

1 AN ACT in relation to cemeteries.

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

4 Section 5. The Grave and Cemetery Restoration Act is  
5 amended by changing Section 1 as follows:

6 (55 ILCS 70/1) (from Ch. 21, par. 61)

7 Sec. 1. Care by county.

8 (a) The county board of any county may appropriate funds  
9 from the county treasury to be used for the purpose of  
10 putting any old, neglected graves and cemeteries in the  
11 county in a cleaner and more respectable condition.

12 (b) A county that has within its territory an abandoned  
13 cemetery may enter the cemetery grounds and cause the grounds  
14 to be cleared and made orderly. Provided, in no event shall a  
15 county enter an abandoned cemetery under this subsection if  
16 the owner of the property or the legally responsible cemetery  
17 authority provides written notification to the county, prior  
18 to the county's entry (1) demonstrating the ownership or  
19 authority to control or manage the cemetery and (2) declining  
20 the county authorization to enter the property. In making a  
21 cemetery orderly under this Section, the county may take  
22 necessary measures to correct dangerous conditions that exist  
23 in regard to markers, memorials, or other cemetery artifacts  
24 but may not permanently remove those items from their  
25 location on the cemetery grounds. If an abandoned cemetery  
26 is dedicated as an Illinois nature preserve under the  
27 Illinois Natural Areas Preservation Act, any actions to cause  
28 the grounds to be cleared and kept orderly shall be  
29 consistent with the rules and master plan governing the  
30 dedicated nature preserve.

31 (c) For the purposes of this Section:

1       "Abandoned cemetery" means an area of land containing  
 2       more than 6 places of interment for which, after diligent  
 3       search, no owner of the land or currently functioning  
 4       cemetery authority objects to entry sought pursuant to this  
 5       Section, and (1) at which no interments have taken place in  
 6       at least 3 years; or (2) for which there has been inadequate  
 7       maintenance for at least 6 months.

8       "Diligent search" includes, but is not limited to,  
 9       publication of a notice in a newspaper of local circulation  
 10       not more than 45 but at least 30 days prior to a county's  
 11       entry and cleanup of cemetery grounds. The notice shall  
 12       provide (1) notice of the county's intended entry and cleanup  
 13       of the cemetery; (2) the name, if known, and geographic  
 14       location of the cemetery; (3) the right of the cemetery  
 15       authority or owner of the property to deny entry to the  
 16       county upon written notice to the county; and (4) the date or  
 17       dates of the intended cleanup.

18       "Inadequate maintenance" includes, but is not limited to,  
 19       the failure to cut the lawn throughout a cemetery to prevent  
 20       an overgrowth of grass and weeds; the failure to trim shrubs  
 21       to prevent excessive overgrowth; the failure to trim trees so  
 22       as to remove dead limbs; the failure to keep in repair the  
 23       drains, water lines, roads, buildings, fences, and other  
 24       structures of the cemetery premises; or the failure to keep  
 25       the cemetery premises free of trash and debris.

26       (Source: P.A. 86-696.)

27       Section 10. The Township Code is amended by changing  
 28       Section 130-5 as follows:

29       (60 ILCS 1/130-5)

30       Sec. 130-5. Cemeteries; permitted activities.

31       (a) A township may establish and maintain cemeteries  
 32       within and without its territory, may acquire lands for

1 cemeteries by condemnation or otherwise, may lay out lots of  
 2 convenient size for families, and may sell lots for a family  
 3 burying ground or to individuals for burial purposes.  
 4 Associations duly incorporated under the laws of this State  
 5 for cemetery purposes shall have the same power and authority  
 6 to purchase lands and sell lots for burial purposes as are  
 7 conferred upon townships under this Article.

8 (b) A township that has within its territory an  
 9 abandoned cemetery may enter the cemetery grounds and cause  
 10 the grounds to be cleared and made orderly. Provided, in no  
 11 event shall a township enter an abandoned cemetery under this  
 12 subsection if the owner of the property or the legally  
 13 responsible cemetery authority provides written notification  
 14 to the township, prior to the township's entry (1)  
 15 demonstrating the ownership or authority to control or manage  
 16 the cemetery and (2) declining the township authorization to  
 17 enter the property. In making a cemetery orderly under this  
 18 Section, the township may take necessary measures to correct  
 19 dangerous conditions that exist in regard to markers,  
 20 memorials, or other cemetery artifacts but may not  
 21 permanently remove those items from their location on the  
 22 cemetery grounds. If an abandoned cemetery is dedicated as  
 23 an Illinois nature preserve under the Illinois Natural Areas  
 24 Preservation Act, any actions to cause the grounds to be  
 25 cleared and kept orderly shall be consistent with the rules  
 26 and master plan governing the dedicated nature preserve.

27 (c) In this Section:

28 "Abandoned cemetery" means an area of land containing  
 29 more than 6 places of interment for which, after diligent  
 30 search, no owner of the land or currently functioning  
 31 cemetery authority objects to entry sought pursuant to this  
 32 Section, and (1) at which no interments have taken place in  
 33 at least 3 years; or (2) for which there has been inadequate  
 34 maintenance for at least 6 months.

1       "Diligent search" includes, but is not limited to,  
 2       publication of a notice in a newspaper of local circulation  
 3       not more than 45 but at least 30 days prior to a township's  
 4       entry and cleanup of cemetery grounds. The notice shall  
 5       provide (1) notice of the township's intended entry and  
 6       cleanup of the cemetery; (2) the name, if known, and  
 7       geographic location of the cemetery; (3) the right of the  
 8       cemetery authority or owner of the property to deny entry to  
 9       the township upon written notice to the township; and (4) the  
 10       date or dates of the intended cleanup.

11       "Inadequate maintenance" includes, but is not limited to,  
 12       the failure to cut the lawn throughout a cemetery to prevent  
 13       an overgrowth of grass and weeds; the failure to trim shrubs  
 14       to prevent excessive overgrowth; the failure to trim trees so  
 15       as to remove dead limbs; the failure to keep in repair the  
 16       drains, water lines, roads, buildings, fences, and other  
 17       structures of the cemetery premises; or the failure to keep  
 18       the cemetery premises free of trash and debris.

19       (Source: Laws 1963, p. 824; P.A. 88-62.)

20       Section 15. The Illinois Municipal Code is amended by  
 21       changing Section 11-49-1 as follows:

22       (65 ILCS 5/11-49-1) (from Ch. 24, par. 11-49-1)

23       Sec. 11-49-1. Cemeteries; permitted activities.

24       (a) The corporate authorities of each municipality may  
 25       establish and regulate cemeteries within or without the  
 26       municipal limits; may acquire lands therefor, by purchase or  
 27       otherwise; may cause cemeteries to be removed; and may  
 28       prohibit their establishment within one mile of the municipal  
 29       limits.

30       (b) The corporate authorities also may enter into  
 31       contracts to purchase existing cemeteries, or lands for  
 32       cemetery purposes, on deferred installments to be paid solely

1 from the proceeds of sale of cemetery lots. Every such  
2 contract shall empower the purchasing municipality, in its  
3 own name, to execute and deliver deeds to purchasers of  
4 cemetery lots for burial purposes.

5 (c) The corporate authorities of each municipality that  
6 has within its territory an abandoned cemetery may enter the  
7 cemetery grounds and cause the grounds to be cleared and made  
8 orderly. Provided, in no event shall the corporate  
9 authorities of a municipality enter an abandoned cemetery  
10 under this subsection if the owner of the property or the  
11 legally responsible cemetery authority provides written  
12 notification to the corporate authorities, prior to the  
13 corporate authorities' entry (1) demonstrating the ownership  
14 or authority to control or manage the cemetery and (2)  
15 declining the corporate authority authorization to enter the  
16 property. In making a cemetery orderly under this Section,  
17 the corporate authorities of a municipality may take  
18 necessary measures to correct dangerous conditions that exist  
19 in regard to markers, memorials, or other cemetery artifacts  
20 but may not permanently remove those items from their  
21 location on the cemetery grounds. If an abandoned cemetery  
22 is dedicated as an Illinois nature preserve under the  
23 Illinois Natural Areas Preservation Act, any actions to cause  
24 the grounds to be cleared and kept orderly shall be  
25 consistent with the rules and master plan governing the  
26 dedicated nature preserve.

27 (d) In this Section:

28 "Abandoned cemetery" means an area of land containing  
29 more than 6 places of interment for which, after diligent  
30 search, no owner of the land or currently functioning  
31 cemetery authority objects to entry sought pursuant to this  
32 Section, and (1) at which no interments have taken place in  
33 at least 3 years; or (2) for which there has been inadequate  
34 maintenance for at least 6 months.

1       "Diligent search" includes, but is not limited to,  
 2       publication of a notice in a newspaper of local circulation  
 3       not more than 45 but at least 30 days prior to entry and  
 4       cleanup of cemetery grounds by the corporate authorities of a  
 5       municipality. The notice shall provide (1) notice of the  
 6       corporate authorities' intended entry and cleanup of the  
 7       cemetery; (2) the name, if known, and geographic location of  
 8       the cemetery; (3) the right of the cemetery authority or  
 9       owner of the property to deny entry to the corporate  
 10       authorities upon written notice to those authorities; and (4)  
 11       the date or dates of the intended cleanup.

12       "Inadequate maintenance" includes, but is not limited to,  
 13       the failure to cut the lawn throughout a cemetery to prevent  
 14       an overgrowth of grass and weeds; the failure to trim shrubs  
 15       to prevent excessive overgrowth; the failure to trim trees so  
 16       as to remove dead limbs; the failure to keep in repair the  
 17       drains, water lines, roads, buildings, fences, and other  
 18       structures of the cemetery premises; or the failure to keep  
 19       the cemetery premises free of trash and debris.

20       (Source: Laws 1961, p. 576.)

21       Section 20. The Illinois Funeral or Burial Funds Act is  
 22       amended by changing Sections 1a, 1a-1, 2, 2a, 3, 3a, 3e, 3f,  
 23       4, 7.2, and 8 and by adding Sections 3a-5 and 8.1 as follows:

24       (225 ILCS 45/1a) (from Ch. 111 1/2, par. 73.101a)

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

28       "Beneficiary" means the person specified in the pre-need  
 29       contract upon whose death funeral services or merchandise  
 30       shall be provided or delivered.

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

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

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

11 "Person" means any person, partnership, association,  
12 corporation, or other entity.

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

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

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

29 "Sales proceeds" means the entire amount paid to a  
30 seller, exclusive of sales taxes paid by the seller, finance  
31 charges paid by the purchaser, and credit life, accident or  
32 disability insurance premiums, upon any agreement or  
33 contract, or series or combination of agreements or  
34 contracts, for the purpose of performing funeral services or

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

5 "Purchase price" means the sales proceeds less finance  
6 charges on retail installment contracts.

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

10 "Trustee" means a person authorized to hold funds under  
11 this Act.

12 (Source: P.A. 88-477.)

13 (225 ILCS 45/1a-1)

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

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

20 (1) It states the name and address of the principal  
21 office of the seller and the parent company of the  
22 seller, if any provider, or clearly discloses that the  
23 provider will be selected by the purchaser or the  
24 purchaser's survivor or legal representative at a later  
25 date, except that no contract shall contain any provision  
26 restricting the right of the purchaser during  
27 his or her lifetime in making his or her own selection of  
28 a provider.

29 (2) It clearly identifies the provider's seller's  
30 name and address, the purchaser, and the beneficiary, if  
31 other than the purchaser, and the provider, if different  
32 than the seller or discloses that the provider will be  
33 selected at a later date.



1           (2.5) If the provider has branch locations, the  
 2           contract gives the purchaser the opportunity to identify  
 3           the branch at which the funeral will be provided.

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

9           (A) Each guaranteed price contract shall  
 10          contain the following statement in 12 point bold  
 11          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  
 16                   INCURRED FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT  
 17                   LIMITED TO, CASH ADVANCES, SHIPPING OF REMAINS FROM  
 18                   A DISTANT PLACE, OR DESIGNATED HONORARIA ORDERED OR  
 19                   DIRECTED BY SURVIVORS.

20          (B) Except as provided in subparagraph (C) of  
 21          this paragraph (3), each non-guaranteed price  
 22          contract shall contain the following statement in 12  
 23          point bold 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  
 27                   ONLY A DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE  
 28                   OF THE GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL  
 29                   CHARGES MAY BE REQUIRED.

30          (C) If a non-guaranteed price contract may  
 31          subsequently become guaranteed, the contract shall  
 32          clearly disclose the nature of the guarantee and the  
 33          time, occurrence, or event upon which the contract  
 34          shall become a guaranteed price contract.

1           (4) It provides that if the particular supplies and  
 2 services specified in the pre-need contract are  
 3 unavailable at the time of delivery, the provider shall  
 4 be required to furnish supplies and services similar in  
 5 style and at least equal in quality of material and  
 6 workmanship.

7           (5) It discloses any penalties or restrictions,  
 8 including but not limited to geographic restrictions or  
 9 the inability of the provider, ~~if selected,~~ to perform,  
 10 on the delivery of merchandise, services, or pre-need  
 11 contract guarantees.

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

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

16           (B) The nature of the relationship among the  
 17 person entity funding the pre-need contract, the  
 18 provider, ~~if selected,~~ and the seller; and

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

33           (D) The method of changing ~~or selecting~~ the  
 34 designation of the provider.

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

4 (c) No pre-need contract shall be sold in this State  
 5 unless there is a provider for the services and personal  
 6 property being sold, ~~or unless disclosure has been made by~~  
 7 ~~the seller as provided in subdivision (a)(1).~~ If the seller  
 8 is not a provider ~~and a provider has been selected,~~ then the  
 9 seller must have a binding agreement with a provider, and the  
 10 identity of the provider and the nature of the agreement  
 11 between the seller and the provider shall be disclosed in the  
 12 pre-need contract at the time of the sale and before the  
 13 receipt of any sales proceeds. ~~Any subsequent change made in~~  
 14 ~~the identity of the provider shall be approved in writing by~~  
 15 ~~the purchaser and beneficiary within 30 days after it occurs.~~  
 16 The failure to disclose the identity of the provider, the  
 17 nature of the agreement between the seller and the provider,  
 18 or any changes thereto to the purchaser and beneficiary, or  
 19 the failure to make the disclosures required in subdivision  
 20 (a)(1), constitutes an intentional violation of this Act.

21 (d) All pre-need contracts must be in writing in at  
 22 least 11 point type, numbered, and executed in duplicate and  
 23 ~~no pre-need contract form shall be used without prior filing~~  
 24 ~~with the Comptroller.~~ A signed copy of the pre-need contract  
 25 must be provided to the purchaser at the time of entry into  
 26 the pre-need contract. ~~The Comptroller shall review all~~  
 27 ~~pre-need contract forms and shall prohibit the use of~~  
 28 ~~contract forms which do not meet the requirements of this Act~~  
 29 ~~upon written notification to the seller.~~ ~~Any use or~~  
 30 ~~attempted use of any oral pre-need contract or any written~~  
 31 ~~pre-need contract in a form not filed with the Comptroller or~~  
 32 ~~in a form which does not meet the requirements of this Act~~  
 33 ~~shall be deemed a violation of this Act.~~ ~~Life insurance~~  
 34 ~~policies, tax-deferred annuities, endorsements, riders, or~~

1 ~~applications-for-life-insurance-or-tax-deferred-annuities-are~~  
 2 ~~not--subject-to-filing-with-the-Comptroller.~~ The Comptroller  
 3 may by rule develop a model pre-need contract form which  
 4 meets the requirements of this Act.

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

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

22 (g) No pre-need contract shall be sold in this State  
 23 unless it is accompanied by a funding mechanism permitted  
 24 under this Act, and unless the seller is licensed by the  
 25 Comptroller as provided in Section 3 of this Act. Nothing in  
 26 this Act is intended to relieve sellers of pre-need contracts  
 27 from being licensed under any other Act required for their  
 28 profession or business, and being subject to the rules  
 29 promulgated to regulate their profession or business,  
 30 including rules on solicitation and advertisement.

31 (Source: P.A. 90-47, eff. 1-1-98.)

32 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

33 Sec. 2. (a) If a purchaser selects a trust arrangement

1 to fund the pre-need contract, all trust deposits as  
2 determined by Section 1b shall be made within 30 days of  
3 receipt.

4 (b) A trust established under this Act must be  
5 maintained:

6 (1) in a trust account established in a bank,  
7 savings and loan association, savings bank, or credit  
8 union authorized to do business in Illinois in which  
9 accounts are insured by an agency of the federal  
10 government; or

11 (2) in a trust company authorized to do business in  
12 Illinois.

13 (c) Trust agreements and amendments to the trust  
14 agreements used to fund a pre-need contract shall be filed  
15 with the Comptroller.

16 (d) ~~(Blank). Trust agreements shall follow the format of~~  
17 ~~the standard Funeral Trust Agreements approved by the~~  
18 ~~Comptroller for guaranteed or non-guaranteed price funeral~~  
19 ~~plans.~~

20 (e) A seller or provider shall furnish to the trustee  
21 and depositary the name of each payor and the amount of  
22 payment on each such account for which deposit is being so  
23 made. Nothing shall prevent the trustee or a seller or  
24 provider acting as a trustee in accordance with this Act from  
25 commingling the deposits in any such trust fund for purposes  
26 of its management and the investment of its funds as provided  
27 in the Common Trust Fund Act. In addition, multiple trust  
28 funds maintained under this Act may be commingled or  
29 commingled with other funeral or burial related trust funds  
30 if all record keeping requirements imposed by law are met.

31 (f) Trust funds may be maintained in a financial  
32 institution described in subsection (b) which is located in a  
33 state adjoining this State where: (1) the financial  
34 institution is located within 50 miles of the border of this

1 State, (2) its accounts are federally insured, and (3) it has  
2 registered with the Illinois Secretary of State for purposes  
3 of service of process.

4 (g) Upon notice to the Comptroller, the seller may  
5 change the trustee of the fund.

6 (Source: P.A. 88-477.)

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  
12 shall be mailed within 30 days of signing the pre-need  
13 contract.

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

22 (c) Nothing shall prohibit the purchaser from  
23 irrevocably assigning ownership of the policy or annuity used  
24 to fund a guaranteed price pre-need contract to a person or  
25 trust for the purpose of obtaining favorable consideration  
26 for Medicaid, Supplemental Security Income, or another public  
27 assistance program, as permitted under federal law. The  
28 seller or contract provider may be named a nominal owner of  
29 the life insurance policy only for such time as it takes to  
30 immediately transfer the policy into a trust. Except for  
31 this purpose, neither the seller nor the contract provider  
32 shall be named the owner or the beneficiary of the policy or  
33 annuity. ~~7-except-that-neither-the-seller--nor--the--contract~~

1 ~~provider shall be named the owner of the policy or annuity.~~

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

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

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

22 (Source: P.A. 88-477.)

23 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

24 Sec. 3. Licensing.

25 (a) No person, firm, partnership, association or  
26 corporation may act as seller without first securing from the  
27 State Comptroller a license to so act. Application for such  
28 license shall be in writing, signed by the applicant and duly  
29 verified on forms furnished by the Comptroller. Each  
30 application shall contain at least the following:

- 31 (1) The full name and address (both residence and  
32 place of business) of the applicant, and every member,  
33 officer and director thereof if the applicant is a firm,

1 partnership, association, or corporation, and of every  
2 shareholder holding more than 10% of the corporate stock  
3 if the applicant is a corporation. Any license issued  
4 pursuant to the application shall be valid only at the  
5 address stated in the application for such applicant or  
6 at such new address as may be approved by the  
7 Comptroller;

8 (2) A statement of the applicant's assets and  
9 liabilities approximate net worth;

10 (3) The name and address of the applicant's  
11 principal place of business at which the books, accounts,  
12 and records shall be available for examination by the  
13 Comptroller as required by this Act;

14 (4) The names and addresses of the applicant's  
15 branch locations at which pre-need sales shall be  
16 conducted and which shall operate under the same license  
17 number as the applicant's principal place of business;

18 (5) For each individual listed under item (1) above,  
19 a detailed statement of the individual's business  
20 experience for the 10 years immediately preceding the  
21 application; any present or prior connection between the  
22 individual and any other person engaged in pre-need  
23 sales; any felony or misdemeanor convictions for which  
24 fraud was an essential element; any charges or complaints  
25 lodged against the individual for which fraud was an  
26 essential element and which resulted in civil or criminal  
27 litigation; any failure of the individual to satisfy an  
28 enforceable judgment entered against him based upon  
29 fraud; and any other information requested by the  
30 Comptroller relating to past business practices of the  
31 individual. Since the information required by this item  
32 (5) may be confidential or contain proprietary  
33 information, this information shall not be available to  
34 other licensees or the general public and shall be used



1 only for the lawful purposes of the Comptroller in  
2 enforcing this Act;

3 (6) The name of the trustee and, if applicable, the  
4 names of the advisors to the trustee, including a copy of  
5 the proposed trust agreement under which the trust funds  
6 are to be held as required by this Act; and

7 (7) Such other information as the Comptroller may  
8 reasonably require in order to determine the  
9 qualification of the applicant to be licensed under this  
10 Act. and-(3)

11 (b) Applications for license shall be accompanied by a  
12 fidelity bond executed by the applicant and a surety company  
13 authorized to do business in this State or an irrevocable,  
14 unconditional letter of credit issued by a bank, credit  
15 union, or trust company authorized to do business in the  
16 State of Illinois, as approved by the State Comptroller, in  
17 such amount not exceeding \$10,000 as the Comptroller may  
18 require. Individual--salespersons--employed--by--a--licensee  
19 shall--not--be--required--to--obtain--licenses--in--their--individual  
20 capacities.--Upon--receipt--of--such--application--and--bond--or  
21 letter--of--credit--the--Comptroller--shall--issue--a--license--unless  
22 he--or--she--shall--determine--that--the--applicant--has--made--false  
23 statements--or--representations--in--such--application,--or--is  
24 insolvent,--or--has--conducted--or--is--about--to--conduct--his  
25 business--in--a--fraudulent--manner,--or--is--not--duly--authorized--to  
26 transact--business--in--this--State.--Such--license--shall--be--kept  
27 conspicuously--posted--in--the--place--of--business--of--the  
28 licensee. If, after notice and an opportunity to be heard, it  
29 has been determined that a licensee has violated this Act  
30 within the past 5 calendar years, or if a licensee does not  
31 retain a corporate fiduciary, as defined in the Corporate  
32 Fiduciary Act, to manage the funds in trust pursuant to this  
33 Act, the Comptroller may require an additional bond or letter  
34 of credit from the licensee from time to time in amounts

1 equal to one-tenth of such trust funds, which bond or letter  
2 of credit shall run to the Comptroller for the use and  
3 benefit of the beneficiaries of such trust funds.

4 The licensee shall keep accurate accounts, books and  
5 records in this State, at the principal place of business  
6 identified in the licensee's license application or as  
7 otherwise approved by the Comptroller in writing, of all  
8 transactions, copies of all pre-need contracts, trust  
9 agreements, and other agreements, dates and amounts of  
10 payments made and accepted thereon, the names and addresses  
11 of the contracting parties, the persons for whose benefit  
12 such funds are accepted, and the names of the depositaries of  
13 such funds. Each licensee shall maintain the documentation  
14 for a period of 3 years after the licensee has fulfilled his  
15 obligations under the pre-need contract. Additionally, for a  
16 period not to exceed 6 months after the performance of all  
17 terms in a pre-need sales contract, the licensee shall  
18 maintain copies of the contract at the licensee branch  
19 location where the contract was entered or at some other  
20 location agreed to by the Comptroller in writing. If an  
21 insurance policy or tax-deferred annuity is used to fund the  
22 pre-need contract, the licensee under this Act shall keep and  
23 maintain accurate accounts, books, and records in this State,  
24 at the principal place of business identified in the  
25 licensee's application or as otherwise approved by the  
26 Comptroller in writing, of all insurance policies and  
27 tax-deferred annuities used to fund the pre-need contract,  
28 the name and address of insured, annuitant, and initial  
29 beneficiary, and the name and address of the insurance  
30 company issuing the policy or annuity. If a life insurance  
31 policy or tax-deferred annuity is used to fund a pre-need  
32 contract, the licensee shall notify the insurance company of  
33 the name of each pre-need contract purchaser and the amount  
34 of each payment when the pre-need contract, insurance policy

1 or annuity is purchased.

2 The licensee shall make reports to the Comptroller  
3 annually or at such other time as the Comptroller may  
4 require, on forms furnished by the Comptroller. The licensee  
5 shall file the annual report with the Comptroller within 75  
6 days after the end of the licensee's fiscal year. The  
7 Comptroller shall for good cause shown grant an extension for  
8 the filing of the annual report upon the written request of  
9 the licensee. Such extension shall not exceed 60 days. If a  
10 licensee fails to submit an annual report to the Comptroller  
11 within the time specified in this Section, the Comptroller  
12 shall impose upon the licensee a penalty of \$5 for each and  
13 every day the licensee remains delinquent in submitting the  
14 annual report. The Comptroller may abate all or part of the  
15 \$5 daily penalty for good cause shown. Every application  
16 shall be accompanied by a check or money order in the amount  
17 of \$25 and every report shall be accompanied by a check or  
18 money order in the amount of \$10 payable to: Comptroller,  
19 State of Illinois.

20 The licensee shall make all required books and records  
21 pertaining to trust funds, insurance policies, or  
22 tax-deferred annuities available to the Comptroller for  
23 examination. The Comptroller, or a person designated by the  
24 Comptroller who is trained to perform such examinations, may  
25 at any time investigate the books, records and accounts of  
26 the licensee with respect to trust funds, insurance policies,  
27 or tax-deferred annuities and for that purpose may require  
28 the attendance of and examine under oath all persons whose  
29 testimony he may require. The licensee shall pay a fee for  
30 such examination in accordance with a schedule established by  
31 the Comptroller. The fee shall not exceed the cost of such  
32 examination. For pre-need contracts funded by trust  
33 arrangements, the cost of an initial examination shall be  
34 borne by the licensee if it has \$10,000 or more in trust

1 funds, otherwise, by the Comptroller. The charge made by the  
 2 Comptroller for an examination shall be based upon the total  
 3 amount of trust funds held by the licensee at the end of the  
 4 calendar or fiscal year for which the report is required by  
 5 this Act and shall be in accordance with the following  
 6 schedule:

- 7 Less than \$10,000.....no charge;
- 8 \$10,000 or more but less than \$50,000.....\$10;
- 9 \$50,000 or more but less than \$100,000.....\$40;
- 10 \$100,000 or more but less than \$250,000.....\$80;
- 11 \$250,000 or more.....\$100.

12 The Comptroller may order additional audits or  
 13 examinations as he or she may deem necessary or advisable to  
 14 ensure the safety and stability of the trust funds and to  
 15 ensure compliance with this Act. These additional audits or  
 16 examinations shall only be made after good cause is  
 17 established by the Comptroller in the written order. The  
 18 grounds for ordering these additional audits or examinations  
 19 may include, but shall not be limited to:

- 20 (1) material and unverified changes or fluctuations  
 21 in trust balances or insurance or annuity policy amounts;
- 22 (2) the licensee changing trustees more than twice  
 23 in any 12-month period;
- 24 (3) any withdrawals or attempted withdrawals from  
 25 the trusts, insurance policies, or annuity contracts in  
 26 violation of this Act; or
- 27 (4) failure to maintain or produce documentation  
 28 required by this Act for deposits into trust accounts,  
 29 trust investment activities, or life insurance or annuity  
 30 policies.

31 Prior to ordering an additional audit or examination, the  
 32 Comptroller shall request the licensee to respond and comment  
 33 upon the factors identified by the Comptroller as warranting  
 34 the subsequent examination or audit. The licensee shall have

1 30 days to provide a response to the Comptroller. If the  
2 Comptroller decides to proceed with the additional  
3 examination or audit, the licensee shall bear the full cost  
4 of that examination or audit, up to a maximum of \$7,500. The  
5 Comptroller may elect to pay for the examination or audit and  
6 receive reimbursement from the licensee. Payment of the  
7 costs of the examination or audit by a licensee shall be a  
8 condition of receiving, maintaining, or renewing a license  
9 under this Act. All moneys received by the Comptroller for  
10 examination or audit fees shall be maintained in a separate  
11 account to be known as the Comptroller's Administrative Fund.  
12 This Fund, subject to appropriation by the General Assembly,  
13 may be utilized by the Comptroller for enforcing this Act and  
14 other purposes that may be authorized by law.

15 For pre-need contracts funded by life insurance or a  
16 tax-deferred annuity, the cost of an examination shall be  
17 borne by the licensee if it has received \$10,000 or more in  
18 premiums during the preceding calendar year. The fee schedule  
19 for such examination shall be established in rules  
20 promulgated by the Comptroller. In the event such  
21 investigation or other information received by the  
22 Comptroller discloses a substantial violation of the  
23 requirements of this Act, the Comptroller shall revoke the  
24 license of such person upon a hearing as provided in this  
25 Act. Such licensee may terminate all further responsibility  
26 for compliance with the requirements of this Act by  
27 voluntarily surrendering the license to the Comptroller, or  
28 in the event of its loss, furnishing the Comptroller with a  
29 sworn statement to that effect, which states the licensee's  
30 intention to discontinue acceptance of funds received under  
31 pre-need contracts. Such license or statement must be  
32 accompanied by an affidavit that said licensee has lawfully  
33 expended or refunded all funds received under pre-need  
34 contracts, and that the licensee will accept no additional

1 sales proceeds. The Comptroller shall immediately cancel or  
2 revoke said license.

3 (Source: P.A. 88-477; 89-615, eff. 8-9-96.)

4 (225 ILCS 45/3a) (from Ch. 111 1/2, par. 73.103a)

5 Sec. 3a. Denial, suspension, or revocation of license.

6 (a) The Comptroller may refuse to issue or may suspend  
7 or revoke a license on any of the following grounds:

8 (1) The applicant or licensee has made any  
9 misrepresentations or false statements or concealed any  
10 material fact.

11 (2) The applicant or licensee is insolvent.

12 (3) The applicant or licensee has been engaged in  
13 business practices that work a fraud.

14 (4) The applicant or licensee has refused to give  
15 pertinent data to the Comptroller.

16 (5) The applicant or licensee has failed to satisfy  
17 any enforceable judgment or decree rendered by any court  
18 of competent jurisdiction against the applicant.

19 (6) The applicant or licensee has conducted or is  
20 about to conduct business in a fraudulent manner.

21 (7) The trust agreement is not in compliance with  
22 State or federal law.

23 (8) The fidelity bond is not satisfactory to the  
24 Comptroller.

25 (9) As to any individual required to be listed in  
26 the license application, the individual has conducted or  
27 is about to conduct any business on behalf of the  
28 applicant in a fraudulent manner; has been convicted of  
29 any felony or misdemeanor, an essential element of which  
30 is fraud; has had a judgment rendered against him or her  
31 based on fraud in any civil litigation; has failed to  
32 satisfy any enforceable judgment or decree rendered  
33 against him or her by any court of competent

1       jurisdiction; or has been convicted of any felony or any  
2       theft-related offense.

3       (10) The applicant or licensee, including any  
4       member, officer, or director thereof if the applicant or  
5       licensee is a firm, partnership, association or  
6       corporation and any shareholder holding more than 10% of  
7       the corporate stock, has violated any provision of this  
8       Act or any regulation, decision, order, or finding made  
9       by the Comptroller under this Act.

10       (11) The Comptroller finds any fact or condition  
11       existing which, if it had existed at the time of the  
12       original application for such license, would have  
13       warranted the Comptroller in refusing the issuance of the  
14       license.

15       (b) Before refusal to issue or renew and before  
16       suspension or revocation of a license, the Comptroller shall  
17       hold a hearing to determine whether the applicant or  
18       licensee, hereinafter referred to as the respondent, is  
19       entitled to hold such a license. At least 10 days prior to  
20       the date set for such hearing, the Comptroller shall notify  
21       the respondent in writing that on the date designated a  
22       hearing will be held to determine his eligibility for a  
23       license and that he may appear in person or by counsel. Such  
24       written notice may be served on the respondent personally, or  
25       by registered or certified mail sent to the respondent's  
26       business address as shown in his latest notification to the  
27       Comptroller. At the hearing, both the respondent and the  
28       complainant shall be accorded ample opportunity to present in  
29       person or by counsel such statements, testimony, evidence and  
30       argument as may be pertinent to the charges or to any defense  
31       thereto. The Comptroller may reasonably continue such  
32       hearing from time to time.

33       The Comptroller may subpoena any person or persons in  
34       this State and take testimony orally, by deposition or by

1 exhibit, in the same manner and with the same fees and  
2 mileage allowances as prescribed in judicial proceedings in  
3 civil cases.

4 Any authorized agent of the Comptroller may administer  
5 oaths to witnesses at any hearing which the Comptroller is  
6 authorized to conduct.

7 (Source: P.A. 84-839.)

8 (225 ILCS 45/3a-5 new)

9 Section 3a-5. License requirements.

10 (a) Every license issued by the Comptroller shall state  
11 the number of the license, the business name and address of  
12 the licensee's principal place of business, each branch  
13 location also operating under the license, and the licensee's  
14 parent company, if any. The license shall be conspicuously  
15 posted in each place of business operating under the license.  
16 The Comptroller may issue such additional licenses as may be  
17 necessary for licensee branch locations upon compliance with  
18 the provisions of this Act governing an original issuance of  
19 a license for each new license.

20 (b) Individual salespersons representing a licensee  
21 shall not be required to obtain licenses in their individual  
22 capacities, but must acknowledge, by affidavit, that they  
23 have been provided with a copy of and have read this Act. The  
24 licensee shall retain copies of the affidavits of its sellers  
25 for its records and shall make the affidavits available to  
26 the Comptroller for examination upon request.

27 (c) The licensee shall be responsible for the activities  
28 of any person representing the licensee in selling or  
29 offering a pre-need contract for sale.

30 (d) Any person not selling on behalf of a licensee shall  
31 obtain its own license.

32 (e) No license shall be transferable or assignable  
33 without the express written consent of the Comptroller. A



1 transfer of more than 50% of the ownership of any business  
2 licensed hereunder shall be deemed to be an attempted  
3 assignment of the license originally issued to the licensee  
4 for which consent of the Comptroller shall be required.

5 (f) Every license issued hereunder shall remain in force  
6 until it has been suspended, surrendered, or revoked in  
7 accordance with this Act. The Comptroller, upon the request  
8 of an interested person or on his own motion, may issue new  
9 licenses to a licensee whose license or licenses have been  
10 revoked, if no factor or condition then exists which would  
11 have warranted the Comptroller to originally refuse the  
12 issuance of such license.

13 (225 ILCS 45/3e) (from Ch. 111 1/2, par. 73.103e)

14 Sec. 3e. Upon the revocation of, suspension of, or  
15 refusal to renew any license, the licensee shall immediately  
16 surrender the license or licenses and--any--branch--office  
17 licenses to the Comptroller. If the licensee fails to do so,  
18 the Comptroller shall have the right to seize the same.

19 (Source: P.A. 84-839.)

20 (225 ILCS 45/3f)

21 Sec. 3f. Revocation of license.

22 (a) The Comptroller, upon determination that grounds  
23 exist for the revocation or suspension of a license issued  
24 under this Act, may revoke or suspend, if appropriate, the  
25 license issued to a licensee or to a particular branch office  
26 location with respect to which the grounds for revocation or  
27 suspension may occur or exist.

28 (b) Whenever a license is revoked by the Comptroller, he  
29 or she shall apply to the Circuit Court of the county wherein  
30 the licensee is located for a receiver to administer the  
31 trust funds of the licensee or to maintain the life insurance  
32 policies and tax-deferred annuities held by the licensee

1 under a pre-need contract.

2 (Source: P.A. 88-477.)

3 (225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

4 Sec. 4. Withdrawal of funds; revocability of contract.

5 (a) The amount or amounts so deposited into trust, with  
6 interest thereon, if any, shall not be withdrawn until the  
7 death of the person or persons for whose funeral or burial  
8 such funds were paid, unless sooner withdrawn and repaid to  
9 the person who originally paid the money under or in  
10 connection with the pre-need contract or to his or her legal  
11 representative. The life insurance policies or tax-deferred  
12 annuities shall not be surrendered until the death of the  
13 person or persons for whose funeral or burial the policies or  
14 annuities were purchased, unless sooner surrendered and  
15 repaid to the owner of the policy purchased under or in  
16 connection with the pre-need contract or to his or her legal  
17 representative. If, however, the agreement or series of  
18 agreements provides for forfeiture and retention of any or  
19 all payments as and for liquidated damages as provided in  
20 Section 6, then the trustee may withdraw the deposits. In  
21 addition, nothing in this Section (i) prohibits the change of  
22 depositary by the trustee and the transfer of trust funds  
23 from one depositary to another or (ii) prohibits a contract  
24 purchaser who is or may become eligible for public assistance  
25 under any applicable federal or State law or local ordinance  
26 including, but not limited to, eligibility under 24 C.F.R.,  
27 Part 913 relating to family insurance under federal Housing  
28 and Urban Development Policy from irrevocably waiving, in  
29 writing, and renouncing the right to cancel a pre-need  
30 contract for funeral services in an amount prescribed by rule  
31 of the Illinois Department of Public Aid. No guaranteed price  
32 pre-need funeral contract may prohibit a purchaser from  
33 making a contract irrevocable to the extent that federal law

1 or regulations require that such a contract be irrevocable  
2 for purposes of the purchaser's eligibility for Supplemental  
3 Security Income benefits, Medicaid, or another public  
4 assistance program, as permitted under federal law.

5 (b) If for any reason a seller or provider who has  
6 engaged in pre-need sales has refused, cannot, or does not  
7 comply with the terms of the pre-need contract within a  
8 reasonable time after he or she is required to do so, the  
9 purchaser or his or her heirs or assigns or duly authorized  
10 representative shall have the right to a refund of an amount  
11 equal to the sales price paid for undelivered merchandise or  
12 services plus otherwise earned undistributed interest amounts  
13 held in trust attributable to the contract, within 30 days of  
14 the filing of a sworn affidavit with the trustee setting  
15 forth the existence of the contract and the fact of breach.  
16 A copy of this affidavit shall be filed with the Comptroller  
17 and the seller. In the event a seller is prevented from  
18 performing by strike, shortage of materials, civil disorder,  
19 natural disaster, or any like occurrence beyond the control  
20 of the seller or provider, the seller or provider's time for  
21 performance shall be extended by the length of the delay.  
22 Nothing in this Section shall relieve the seller or provider  
23 from any liability for non-performance of his or her  
24 obligations under the pre-need contract.

25 (c) After final payment on a pre-need contract, any  
26 purchaser may, upon written demand to a seller, demand that  
27 the pre-need contract with the seller be terminated. The  
28 seller shall, within 30 days, initiate a refund to the  
29 purchaser of the entire amount held in trust attributable to  
30 undelivered merchandise and unperformed services, including  
31 otherwise earned undistributed interest earned thereon or the  
32 cash surrender value of a life insurance policy or  
33 tax-deferred annuity.

34 (c-5) If no funeral merchandise or services are provided

1 or if the funeral is conducted by another person, the seller  
2 may keep no more than 10% of the payments made under the  
3 pre-need contract or \$300, whichever sum is less. The  
4 remainder of the trust funds or insurance or annuity proceeds  
5 shall be forwarded to the legal heirs of the deceased or as  
6 determined by probate action.

7 (d) The placement and retention of all or a portion of a  
8 casket, combination casket-vault, urn, or outer burial  
9 container comprised of materials which are designed to  
10 withstand prolonged storage in the manner set forth in this  
11 paragraph without adversely affecting the structural  
12 integrity or aesthetic characteristics of such merchandise in  
13 a specific burial space in which the person or persons for  
14 whose funeral or burial the merchandise was intended has a  
15 right of interment, or the placement of the merchandise in a  
16 specific mausoleum crypt or lawn crypt in which such person  
17 has a right of entombment, or the placement of the  
18 merchandise in a specific niche in which such person has a  
19 right of inurnment, or delivery to such person and retention  
20 by such person until the time of need shall constitute actual  
21 delivery to the person who originally paid the money under or  
22 in connection with said agreement or series of agreements.  
23 Actual delivery shall eliminate, from and after the date of  
24 actual delivery, any requirement under this Act to place or  
25 retain in trust any funds received for the sale of such  
26 merchandise. The delivery, prior to the time of need, of any  
27 funeral or burial merchandise in any manner other than  
28 authorized by this Section shall not constitute actual  
29 delivery and shall not eliminate any requirement under this  
30 Act to place or retain in trust any funds received for the  
31 sale of such merchandise.

32 (Source: P.A. 87-1091; 88-477.)

33 (225 ILCS 45/7.2)

1           Sec. 7.2. Investigation of unlawful practices. If it  
 2 appears to the Comptroller that a person has engaged in, is  
 3 engaging in, or is about to engage in any practice in  
 4 violation of ~~declared--to--be--unlawful--by~~ this Act, the  
 5 Comptroller may:

6           (1) require that person to file on such terms as  
 7 the Comptroller prescribes a statement or report in  
 8 writing, under oath or otherwise, containing all  
 9 information the Comptroller may consider necessary to  
 10 ascertain whether a licensee is in compliance with this  
 11 Act, or whether an unlicensed person is engaging in  
 12 activities for which a license is required;

13           (2) examine under oath any person in connection  
 14 with the books and records pertaining to or having an  
 15 impact upon trust funds, insurance policies, or tax  
 16 deferred annuities required or allowed to be maintained  
 17 pursuant to this Act;

18           (3) examine any books and records of the licensee,  
 19 trustee, or investment advisor that the Comptroller may  
 20 consider necessary to ascertain compliance with this Act;  
 21 and

22           (4) require the production of a copy of any record,  
 23 book, document, account, or paper that is produced in  
 24 accordance with this Act and retain it in his or her  
 25 possession until the completion of all proceedings in  
 26 connection with which it is produced.

27 (Source: P.A. 89-615, eff. 8-9-96.)

28 (225 ILCS 45/8) (from Ch. 111 1/2, par. 73.108)

29           Sec. 8. Any person who intentionally fails to deposit the  
 30 required sales proceeds into a trust required under this Act,  
 31 intentionally and improperly withdraws or uses trust funds  
 32 for his or her own benefit, or otherwise intentionally  
 33 violates any provision of this Act is guilty of a Class 4

1 felony.

2 If any person intentionally violates this Act or fails or  
3 refuses to comply with any order of the Comptroller or any  
4 part of an order that has become final to the person and is  
5 still in effect, the Comptroller may, after notice and  
6 hearing at which it is determined that a violation of this  
7 Act or the order has been committed, further order that the  
8 person shall forfeit and pay to the State of Illinois a sum  
9 not to exceed \$5,000 for each violation. This liability  
10 shall be enforced in an action brought in any court of  
11 competent jurisdiction by the Comptroller in the name of the  
12 People of the State of Illinois.

13 ~~Any violation of this Act for which a fine may be~~  
14 ~~assessed shall be established by rules promulgated by the~~  
15 ~~Comptroller.~~

16 In addition to the other penalties and remedies provided  
17 in this Act, the Comptroller may bring a civil action in the  
18 county of residence of the licensee or any person accepting  
19 trust funds to enjoin any violation or threatened violation  
20 of this Act.

21 The powers vested in the Comptroller by this Section are  
22 in addition to any and all other powers and remedies vested  
23 in the Comptroller by law.

24 (Source: P.A. 88-477.)

25 (225 ILCS 45/8.1 new)

26 Sec. 8.1. Sales; liability of purchaser for shortage. In  
27 the event of a sale or transfer of all or substantially all  
28 of the assets of the licensee, the sale or transfer of the  
29 controlling interest of the corporate stock of the licensee  
30 if the licensee is a corporation, the sale or transfer of the  
31 controlling interest of the partnership if the licensee is a  
32 partnership, or the sale of the licensee pursuant to  
33 foreclosure proceedings, the purchaser is liable for any

1 shortages existing before or after the sale in the trust  
2 funds required to be maintained in a trust pursuant to this  
3 Act and shall honor all pre-need contracts and trusts entered  
4 into by the licensee. Any shortages existing in the trust  
5 funds constitute a prior lien in favor of the trust for the  
6 total value of the shortages, and notice of that lien shall  
7 be provided in all sales instruments.

8 In the event of a sale or transfer of all or  
9 substantially all of the assets of the licensee, the sale or  
10 transfer of the controlling interest of the corporate stock  
11 of the licensee if the licensee is a corporation, or the sale  
12 or transfer of the controlling interest of the partnership if  
13 the licensee is a partnership, the licensee shall, at least  
14 21 days prior to the sale or transfer, notify the  
15 Comptroller, in writing, of the pending date of sale or  
16 transfer so as to permit the Comptroller to audit the books  
17 and records of the licensee. The audit must be commenced  
18 within 10 business days of the receipt of the notification  
19 and completed within the 21-day notification period unless  
20 the Comptroller notifies the licensee during that period that  
21 there is a basis for determining a deficiency which will  
22 require additional time to finalize. The sale or transfer  
23 may not be completed by the licensee unless and until:

24 (i) the Comptroller has completed the audit of the  
25 licensee's books and records;

26 (ii) any delinquency existing in the trust funds has  
27 been paid by the licensee, or arrangements satisfactory  
28 to the Comptroller have been made by the licensee on the  
29 sale or transfer for the payment of any delinquency; and

30 (iii) the Comptroller issues a license upon  
31 application of the new owner, which license must be  
32 applied for within 30 days of the anticipated date of the  
33 sale or transfer, subject to the payment of any  
34 delinquencies, if any, as stated in item (ii).

1        For purposes of this Section, a person, firm,  
 2        corporation, partnership, or institution that acquires the  
 3        licensee through a real estate foreclosure shall be subject  
 4        to the provisions of this Section.

5        Section 25. The Illinois Public Aid Code is amended by  
 6        changing Section 12-4.11 as follows:

7            (305 ILCS 5/12-4.11) (from Ch. 23, par. 12-4.11)

8            Sec. 12-4.11. Grant amounts. The Department, with due  
 9        regard for and subject to budgetary limitations, shall  
 10       establish grant amounts for each of the programs, by  
 11       regulation. The grant amounts may vary by program, size of  
 12       assistance unit and geographic area.

13        Aid payments shall not be reduced except: (1) for changes  
 14       in the cost of items included in the grant amounts, or (2)  
 15       for changes in the expenses of the recipient, or (3) for  
 16       changes in the income or resources available to the  
 17       recipient, or (4) for changes in grants resulting from  
 18       adoption of a consolidated grant amount.

19        In fixing standards to govern payments or reimbursements  
 20       for funeral and burial expenses, the Department shall  
 21       establish a minimum allowable amount of not less than \$1,000  
 22       for Department payment of funeral services and not less than  
 23       \$500 for Department payment of burial or cremation services.  
 24       In establishing the minimum allowable amount, the Department  
 25       shall take into account the services essential to a  
 26       dignified, low-cost (i) funeral and (ii) burial or cremation,  
 27       including reasonable amounts that may be necessary for burial  
 28       space and cemetery charges, and any applicable taxes or other  
 29       required governmental fees or charges. If no person has  
 30       agreed to pay the total cost of the (i) funeral and (ii)  
 31       burial or cremation charges, the Department shall pay the  
 32       vendor the actual costs of the (i) funeral and (ii) burial or



1 cremation, or the minimum allowable amount for each service  
 2 as established by the Department, whichever is less, provided  
 3 that the Department reduces its payments by the amount  
 4 available from the following sources: the decedent's assets  
 5 and available resources and the anticipated amounts of any  
 6 death benefits available to the decedent's estate, and  
 7 amounts paid and arranged to be paid by the decedent's  
 8 legally responsible relatives. A legally responsible relative  
 9 is expected to pay (i) funeral and (ii) burial or cremation  
 10 expenses unless financially unable to do so.

11 Nothing contained in this Section or in any other Section  
 12 of this Code shall be construed to prohibit the Illinois  
 13 Department (1) from consolidating existing standards on the  
 14 basis of any standards which are or were in effect on, or  
 15 subsequent to July 1, 1969, or (2) from employing any  
 16 consolidated standards in determining need for public aid and  
 17 the amount of money payment or grant for individual  
 18 recipients or recipient families.

19 (Source: P.A. 90-17, eff. 7-1-97; 90-326, eff. 8-8-97;  
 20 90-372, eff. 7-1-98; 90-655, eff. 7-30-98; 91-24, eff.  
 21 7-1-99.)

22 Section 27. The Crematory Regulation Act is amended by  
 23 changing Section 10 as follows:

24 (410 ILCS 18/10)

25 Sec. 10. Establishment of crematory and registration of  
 26 crematory authority.

27 (a) Any person doing business in this State, or any  
 28 cemetery, funeral establishment, corporation, partnership,  
 29 joint venture, voluntary organization or any other entity,  
 30 may erect, maintain, and operate a crematory in this State  
 31 and provide the necessary appliances and facilities for the  
 32 cremation of human remains in accordance with this Act.

1 (b) A crematory shall be subject to all local, State,  
2 and federal health and environmental protection requirements  
3 and shall obtain all necessary licenses and permits from the  
4 Department, the federal Department of Health and Human  
5 Services, and the Illinois and federal Environmental  
6 Protection Agencies, or such other appropriate local, State,  
7 or federal agencies.

8 (c) A crematory may be constructed on or adjacent to any  
9 cemetery, on or adjacent to any funeral establishment, or at  
10 any other location consistent with local zoning regulations.

11 (d) An application for registration as a crematory  
12 authority shall be in writing on forms furnished by the  
13 Comptroller. Applications shall be accompanied by a fee of  
14 \$50 and shall contain all of the following:

15 (1) The full name and address, both residence and  
16 business, of the applicant if the applicant is an  
17 individual; the full name and address of every member if  
18 the applicant is a partnership; the full name and address  
19 of every member of the board of directors if the  
20 applicant is an association; and the name and address of  
21 every officer, director, and shareholder holding more  
22 than 25% of the corporate stock if the applicant is a  
23 corporation.

24 (2) The address and location of the crematory.

25 (3) A description of the type of structure and  
26 equipment to be used in the operation of the crematory.

27 (4) Any further information that the Comptroller  
28 reasonably may require.

29 (e) Each crematory authority shall file an annual report  
30 with the Comptroller, accompanied with a \$25 fee, providing  
31 any changes required in the information provided under  
32 subsection (d) or indicating that no changes have occurred.  
33 The annual report shall be filed by a crematory authority on  
34 or before March 15 of each calendar year, in the Office of

1 the Comptroller. If the fiscal year of a crematory authority  
2 is other than on a calendar year basis, then the crematory  
3 authority shall file the report required by this Section  
4 within 75 days after the end of its fiscal year. The  
5 Comptroller shall, for good cause shown, grant an extension  
6 for the filing of the annual report upon the written request  
7 of the crematory authority. An extension shall not exceed 60  
8 days. If a crematory authority fails to submit an annual  
9 report to the Comptroller within the time specified in this  
10 Section, the Comptroller shall impose upon the crematory  
11 authority a penalty of \$5 for each and every day the  
12 crematory authority remains delinquent in submitting the  
13 annual report. The Comptroller may abate all or part of the  
14 \$5 daily penalty for good cause shown.

15 (f) All records relating to the registration and annual  
16 report of the crematory authority required to be filed under  
17 this Section shall be subject to inspection by the  
18 Comptroller upon reasonable notice.

19 (Source: P.A. 87-1187.)

20 Section 30. The Cemetery Care Act is amended by changing  
21 Sections 2a, 9, 10, 11, 12, 13, 15b, and 24 and adding  
22 Section 26 as follows:

23 (760 ILCS 100/2a) (from Ch. 21, par. 64.2a)

24 Sec. 2a. Powers and duties of cemetery authorities;  
25 cemetery property maintained by cemetery care funds.

26 (a) With respect to cemetery property maintained by  
27 cemetery care funds, a cemetery authority shall be  
28 responsible for the performance of:

29 (1) (a) the care and maintenance of the cemetery  
30 property it owns; and

31 (2) (b) the opening and closing of all graves,  
32 crypts, or niches for human remains in any cemetery

1 property it owns.

2 (b) A cemetery authority owning, operating, controlling  
3 or managing a privately operated cemetery shall make  
4 available for inspection, and upon reasonable request provide  
5 a copy of, its rules and regulations and its current prices  
6 of interment, inurnment, or entombment rights.

7 (c) A cemetery authority owning, operating, controlling  
8 or managing a privately operated cemetery may, from time to  
9 time as land in its cemetery may be required for burial  
10 purposes, survey and subdivide those lands and make and file  
11 in its office a map thereof delineating the lots or plots,  
12 avenues, paths, alleys, and walks and their respective  
13 designations. The cemetery authority shall open the map to  
14 public inspection. The cemetery authority may make available  
15 a copy of the overall map upon written request and payment of  
16 reasonable photocopy fees. Any unsold lots, plots or parts  
17 thereof, in which there are not human remains, may be  
18 resurveyed and altered in shape or size, and properly  
19 designated on such map. Nothing contained in this  
20 subsection, however, shall prevent the cemetery authority  
21 from enlarging an interment right by selling to the owner  
22 thereof the excess space next to such interment right and  
23 permitting interments therein, provided reasonable access to  
24 such interment right and to adjoining interment rights is not  
25 thereby eliminated. The Comptroller may waive any or all of  
26 the requirements of this subsection (c) for good cause shown.

27 (d) A cemetery authority owning, operating, controlling,  
28 or managing a privately operated cemetery shall keep a record  
29 of every interment, entombment, and inurnment in the  
30 cemetery. The record shall include the deceased's name, age,  
31 and date of burial, when these particulars can be  
32 conveniently obtained, and the lot, plot, or section where  
33 the human remains are interred, entombed, or inurned. The  
34 record shall be open to public inspection consistent with

1 State and federal law. The cemetery authority shall make  
2 available, consistent with State and federal law, a true copy  
3 of the record upon written request and payment of reasonable  
4 copy costs.

5 (e) A cemetery authority owning, operating, controlling,  
6 or managing a privately operated cemetery shall provide  
7 access to the cemetery under the cemetery authority's  
8 reasonable rules and regulations.

9 (Source: P.A. 87-747.)

10 (760 ILCS 100/9) (from Ch. 21, par. 64.9)

11 Sec. 9. Application for license.

12 (a) Prior to the acceptance of care funds authorized by  
13 Section 3 of this Act or the sale or transfer of the  
14 controlling interest of a licensed cemetery authority, a  
15 cemetery authority owning, operating, controlling, or  
16 managing a privately operated cemetery shall make application  
17 to the Comptroller for a license to hold the funds. Whenever  
18 a---cemetery--authority--owning,--operating,--controlling--or  
19 managing-a-privately-operated-cemetery-is-newly-organized-and  
20 such-cemetery-authority-desires-to-be-licensed-to-accept--the  
21 care--funds--authorized-by-Section-3-of-this-Act,--or-whenver  
22 there-is-a-sale-or-transfer-of-the-controlling-interest-of--a  
23 licensed--cemetery--authority,--it-shall-make-application-for  
24 such-license.

25 In the case of a sale or transfer of the controlling  
26 interest of the cemetery authority, the prior license shall  
27 remain in effect until the Comptroller issues a new license  
28 to the newly-controlled cemetery authority as provided in  
29 Section 15b. Upon issuance of the new license, the prior  
30 license shall be deemed surrendered if the licensee has  
31 agreed to the sale and transfer and has consented to the  
32 surrender of the license. A sale or transfer of the  
33 controlling interest of a cemetery authority to an immediate

1 family member is not considered a transfer of the controlling  
2 interest for purposes of this Section.

3 (b) Applications for license shall be filed with the  
4 Comptroller. Applications shall be in writing under oath,  
5 signed by the applicant, and in the form furnished by the  
6 Comptroller. The form furnished by the Comptroller shall  
7 enable a cemetery authority to apply for license of multiple  
8 cemetery locations within a single license application. A  
9 check or money order in the amount of \$25 per license seeking  
10 to be issued under the application, payable to: Comptroller,  
11 State of Illinois, shall be included. Each application shall  
12 contain the following:

13 (1) the full name and address (both of residence  
14 and of place of business) of the applicant, if an  
15 individual; of every member, if the applicant is a  
16 partnership or association; of every officer, or  
17 director, if the applicant is a corporation; and of any  
18 party owning 10% or more of the cemetery authority, and  
19 the full name and address of the parent company, if any;

20 (2) a detailed statement of the applicant's assets  
21 and liabilities;

22 (2.1) the name, address, and legal boundaries of  
23 each cemetery for which the care funds shall be entrusted  
24 and at which books, accounts, and records shall be  
25 available for examination by the Comptroller as required  
26 by Section 13 of this Act;

27 (3) as to the name of each individual person listed  
28 under (1) above, a detailed statement of each person's  
29 business experience for the 10 years immediately  
30 preceding the application; the present and previous  
31 connection, if any, of each person with any other  
32 cemetery or cemetery authority; whether each person has  
33 ever been convicted of any a felony or has ever been  
34 convicted of any misdemeanor of which an essential

1 element is fraud or has been involved in any civil  
 2 litigation in which a judgment has been entered against  
 3 him or her based on fraud; whether each person is  
 4 currently a defendant in any lawsuit in which the  
 5 complaint against the person is based upon fraud; whether  
 6 such person has failed to satisfy any enforceable  
 7 judgment entered by a court of competent jurisdiction in  
 8 any civil proceedings against such individual; and

9 (4) the total amount in trust and now available  
 10 from sales of lots, graves, crypts or niches where part  
 11 of the sale price has been placed in trust; the amount of  
 12 money placed in the care funds of each applicant; the  
 13 amount set aside in care funds from the sale of lots,  
 14 graves, crypts and niches for the general care of the  
 15 cemetery and the amount available for that purpose; the  
 16 amount received in trust by special agreement for special  
 17 care and the amount available for that purpose; the  
 18 amount of principal applicable to trust funds received by  
 19 the applicant; and.

20 (5) any other information that the Comptroller may  
 21 reasonably require in order to determine the  
 22 qualifications of the applicant to be licensed under this  
 23 Act.

24 Such information shall be furnished whether the care  
 25 funds are held by the applicant as trustee or by an  
 26 independent trustee. If the funds are not held by the  
 27 applicant, the name of the independent trustee holding them  
 28 is also to be furnished by the applicant.

29 (c) Applications for license shall also be accompanied  
 30 by a fidelity bond issued by a bonding company or insurance  
 31 company authorized to do business in this State or by an  
 32 irrevocable, unconditional letter of credit issued by a bank  
 33 or trust company authorized to do business in the State of  
 34 Illinois, as approved by the State Comptroller, where such

1 care funds exceed the sum of \$15,000. Such bond or letter of  
2 credit shall run to the Comptroller and his or her successor  
3 for the benefit of the care funds held by such cemetery  
4 authority or by the trustee of the care funds of such  
5 cemetery authority. Such bonds or letters of credit shall be  
6 in an amount equal to 1/10 of such care funds. However, such  
7 bond or letter of credit shall not be in an amount less than  
8 \$1,000; the first \$15,000 of such care funds shall not be  
9 considered in computing the amount of such bond or letter of  
10 credit. No application shall be accepted by the Comptroller  
11 unless accompanied by such bond or letter of credit.

12 Applications for license by newly organized cemetery  
13 authorities after January 1, 1960 shall also be accompanied  
14 by evidence of a minimum care fund deposit in an amount to be  
15 determined as follows: if the number of inhabitants, either  
16 in the county in which the cemetery is to be located or in  
17 the area included within a 10 mile radius from the cemetery  
18 if the number of inhabitants therein is greater, is 25,000 or  
19 less the deposit shall be \$7,500; if the number of  
20 inhabitants is 25,001 to 50,000, the deposit shall be  
21 \$10,000; if the number of inhabitants is 50,001 to 125,000,  
22 the deposit shall be \$15,000; if the number of inhabitants is  
23 over 125,000, the deposit shall be \$25,000.

24 After an amount equal to and in addition to the required  
25 minimum care fund deposit has been deposited in trust, the  
26 cemetery authority may withhold 50% of all future care funds  
27 until it has recovered the amount of the minimum care fund  
28 deposit.

29 (d) (Blank). ~~The applicant shall have a permanent~~  
30 ~~address and any license issued pursuant to the application is~~  
31 ~~valid only at the address or at any new address approved by~~  
32 ~~the Comptroller.~~

33 (e) All bonds and bonding deposits made by any cemetery  
34 authority may be returned to the cemetery authority or



1 cancelled as to care funds invested with an investment  
2 company.

3 (Source: P.A. 89-615, eff. 8-9-96; 90-655, eff. 7-30-98.)

4 (760 ILCS 100/10) (from Ch. 21, par. 64.10)

5 Sec. 10. Upon receipt of such application for license,  
6 the Comptroller shall issue a license to the applicant unless  
7 the Comptroller determines that:

8 (a) The applicant has made any misrepresentations or  
9 false statements or has concealed any essential or material  
10 fact, or

11 (b) The applicant is insolvent; or

12 (c) The applicant is or has been using practices in the  
13 conducting of the cemetery business that work or tend to work  
14 a fraud; or

15 (d) The applicant has refused to furnish or give  
16 pertinent data to the Comptroller; or

17 (e) The applicant has failed to notify the Comptroller  
18 with respect to any material facts required in the  
19 application for license under the provisions of this Act; or

20 (f) The applicant has failed to satisfy any enforceable  
21 judgment entered by the circuit court in any civil  
22 proceedings against such applicant; or

23 (g) The applicant has conducted or is about to conduct  
24 its business in a fraudulent manner; or

25 (h) The applicant or any ~~As--to--the--name--of--any~~  
26 individual listed in the license application, ~~such individual~~  
27 has conducted or is about to conduct any business on behalf  
28 of the applicant in a fraudulent manner; or has been  
29 convicted of a felony or any misdemeanor of which an  
30 essential element is fraud; or has been involved in any civil  
31 litigation in which a judgment has been entered against him  
32 or her based on fraud; or has failed to satisfy any  
33 enforceable judgment entered by the circuit court in any

1 civil proceedings against such individual; or has been  
 2 convicted of any felony of which fraud is an essential  
 3 element; or has been convicted of any theft-related offense;  
 4 or has failed to comply with the requirements of this Act; or  
 5 has demonstrated a pattern of improperly failing to honor a  
 6 contract with a consumer; or

7 (i) The applicant has ever had a license involving  
 8 cemeteries or funeral homes revoked, suspended, or refused to  
 9 be issued in Illinois or elsewhere.

10 If the Comptroller so determines, then he or she shall  
 11 conduct a hearing to determine whether to deny the  
 12 application. However, no application shall be denied unless  
 13 the applicant has had at least 10 days' notice of a hearing  
 14 on the application and an opportunity to be heard thereon. If  
 15 the application is denied, the Comptroller shall within 20  
 16 days thereafter prepare and keep on file in his or her office  
 17 the transcript of the evidence taken and a written order of  
 18 denial thereof, which shall contain his or her findings with  
 19 respect thereto and the reasons supporting the denial, and  
 20 shall send by United States mail a copy of the written order  
 21 of denial to the applicant at the address set forth in the  
 22 application, within 5 days after the filing of such order. A  
 23 review of such decision may be had as provided in Section 20  
 24 of this Act.

25 The license issued by the Comptroller shall remain in  
 26 full force and effect until it is surrendered by the licensee  
 27 or revoked by the Comptroller as hereinafter provided.

28 (Source: P.A. 88-477.)

29 (760 ILCS 100/11) (from Ch. 21, par. 64.11)

30 Sec. 11. Issuance and display of license. A license  
 31 issued under this Act authorizes the cemetery authority to  
 32 accept care funds for the cemetery identified in the license.  
 33 If a license application seeks licensure to accept care funds

1 on behalf of more than one cemetery location, the  
 2 Comptroller, upon approval of the license application, shall  
 3 issue to the cemetery authority a separate license for each  
 4 cemetery location indicated on the application. Each license  
 5 issued by the Comptroller under this Act is independent of  
 6 any other license that may be issued to a cemetery authority  
 7 under a single license application.

8 Every license issued by the Comptroller shall state the  
 9 number of the license and the address at which the business  
 10 is to be conducted. Such license shall be kept conspicuously  
 11 posted in the place of business of the licensee and shall not  
 12 be transferable or assignable.

13 No more than one place of business shall be maintained  
 14 under the same license, but the Comptroller may issue more  
 15 than one license to the same licensee upon compliance with  
 16 the provisions of this Act governing an original issuance of  
 17 a license, for each new license.

18 Whenever a licensee shall wish to change the name as  
 19 originally set forth in his license, he shall give written  
 20 notice thereof to the Comptroller together with the reasons  
 21 for the change and if the change is approved by the  
 22 Comptroller he shall issue a new license.

23 A license issued by the Comptroller shall remain in full  
 24 force and effect until it is surrendered by the licensee or  
 25 suspended or revoked by the Comptroller as provided in this  
 26 Act.

27 (Source: P.A. 78-592.)

28 (760 ILCS 100/12) (from Ch. 21, par. 64.12)

29 Sec. 12. Annual reports. Every licensee shall prepare a  
 30 written report as of the end of the preceding calendar year  
 31 or fiscal year, as the case may be, showing:

32 (a) The amount of the principal of the care funds held  
 33 in trust by the trustee of the care funds at the beginning of

1 such year and in addition thereto all moneys or property  
2 received during such year (1) under and by virtue of the sale  
3 of a lot, grave, crypt or niche; (2) under or by virtue of  
4 the terms of the contract authorized by the provisions of  
5 Section 3 of this Act; (3) under or by virtue of any gift,  
6 grant, legacy, payment or other contribution made either  
7 prior to or subsequent to the effective date of this Act, and  
8 (4) under or by virtue of any contract or conveyance made  
9 either prior to or subsequent to the effective date of this  
10 Act;

11 (b) The securities in which such care funds are invested  
12 and the cash on hand as of the date of the report;

13 (c) The income received from such care funds during the  
14 preceding calendar year, or fiscal year, as the case may be;

15 (d) The expenditures made from said income during the  
16 preceding calendar year, or fiscal year, as the case may be;  
17 and

18 (e) The number of interments made during the preceding  
19 calendar year, or fiscal year, as the case may be.

20 Where any of the care funds of a licensee are held by an  
21 independent trustee, the report filed by the licensee shall  
22 contain a certificate signed by the trustee of the care funds  
23 of such licensee certifying to the truthfulness of the  
24 statements in the report as to (1) the total amount of  
25 principal of the care funds held by the trustee, (2) the  
26 securities in which such care funds are invested and the cash  
27 on hand as of the date of the report and (3) the income  
28 received from such care funds during the preceding calendar  
29 year, or fiscal year, as the case may be.

30 Such report shall be filed by such licensee on or before  
31 March 15 of each calendar year, in the office of the  
32 Comptroller. If the fiscal year of such licensee is other  
33 than on a calendar year basis, then such licensee shall file  
34 the report required by this Section within 2 1/2 months of

1 the end of its fiscal year. The Comptroller shall for good  
 2 cause shown grant an extension for the filing of the annual  
 3 report upon the written request of the licensee. Such  
 4 extension shall not exceed 60 days. If a licensee fails to  
 5 submit an annual report to the Comptroller within the time  
 6 specified in this Section, the Comptroller shall impose upon  
 7 the licensee a penalty of \$5 for each and every day the  
 8 licensee remains delinquent in submitting the annual report.  
 9 The Comptroller may abate all or part of the \$5 daily penalty  
 10 for good cause shown.

11 Such report shall be made under oath and shall be in the  
 12 form furnished by the Comptroller. Each report shall be  
 13 accompanied by a check or money order in the amount of \$10,  
 14 payable to: Comptroller, State of Illinois.

15 If any annual report shows that the amount of the care  
 16 funds held in trust at the end of the preceding calendar year  
 17 or fiscal year, as the case may be, has increased in amount  
 18 over that shown by the next preceding report, then the  
 19 fidelity bond theretofore filed shall be increased to the  
 20 amount required by Section 9 of this Act. Such increased  
 21 fidelity bond shall accompany the report and no report shall  
 22 be accepted by the Comptroller unless accompanied by such  
 23 bond, except where the filing of a bond is excused by Section  
 24 18 of this Act.

25 (Source: P.A. 88-477; 89-615, eff. 8-9-96.)

26 (760 ILCS 100/13) (from Ch. 21, par. 64.13)

27 Sec. 13. Books, accounts, and records. Every licensee  
 28 and the trustee of the care funds of every licensee shall be  
 29 a resident of this State and shall keep in this State and use  
 30 in its business such books, accounts and records as will  
 31 enable the Comptroller to determine whether such licensee or  
 32 trustee is complying with the provisions of this Act and with  
 33 the rules, regulations and directions made by the Comptroller

1 hereunder. The licensee shall keep the books, accounts, and  
 2 records at the location identified in the license issued by  
 3 the Comptroller or as otherwise agreed by the Comptroller in  
 4 writing. The books, accounts, and records shall be  
 5 accessible for review upon demand of the Comptroller.

6 (Source: P.A. 78-592.)

7 (760 ILCS 100/15b)

8 Sec. 15b. Sales; liability of purchaser for shortage.

9 In the case of a sale of any privately operated cemetery  
 10 or any part thereof or of any related personal property by a  
 11 cemetery authority to a purchaser or pursuant to foreclosure  
 12 proceedings, except the sale of burial rights, services, or  
 13 merchandise to a person for his or her personal or family  
 14 burial or interment, the purchaser is liable for any  
 15 shortages existing before or after the sale in the care funds  
 16 required to be maintained in a trust pursuant to this Act and  
 17 shall honor all instruments issued under Section 4 for that  
 18 cemetery. Any shortages existing in the care funds constitute  
 19 a prior lien in favor of the trust for the total value of the  
 20 shortages, and notice of such lien shall be provided in all  
 21 sales instruments.

22 In the event of a sale or transfer of all or  
 23 substantially all of the assets of the cemetery authority,  
 24 the sale or transfer of the controlling interest of the  
 25 corporate stock of the cemetery authority if the cemetery  
 26 authority is a corporation, or the sale or transfer of the  
 27 controlling of the partnership if the cemetery authority is a  
 28 partnership, the cemetery authority shall, at least 21 days  
 29 prior to the sale or transfer, notify the Comptroller, in  
 30 writing, of the pending date of sale or transfer so as to  
 31 permit the Comptroller to audit the books and records of the  
 32 cemetery authority. The audit must be commenced within 10 5  
 33 business days of the receipt of the notification and

1 completed within the 21 day notification period unless the  
2 Comptroller notifies the cemetery authority during that  
3 period that there is a basis for determining a deficiency  
4 which will require additional time to finalize. The sale or  
5 transfer may not be completed by the cemetery authority  
6 unless and until:

7 (a) The Comptroller has completed the audit of the  
8 cemetery authority's books and records;

9 (b) Any delinquency existing in the care funds has  
10 been paid by the cemetery authority, or arrangements  
11 satisfactory to the Comptroller have been made by the  
12 cemetery authority on the sale or transfer for the  
13 payment of any delinquency;

14 (c) The Comptroller issues a new cemetery care  
15 license upon application of the newly controlled  
16 corporation or partnership, which license must be applied  
17 for within 30 days of the anticipated date of the sale or  
18 transfer, subject to the payment of any delinquencies, if  
19 any, as stated in item (b) above.

20 For purposes of this Section, a person, firm,  
21 corporation, partnership, or institution that acquires the  
22 cemetery through a real estate foreclosure shall be subject  
23 to the provisions of this Section. The sale or transfer of  
24 the controlling interest of a cemetery authority to an  
25 immediate family member is not subject to the license  
26 application process required in item (c) of this Section.

27 In the event of a sale or transfer of any cemetery land,  
28 including any portion of cemetery land in which no human  
29 remains have been interred, a licensee shall, at least 21  
30 days prior to the sale or transfer, notify the Comptroller,  
31 in writing, of the pending sale or transfer.

32 (Source: P.A. 90-623, eff. 7-10-98.)

33 (760 ILCS 100/24) (from Ch. 21, par. 64.24)

1           Sec. 24. Whoever intentionally fails to deposit the  
2 required amounts into a trust provided for in this Act,  
3 intentionally and improperly withdraws or uses trust funds  
4 for his or her own benefit, or otherwise intentionally  
5 violates any provision of this Act (other than except the  
6 provisions of Section 23 and subsections (b), (c), (d), and  
7 (e) of Section 2a) shall be guilty of a Class 4 felony, and  
8 each day such provisions are violated shall constitute a  
9 separate offense.

10           If any person intentionally violates this Act or fails or  
11 refuses to comply with any order of the Comptroller or any  
12 part of an order that has become final to such person and is  
13 still in effect, the Comptroller may, after notice and  
14 hearing at which it is determined that a violation of this  
15 Act or such order has been committed, further order that such  
16 person shall forfeit and pay to the State of Illinois a sum  
17 not to exceed \$5,000 for each violation. Such liability  
18 shall be enforced in an action brought in any court of  
19 competent jurisdiction by the Comptroller in the name of the  
20 People of the State of Illinois.

21           In addition to the other penalties and remedies provided  
22 in this Act, the Comptroller may bring a civil action in the  
23 county of residence of the licensee or any person accepting  
24 care funds to enjoin any violation or threatened violation of  
25 this Act.

26           The powers vested in the Comptroller by this Section are  
27 additional to any and all other powers and remedies vested in  
28 the Comptroller by law.

29 (Source: P. A. 86-1359.)

30 (760 ILCS 100/26 new)

31 Sec. 26. Abandoned or neglected cemeteries; clean-up.  
32 The Comptroller may administer a program for the purpose of  
33 cleaning up abandoned or neglected cemeteries located in



1 Illinois. Administration of this program may include the  
 2 Comptroller's issuance of grants for that purpose to units of  
 3 local government, school districts, and not-for-profit  
 4 associations.

5 Section 40. The Cemetery Protection Act is amended by  
 6 changing Section 1 as follows:

7 (765 ILCS 835/1) (from Ch. 21, par. 15)

8 Sec. 1. (a) Any person who acts without proper legal  
 9 authority and who willfully and knowingly destroys or damages  
 10 the remains of a deceased human being or who desecrates human  
 11 remains is guilty of a Class 3 felony.

12 (a-5) Any person who acts without proper legal authority  
 13 and who willfully and knowingly removes any portion of the  
 14 remains of a deceased human being from a burial ground where  
 15 skeletal remains are buried or from a grave, crypt, vault,  
 16 mausoleum, or other repository of human remains is guilty of  
 17 a Class 4 felony.

18 (b) Any person who acts without proper legal authority  
 19 and who willfully and knowingly:

20 (1) obliterates, vandalizes, or desecrates a burial  
 21 ground where skeletal remains are buried or a grave,  
 22 crypt, vault, mausoleum, or other repository of human  
 23 remains;

24 (2) obliterates, vandalizes, or desecrates a park  
 25 or other area clearly designated to preserve and  
 26 perpetuate the memory of a deceased person or group of  
 27 persons;

28 (3) obliterates, vandalizes, or desecrates plants,  
 29 trees, shrubs, or flowers located upon or around a  
 30 repository for human remains or within a human graveyard  
 31 or cemetery; or

32 (4) obliterates, vandalizes, or desecrates a fence,

1 rail, curb, or other structure of a similar nature  
2 intended for the protection or for the ornamentation of  
3 any tomb, monument, gravestone, or other structure of  
4 like character;

5 is guilty of a Class A misdemeanor if the amount of the  
6 damage is less than \$500, a Class 4 felony if the amount of  
7 the damage is at least \$500 and less than \$10,000, a Class 3  
8 felony if the amount of the damage is at least \$10,000 and  
9 less than \$100,000, or a Class 2 felony if the damage is  
10 \$100,000 or more and shall provide restitution to the  
11 cemetery authority or property owner for the amount of any  
12 damage caused.

13 (b-5) Any person who acts without proper legal authority  
14 and who willfully and knowingly defaces, vandalizes, injures,  
15 or removes a gravestone or other memorial, monument, or  
16 marker commemorating a deceased person or group of persons,  
17 whether located within or outside of a recognized cemetery,  
18 memorial park, or battlefield is guilty of a Class 4 felony  
19 for damaging at least one but no more than 4 gravestones, a  
20 Class 3 felony for damaging at least 5 but no more than 10  
21 gravestones, or a Class 2 felony for damaging more than 10  
22 gravestones and shall provide restitution to the cemetery  
23 authority or property owner for the amount of any damage  
24 caused.

25 (b-7) Any person who acts without proper legal authority  
26 and who willfully and knowingly removes with the intent to  
27 resell a gravestone or other memorial, monument, or marker  
28 commemorating a deceased person or group of persons, whether  
29 located within or outside a recognized cemetery, memorial  
30 park, or battlefield, is guilty of a Class 2 felony.

31 (c) The provisions of this Section shall not apply to  
32 the removal or unavoidable breakage or injury by a cemetery  
33 authority of anything placed in or upon any portion of its  
34 cemetery in violation of any of the rules and regulations of

1 the cemetery authority, nor to the removal of anything placed  
2 in the cemetery by or with the consent of the cemetery  
3 authority that in the judgment of the cemetery authority has  
4 become wrecked, unsightly, or dilapidated.

5 (d) If an unemancipated minor is found guilty of  
6 violating any of the provisions of subsection (b) of this  
7 Section and is unable to provide restitution to the cemetery  
8 authority or property owner, the parents or legal guardians  
9 of that minor shall provide restitution to the cemetery  
10 authority or property owner for the amount of any damage  
11 caused, up to the total amount allowed under the Parental  
12 Responsibility Law.

13 (e) Any person who shall hunt, shoot or discharge any  
14 gun, pistol or other missile, within the limits of any  
15 cemetery, or shall cause any shot or missile to be discharged  
16 into or over any portion thereof, or shall violate any of the  
17 rules made and established by the board of directors of such  
18 cemetery, for the protection or government thereof, is guilty  
19 of a Class C misdemeanor.

20 (f) Any person who knowingly enters or knowingly remains  
21 upon the premises of a public or private cemetery without  
22 authorization during hours that the cemetery is posted as  
23 closed to the public is guilty of a Class A misdemeanor.

24 (g) All fines when recovered, shall be paid over by the  
25 court or officer receiving the same to the cemetery  
26 association and be applied, as far as possible in repairing  
27 the injury, if any, caused by such offense. Provided,  
28 nothing contained in this Act shall deprive such cemetery  
29 association, or the owner of any lot or monument from  
30 maintaining an action for the recovery of damages caused by  
31 any injury caused by a violation of the provisions of this  
32 Act, or of the rules established by the board of directors of  
33 such cemetery association. Nothing in this Section shall be  
34 construed to prohibit the discharge of firearms loaded with

1 blank ammunition as part of any funeral, any memorial  
 2 observance or any other patriotic or military ceremony.  
 3 (Source: P.A. 89-36, eff. 1-1-96.)

4 Section 45. The Illinois Pre-Need Cemetery Sales Act is  
 5 amended by changing Sections 1, 4, 5, 6, 7, 8, 8a, 9, 12, 14,  
 6 16, 19, 20, 22, and 23 and adding Section 27.1 as follows:

7 (815 ILCS 390/1) (from Ch. 21, par. 201)

8 Sec. 1. Purpose. It is the purpose of this Act to  
 9 assure adequate protection for those who contract through  
 10 pre-need contracts for the purchase of certain cemetery  
 11 merchandise and cemetery services and undeveloped interment,  
 12 entombment or inurnment space, when the seller may delay  
 13 delivery or performance more than 120 days following initial  
 14 payment on the account.  
 15 (Source: P.A. 85-805.)

16 (815 ILCS 390/4) (from Ch. 21, par. 204)

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

19 (A) A- "Pre-need sales contract" or "Pre-need sales"  
 20 means any agreement or contract or series or combination of  
 21 agreements or contracts which have for a purpose the sale of  
 22 cemetery merchandise, cemetery services or undeveloped  
 23 interment, entombment or inurnment spaces where the terms of  
 24 such sale require payment or payments to be made at a  
 25 currently determinable time and where the merchandise,  
 26 services or completed spaces are to be provided more than 120  
 27 days following the initial payment on the account. An  
 28 agreement or contract for a memorial, marker, or monument  
 29 shall not be deemed a "pre-need sales contract" or a  
 30 "pre-need sale" if the memorial, marker, or monument is  
 31 delivered within 180 days following initial payment on the

1 account and work thereon commences a reasonably short time  
2 after initial payment on the account.

3 (B) B- "Delivery" occurs when:

4 (1) Physical possession of the merchandise is  
5 transferred or the easement for burial rights in a  
6 completed space is executed, delivered and transferred to  
7 the buyer; or

8 (2) Following authorization by a purchaser under a  
9 pre-need sales contract, title to the merchandise has  
10 been transferred to the buyer and the merchandise has  
11 been paid for and is in the possession of the seller who  
12 has placed it, until needed, at the site of its ultimate  
13 use; or

14 (3) ~~(A)~~ Following authorization by a purchaser  
15 under a pre-need sales contract, the merchandise has been  
16 permanently identified with the name of the buyer or the  
17 beneficiary and delivered to a licensed and bonded  
18 warehouse and both title to the merchandise and a  
19 warehouse receipt have been delivered to the purchaser or  
20 beneficiary and a copy of the warehouse receipt has been  
21 delivered to the licensee for retention in its files;  
22 except that in the case of outer burial containers, the  
23 use of a licensed and bonded warehouse as set forth in  
24 this paragraph shall not constitute delivery for purposes  
25 of this Act. Nothing herein shall prevent a seller from  
26 perfecting a security interest in accordance with the  
27 Uniform Commercial Code on any merchandise covered under  
28 this Act.

29 ~~(B)~~ All warehouse facilities to which sellers  
30 deliver merchandise pursuant to this Act shall:

31 (i) be either located in the State of Illinois  
32 or qualify as a foreign warehouse facility as  
33 defined herein;

34 (ii) submit to the Comptroller not less than

1 annually, by March 1 of each year, a report of all  
2 cemetery merchandise stored by each licensee under  
3 this Act which is in storage on the date of the  
4 report;

5 (iii) permit the Comptroller or his designee  
6 at any time to examine stored merchandise and to  
7 examine any documents pertaining thereto;

8 (iv) submit evidence satisfactory to the  
9 Comptroller that all merchandise stored by said  
10 warehouse for licensees under this Act is insured  
11 for casualty or other loss normally assumed by a  
12 bailee for hire;

13 (v) demonstrate to the Comptroller that the  
14 warehouse has procured and is maintaining a  
15 performance bond in the form, content and amount  
16 sufficient to unconditionally guarantee to the  
17 purchaser or beneficiary the prompt shipment of the  
18 cemetery merchandise.

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

- 23 (1) memorials,
- 24 (2) markers,
- 25 (3) monuments,
- 26 (4) foundations, and
- 27 (5) outer burial containers.

28 (D) "Undeveloped interment, entombment or inurnment  
29 spaces" or "undeveloped spaces" means any space to be used  
30 for the reception of human remains that is not completely and  
31 totally constructed at the time of initial payment therefor  
32 in a:

- 33 (1) lawn crypt,
- 34 (2) mausoleum,

- 1           (3) garden crypt,
- 2           (4) columbarium, or
- 3           (5) cemetery section.

4           (E) "Cemetery services" means those services customarily  
 5 performed by cemetery or crematory personnel in connection  
 6 with the interment, entombment, inurnment or cremation of a  
 7 dead human body.

8           (F) "Cemetery section" means a grouping of spaces  
 9 intended to be developed simultaneously for the purpose of  
 10 interring human remains.

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

17          (H) "Lawn crypt" means a permanent underground crypt  
 18 usually constructed of reinforced concrete or similar  
 19 material installed in multiple units for the entombment  
 20 ~~interment~~ of human remains.

21          (I) "Mausoleum" or "garden crypt" means a grouping of  
 22 spaces constructed of reinforced concrete or similar material  
 23 constructed or assembled above the ground for entombing human  
 24 remains.

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

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

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

34          (M) "Seller" means any person selling or offering for

1 sale cemetery merchandise, cemetery services or undeveloped  
2 interment, entombment, or inurnment spaces in accordance with  
3 a pre-need sales contract on-a-pre-need-basis.

4 (N) "Religious cemetery" means a cemetery owned,  
5 operated, controlled or managed by any recognized church,  
6 religious society, association or denomination or by any  
7 cemetery authority or any corporation administering, or  
8 through which is administered, the temporalities of any  
9 recognized church, religious society, association or  
10 denomination.

11 (O) "Municipal cemetery" means a cemetery owned,  
12 operated, controlled or managed by any city, village,  
13 incorporated town, township, county or other municipal  
14 corporation, political subdivision, or instrumentality  
15 thereof authorized by law to own, operate or manage a  
16 cemetery.

17 (O-1) "Outer burial container" means a container made of  
18 concrete, steel, wood, fiberglass, or similar material, used  
19 solely at the interment site, and designed and used  
20 exclusively to surround or enclose a separate casket and to  
21 support the earth above such casket, commonly known as a  
22 burial vault, grave box, or grave liner, but not including a  
23 lawn crypt.

24 (P) "Sales price" means the gross amount paid by a  
25 purchaser on a pre-need sales contract for cemetery  
26 merchandise, cemetery services or undeveloped interment,  
27 entombment or inurnment spaces, excluding sales taxes, credit  
28 life insurance premiums, finance charges and Cemetery Care  
29 Act contributions.

30 (Q) (Blank).

31 (R) "Provider" means a person who is responsible for  
32 performing cemetery services or furnishing cemetery  
33 merchandise, interment spaces, entombment spaces, or  
34 inurnment spaces under a pre-need sales contract.



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

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

6        (U) "Foreign warehouse facility" means a warehouse  
7        facility now or hereafter located in any state or territory  
8        of the United States, including the District of Columbia,  
9        other than the State of Illinois.

10        A foreign warehouse facility shall be deemed to have  
11        appointed the Comptroller to be its true and lawful attorney  
12        upon whom may be served all legal process in any action or  
13        proceeding against it relating to or growing out of this Act,  
14        and the acceptance of the delivery of stored merchandise  
15        under this Act shall be signification of its agreement that  
16        any such process against it which is so served, shall be of  
17        the same legal force and validity as though served upon it  
18        personally.

19        Service of such process shall be made by delivering to  
20        and leaving with the Comptroller, or any agent having charge  
21        of the Comptroller's Department of Cemetery and Burial  
22        Trusts, a copy of such process and such service shall be  
23        sufficient service upon such foreign warehouse facility if  
24        notice of such service and a copy of the process are, within  
25        10 days thereafter, sent by registered mail by the plaintiff  
26        to the foreign warehouse facility at its principal office and  
27        the plaintiff's affidavit of compliance herewith is appended  
28        to the summons. The Comptroller shall keep a record of all  
29        process served upon him under this Section and shall record  
30        therein the time of such service.

31        (Source: P.A. 91-7, eff. 1-1-2000; 91-357, eff. 7-29-99;  
32        revised 8-30-99.)

1           Sec. 5. It is unlawful for any seller person directly or  
 2 indirectly doing business within this State, ~~through an agent~~  
 3 ~~or otherwise~~ to engage in pre-need sales without a license  
 4 issued by the Comptroller.

5 (Source: P.A. 84-239.)

6 (815 ILCS 390/6) (from Ch. 21, par. 206)

7           Sec. 6. License application.

8           (a) An application for a license shall be made in  
 9 writing to the Comptroller on forms prescribed by him or her,  
 10 signed by the applicant under oath verified by a notary  
 11 public, and shall ~~be~~ accompanied by a non-returnable \$25  
 12 application fee. The Comptroller may prescribe abbreviated  
 13 application forms for persons holding a license under the  
 14 Cemetery Care Act. Applications (except abbreviated  
 15 applications) must include at least the following  
 16 information:

17           (1) The full name and address, both residence and  
 18 business, of the applicant if the applicant is an  
 19 individual; of every member if applicant is a  
 20 partnership; of every member of the Board of Directors if  
 21 applicant is an association; and of every officer,  
 22 director and shareholder holding more than 10% 5% of the  
 23 corporate stock if applicant is a corporation;

24           (2) A detailed statement of applicant's assets and  
 25 liabilities;

26           (2.1) The name and address of the applicant's  
 27 principal place of business at which the books, accounts,  
 28 and records are available for examination by the  
 29 Comptroller as required by this Act;

30           (2.2) The name and address of the applicant's  
 31 branch locations at which pre-need sales will be  
 32 conducted and which will operate under the same license  
 33 number as the applicant's principal place of business;

1           (3) For each individual listed under (1) above, a  
2 detailed statement of the individual's business  
3 experience for the 10 years immediately preceding the  
4 application; any present or prior connection between the  
5 individual and any other person engaged in pre-need  
6 sales; any felony or misdemeanor convictions for which  
7 fraud was an essential element; any charges or complaints  
8 lodged against the individual for which fraud was an  
9 essential element and which resulted in civil or criminal  
10 litigation; any failure of the individual to satisfy an  
11 enforceable judgment entered against him or her based  
12 upon fraud; and any other information requested by the  
13 Comptroller relating to the past business practices of  
14 the individual. Since the information required by this  
15 paragraph may be confidential or contain proprietary  
16 information, this information shall not be available to  
17 other licensees or the general public and shall be used  
18 only for the lawful purposes of the Comptroller in  
19 enforcing this Act;

20           (4) The name of the trustee and, if applicable, the  
21 names of the advisors to the trustee, including a copy of  
22 the proposed trust agreement under which the trust funds  
23 are to be held as required by this Act;

24           (5) Where applicable, the name of the corporate  
25 surety company providing the performance bond for the  
26 construction of undeveloped spaces and a copy of the  
27 bond; and

28           (6) Such other information as the Comptroller may  
29 reasonably require in order to determine the  
30 qualification of the applicant to be licensed under this  
31 Act.

32           (b) Applications for license shall be accompanied by a  
33 fidelity bond executed by the applicant and a security  
34 company authorized to do business in this State in such

1 amount, not exceeding \$10,000, as the Comptroller may  
2 require. The Comptroller may require additional bond from  
3 time to time in amounts equal to one-tenth of such trust  
4 funds but not to exceed \$100,000, which bond shall run to the  
5 Comptroller for the use and benefit of the beneficiaries of  
6 such trust funds. Such licensee may by written permit of the  
7 Comptroller be authorized to operate without additional bond,  
8 except such fidelity bond as may be required by the  
9 Comptroller for the protection of the licensee against loss  
10 by default by any of its employees engaged in the handling of  
11 trust funds.

12 (c) Any application not acted upon within 90 days may be  
13 deemed denied.

14 (Source: P.A. 88-477.)

15 (815 ILCS 390/7) (from Ch. 21, par. 207)

16 Sec. 7. The Comptroller may refuse to issue or may  
17 suspend or revoke a license on any of the following grounds:

18 (a) The applicant or licensee has made any  
19 misrepresentations or false statements or concealed any  
20 material fact;

21 (b) The applicant or licensee is insolvent;

22 (c) The applicant or licensee has been engaged in  
23 business practices that work a fraud;

24 (d) The applicant or licensee has refused to give  
25 pertinent data to the Comptroller;

26 (e) The applicant or licensee has failed to satisfy any  
27 enforceable judgment or decree rendered by any court of  
28 competent jurisdiction against the applicant;

29 (f) The applicant or licensee has conducted or is about  
30 to conduct business in a fraudulent manner;

31 (g) ~~The trustee-advisers-of-the~~ trust agreement is not  
32 in compliance with State or federal law satisfactory to the  
33 ~~Comptroller;~~

1 (h) The pre-construction performance bond, if  
2 applicable, is not satisfactory to the Comptroller;

3 (i) The fidelity bond is not satisfactory to the  
4 Comptroller;

5 (j) As to any individual listed in the license  
6 application as required pursuant to Section 6, that such  
7 individual has conducted or is about to conduct any business  
8 on behalf of the applicant in a fraudulent manner, ~~;~~ has been  
9 convicted of any felony or misdemeanor an essential element  
10 of which is fraud, has had a judgment rendered against him or  
11 her based on fraud in any civil litigation, ~~or~~ has failed to  
12 satisfy any enforceable judgment or decree rendered against  
13 him by any court of competent jurisdiction, or has been  
14 convicted of any felony or any theft-related offense;

15 (k) The applicant or licensee has failed to make the  
16 annual report required by this Act or to comply with a final  
17 order, decision, or finding of the Comptroller made pursuant  
18 to this Act;

19 (l) The applicant or licensee, including any member,  
20 officer, or director thereof if the applicant or licensee is  
21 a firm, partnership, association, or corporation and any  
22 shareholder holding more than 10% of the corporate stock, has  
23 violated any provision of this Act or any regulation or order  
24 made by the Comptroller under this Act; or

25 (m) The Comptroller finds any fact or condition existing  
26 which, if it had existed at the time of the original  
27 application for such license would have warranted the  
28 Comptroller in refusing the issuance of the license.

29 (Source: P.A. 85-842.)

30 (815 ILCS 390/8) (from Ch. 21, par. 208)

31 Sec. 8. (a) Every license issued by the Comptroller  
32 shall state the number of the license, the business name and  
33 address of the licensee's principal place of business, each

1 branch location also operating under the license, and the  
2 licensee's parent company, if any. licensee--at--which--the  
3 business--is--to--be--conducted, and The license shall be  
4 conspicuously posted in each the place of business operating  
5 under the license. ~~No more than one place of business shall~~  
6 ~~be maintained under the same license,~~ but The Comptroller  
7 may issue additional licenses as may be necessary for license  
8 branch locations ~~more than one license to a licensee~~ upon  
9 compliance with the provisions of this Act governing an  
10 original issuance of a license for each new license.

11 (b) Individual salespersons representing employed by a  
12 licensee shall not be required to obtain licenses in their  
13 individual capacities but must acknowledge, by affidavit,  
14 that they have been provided a copy of and have read this  
15 Act. The licensee must retain copies of the affidavits of  
16 its salespersons for its records and must make the affidavits  
17 available to the Comptroller for examination upon request.

18 (c) The licensee shall be responsible for the activities  
19 of any person representing the licensee in selling or  
20 offering a pre-need contract for sale ~~all individuals or~~  
21 ~~sales organizations selling under contract with, as agents or~~  
22 ~~on behalf of the licensee.~~

23 (d) Any ~~sales company or other~~ person not selling on  
24 behalf of a licensee shall be required to obtain his or her  
25 its own license.

26 (e) Any person engaged in pre-need sales, as defined  
27 herein, prior to the effective date of this Act may continue  
28 operations until the application for license under this Act  
29 is denied; provided that such person shall make application  
30 for a license within 60 days of the date that application  
31 forms are made available by the Comptroller.

32 (f) No license shall be transferable or assignable  
33 without the express written consent of the Comptroller. A  
34 transfer of more than 50% of the ownership of any business

1 licensed hereunder shall be deemed to be an attempted  
2 assignment of the license originally issued to the licensee  
3 for which consent of the Comptroller shall be required.

4 (g) Every license issued hereunder shall remain in force  
5 until the same has been suspended, surrendered or revoked in  
6 accordance with this Act, but the Comptroller, upon the  
7 request of an interested person or on his own motion, may  
8 issue new licenses to a licensee whose license or licenses  
9 have been revoked, if no factor or condition then exists  
10 which would have warranted the Comptroller in refusing  
11 originally the issuance of such license.

12 (Source: P.A. 84-239.)

13 (815 ILCS 390/8a)

14 Sec. 8a. Investigation of unlawful practices. If it  
15 appears to the Comptroller that a person has engaged in, is  
16 engaging in, or is about to engage in any practice in  
17 violation of ~~declared--to--be--unlawful--by~~ this Act, the  
18 Comptroller may:

19 (1) require that person to file on such terms as  
20 the Comptroller prescribes a statement or report in  
21 writing, under oath or otherwise, containing all  
22 information the Comptroller may consider necessary to  
23 ascertain whether a licensee is in compliance with this  
24 Act, or whether an unlicensed person is engaging in  
25 activities for which a license is required;

26 (2) examine under oath any person in connection  
27 with the books and records pertaining to or having an  
28 impact upon the trust funds required to be maintained  
29 pursuant to this Act;

30 (3) examine any books and records of the licensee,  
31 trustee, or investment advisor that the Comptroller may  
32 consider necessary to ascertain compliance with this Act;

33 and

1           (4) require the production of a copy of any record,  
 2           book, document, account, or paper that is produced in  
 3           accordance with this Act and retain it in his or her  
 4           possession until the completion of all proceedings in  
 5           connection with which it is produced.

6           (Source: P.A. 89-615, eff. 8-9-96.)

7           (815 ILCS 390/9) (from Ch. 21, par. 209)

8           Sec. 9. The Comptroller may, upon his own motion  
 9           investigate the actions of any person providing, selling, or  
 10          offering pre-need sales contracts or of any applicant or any  
 11          person or persons holding or claiming to hold a license under  
 12          this Act. The Comptroller shall make such an investigation  
 13          on receipt of the verified written complaint of any person  
 14          setting forth facts which, if proved, would constitute  
 15          grounds for refusal, suspension, or revocation of a license  
 16          with--respect--to--which--grounds--for--revocation--may--occur--or  
 17          exist,--or--if--he--shall--find--that--such--grounds--for--revocation  
 18          are--of--general--application--to--all--offices--or--to--more--than--one  
 19          office--operated--by--such--licensee,--he--may--revoke--all--of--the  
 20          licenses--issued--to--such--licensee--or--such--number--of--licensees  
 21          to--which--grounds--apply,--as--the--case--may--be. Before refusing  
 22          to issue, and before suspension or revocation of a license,  
 23          the Comptroller shall hold a hearing to determine whether the  
 24          applicant or licensee, hereafter called the respondent, is  
 25          entitled to hold such a license. At least 10 days prior to  
 26          the date set for such hearing, the Comptroller shall notify  
 27          the respondent in writing that on the date designated a  
 28          hearing will be held to determine his eligibility for a  
 29          license and that he may appear in person or by counsel.  
 30          Such written notice may be served on the respondent  
 31          personally, or by registered or certified mail sent to the  
 32          respondent's business address as shown in his latest  
 33          notification to the Comptroller and shall include sufficient



1 information to inform the respondent of the general nature of  
2 the charge. At the hearing, both the respondent and the  
3 complainant shall be accorded ample opportunity to present in  
4 person or by counsel such statements, testimony, evidence and  
5 argument as may be pertinent to the charges or to any defense  
6 thereto. The Comptroller may reasonably continue such  
7 hearing from time to time.

8 The Comptroller may subpoena any person or persons in  
9 this State and take testimony orally, by deposition or by  
10 exhibit, in the same manner and with the same fees and  
11 mileage as prescribed in judicial proceedings in civil cases.

12 Any authorized agent of the Comptroller may administer  
13 oaths to witnesses at any hearing which the Comptroller is  
14 authorized to conduct.

15 The Comptroller, at his expense, shall provide a  
16 certified shorthand reporter to take down the testimony and  
17 preserve a record of all proceedings at the hearing of any  
18 case involving the refusal to issue a license, the suspension  
19 or revocation of a license, the imposition of a monetary  
20 penalty, or the referral of a case for criminal prosecution.  
21 The record of any such proceeding shall consist of the notice  
22 of hearing, complaint, all other documents in the nature of  
23 pleadings and written motions filed in the proceedings, the  
24 transcript of testimony and the report and orders of the  
25 Comptroller. Copies of the transcript of such record may be  
26 purchased from the certified shorthand reporter who prepared  
27 the record or from the Comptroller.

28 (Source: P.A. 84-239.)

29 (815 ILCS 390/12) (from Ch. 21, par. 212)

30 Sec. 12. License revocation or suspension.

31 (a) The Comptroller may, upon determination that grounds  
32 exist for the revocation or suspension of a license issued  
33 under this Act, revoke or suspend, if appropriate, the

1 license issued to a licensee or to a particular branch office  
2 location with respect to which the grounds for revocation or  
3 suspension may occur or exist.

4 (b) Upon the revocation or suspension of any license,  
5 the licensee shall immediately surrender the license or  
6 licenses and--any-branch-office-licenses to the Comptroller.  
7 If the licensee fails to do so, the Comptroller has the right  
8 to seize the license or licenses same.

9 (Source: P.A. 84-239.)

10 (815 ILCS 390/14) (from Ch. 21, par. 214)

11 Sec. 14. Contract required.

12 (a) It is unlawful for any person seller doing business  
13 within this State to accept sales proceeds, either directly  
14 or indirectly, by any means, unless the seller enters into a  
15 pre-need sales contract with the purchaser which meets the  
16 following requirements:

17 (1) A written sales contract shall be executed in  
18 at least 11 point type in duplicate for each pre-need  
19 sale made by a licensee, and a signed copy given to the  
20 purchaser. Each completed contract shall be numbered and  
21 shall contain: (i) the name and address of the purchaser,  
22 the principal office of the licensee, and the parent  
23 company of the licensee; (ii) and-the seller, the name  
24 of the person, if known, who is to receive the cemetery  
25 merchandise, cemetery services or the completed  
26 interment, entombment or inurnment spaces under the  
27 contract; and (iii) specific identification of  
28 specifically--identify such merchandise, services or  
29 spaces to be provided, if a specific space or spaces are  
30 contracted for, and the price of the merchandise,  
31 services, or space or spaces.

32 (2) In addition, such contracts must contain a  
33 provision in distinguishing typeface as follows:

1           "Notwithstanding anything in this contract to the  
2 contrary, you are afforded certain specific rights of  
3 cancellation and refund under ~~Sections 18 and 19~~ of the  
4 Illinois Pre-Need Cemetery Sales Act, enacted by the 84th  
5 General Assembly of the State of Illinois".

6           (3) All pre-need sales contracts shall be sold on a  
7 guaranteed price basis. At the time of performance of the  
8 service or delivery of the merchandise, the seller shall  
9 be prohibited from assessing the purchaser or his heirs  
10 or assigns or duly authorized representative any  
11 additional charges for the specific merchandise and  
12 services listed on the pre-need sales contract.

13           (4) Each contract shall clearly disclose that the  
14 price of the merchandise or services is guaranteed and  
15 shall contain the following statement in 12 point bold  
16 type:

17           "THIS CONTRACT GUARANTEES THE BENEFICIARY THE  
18 SPECIFIC GOODS, AND SERVICES, INTERMENT SPACES,  
19 ENTOMBMENT SPACES, AND INURNMENT SPACES CONTRACTED FOR.  
20 NO ADDITIONAL CHARGES MAY BE REQUIRED FOR DESIGNATED  
21 GOODS, AND SERVICES, AND SPACES. ADDITIONAL CHARGES MAY  
22 BE INCURRED FOR UNEXPECTED EXPENSES."

23           (5) The pre-need sales contract shall provide that  
24 if the particular cemetery services, cemetery  
25 merchandise, or spaces specified in the pre-need contract  
26 are unavailable at the time of delivery, the seller shall  
27 be required to furnish services, merchandise, and spaces  
28 similar in style and at least equal in quality of  
29 material and workmanship.

30           (6) The pre-need contract shall also disclose any  
31 specific penalties to be incurred by the purchaser as a  
32 result of failure to make payments; and penalties to be  
33 incurred or moneys or refunds to be received as a result  
34 of cancellation of the contract.

1           (7) The pre-need contract shall disclose the nature  
2           of the relationship between the provider and the seller.

3           (8) Each pre-need contract that authorizes the  
4           delivery of cemetery merchandise to a licensed and bonded  
5           warehouse shall provide that prior to or upon delivery of  
6           the merchandise to the warehouse the title to the  
7           merchandise and a warehouse receipt shall be delivered to  
8           the purchaser or beneficiary. The pre-need contract  
9           shall contain the following statement in 12 point bold  
10           type:

11           "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO  
12           A LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE  
13           MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE  
14           BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER  
15           MAY PRECLUDE REFUND OF SALE PROCEEDS THAT ARE  
16           ATTRIBUTABLE TO THE DELIVERED MERCHANDISE."

17           The purchaser shall initial the statement at the  
18           time of entry into the pre-need contract.

19           (9) Each pre-need contract that authorizes the  
20           placement of cemetery merchandise at the site of its  
21           ultimate use prior to the time that the merchandise is  
22           needed by the beneficiary shall contain the following  
23           statement in 12 point bold type:

24           "THIS CONTRACT AUTHORIZES THE PLACEMENT OF MERCHANDISE AT  
25           THE SITE OF ITS ULTIMATE USE PRIOR TO THE TIME THAT THE  
26           MERCHANDISE IS NEEDED BY THE BENEFICIARY. DELIVERY OF THE  
27           MERCHANDISE IN THIS MANNER MAY PRECLUDE REFUND OF SALE  
28           PROCEEDS THAT ARE ATTRIBUTABLE TO THE DELIVERED  
29           MERCHANDISE."

30           The purchaser shall initial the statement at the  
31           time of entry into the pre-need contract.

32           (b) Every pre-need sales contract must be in writing.  
33           and-no-pre-need-sales-contract-form-may-be-used-unless-it-has  
34           previously-been-filed-with-the-Comptroller.--The--Comptroller

1 shall--review--all--pre-need--sales--contract-forms-and, upon  
 2 written-notification-to-the-seller, shall-prohibit-the-use-of  
 3 contract-forms-that-do-not-meet-the-requirements-of-this-Act.  
 4 Any-use-or-attempted-use-of-any-oral-pre-need-sales--contract  
 5 or--any--written--pre-need-sales-contract-in-a-form-not-filed  
 6 with-the-Comptroller-or-in-a-form--that--does--not--meet--the  
 7 requirements--of-this-Act-shall-be-deemed-a-violation-of-this  
 8 Act. The Comptroller may by rule develop a model pre-need  
 9 sales contract form that meets the requirements of this Act.

10 (c) To the extent the Rule is applicable, every pre-need  
 11 sales contract is subject to the Federal Trade Commission  
 12 Rule concerning the Cooling-Off Period for Door-to-Door Sales  
 13 (16 CFR Part 429).

14 (d) No pre-need sales contract may be entered into in  
 15 this State unless there is a provider for the cemetery  
 16 merchandise, cemetery services, and undeveloped interment,  
 17 inurnment, and entombment spaces being sold. If the seller  
 18 is not the provider, then the seller must have a binding  
 19 agreement with a provider, and the identity of the provider  
 20 and the nature of the agreement between the seller and the  
 21 provider must be disclosed in the pre-need sales contract at  
 22 the time of sale and before the receipt of any sale proceeds.  
 23 The failure to disclose the identity of the provider, the  
 24 nature of the agreement between the seller and the provider,  
 25 or any changes thereto to the purchaser and beneficiary, or  
 26 the failure to make the disclosures required by this Section  
 27 constitutes an intentional violation of this Act.

28 (e) No pre-need contract may be entered into in this  
 29 State unless it is accompanied by a funding mechanism  
 30 permitted under this Act and unless the seller is licensed by  
 31 the Comptroller as provided in this Act. Nothing in this Act  
 32 is intended to relieve providers or sellers of pre-need  
 33 contracts from being licensed under any other Act required  
 34 for their profession or business or from being subject to the

1 rules promulgated to regulate their profession or business,  
2 including rules on solicitation and advertisement.

3 (f) No pre-need contract may be entered into in this  
4 State unless the seller explains to the purchaser the terms  
5 of the pre-need contract prior to the purchaser signing and  
6 the purchaser initials a statement in the contract confirming  
7 that the seller has explained the terms of the contract prior  
8 to the purchaser signing.

9 (g) The State Comptroller shall develop a booklet for  
10 consumers in plain English describing the scope, application,  
11 and consumer protections of this Act. After the booklet is  
12 developed, no pre-need contract may be sold in this State  
13 unless the seller distributes to the purchaser prior to the  
14 sale a booklet developed or approved for use by the State  
15 Comptroller.

16 (Source: P.A. 91-7, eff. 1-1-2000.)

17 (815 ILCS 390/16) (from Ch. 21, par. 216)

18 Sec. 16. Trust funds; disbursements.

19 (a) A trustee shall make no disbursements from the trust  
20 fund except as provided in this Act.

21 (b) A trustee shall, with respect to the investment of  
22 such trust funds, exercise the judgment and care under the  
23 circumstances then prevailing which persons of prudence,  
24 discretion and intelligence exercise in the management of  
25 their own affairs, not in regard to speculation, but in  
26 regard to the permanent disposition of their funds,  
27 considering the probable income as well as the probable  
28 safety of their capital.

29 The seller shall act as trustee of all amounts received  
30 for cemetery merchandise, services, or undeveloped spaces  
31 until those amounts have been deposited into the trust fund.  
32 The seller may continue to be the trustee of up to \$500,000  
33 that has been deposited into the trust fund, but the seller

1 must retain an independent trustee for any amount of trust  
2 funds in excess of \$500,000. A seller holding trust funds in  
3 excess of \$500,000 ~~on the effective date of this amendatory~~  
4 ~~Act of 1996 shall have 36 months to retain an independent~~  
5 ~~trustee for the amounts over \$500,000; any other seller~~ must  
6 retain an independent trustee for its trust funds in excess  
7 of \$500,000 as soon as may be practical. The Comptroller  
8 shall have the right to disqualify the trustee upon the same  
9 grounds as for refusing to grant or revoking a license  
10 hereunder. Upon notice to the Comptroller, the seller may  
11 change the trustee of the trust fund.

12 (c) The trustee may rely upon certifications and  
13 affidavits made to it under the provisions of this Act, and  
14 shall not be liable to any person for such reliance.

15 (d) A trustee shall be allowed to withdraw from the  
16 trust funds maintained pursuant to this Act, payable solely  
17 from the income earned on such trust funds, a reasonable fee  
18 for all usual and customary services for the operation of the  
19 trust fund, including, but not limited to trustee fees,  
20 investment advisor fees, allocation fees, annual audit fees  
21 and other similar fees. The maximum amount allowed to be  
22 withdrawn for these fees each year shall be the lesser of 3%  
23 of the balance of the trust calculated on an annual basis or  
24 the amount of annual income generated therefrom.

25 (e) The trust shall be a single-purpose trust fund. In  
26 the event of the seller's bankruptcy, insolvency or  
27 assignment for the benefit of creditors, or an adverse  
28 judgment, the trust funds shall not be available to any  
29 creditor as assets of the seller or to pay any expenses of  
30 any bankruptcy or similar proceeding, but shall be  
31 distributed to the purchasers or managed for their benefit by  
32 the trustee holding the funds. Except in an action by the  
33 Comptroller to revoke a license issued pursuant to this Act  
34 and for creation of a receivership as provided in this Act,

1 the trust shall not be subject to judgment, execution,  
2 garnishment, attachment, or other seizure by process in  
3 bankruptcy or otherwise, nor to sale, pledge, mortgage, or  
4 other alienation, and shall not be assignable except as  
5 approved by the Comptroller. The changes made by this  
6 amendatory Act of the 91st General Assembly are intended to  
7 clarify existing law regarding the inability of licensees to  
8 pledge the trust.

9 (f) Because it is not known at the time of deposit or at  
10 the time that income is earned on the trust account to whom  
11 the principal and the accumulated earnings will be  
12 distributed, for purposes of determining the Illinois Income  
13 Tax due on these trust funds, the principal and any accrued  
14 earnings or losses relating to each individual account shall  
15 be held in suspense until the final determination is made as  
16 to whom the account shall be paid.

17 (Source: P.A. 91-7, eff. 6-1-99.)

18 (815 ILCS 390/19) (from Ch. 21, par. 219)

19 Sec. 19. Construction or development of spaces.

20 (a) The construction or development of undeveloped  
21 interment, entombment or inurnment spaces shall be commenced  
22 on that phase, section or sections of undeveloped ground or  
23 section of lawn crypts, mausoleums, garden crypts,  
24 columbariums or cemetery spaces in which sales are made  
25 within 3 years of the date of the first such sale. The  
26 seller shall give written notice to the Comptroller no later  
27 than 30 days after the first sale. Such notice shall include  
28 a description of the project. Once commenced, construction  
29 or development shall be pursued diligently to completion.  
30 The construction must be completed within 6 years of the  
31 first sale. If construction or development is not commenced  
32 or completed within the times specified herein, any purchaser  
33 may surrender and cancel the contract and upon cancellation



1 shall be entitled to a refund of the actual amounts paid  
2 toward the purchase price plus interest attributable to such  
3 amount earned while in trust; provided however that any delay  
4 caused by strike, shortage of materials, civil disorder,  
5 natural disaster or any like occurrence beyond the control of  
6 the seller shall extend the time of such commencement and  
7 completion by the length of such delay.

8 (b) At any time within 12 months of a purchaser's  
9 entering into a pre-need contract for undeveloped interment,  
10 entombment or inurnment spaces, a purchaser may surrender and  
11 cancel his or her contract and upon cancellation shall be  
12 entitled to a refund of the actual amounts paid toward the  
13 purchase price plus interest attributable to such amount  
14 earned while in trust. Notwithstanding the foregoing, the  
15 cancellation and refund rights specified in this paragraph  
16 shall terminate as of the date the seller commences  
17 construction or development of the phase, section or sections  
18 of undeveloped spaces in which sales are made. After the  
19 rights of cancellation and refund specified herein have  
20 terminated, if a purchaser defaults in making payments under  
21 the pre-need contract, the seller shall have the right to  
22 cancel the contract and withdraw from the trust fund the  
23 entire balance to the credit of the defaulting purchaser's  
24 account as liquidated damages. In such event, the trustee  
25 shall deliver said balance to the seller upon its  
26 certification, and upon receiving said certification the  
27 trustee may rely thereon and shall not be liable to anyone  
28 for such reliance.

29 (c) During the construction or development of interment,  
30 entombment or inurnment spaces, upon the sworn certification  
31 by the seller and the contractor to the trustee, the trustee  
32 shall disburse from the trust fund the amount equivalent to  
33 the cost of performed labor or delivered materials as  
34 certified. Said certification shall be substantially in the

1 following form:

2 We, the undersigned, being respectively the Seller and  
3 Contractor, do hereby certify that the Contractor has  
4 performed labor or delivered materials or both to (address of  
5 property) ....., in connection with a contract to  
6 ....., and that as of this date the value of the labor  
7 performed and materials delivered is \$.....

8 We do further certify that in connection with such  
9 contract there remains labor to be performed, and materials  
10 to be delivered, of the value of \$.....

11 This Certificate is signed (insert date).

12 .....  
13 Seller Contractor

14 A person who executes and delivers a completion  
15 certificate with actual knowledge of a falsity contained  
16 therein shall be considered in violation of this Act and  
17 subject to the penalties contained herein.

18 (d) Except as otherwise authorized by this Section,  
19 every seller of undeveloped spaces shall provide facilities  
20 for temporary interment, entombment or inurnment for  
21 purchasers or beneficiaries of contracts who die prior to  
22 completion of the space. Such temporary facilities shall be  
23 constructed of permanent materials, and, insofar as  
24 practical, be landscaped and groomed to the extent customary  
25 in the cemetery industry in that community. The heirs,  
26 assigns, or personal representative of a purchaser or  
27 beneficiary shall not be required to accept temporary  
28 underground interment spaces where the undeveloped space  
29 contracted for was an above ground entombment or inurnment  
30 space. In the event that temporary facilities as described  
31 in this paragraph are not made available, upon the death of a  
32 purchaser or beneficiary, the heirs, assigns, or personal  
33 representative is entitled to a refund of the entire sales  
34 price paid plus undistributed interest attributable to such

1 amount while in trust.

2 (e) If the seller delivers a completed space acceptable  
3 to the heirs, assigns or personal representative of a  
4 purchaser or beneficiary, other than the temporary facilities  
5 specified herein, in lieu of the undeveloped space purchased,  
6 the seller shall provide the trustee with a delivery  
7 certificate and all sums deposited under the pre-need sales  
8 contract, including the undistributed income, shall be paid  
9 to the seller.

10 (f) Upon completion of the phase, section or sections of  
11 the project as certified to the trustee by the seller and the  
12 contractor and delivery of the deed or certificate of  
13 ownership to the completed interment, entombment, or  
14 inurnment space to all of the purchasers entitled to receive  
15 those ownership documents, the trust fund requirements set  
16 forth herein shall terminate and all funds held in the  
17 preconstruction trust fund attributable to the completed  
18 phase, section or sections, including interest accrued  
19 thereon, shall be returned to the seller.

20 (g) This Section shall not apply to the sale of  
21 undeveloped spaces if there has been any such sale in the  
22 same phase, section or sections of the project prior to the  
23 effective date of this Act.

24 (Source: P.A. 91-357, eff. 7-29-99.)

25 (815 ILCS 390/20) (from Ch. 21, par. 220)

26 Sec. 20. Records.

27 (a) Each licensee must keep accurate accounts, books and  
28 records in this State at the principal place of business  
29 identified in the licensee's license application or as  
30 otherwise approved by the Comptroller in writing of all  
31 transactions, copies of agreements, dates and amounts of  
32 payments made or received, the names and addresses of the  
33 contracting parties, the names and addresses of persons for

1 whose benefit funds are received, if known, and the names of  
2 the trust depositories. Additionally, for a period not to  
3 exceed 6 months after the performance of all terms in a  
4 pre-need sales contract, the licensee shall maintain copies  
5 of each pre-need contract at the licensee branch location  
6 where the contract was entered or at some other location  
7 agreed to by the Comptroller in writing.

8 (b) Each licensee must maintain such records for a  
9 period of 3 years after the licensee shall have fulfilled his  
10 or her obligation under the pre-need contract or 3 years  
11 after any stored merchandise shall have been provided to the  
12 purchaser or beneficiary, whichever is later.

13 (c) Each licensee shall submit reports to the  
14 Comptroller annually, under oath, on forms furnished by the  
15 Comptroller. The annual report shall contain, but shall not  
16 be limited to, the following:

17 (1) An accounting of the principal deposit and  
18 additions of principal during the fiscal year.

19 (2) An accounting of any withdrawal of principal or  
20 earnings.

21 (3) An accounting at the end of each fiscal year,  
22 of the total amount of principal and earnings held.

23 (d) The annual report shall be filed by the licensee  
24 with the Comptroller within 75 days after the end of the  
25 licensee's fiscal year. An extension of up to 60 days may be  
26 granted by the Comptroller, upon a showing of need by the  
27 licensee. Any other reports shall be in the form furnished  
28 or specified by the Comptroller. If a licensee fails to  
29 submit an annual report to the Comptroller within the time  
30 specified in this Section, the Comptroller shall impose upon  
31 the licensee a penalty of \$5 for each and every day the  
32 licensee remains delinquent in submitting the annual report.  
33 The Comptroller may abate all or part of the \$5 daily penalty  
34 for good cause shown. Each report shall be accompanied by a

1 check or money order in the amount of \$10 payable to:  
2 Comptroller, State of Illinois.

3 (e) On and after the effective date of this amendatory  
4 Act of the 91st General Assembly, a licensee may report all  
5 required information concerning the sale of outer burial  
6 containers on the licensee's annual report required to be  
7 filed under this Act and shall not be required to report that  
8 information under the Illinois Funeral or Burial Funds Act,  
9 as long as the information is reported under this Act.

10 (Source: P.A. 91-7, eff. 1-1-2000.)

11 (815 ILCS 390/22) (from Ch. 21, par. 222)

12 Sec. 22. Cemetery Consumer Protection Fund.

13 (a) Every seller engaging in pre-need sales shall pay to  
14 the Comptroller \$5 for each said contract entered into, to be  
15 paid into a special income earning fund hereby created in the  
16 State Treasury, known as the Cemetery Consumer Protection  
17 Fund. The above said fees shall be remitted to the  
18 Comptroller semi-annually within 30 days after the end of  
19 June and December for all contracts that have been entered in  
20 such 6 month period.

21 (b) All monies paid into the fund together with all  
22 accumulated undistributed income thereon shall be held as a  
23 special fund in the State Treasury. The fund shall be used  
24 solely for the purpose of providing restitution to consumers  
25 who have suffered pecuniary loss arising out of pre-need  
26 sales.

27 (c) The fund shall be applied only to restitution or  
28 completion of the project or delivery of the merchandise or  
29 services, where such has been ordered by the Circuit Court in  
30 a lawsuit brought under this Act by the Attorney General of  
31 the State of Illinois on behalf of the Comptroller and in  
32 which it has been determined by the Court that the obligation  
33 is non-collectible from the judgment debtor. Restitution

1 shall not exceed the amount of the sales price paid plus  
2 interest at the statutory rate. The fund shall not be used  
3 for the payment of any attorney or other fees.

4 (d) Whenever restitution is paid by the fund, the fund  
5 shall be subrogated to the amount of such restitution, and  
6 the Comptroller shall request the Attorney General to engage  
7 in all reasonable post judgment collection steps to collect  
8 said restitution from the judgment debtor and reimburse the  
9 fund.

10 (e) The fund shall not be applied toward any restitution  
11 for losses in any lawsuit initiated by the Attorney General  
12 or Comptroller or with respect to any claim made on pre-need  
13 sales which occurred prior to the effective date of this Act.

14 (f) The fund may not be allocated for any purpose other  
15 than that specified in this Act.

16 (g) Notwithstanding any other provision of this Section,  
17 the payment of restitution from the fund shall be a matter of  
18 grace and not of right and no purchaser shall have any vested  
19 rights in the fund as a beneficiary or otherwise. Prior to  
20 seeking restitution from the fund, a purchaser or beneficiary  
21 seeking payment of restitution shall apply for restitution on  
22 a form provided by the Comptroller. The form shall include  
23 any information the Comptroller may reasonably require in  
24 order for the Court to determine that restitution or  
25 completion of the project or delivery of merchandise or  
26 service is appropriate.

27 (h) Annually, the status of the fund shall be reviewed  
28 by the Comptroller, and if he determines that the fund  
29 together with all accumulated income earned thereon, equals  
30 or exceeds \$10,000,000 and that the total number of  
31 outstanding claims filed against the fund is less than 10% of  
32 the fund's current balance, then payments to the fund shall  
33 be suspended until such time as the fund's balance drops  
34 below \$10,000,000 or the total number of outstanding claims

1 filed against the fund is more than 10% of the fund's current  
2 balance, but on such suspension, the fund shall not be  
3 considered inactive.

4 (Source: P.A. 84-239.)

5 (815 ILCS 390/23) (from Ch. 21, par. 223)

6 Sec. 23. (a) Any person who fails to deposit the required  
7 amount into a trust provided for in this Act, improperly  
8 withdraws or uses trust funds for his or her own benefit, or  
9 otherwise violates ~~violating~~ any provision of this Act is  
10 guilty of a Class 4 felony.

11 (b) If any person violates this Act or fails or refuses  
12 to comply with any order of the Comptroller or any part  
13 thereof which to such person has become final and is still in  
14 effect, the Comptroller may, after notice and hearing at  
15 which it is determined that a violation of this Act or such  
16 order has been committed, further order that such person  
17 shall forfeit and pay to the State of Illinois a sum not to  
18 exceed \$5,000 for each violation. Such liability shall be  
19 enforced in an action brought in any court of competent  
20 jurisdiction by the Comptroller in the name of the people of  
21 the State of Illinois.

22 (c) Whenever a license is revoked by the Comptroller, or  
23 the Comptroller determines that any person is engaged in  
24 pre-need sales without a license, he shall apply to the  
25 circuit court of the county where such person is located for  
26 a receiver to administer the business of such person.

27 (d) Whenever a licensee fails or refuses to make a  
28 required report or whenever it appears to the Comptroller  
29 from any report or examination that such licensee has  
30 committed a violation of law or that the trust funds have not  
31 been administered properly or that it is unsafe or  
32 inexpedient for such licensee or the trustee of the trust  
33 funds of such licensee to continue to administer such funds

1 or that any officer of such licensee or of the trustee of the  
2 trust funds of such licensee has abused his trust or has been  
3 guilty of misconduct or breach of trust in his official  
4 position injurious to such licensee or that such licensee has  
5 suffered as to its trust funds a serious loss by larceny,  
6 embezzlement, burglary, repudiation or otherwise, the  
7 Comptroller shall, by order, direct the discontinuance of  
8 such illegal, unsafe or unauthorized practices and shall  
9 direct strict conformity with the requirements of the law and  
10 safety and security in its transactions and may apply to the  
11 circuit court of the county where such licensee is located to  
12 prevent any disbursements or expenditures by such licensee  
13 until the trust funds are in such condition that it would not  
14 be jeopardized thereby and the Comptroller shall communicate  
15 the facts to the Attorney General of the State of Illinois  
16 who shall thereupon institute such proceedings against the  
17 licensee or its trustee or the officers of either or both as  
18 the nature of the case may require.

19 (e) In addition to the other penalties and remedies  
20 provided in this Act, the Comptroller may bring a civil  
21 action in the county of residence of the licensee or any  
22 person engaging in pre-need sales, to enjoin any violation or  
23 threatened violation of this Act.

24 (f) The powers vested in the Comptroller by this Section  
25 are additional to any and all other powers and remedies  
26 vested in the Comptroller by law, and nothing herein  
27 contained shall be construed as requiring that the  
28 Comptroller shall employ the powers conferred herein instead  
29 of or as a condition precedent to the exercise of any other  
30 power or remedy vested in the Comptroller.

31 (Source: P.A. 88-477.)

32 (815 ILCS 390/27.1 new)

33 Sec. 27.1. Sales; liability of purchaser for shortage.



1 In the event of a sale or transfer of all or substantially  
2 all of the assets of the licensee, the sale or transfer of  
3 the controlling interest of the corporate stock of the  
4 licensee if the licensee is a corporation, the sale or  
5 transfer of the controlling interest of the partnership if  
6 the licensee is a partnership, or sale pursuant to  
7 foreclosure proceedings, the purchaser is liable for any  
8 shortages existing before or after the sale in the trust  
9 funds required to be maintained in a trust under this Act and  
10 shall honor all pre-need contracts and trusts entered into by  
11 the licensee. Any shortages existing in the trust funds  
12 constitute a prior lien in favor of the trust for the total  
13 value of the shortages, and notice of that lien must be  
14 provided in all sales instruments.

15 In the event of a sale or transfer of all or  
16 substantially all of the assets of the licensee, the sale or  
17 transfer of the controlling interest of the corporate stock  
18 of the licensee if the licensee is a corporation, or the sale  
19 or transfer of the controlling interest of the partnership if  
20 the licensee is a partnership, the licensee shall, at least  
21 21 days prior to the sale or transfer, notify the  
22 Comptroller, in writing, of the pending date of sale or  
23 transfer so as to permit the Comptroller to audit the books  
24 and records of the licensee. The audit must be commenced  
25 within 10 business days after the receipt of the notification  
26 and completed within the 21-day notification period unless  
27 the Comptroller notifies the licensee during that period that  
28 there is a basis for determining a deficiency which will  
29 require additional time to finalize. The sale or transfer  
30 may not be completed by the licensee unless and until:

31 (i) the Comptroller has completed the audit of the  
32 licensee's books and records;

33 (ii) any delinquency existing in the trust funds has  
34 been paid by the licensee, or arrangements satisfactory

1 to the Comptroller have been made by the licensee on the  
2 sale or transfer for the payment of any delinquency;

3 (iii) the Comptroller issues a license upon  
4 application of the new owner, which license must be  
5 applied for within 30 days after the anticipated date of  
6 the sale or transfer, subject to the payment of any  
7 delinquencies, if any, as stated in item (ii).

8 For purposes of this Section, a person, firm,  
9 corporation, partnership, or institution that acquires the  
10 licensee through a real estate foreclosure is subject to the  
11 provisions of this Section.

12 Section 50. Severability. If any provision of this Act or  
13 its application to any person or circumstance is held  
14 invalid, the invalidity of that provision or application does  
15 not affect other provisions or applications of this Act that  
16 can be given effect without the invalid provision or  
17 application.

18 Section 99. Effective date. This Act takes effect  
19 January 1, 2002.