



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5810

by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

225 ILCS 45/1a-1

Amends the Illinois Funeral or Burial Funds Act. Provides that, at the time of payment, a provider shall inform the purchaser of all the possible funding arrangements for a pre-need contract, including the distinctions between the financial results of funding the contract through a trust fund, Totten trust, annuity, or life insurance policy. Further provides that, at the time of payment, a provider shall make the purchaser aware of who the pre-need contract designates as the beneficiary.

LRB098 18206 ZMM 53336 b

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 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 (1.5) If funded by a trust, it clearly identifies the
17 trustee's name and address and the primary state or federal
18 regulator of the trustee as a corporate fiduciary.

19 (1.7) If funded by life insurance, it clearly
20 identifies the life insurance provider and the primary
21 regulator of the life insurance provider.

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

1 the purchaser.

2 (2.5) If the provider has branch locations, the
3 contract gives the purchaser the opportunity to identify
4 the branch at which the funeral will be provided.

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

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

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

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

24 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE
25 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR
26 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A

1 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE
2 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES
3 MAY BE REQUIRED.

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

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

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

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

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

22 (B) The nature of the relationship among the person
23 funding the pre-need contract, the provider, and the
24 seller; and

25 (C) The impact on the pre-need contract of (i) any
26 changes in the funding arrangement including but not

1 limited to changes in the assignment, beneficiary
2 designation, or use of the funds; (ii) any specific
3 penalties to be incurred by the contract purchaser as a
4 result of failure to make payments; (iii) penalties to
5 be incurred or moneys or refunds to be received as a
6 result of cancellations; and (iv) all relevant
7 information concerning what occurs and whether any
8 entitlements or obligations arise if there is a
9 difference between the proceeds of the particular
10 funding arrangement and the amount actually needed to
11 pay for the funeral at-need.

12 (D) The method of changing the provider.

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

16 (c) No pre-need contract shall be sold in this State unless
17 there is a provider for the services and personal property
18 being sold. If the seller is not a provider, then the seller
19 must have a binding agreement with a provider, and the identity
20 of the provider and the nature of the agreement between the
21 seller and the provider shall be disclosed in the pre-need
22 contract at the time of the sale and before the receipt of any
23 sales proceeds. The failure to disclose the identity of the
24 provider, the nature of the agreement between the seller and
25 the provider, or any changes thereto to the purchaser and
26 beneficiary, or the failure to make the disclosures required in

1 subdivision (a)(1), constitutes an intentional violation of
2 this Act.

3 (d) All pre-need contracts must be in writing in at least
4 11 point type, numbered, and executed in duplicate. A signed
5 copy of the pre-need contract must be provided to the purchaser
6 at the time of entry into the pre-need contract. The
7 Comptroller may by rule develop a model pre-need contract form
8 that meets the requirements of this Act.

9 (e) The State Comptroller shall by rule develop a booklet
10 for consumers in plain English describing the scope,
11 application, and consumer protections of this Act. After the
12 adoption of these rules, no pre-need contract shall be sold in
13 this State unless (i) the seller distributes to the purchaser
14 prior to the sale a booklet promulgated or approved for use by
15 the State Comptroller; (ii) the seller explains to the
16 purchaser the terms of the pre-need contract prior to the
17 purchaser signing; and (iii) the purchaser initials a statement
18 in the contract confirming that the seller has explained the
19 terms of the contract prior to the purchaser signing.

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

25 (g) No pre-need contract shall be sold in this State unless
26 it is accompanied by a funding mechanism permitted under this

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

8 (h) A provider shall, at the time of payment, inform the
9 purchaser of all the possible funding arrangements for a
10 pre-need contract, including the distinctions between the
11 financial results of funding the contract through a trust fund,
12 Totten trust, annuity, or life insurance policy. The provider
13 shall, at the time of payment, make the purchaser aware of who
14 the pre-need contract designates as the beneficiary.

15 (Source: P.A. 96-879, eff. 2-2-10.)