

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 Sections 1a and 2a and by adding Section
25 2b as follows:

1 (225 ILCS 45/1a) (from Ch. 111 1/2, par. 73.101a)

2 Sec. 1a. For the purposes of this Act, the following terms
3 shall have the meanings specified, unless the context clearly
4 requires another meaning:

5 "Beneficiary" means the person specified in the pre-need
6 contract upon whose death funeral services or merchandise
7 shall be provided or delivered.

8 "Burial spaces" has the meaning ascribed to that term in
9 20 CFR 416.1231.

10 "Licensee" means a seller of a pre-need contract who has
11 been licensed by the Comptroller under this Act.

12 "Outer burial container" means any container made of
13 concrete, steel, wood, fiberglass or similar material, used
14 solely at the interment site, and designed and used
15 exclusively to surround or enclose a separate casket and to
16 support the earth above such casket, commonly known as a
17 burial vault, grave box or grave liner, but not including a
18 lawn crypt as defined in the Illinois Pre-need Cemetery Sales
19 Act.

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

22 "Person" means any person, partnership, association,
23 corporation, or other entity.

24 "Pre-need contract" means any agreement or contract, or
25 any series or combination of agreements or contracts, whether

1 funded by trust deposits or life insurance policies or
2 annuities, which has for a purpose the furnishing or
3 performance of funeral services or the furnishing or delivery
4 of any personal property, merchandise, or services of any
5 nature in connection with the final disposition of a dead
6 human body. Nothing in this Act is intended to regulate the
7 content of a life insurance policy or a tax-deferred annuity.

8 "Provider" means a person who is obligated for furnishing
9 or performing funeral services or the furnishing or delivery
10 of any personal property, merchandise, or services of any
11 nature in connection with the final disposition of a dead
12 human body.

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

15 "Sales proceeds" means the entire amount paid to a seller,
16 exclusive of sales taxes paid by the seller, finance charges
17 paid by the purchaser, and credit life, accident or disability
18 insurance premiums, upon any agreement or contract, or series
19 or combination of agreements or contracts, for the purpose of
20 performing funeral services or furnishing personal property,
21 merchandise, or services of any nature in connection with the
22 final disposition of a dead human body, including, but not
23 limited to, the retail price paid for such services and
24 personal property and merchandise.

25 "Purchase price" means sales proceeds less finance charges
26 on retail installment contracts.

1 "Seller" means the person who sells or offers to sell the
2 pre-need contract to a purchaser, whether funded by a trust
3 agreement, life insurance policy, or tax-deferred annuity.

4 "Trustee" means a person authorized to hold funds under
5 this Act.

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

7 (225 ILCS 45/2a)

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

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

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

21 (c) Nothing shall prohibit the purchaser from irrevocably
22 assigning ownership of the policy or annuity used to fund a
23 guaranteed price pre-need contract to a person or trust or
24 from irrevocably assigning the benefits of the policy or
25 annuity to a funeral home for the purpose of obtaining

1 favorable consideration for Medicaid, Supplemental Security
2 Income, or another public assistance program, as permitted
3 under federal law. The seller or contract provider may be
4 named a nominal owner of the life insurance policy only for
5 such time as it takes to immediately transfer the policy into a
6 trust. Except for this purpose, neither the seller nor the
7 contract provider shall be named the owner or the beneficiary
8 of the policy or annuity.

9 (d) If a life insurance policy or annuity contract is used
10 to fund a pre-need contract, except for guaranteed price
11 contracts permitted in Section 4(a) of this Act, the pre-need
12 contract must be revocable, and any assignment provision in
13 the pre-need contract must contain the following disclosure in
14 12 point bold type:

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

23 (e) Sales proceeds shall not be used to purchase life
24 insurance policies or tax-deferred annuities unless the
25 company issuing the life insurance policies or tax-deferred
26 annuities is licensed with the Illinois Department of

1 Insurance, and the insurance producer or annuity seller is
2 licensed to do business in the State of Illinois.

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

4 (225 ILCS 45/2b new)

5 Sec. 2b. Irrevocable designation of beneficiary of
6 existing whole life insurance.

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

1 the Department of Human Services for any increase in the
2 Consumer Price Index. The guaranteed pre-need contract must
3 provide a complete description and cost of the funeral goods
4 and services including burial spaces. More than one policy may
5 be subject to this Section if the total face value of the
6 policies is necessary to pay the amount described in the
7 guaranteed pre-need contract with the provider. All policies
8 shall be listed on the form. The insured or any other person
9 who may be the owner of rights under an existing policy of
10 whole life insurance shall be given a copy of the executed
11 form. The licensee shall retain copies for inspection by the
12 Comptroller and shall report annually to the Comptroller the
13 following: the name of the insured, the insurance policy
14 number, the amount of the guaranteed pre-need contract, the
15 current value of the policy or benefits designated, and the
16 name of the insurance company issuing the policy.

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

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

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

3 (A) the amount of the guaranteed pre-need
4 contract; or

5 (B) the actual value of the funeral and burial or
6 cemetery services and merchandise provided;

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

10 (3) third, payment of proceeds to a secondary
11 beneficiary (if any) listed on the policy, or to the
12 estate of the decedent if no secondary beneficiary is
13 named on the policy in the event the proceeds exceed the
14 lesser of the prearranged costs or actual value of the
15 funeral and burial or cemetery merchandise and services
16 provided and the total medical assistance paid on behalf
17 of the insured.

18 (d) The provider shall receive and disburse these proceeds
19 notwithstanding any other prohibition in law against serving
20 as a trustee.

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

1 (i) be bound to the terms of the irrevocable designation of
2 beneficiary; (ii) notify the insurance company or companies of
3 the assignment; (iii) notify the Department of Healthcare and
4 Family Services of the change in provider; and (iv) retain a
5 copy of the assignment for inspection by the Comptroller.

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

8 (305 ILCS 5/3-1.2) (from Ch. 23, par. 3-1.2)

9 Sec. 3-1.2. Need.

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

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

3 (b) Subject to federal approval, resources (for example,
4 land, buildings, equipment, supplies, or tools), including
5 farmland property and personal property used in the
6 income-producing operations related to the farmland (for
7 example, equipment and supplies, motor vehicles, or tools),
8 necessary for self-support, up to \$6,000 of the person's
9 equity in the income-producing property, provided that the
10 property produces a net annual income of at least 6% of the
11 excluded equity value of the property, are exempt. Equity
12 value in excess of \$6,000 shall not be excluded. If the
13 activity produces income that is less than 6% of the exempt
14 equity due to reasons beyond the person's control (for
15 example, the person's illness or crop failure) and there is a
16 reasonable expectation that the property will again produce
17 income equal to or greater than 6% of the equity value (for
18 example, a medical prognosis that the person is expected to
19 respond to treatment or that drought-resistant corn will be
20 planted), the equity value in the property up to \$6,000 is
21 exempt. If the person owns more than one piece of property and
22 each produces income, each piece of property shall be looked
23 at to determine whether the 6% rule is met, and then the
24 amounts of the person's equity in all of those properties
25 shall be totaled to determine whether the total equity is
26 \$6,000 or less. The total equity value of all properties that

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

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

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

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

25 (2) Funds in an irrevocable prepaid funeral or burial
26 contract are exempt up to \$6,774 ~~\$5,874~~, except that any

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

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

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

9 (4) Existing life insurance policies are exempt if
10 there has been an irrevocable declaration of proceeds at
11 the death of the insured in compliance with this
12 subsection. A person shall sign a contract with a funeral
13 home that describes the cost of the funeral goods and
14 services to be provided upon the person's death, up to
15 \$6,774, in addition to the purchase of burial spaces. This
16 amount shall be adjusted annually for any increase in the
17 Consumer Price Index. The contract must provide a complete
18 description of the funeral goods and services and burial
19 spaces to be provided and the price thereof. The person
20 shall sign an irrevocable designation of beneficiary form
21 declaring that any amounts payable from the policies not
22 used for funeral goods and services or burial spaces as
23 set forth in the contract shall be received by the State,
24 up to an amount equal to the total medical assistance paid
25 on behalf of the person; any funds remaining after payment
26 to the State shall be paid to a secondary beneficiary (if

1 any) listed on the policy, or to the estate of the
2 purchaser if no secondary beneficiary is named on the
3 policy in the event the proceeds exceed the prearranged
4 costs of the funeral home or cemetery merchandise and
5 services and the total medical assistance paid on behalf
6 of the insured. More than one policy may be subject to this
7 subsection if the total face value of the policies is
8 necessary to pay the amount described in the contract with
9 the funeral home; policies that are not necessary to pay
10 the amount described in the contract are not exempt. The
11 Department of Healthcare and Family Services shall adopt
12 rules and forms to implement this Section.

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

1 the person. After a person reaches age 65, any funding by or on
2 behalf of the person to the trust shall be treated as a
3 transfer of assets for less than fair market value unless the
4 person is a ward of a county public guardian or the State
5 Guardian pursuant to Section 13-5 of the Probate Act of 1975 or
6 Section 30 of the Guardianship and Advocacy Act and lives in
7 the community, or the person is a ward of a county public
8 guardian or the State Guardian pursuant to Section 13-5 of the
9 Probate Act of 1975 or Section 30 of the Guardianship and
10 Advocacy Act and a court has found that any expenditures from
11 the trust will maintain or enhance the person's quality of
12 life. If the trust contains proceeds from a personal injury
13 settlement, any Department charge must be satisfied in order
14 for the transfer to the trust to be treated as a transfer for
15 fair market value.

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

1 longer be considered homestead property.

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

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

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

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