

AN ACT concerning prepaid funeral or burial contracts.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by adding Section 245.3 as follows:

(215 ILCS 5/245.3 new)

Sec. 245.3. Irrevocable assignment of life insurance to a funeral home. 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 Section 2b of the Illinois Funeral or Burial Funds Act. Subject to the terms of the policy or a contract relating to the policy, including, but not limited to, a prepaid funeral or burial contract, an irrevocable assignment by an insured or other owner of rights under a policy made before or after the effective date of this amendatory Act of the 102nd General Assembly is valid for the purpose of vesting in the assignee, in accordance with the policy or contract as to the time at which it is effective, all rights assigned. That irrevocable assignment is, however, without prejudice to the company on account of any payment it makes. The insurance company shall within 15 business days notify the funeral home and owner of

the policy of its receipt of the form. A policy owner who executes a designation of beneficiary form pursuant to Section 2b of the Illinois Funeral or Burial Funds Act also irrevocably waives and cannot exercise the following rights:

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

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

(3) The right to obtain a policy loan.

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

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

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

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

(225 ILCS 45/2a)

Sec. 2a. Purchase of insurance or annuity.

(a) If a purchaser selects the purchase of a life

insurance policy or tax-deferred annuity contract to fund the pre-need contract, the application and collected premium shall be mailed within 30 days of signing the pre-need contract.

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

(c) Nothing shall prohibit the purchaser from irrevocably assigning ownership of the policy or annuity used to fund a guaranteed price pre-need contract 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, as permitted under federal law. The seller or contract provider may be named a nominal owner of the life insurance policy only for such time as it takes to immediately transfer the policy into a trust. Except for this purpose, neither the seller nor the contract provider shall be named the owner or the beneficiary of the policy or annuity.

(d) If a life insurance policy or annuity contract is used to fund a pre-need contract, except for guaranteed price

contracts permitted in Section 4(a) of this Act, the pre-need contract must be revocable, and any assignment provision in the pre-need contract must contain the following disclosure in 12 point bold type:

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

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

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

(225 ILCS 45/2b new)

Sec. 2b. Irrevocable designation of beneficiary of existing life insurance.

(a) In accordance with Section 245.3 of the Illinois Insurance Code, an insured or any other person who may be the owner of rights under an existing policy of life insurance may

make an irrevocable assignment of all or a part of his or her rights under the policy to a provider in consideration for signing a guaranteed pre-need contract for the purpose of obtaining favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program. The form that shall effectuate the irrevocable assignment and thereby provide for the irrevocable designation of beneficiary of one or more life insurance policies, which shall comply with all applicable federal laws and regulations, shall be prepared by the Department of Healthcare and Family Services under paragraph (4) of subsection (c) of Section 3-1.2 of the Illinois Public Aid Code or such form, approved in advance by the Department of Healthcare and Family Services, that has been prepared by an insurance company licensed to operate in the State of Illinois. The insured or any other person who may be the owner of rights under an existing policy of life insurance shall sign a guaranteed pre-need contract with the provider that describes the cost of the funeral goods and services to be provided upon the person's death, up to \$7,248, except that any portion of a contract that clearly represents the purchase of burial space, as that term is defined for purposes of the Supplemental Security Income program, is exempt regardless of value. This amount shall be adjusted annually by the Department of Human Services for any increase in the Consumer Price Index. The guaranteed pre-need contract must provide a complete description and cost of the goods and

services and any cash advances. More than one policy may be subject to this Section if the total face value of the policies is necessary to pay the amount described in the guaranteed pre-need contract with the provider. All policies shall be listed on the form. The insured or any other person who may be the owner of rights under an existing policy of life insurance shall be given a copy of the executed form. The licensee shall retain copies for inspection by the Comptroller and shall report annually to the Comptroller the following: the name of the insured, the insurance policy number, the amount of the guaranteed pre-need contract, the current value of the policy or benefits designated, and the name of the insurance company issuing the policy.

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

(c) No commission may be sought or received in connection with any cash advance allowance included in the guaranteed pre-need contract.

(d) For guaranteed pre-need contracts with cash advances, the contract shall include a disclosure, in 12 point bold type and located immediately above such cash advance allowance, that states: "No interment, inurnment, or entombment right has

been selected or reserved with this allowance; cash advances are merely an allowance toward the then-current costs for the involved items, to be purchased after death. Burial space allowances may only be excluded from resources under Medicaid if a separate contract is executed for such burial space with a cemetery."

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

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

(A) the amount of the guaranteed pre-need contract for payment of all services, goods, and cash advances in the amounts indicated on the pre-need contract; or

(B) the actual value of the services, goods, and cash advances, not to exceed the amounts indicated in the pre-need contract;

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

(3) third, payment of proceeds to a secondary beneficiary (if any) listed on the policy, or to the estate of the decedent if no secondary beneficiary is named on the policy in the event the proceeds exceed the amount of the pre-need contract for payment of all

services, goods and cash advances in the amounts indicated on the pre-need contract and the total medical assistance paid on behalf of the insured.

(f) The provider shall receive and disburse these proceeds notwithstanding any other prohibition in law against serving as a trustee. The provider shall promptly deposit these funds into a non-interest bearing checking or share account that has been established to receive proceeds of this type. These proceeds shall not be commingled with any other account of the provider. The account may contain the funds of more than one client. The provider may disburse these funds to itself for goods and services. The provider shall maintain a ledger indicating the amount of proceeds received and the disbursement of those proceeds. A copy of this ledger shall be provided to the Comptroller and the Department of Healthcare and Family Services, and to the estate or heirs of the insured, as applicable, if requested by them. For the purpose of this Section, the providers who receive and disburse these proceeds from life insurance policies shall be funeral homes.

(g) Further assignment. The rights and obligations of the provider subject to the irrevocable designation of beneficiary may be assigned to another provider upon the choice of the insured or the approved representative or the power of attorney for property of the insured, or upon the insolvency or bankruptcy of the provider. The assignee provider shall:

(i) be bound to the terms of the irrevocable designation of

beneficiary and the associated guaranteed pre-need contract;
(ii) notify the insurance company or companies of the
assignment; (iii) notify the Department of Healthcare and
Family Services of the change in provider; and (iv) retain a
copy of the assignment for inspection by the Comptroller.

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

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

Sec. 3-1.2. Need.

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

and regulation that the amount of resources to be disregarded be increased to the maximum extent so permitted or required.

(b) Subject to federal approval, resources (for example, land, buildings, equipment, supplies, or tools), including farmland property and personal property used in the income-producing operations related to the farmland (for example, equipment and supplies, motor vehicles, or tools), necessary for self-support, up to \$6,000 of the person's equity in the income-producing property, provided that the property produces a net annual income of at least 6% of the excluded equity value of the property, are exempt. Equity value in excess of \$6,000 shall not be excluded. If the activity produces income that is less than 6% of the exempt equity due to reasons beyond the person's control (for example, the person's illness or crop failure) and there is a reasonable expectation that the property will again produce income equal to or greater than 6% of the equity value (for example, a medical prognosis that the person is expected to respond to treatment or that drought-resistant corn will be planted), the equity value in the property up to \$6,000 is exempt. If the person owns more than one piece of property and each produces income, each piece of property shall be looked at to determine whether the 6% rule is met, and then the amounts of the person's equity in all of those properties shall be totaled to determine whether the total equity is \$6,000 or less. The total equity value of all properties that

is exempt shall be limited to \$6,000.

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

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

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

(2) Funds in an irrevocable prepaid funeral or burial contract are exempt up to \$7,248 ~~\$5,874~~, except that any

portion of a contract that clearly represents the purchase of burial space, as that term is defined for purposes of the Supplemental Security Income program, is exempt regardless of value. This amount shall be adjusted annually for any increase in the Consumer Price Index. The amount exempted shall be limited to the price of the funeral goods and services to be provided upon death. The contract must provide a complete description of the funeral goods and services to be provided and the price thereof. Any amount in the contract not so specified shall be treated as a transfer of assets for less than fair market value.

(3) A prepaid, guaranteed-price funeral or burial contract, funded by an irrevocable assignment of a person's life insurance policy to a trust or a funeral home, is exempt. The amount exempted shall be limited to the amount of the insurance benefit designated for the cost of the funeral goods and services to be provided upon the person's death. The contract must provide a complete description of the funeral goods and services to be provided and the price thereof. Any amount in the contract not so specified shall be treated as a transfer of assets for less than fair market value. The trust must include a statement that, upon the death of the person, the State will receive all amounts remaining in the trust, including any remaining payable proceeds under the insurance policy

up to an amount equal to the total medical assistance paid on behalf of the person. The trust is responsible for ensuring that the provider of funeral services under the contract receives the proceeds of the policy when it provides the funeral goods and services specified under the contract. The irrevocable assignment of ownership of the insurance policy must be acknowledged by the insurance company.

(4) Existing life insurance policies are exempt if there has been an irrevocable assignment in compliance with Section 2b of the Illinois Funeral or Burial Funds Act. A person shall sign a contract with a funeral home, which is licensed under the Illinois Funeral or Burial Funds Act, that describes the cost of the funeral goods and services to be provided upon the person's death, up to \$7,248, except that any portion of a contract that clearly represents the purchase of burial space, as that term is defined for purposes of the Supplemental Security Income program, is exempt regardless of value. This amount shall be adjusted annually for any increase in the Consumer Price Index. The contract must provide a complete description of the goods and services and any cash advances to be provided and the price thereof. The person shall sign an irrevocable designation of beneficiary form declaring that any amounts payable from the policies not used for goods and services and any cash advances as set

forth in the contract shall be received by the State, up to an amount equal to the total medical assistance paid on behalf of the person; any funds remaining after payment to the State shall be paid to a secondary beneficiary (if any) listed on the policy, or to the estate of the purchaser if no secondary beneficiary is named on the policy in the event the proceeds exceed the prearranged costs of merchandise and services and any cash advances and the total medical assistance paid on behalf of the insured. More than one policy may be subject to this subsection if the total face value of the policies is necessary to pay the amount described in the contract with the funeral home; policies that are not necessary to pay the amount described in the contract are not exempt. The licensed funeral home to which the life insurance policy benefits have been irrevocably assigned shall retain copies for inspection by the Comptroller and shall report annually to the Comptroller the following: the name of the insured, the name of the insurance company and policy number, an itemized account of the amount of the contract for goods and services and any cash advances provided, and the current value of the policy of benefits designated with a record of all amounts paid back to the State or other beneficiary. The Department of Healthcare and Family Services shall adopt rules and forms to implement this Section.

(d) Notwithstanding any other provision of this Code to the contrary, an irrevocable trust containing the resources of a person who is determined to have a disability shall be considered exempt from consideration. A pooled trust must be established and managed by a non-profit association that pools funds but maintains a separate account for each beneficiary. The trust may be established by the person, a parent, grandparent, legal guardian, or court. It must be established for the sole benefit of the person and language contained in the trust shall stipulate that any amount remaining in the trust (up to the amount expended by the Department on medical assistance) that is not retained by the trust for reasonable administrative costs related to wrapping up the affairs of the subaccount shall be paid to the Department upon the death of the person. After a person reaches age 65, any funding by or on behalf of the person to the trust shall be treated as a transfer of assets for less than fair market value unless the person is a ward of a county public guardian or the State Guardian pursuant to Section 13-5 of the Probate Act of 1975 or Section 30 of the Guardianship and Advocacy Act and lives in the community, or the person is a ward of a county public guardian or the State Guardian pursuant to Section 13-5 of the Probate Act of 1975 or Section 30 of the Guardianship and Advocacy Act and a court has found that any expenditures from the trust will maintain or enhance the person's quality of life. If the trust contains proceeds from a personal injury

settlement, any Department charge must be satisfied in order for the transfer to the trust to be treated as a transfer for fair market value.

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

(f) Occasional or irregular gifts in cash, goods or services from persons who are not legally responsible relatives which are of nominal value or which do not have significant effect in meeting essential requirements shall be disregarded.

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

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

(i) The provisions under paragraph (4) of subsection (c) are subject to federal approval. The Department of Healthcare and Family Services shall apply for any necessary federal waivers or approvals to implement by January 1, 2023 the changes made to this Section by this amendatory Act of the 102nd General Assembly.

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

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