



Rep. Dan Brady

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LRB096 08285 KTG 23986 a

1 AMENDMENT TO HOUSE BILL 3236

2 AMENDMENT NO. _____. Amend House Bill 3236 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 and by adding Section 1c as
6 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

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

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

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

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

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

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

26 "Sales proceeds" means the entire amount paid to a seller,

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

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

12 "Seller" means the person who sells or offers to sell the
13 pre-need contract to a purchaser, whether funded by a trust
14 agreement, life insurance policy, ~~or~~ tax-deferred annuity, or,
15 in the case of a non-guaranteed contract, other means agreed to
16 by the purchaser and seller in the pre-need contract. Pre-need
17 contracts entered into with a funeral establishment, as defined
18 in the Funeral Directors and Embalmers Licensing Code, may only
19 be offered or sold to a purchaser by a person licensed as a
20 funeral director or a funeral director and embalmer under the
21 Funeral Directors and Embalmers Licensing Code.

22 "Trustee" means a person authorized to hold funds under
23 this Act.

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

1 Sec. 1c. Disclosures; options. Beginning on the effective
2 date of this amendatory Act of the 96th General Assembly,
3 before a seller and purchaser enter into a pre-need contract,
4 the seller must disclose and fully explain that the purchaser
5 may fund a non-guaranteed pre-need contract by choosing one of
6 the following options:

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

9 (2) depositing funds into a trust program operated by
10 the seller; or

11 (3) other means offered by the seller.

12 The purchaser shall then choose one of those options and
13 the seller shall take all steps necessary to effectuate the
14 purchaser's funding selection.

15 Section 10. The Illinois Pre-Need Cemetery Sales Act is
16 amended by changing Sections 4 and 17 and by adding Section
17 15.5 as follows:

18 (815 ILCS 390/4) (from Ch. 21, par. 204)

19 Sec. 4. Definitions. As used in this Act, the following
20 terms shall have the meaning specified:

21 (A) "Pre-need sales contract" or "Pre-need sales" means any
22 agreement or contract or series or combination of agreements or
23 contracts which have for a purpose the sale of cemetery
24 merchandise, cemetery services or undeveloped interment,

1 entombment or inurnment spaces where the terms of such sale
2 require payment or payments to be made at a currently
3 determinable time and where the merchandise, services or
4 completed spaces are to be provided more than 120 days
5 following the initial payment on the account. An agreement or
6 contract for a memorial, marker, or monument shall not be
7 deemed a "pre-need sales contract" or a "pre-need sale" if the
8 memorial, marker, or monument is delivered within 180 days
9 following initial payment on the account and work thereon
10 commences a reasonably short time after initial payment on the
11 account.

12 (B) "Delivery" occurs when:

13 (1) Physical possession of the merchandise is
14 transferred or the easement for burial rights in a
15 completed space is executed, delivered and transferred to
16 the buyer; or

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

22 (3) Following authorization by a purchaser under a
23 pre-need sales contract, the merchandise has been
24 permanently identified with the name of the buyer or the
25 beneficiary and delivered to a licensed and bonded
26 warehouse and both title to the merchandise and a warehouse

1 receipt have been delivered to the purchaser or beneficiary
2 and a copy of the warehouse receipt has been delivered to
3 the licensee for retention in its files; except that in the
4 case of outer burial containers, the use of a licensed and
5 bonded warehouse as set forth in this paragraph shall not
6 constitute delivery for purposes of this Act. Nothing
7 herein shall prevent a seller from perfecting a security
8 interest in accordance with the Uniform Commercial Code on
9 any merchandise covered under this Act.

10 All warehouse facilities to which sellers deliver
11 merchandise pursuant to this Act shall:

12 (i) be either located in the State of Illinois or
13 qualify as a foreign warehouse facility as defined
14 herein;

15 (ii) submit to the Comptroller not less than
16 annually, by March 1 of each year, a report of all
17 cemetery merchandise stored by each licensee under
18 this Act which is in storage on the date of the report;

19 (iii) permit the Comptroller or his designee at any
20 time to examine stored merchandise and to examine any
21 documents pertaining thereto;

22 (iv) submit evidence satisfactory to the
23 Comptroller that all merchandise stored by said
24 warehouse for licensees under this Act is insured for
25 casualty or other loss normally assumed by a bailee for
26 hire;

1 (v) demonstrate to the Comptroller that the
2 warehouse has procured and is maintaining a
3 performance bond in the form, content and amount
4 sufficient to unconditionally guarantee to the
5 purchaser or beneficiary the prompt shipment of the
6 cemetery merchandise.

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

- 11 (1) memorials,
12 (2) markers,
13 (3) monuments,
14 (4) foundations, and
15 (5) outer burial containers.

16 (D) "Undeveloped interment, entombment or inurnment
17 spaces" or "undeveloped spaces" means any space to be used for
18 the reception of human remains that is not completely and
19 totally constructed at the time of initial payment therefor in
20 a:

- 21 (1) lawn crypt,
22 (2) mausoleum,
23 (3) garden crypt,
24 (4) columbarium, or
25 (5) cemetery section.

26 (E) "Cemetery services" means those services customarily

1 performed by cemetery or crematory personnel in connection with
2 the interment, entombment, inurnment or cremation of a dead
3 human body.

4 (F) "Cemetery section" means a grouping of spaces intended
5 to be developed simultaneously for the purpose of interring
6 human remains.

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

13 (H) "Lawn crypt" means a permanent underground crypt
14 usually constructed of reinforced concrete or similar material
15 installed in multiple units for the entombment of human
16 remains.

17 (I) "Mausoleum" or "garden crypt" means a grouping of
18 spaces constructed of reinforced concrete or similar material
19 constructed or assembled above the ground for entombing human
20 remains.

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

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

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

4 (M) "Seller" means any person selling or offering for sale
5 cemetery merchandise, cemetery services or undeveloped
6 interment, entombment, or inurnment spaces in accordance with a
7 pre-need sales contract. The seller must be licensed in
8 accordance with the requirements of Section 8 of this Act.
9 Pre-need sales contracts offered by anyone other than a
10 licensee under Section 8 of this Act may only be executed by
11 the licensee, whose signature authority may not be delegated to
12 anyone not licensed under the Act for purpose of executing
13 pre-need sales contracts.

14 (N) "Religious cemetery" means a cemetery owned, operated,
15 controlled or managed by any recognized church, religious
16 society, association or denomination or by any cemetery
17 authority or any corporation administering, or through which is
18 administered, the temporalities of any recognized church,
19 religious society, association or denomination.

20 (O) "Municipal cemetery" means a cemetery owned, operated,
21 controlled or managed by any city, village, incorporated town,
22 township, county or other municipal corporation, political
23 subdivision, or instrumentality thereof authorized by law to
24 own, operate or manage a cemetery.

25 (O-1) "Outer burial container" means a container made of
26 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.

5 (P) "Sales price" means the gross amount paid by a
6 purchaser on a pre-need sales contract for cemetery
7 merchandise, cemetery services or undeveloped interment,
8 entombment or inurnment spaces, excluding sales taxes, credit
9 life insurance premiums, finance charges and Cemetery Care Act
10 contributions.

11 (Q) (Blank).

12 (R) "Provider" means a person who is responsible for
13 performing cemetery services or furnishing cemetery
14 merchandise, interment spaces, entombment spaces, or inurnment
15 spaces under a pre-need sales contract.

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

19 (T) "Parent company" means a corporation owning more than
20 12 cemeteries or funeral homes in more than one state.

21 (U) "Foreign warehouse facility" means a warehouse
22 facility now or hereafter located in any state or territory of
23 the United States, including the District of Columbia, other
24 than the State of Illinois.

25 A foreign warehouse facility shall be deemed to have
26 appointed the Comptroller to be its true and lawful attorney

1 upon whom may be served all legal process in any action or
2 proceeding against it relating to or growing out of this Act,
3 and the acceptance of the delivery of stored merchandise under
4 this Act shall be signification of its agreement that any such
5 process against it which is so served, shall be of the same
6 legal force and validity as though served upon it personally.

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

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

21 (815 ILCS 390/15.5 new)

22 Sec. 15.5. Disclosures; options. Beginning on the
23 effective date of this amendatory Act of the 96th General
24 Assembly, before a seller and purchaser enter into a pre-need
25 sales contract, the seller must disclose and fully explain that

1 the purchaser may fund a non-guaranteed pre-need sales contract
2 by choosing one of the following 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 and
9 the seller shall take all steps necessary to effectuate the
10 purchaser's funding selection.

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

1 becoming law.".