet for
13 consumers in plain English describing the scope, application,
14 and consumer protections of this Act. After the booklet is
15 developed, no pre-need contract may be sold in this State
16 unless the seller distributes to the purchaser prior to the
17 sale a booklet developed or approved for use by the State
18 Comptroller.

19 (Source: P.A. 91-7, eff. 1-1-00; 92-419, eff. 1-1-02.)

20 Section 20. The Consumer Fraud and Deceptive Business
21 Practices Act is amended by adding Section 2VV as follows:

22 (815 ILCS 505/2VV new)

23 Sec. 2VV. Cemetery or funeral contracts. No person
24 authorized by law to sell funeral services on an at need basis
25 may also sell or arrange for the purchase of cemetery services,
26 cemetery merchandise, or interment, inurnment, or entombment
27 spaces on an at need basis, unless the person is also
28 authorized by law to sell or arrange for the purchase of such
29 cemetery services, merchandise, or spaces and issues to the
30 consumer a separate contract with the provider of such cemetery
31 services, merchandise, or spaces.

32 Each completed contract shall be numbered and shall

1 contain: (i) the name and address of the purchaser, the name
2 and pertinent information of the person who is to receive the
3 cemetery services, merchandise, or spaces, and the name and
4 address of the seller; (ii) specific identification of such
5 merchandise, type of services to be held by cemetery or
6 crematory personnel, or spaces to be provided and the price of
7 the merchandise, services, or spaces; (iii) the location of the
8 space to be provided, if a specific space is contracted for,
9 indicated on a copy of an overall map of the site or section of
10 the interment, entombment, or inurnment space; and (iv) a
11 description of the type of care furnished by a provider holding
12 a valid license under the Cemetery Care Act that is being
13 purchased to maintain the interment, entombment, or inurnment
14 space, if a specific space is contracted for. If no care is
15 included in the contract, the contract shall state in 11-point
16 bold type: "This contract does not include maintenance care.",
17 and this statement shall be initialed by the purchaser. Upon
18 request by the purchaser, each contract may include a current
19 copy of the provider's rules and regulations pertaining to the
20 site of the interment, entombment, or inurnment spaces, if such
21 spaces are to be provided under the contract. The purchaser
22 shall make personal contact with the provider and visit the
23 site of the undeveloped interment, inurnment, or entombment
24 spaces being sold, unless the purchaser waives his or her right
25 to do so. Each contract that is sold by a seller who is not the
26 provider shall contain the following statements in 12-point
27 bold type and the applicable statements shall be initialed by
28 the purchaser:

29 "I HAVE MADE PERSONAL CONTACT WITH THE PROVIDER OF THE
30 CEMETERY MERCHANDISE, CEMETERY SERVICES, OR INTERMENT,
31 INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS CONTRACT.

32 I HAVE VISITED THE SITE OF THE INTERMENT, INURNMENT, OR
33 ENTOMBMENT SPACES SOLD IN THIS CONTRACT.

34 I HAVE WAIVED MY RIGHT TO MAKE PERSONAL CONTACT AND

1 VISIT THE PROVIDER OF THE CEMETERY MERCHANDISE, CEMETERY
2 SERVICES, OR INTERMENT, INURNMENT, OR ENTOMBMENT SPACES
3 BEING SOLD IN THIS CONTRACT.

4 A COPY OF THE PROVIDER'S RULES AND REGULATIONS HAS BEEN
5 MADE AVAILABLE TO ME UPON MY REQUEST."

6 Any person who violates this Section commits an unlawful
7 practice within the meaning of this Act.

8 Section 99. Effective date. This Act takes effect January
9 1, 2006."