



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB3353

by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

225 ILCS 45/1a

from Ch. 111 1/2, par. 73.101a

225 ILCS 45/1a-1

225 ILCS 45/1c new

Amends the Illinois Funeral or Burial Funds Act. Defines "agent". Requires that pre-need contracts include the telephone number for the principal office of the seller and the parent company of the seller, if any. Requires that a pre-need contract is ratified within 10 business days by a licensed funeral director who is employed by the licensed funeral home firm responsible for providing the funeral goods and services. If the pre-need contract is funded by a trust, requires the seller or seller's agent to deposit the funds into the trust within 10 business days after execution of the contract. Requires the contract to state that the seller is responsible and liable for the competency and veracity of the agent. Provides that an agent acting on behalf of a seller must be properly authorized to do so. Requires an agent to provide to the purchaser a written statement containing: (i) the capacity of the agent to act and whether the agent is acting for the seller as an agent; and (ii) notice that the seller is the only person or entity authorized to provide the services or merchandise called for by the contract. Provides that a seller may not be an affiliate, a parent company, or subsidiary organization of the trustee acting as a fiduciary of a trust to hold consideration paid for services or merchandise subject to a pre-need contract by the seller or seller's agent and a purchaser. Effective immediately.

LRB101 08226 JRG 53292 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 Sections 1a and 1a-1 and by adding Section  
6 1c as 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 "Agent" means a person authorized by a seller to offer,  
12 sell, or solicit the sale of a pre-need sales contract on  
13 behalf of the seller and includes an employee or independent  
14 contractor of the seller.

15 "Beneficiary" means the person specified in the pre-need  
16 contract upon whose death funeral services or merchandise shall  
17 be provided or delivered.

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

20 "Outer burial container" means any container made of  
21 concrete, steel, wood, fiberglass or similar material, used  
22 solely at the interment site, and designed and used exclusively  
23 to surround or enclose a separate casket and to support the

1 earth above such casket, commonly known as a burial vault,  
2 grave box or grave liner, but not including a lawn crypt as  
3 defined in the Illinois Pre-need Cemetery Sales Act.

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

6 "Person" means any person, partnership, association,  
7 corporation, or other entity.

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

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

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

23 "Sales proceeds" means the entire amount paid to a seller,  
24 exclusive of sales taxes paid by the seller, finance charges  
25 paid by the purchaser, and credit life, accident or disability  
26 insurance premiums, upon any agreement or contract, or series

1 or combination of agreements or contracts, for the purpose of  
2 performing funeral services or furnishing personal property,  
3 merchandise, or services of any nature in connection with the  
4 final disposition of a dead human body, including, but not  
5 limited to, the retail price paid for such services and  
6 personal property and merchandise.

7 "Purchase price" means sales proceeds less finance charges  
8 on retail installment contracts.

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

12 "Trustee" means a person authorized to hold funds under  
13 this Act.

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

15 (225 ILCS 45/1a-1)

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

17 (a) It shall be unlawful for any seller doing business  
18 within this State to accept sales proceeds from a purchaser,  
19 either directly or indirectly by any means, unless the seller  
20 or seller's agent enters into a pre-need contract with the  
21 purchaser which meets the following requirements:

22 (1) It states the name, ~~and~~ address, and telephone  
23 number of the principal office of the seller and the parent  
24 company of the seller, if any.

25 (1.3) The contract is ratified within 10 business days

1 by a licensed funeral director who is employed, at the time  
2 the contract is drafted, by the licensed funeral home firm  
3 responsible for providing the funeral goods and services.

4 (1.5) If funded by a trust, it clearly identifies the  
5 trustee's name and address and the primary state or federal  
6 regulator of the trustee as a corporate fiduciary and the  
7 seller or seller's agent deposits the funds into the trust  
8 or trusts within 10 business days after execution of the  
9 contract.

10 (1.7) If funded by life insurance, it clearly  
11 identifies the life insurance provider and the primary  
12 regulator of the life insurance provider.

13 (2) It clearly identifies the provider's name and  
14 address, the purchaser, and the beneficiary, if other than  
15 the purchaser.

16 (2.5) If the provider has branch locations, the  
17 contract gives the purchaser the opportunity to identify  
18 the branch at which the funeral will be provided.

19 (3) It contains a complete description of the funeral  
20 merchandise and services to be provided and the price of  
21 the merchandise and services, and it clearly discloses  
22 whether the price of the merchandise and services is  
23 guaranteed or not guaranteed as to price.

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

26 THIS CONTRACT GUARANTEES THE BENEFICIARY THE

1 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO  
2 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED  
3 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE INCURRED  
4 FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT LIMITED TO,  
5 CASH ADVANCES, SHIPPING OF REMAINS FROM A DISTANT  
6 PLACE, OR DESIGNATED HONORARIA ORDERED OR DIRECTED BY  
7 SURVIVORS.

8 (B) Except as provided in subparagraph (C) of this  
9 paragraph (3), each non-guaranteed price contract  
10 shall contain the following statement in 12 point bold  
11 type:

12 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE  
13 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR  
14 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A  
15 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE  
16 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES  
17 MAY BE REQUIRED.

18 (C) If a non-guaranteed price contract may  
19 subsequently become guaranteed, the contract shall  
20 clearly disclose the nature of the guarantee and the  
21 time, occurrence, or event upon which the contract  
22 shall become a guaranteed price contract.

23 (4) It provides that if the particular supplies and  
24 services specified in the pre-need contract are  
25 unavailable at the time of delivery, the provider shall be  
26 required to furnish supplies and services similar in style

1 and at least equal in quality of material and workmanship.

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

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

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

10 (B) The nature of the relationship among the person  
11 funding the pre-need contract, the provider, and the  
12 seller; and

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

26 (D) The method of changing the provider.

1           (7) The contract states that the seller is responsible  
2           and liable for the veracity and competency of the agent.

3           (8) An agent acting on behalf of a seller must be properly  
4           authorized to act as an agent for the seller as required under  
5           this Act.

6           (9) An agent must provide to the purchaser a written  
7           statement containing:

8           (A) The capacity of the agent to act and whether the  
9           agent is acting for the seller as an agent; and

10           (B) notice that the seller is the only person or entity  
11           authorized to provide the services or merchandise called  
12           for by the contract.

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

9 (225 ILCS 45/1c new)

10 Sec. 1c. Prohibited relationships between sellers and  
11 trustees. A seller may not be an affiliate, a parent company,  
12 or a subsidiary organization of the trustee acting as a  
13 fiduciary of a trust to hold consideration paid for services or  
14 merchandise subject to a contract entered into under this Act  
15 by the seller or seller's agent and a purchaser.

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