

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 If an abandoned or neglected cemetery has been dedicated
6 as an Illinois nature preserve under the Illinois Natural
7 Areas Preservation Act, any action to cause the clean up of
8 the cemetery under the provisions of this Section shall be
9 consistent with the rules and master plan governing the
10 dedicated nature preserve.

11 Section 40. The Cemetery Protection Act is amended by
12 changing Sections 1, 9, 10, 12, 13, and 14 and adding Section
13 16 as follows:

14 (765 ILCS 835/1) (from Ch. 21, par. 15)

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

19 (a-5) Any person who acts without proper legal authority
20 and who willfully and knowingly removes any portion of the
21 remains of a deceased human being from a burial ground where
22 skeletal remains are buried or from a grave, crypt, vault,
23 mausoleum, or other repository of human remains is guilty of
24 a Class 4 felony.

25 (b) Any person who acts without proper legal authority
26 and who willfully and knowingly:

27 (1) obliterates, vandalizes, or desecrates a burial
28 ground where skeletal remains are buried or a grave,
29 crypt, vault, mausoleum, or other repository of human
30 remains;

31 (2) obliterates, vandalizes, or desecrates a park
32 or other area clearly designated to preserve and

1 perpetuate the memory of a deceased person or group of
2 persons;

3 (3) obliterates, vandalizes, or desecrates plants,
4 trees, shrubs, or flowers located upon or around a
5 repository for human remains or within a human graveyard
6 or cemetery; or

7 (4) obliterates, vandalizes, or desecrates a fence,
8 rail, curb, or other structure of a similar nature
9 intended for the protection or for the ornamentation of
10 any tomb, monument, gravestone, or other structure of
11 like character;

12 is guilty of a Class A misdemeanor if the amount of the
13 damage is less than \$500, a Class 4 felony if the amount of
14 the damage is at least \$500 and less than \$10,000, a Class 3
15 felony if the amount of the damage is at least \$10,000 and
16 less than \$100,000, or a Class 2 felony if the damage is
17 \$100,000 or more and shall provide restitution to the
18 cemetery authority or property owner for the amount of any
19 damage caused.

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

32 (b-7) Any person who acts without proper legal authority
33 and who willfully and knowingly removes with the intent to
34 resell a gravestone or other memorial, monument, or marker

1 commemorating a deceased person or group of persons, whether
2 located within or outside a recognized cemetery, memorial
3 park, or battlefield, is guilty of a Class 2 felony.

4 (c) The provisions of this Section shall not apply to
5 the removal or unavoidable breakage or injury by a cemetery
6 authority of anything placed in or upon any portion of its
7 cemetery in violation of any of the rules and regulations of
8 the cemetery authority, nor to the removal of anything placed
9 in the cemetery by or with the consent of the cemetery
10 authority that in the judgment of the cemetery authority has
11 become wrecked, unsightly, or dilapidated.

12 (d) If an unemancipated minor is found guilty of
13 violating any of the provisions of subsection (b) of this
14 Section and is unable to provide restitution to the cemetery
15 authority or property owner, the parents or legal guardians
16 of that minor shall provide restitution to the cemetery
17 authority or property owner for the amount of any damage
18 caused, up to the total amount allowed under the Parental
19 Responsibility Law.

20 (e) Any person who shall hunt, shoot or discharge any
21 gun, pistol or other missile, within the limits of any
22 cemetery, or shall cause any shot or missile to be discharged
23 into or over any portion thereof, or shall violate any of the
24 rules made and established by the board of directors of such
25 cemetery, for the protection or government thereof, is guilty
26 of a Class C misdemeanor.

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

31 (g) All fines when recovered, shall be paid over by the
32 court or officer receiving the same to the cemetery
33 association and be applied, as far as possible in repairing
34 the injury, if any, caused by such offense. Provided,

1 nothing contained in this Act shall deprive such cemetery
2 association, or the owner of any lot or monument from
3 maintaining an action for the recovery of damages caused by
4 any injury caused by a violation of the provisions of this
5 Act, or of the rules established by the board of directors of
6 such cemetery association. Nothing in this Section shall be
7 construed to prohibit the discharge of firearms loaded with
8 blank ammunition as part of any funeral, any memorial
9 observance or any other patriotic or military ceremony.

10 (Source: P.A. 89-36, eff. 1-1-96.)

11 (765 ILCS 835/9) (from Ch. 21, par. 21.2)

12 Sec. 9. When there is no memorial, monument, or marker
13 installed on a cemetery lot; no interment in a cemetery lot;
14 no transfer or assignment of a cemetery lot on the cemetery
15 authority records; no contact by an owner recorded in the
16 cemetery authority records; publication has been made in a
17 local newspaper and no response was received; and 60 years
18 have passed since the cemetery lot was sold, there is a
19 presumption that the cemetery lot has been abandoned.
20 Alternatively, where there is an obligation to pay a cemetery
21 authority, annually or periodically, maintenance or care
22 charges on a cemetery lot, or part thereof, and the owner of
23 or claimant to a right or easement for burial in such
24 cemetery lot, or part thereof, has failed to pay the required
25 annual or periodic maintenance or care charges for a period
26 of 30 years or more, such continuous failure to do so creates
27 and establishes a presumption that the cemetery lot, or part
28 thereof, has been abandoned.

29 Upon a court's determination of abandonment, the
30 ownership of a right or easement for burial in a cemetery
31 lot, or part thereof, shall be subject to sale in the manner
32 hereinafter provided.

33 (Source: Laws 1961, p. 2908.)

1 (765 ILCS 835/10) (from Ch. 21, par. 21.3)

2 Sec. 10. A cemetery authority may file in the office of
3 the clerk of the circuit court of the county in which the
4 cemetery is located a verified petition praying for the entry
5 of an order adjudging a cemetery lot, or part thereof, to
6 have been abandoned. The petition shall describe the
7 cemetery lot, or part thereof, alleged to have been
8 abandoned, shall allege ownership by the petitioner of the
9 cemetery, and, if known, the name of the owner of the right
10 or easement for burial in such cemetery lot, or part thereof,
11 as is alleged to have been abandoned, or, if the owner
12 thereof is known to the petitioner to be deceased, then the
13 names, if known to petitioner, of such claimants thereto as
14 are the heirs-at-law and next-of-kin or the specific legatees
15 under the will of the owner of the right or easement for
16 burial in such lot, or part thereof, and such other facts as
17 the petitioner may have with respect to ownership of the
18 right or easement for burial in such cemetery lot, or part
19 thereof.

20 The petition shall also allege the facts with respect to
21 the abandonment of the cemetery lot or facts about the
22 obligation of the owner to pay annual or periodic maintenance
23 or care charges on such cemetery lot, or part thereof, the
24 amount of such charges as are due and unpaid, and shall also
25 allege the continuous failure by the owner or claimant to pay
26 such charges for a period of 30 consecutive years or more.

27 Irrespective of diversity of ownership of the right or
28 easement for burial therein, a cemetery authority may include
29 in one petition as many cemetery lots, or parts thereof, as
30 are alleged to have been abandoned.

31 (Source: P.A. 84-549.)

32 (765 ILCS 835/12) (from Ch. 21, par. 21.5)

33 Sec. 12. In the event the owner, the claimant, or the

1 heirs-at-law and next-of-kin or the specific legatees under
2 the will of either the owner or claimant submits proof of
3 ownership to the court or, appears and answers the petition,
4 the presumption of abandonment shall no longer exist and the
5 court shall set the matter for hearing upon the petition and
6 such answers thereto as may be filed.

7 In the event the defendant or defendants fails to appear
8 and answer the petition, or in the event that upon the
9 hearing the court determines from the evidence presented that
10 there has been an abandonment of the cemetery lot for 60
11 years or a continuous failure to pay the annual or periodic
12 maintenance or care charges on such lot, or part thereof, for
13 a period of 30 years or more preceding the filing of the
14 petition, then, in either such event, an order shall be
15 entered adjudicating such lot, or part thereof, to have been
16 abandoned and adjudging the right or easement for burial
17 therein to be subject to sale by the cemetery authority at
18 the expiration of one year from the date of the entry of such
19 order. Upon entry of an order adjudicating abandonment of a
20 cemetery lot, or part thereof, the court shall fix such sum
21 as is deemed a reasonable fee for the services of
22 petitioner's attorney.

23 (Source: P.A. 84-549.)

24 (765 ILCS 835/13) (from Ch. 21, par. 21.6)

25 Sec. 13. In the event that, at any time within one year
26 after adjudication of abandonment, the owner or claimant of a
27 lot, or part thereof, which has been adjudged abandoned,
28 shall contact the court or the cemetery authority and pay all
29 maintenance or care charges that are due and unpaid, shall
30 reimburse the cemetery authority for the costs of suit and
31 necessary expenses incurred in the proceeding with respect to
32 such lot, or part thereof, and shall contract for its future
33 care and maintenance, then such lot, or part thereof, shall

1 not be sold as herein provided and, upon petition of the
 2 owner or claimant, the order or judgment adjudging the same
 3 to have been abandoned shall be vacated as to such lot, or
 4 part thereof.

5 (Source: P.A. 79-1365.)

6 (765 ILCS 835/14) (from Ch. 21, par. 21.7)

7 Sec. 14. After the expiration of one year from the date
 8 of entry of an order adjudging a lot, or part thereof, to
 9 have been abandoned, a cemetery authority shall have the
 10 right to do so and may sell such lot, or part thereof, at
 11 public sale and grant an easement therein for burial purposes
 12 to the purchaser at such sale, subject to the interment of
 13 any human remains theretofore placed therein and the right to
 14 maintain memorials placed thereon. A cemetery authority may
 15 bid at and purchase such lot, or part thereof, at such sale.

16 Notice of the time and place of any sale held pursuant to
 17 an order adjudicating abandonment of a cemetery, or part
 18 thereof, shall be published once in a newspaper of general
 19 circulation in the county in which the cemetery is located,
 20 such publication to be not less than 30 days prior to the
 21 date of sale.

22 The proceeds derived from any sale shall be used to
 23 reimburse the petitioner for the costs of suit and necessary
 24 expenses, including attorney's fees, incurred by petitioner
 25 in the proceeding, and the balance, if any, shall be
 26 deposited into the cemetery authority's care fund or, if
 27 there is no care fund, used by the cemetery authority for the
 28 care of its cemetery and for no other purpose.

29 (Source: P.A. 79-1365.)

30 (765 ILCS 835/16 new)

31 Sec. 16. When a multiple interment right owner becomes
 32 deceased, the ownership of any unused rights of interment

1 shall pass in accordance with the specific bequest in the
 2 decedent's will. If there is no will or specific bequest
 3 then the use of the unused rights of interment shall be
 4 determined by a cemetery authority in accordance with the
 5 information set out on a standard affidavit for cemetery
 6 interment rights use form if such a form has been prepared.
 7 The unused right of interment shall be used for the interment
 8 of the first deceased heir listed on the standard affidavit
 9 and continue in sequence until all listed heirs are deceased.
 10 In the event that an interment right is not used, the
 11 interment right shall pass to the heirs of the heirs of the
 12 deceased interment right owner in perpetuity. This shall not
 13 preclude the ability of the heirs to sell said interment
 14 rights, in the event that all listed living heirs are in
 15 agreement. If the standard affidavit for cemetery interment
 16 rights use, showing heirship of decedent interment right
 17 owner's living heirs is provided to and followed by a
 18 cemetery authority, the cemetery authority shall be released
 19 of any liability in relying on that affidavit.

20 The following is the form of the standard affidavit:

21 STATE OF ILLINOIS _____)
 22 _____) SS
 23 COUNTY OF)

24 AFFIDAVIT FOR CEMETERY INTERMENT RIGHTS USE

25 I,, being first duly sworn on oath depose and
 26 say that:

- 27 1. A. My place of residence is
 28 B. My post office address is
 29 C. I understand that I am providing the information
 30 contained in this affidavit to the
 31 ("Cemetery") and the Cemetery shall, in the absence of
 32 directions to the contrary in my will, rely on this
 33 information to allow the listed individuals to be

1 interred in any unused interment rights in the order of
2 their death.

3 D. I understand that, if I am an out-of-state
4 resident, I submit myself to the jurisdiction of Illinois
5 courts for all matters related to the preparation and use
6 of this affidavit. My agent for service of process in
7 Illinois is:

8 Name Address
9 City Telephone

10 Items 2 through 6 must be completed by the executor of
11 the decedent's estate, a personal representative, owner's
12 surviving spouse, or surviving heir.

13 2. The decedent's name is

14 3. The date of decedent's death was

15 4. The decedent's place of residence immediately before
16 his or her death was

17 5. My relationship to the decedent is

18 6. At the time of death, the decedent (had no) (had a)
19 surviving spouse. The name of the surviving spouse, if any,
20 is, and he or she (has) (has not)
21 remarried.

22 7. The following is a list of the cemetery interment
23 rights that may be used by the heirs if the owner is
24 deceased:

25
26

27 8. The following persons have a right to use the
28 cemetery interment rights in the order of their death:

29 Address
30 Address
31 Address
32 Address
33 Address
34 Address

1 Address

2 9. This affidavit is made for the purpose of obtaining
3 the consent of the undersigned to transfer the right of
4 interment at the above mentioned cemetery property to the
5 listed heirs. Affiants agree that they will save, hold
6 harmless, and indemnify Cemetery, its heirs, successors,
7 employees, and assigns, from all claims, loss, or damage
8 whatsoever that may result from relying on this affidavit to
9 record said transfer in its records and allow interments on
10 the basis of the information contained in this affidavit.

11 WHEREFORE affiant requests Cemetery to recognize the
12 above named heirs-at-law as those rightfully entitled to the
13 use of said interment (spaces) (space).

14 THE FOREGOING STATEMENT IS MADE UNDER THE PENALTIES OF
15 PERJURY. (A FRAUDULENT STATEMENT MADE UNDER THE PENALTIES OF
16 PERJURY IS PERJURY AS DEFINED IN THE CRIMINAL CODE OF 1961.)

17 Dated this day of,

18 (Seal) (To be signed by the owner or
19 the individual who completes items 2 through 6 above.)

20 Subscribed and sworn to before me, a Notary Public in and for
21 the County and State of aforesaid this
22 day of,

23 Notary Public.

24 Section 45. The Illinois Pre-Need Cemetery Sales Act is
25 amended by changing Sections 1, 4, 5, 6, 7, 8, 8a, 9, 12, 14,
26 16, 19, 20, 22, and 23 and adding Section 27.1 as follows:

27 (815 ILCS 390/1) (from Ch. 21, par. 201)

28 Sec. 1. Purpose. It is the purpose of this Act to
29 assure adequate protection for those who contract through
30 pre-need contracts for the purchase of certain cemetery

1 merchandise and cemetery services and undeveloped interment,
2 entombment or inurnment space, when the seller may delay
3 delivery or performance more than 120 days following initial
4 payment on the account.

5 (Source: P.A. 85-805.)

6 (815 ILCS 390/4) (from Ch. 21, par. 204)

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

9 (A) A- "Pre-need sales contract" or "Pre-need sales"
10 means any agreement or contract or series or combination of
11 agreements or contracts which have for a purpose the sale of
12 cemetery merchandise, cemetery services or undeveloped
13 interment, entombment or inurnment spaces where the terms of
14 such sale require payment or payments to be made at a
15 currently determinable time and where the merchandise,
16 services or completed spaces are to be provided more than 120
17 days following the initial payment on the account. An
18 agreement or contract for a memorial, marker, or monument
19 shall not be deemed a "pre-need sales contract" or a
20 "pre-need sale" if the memorial, marker, or monument is
21 delivered within 180 days following initial payment on the
22 account and work thereon commences a reasonably short time
23 after initial payment on the account.

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

25 (1) Physical possession of the merchandise is
26 transferred or the easement for burial rights in a
27 completed space is executed, delivered and transferred to
28 the buyer; or

29 (2) Following authorization by a purchaser under a
30 pre-need sales contract, title to the merchandise has
31 been transferred to the buyer and the merchandise has
32 been paid for and is in the possession of the seller who
33 has placed it, until needed, at the site of its ultimate

1 use; or

2 (3) ~~(A)~~ Following authorization by a purchaser
3 under a pre-need sales contract, the merchandise has been
4 permanently identified with the name of the buyer or the
5 beneficiary and delivered to a licensed and bonded
6 warehouse and both title to the merchandise and a
7 warehouse receipt have been delivered to the purchaser or
8 beneficiary and a copy of the warehouse receipt has been
9 delivered to the licensee for retention in its files;
10 except that in the case of outer burial containers, the
11 use of a licensed and bonded warehouse as set forth in
12 this paragraph shall not constitute delivery for purposes
13 of this Act. Nothing herein shall prevent a seller from
14 perfecting a security interest in accordance with the
15 Uniform Commercial Code on any merchandise covered under
16 this Act.

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

19 (i) be either located in the State of Illinois
20 or qualify as a foreign warehouse facility as
21 defined herein;

22 (ii) submit to the Comptroller not less than
23 annually, by March 1 of each year, a report of all
24 cemetery merchandise stored by each licensee under
25 this Act which is in storage on the date of the
26 report;

27 (iii) permit the Comptroller or his designee
28 at any time to examine stored merchandise and to
29 examine any documents pertaining thereto;

30 (iv) submit evidence satisfactory to the
31 Comptroller that all merchandise stored by said
32 warehouse for licensees under this Act is insured
33 for casualty or other loss normally assumed by a
34 bailee for hire;

1 (v) demonstrate to the Comptroller that the
 2 warehouse has procured and is maintaining a
 3 performance bond in the form, content and amount
 4 sufficient to unconditionally guarantee to the
 5 purchaser or beneficiary the prompt shipment of the
 6 cemetery merchandise.

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

- 11 (1) memorials,
- 12 (2) markers,
- 13 (3) monuments,
- 14 (4) foundations, and
- 15 (5) outer burial containers.

16 (D) "Undeveloped interment, entombment or inurnment
 17 spaces" or "undeveloped spaces" means any space to be used
 18 for the reception of human remains that is not completely and
 19 totally constructed at the time of initial payment therefor
 20 in a:

- 21 (1) lawn crypt,
- 22 (2) mausoleum,
- 23 (3) garden crypt,
- 24 (4) columbarium, or
- 25 (5) cemetery section.

26 (E) "Cemetery services" means those services customarily
 27 performed by cemetery or crematory personnel in connection
 28 with the interment, entombment, inurnment or cremation of a
 29 dead human body.

30 (F) "Cemetery section" means a grouping of spaces
 31 intended to be developed simultaneously for the purpose of
 32 interring human remains.

33 (G) "Columbarium" means an arrangement of niches that
 34 may be an entire building, a complete room, a series of

1 special indoor alcoves, a bank along a corridor or part of an
2 outdoor garden setting that is constructed of permanent
3 material such as bronze, marble, brick, stone or concrete for
4 the inurnment of human remains.

5 (H) "Lawn crypt" means a permanent underground crypt
6 usually constructed of reinforced concrete or similar
7 material installed in multiple units for the entombment
8 ~~interment~~ of human remains.

9 (I) "Mausoleum" or "garden crypt" means a grouping of
10 spaces constructed of reinforced concrete or similar material
11 constructed or assembled above the ground for entombing human
12 remains.

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

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

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

22 (M) "Seller" means any person selling or offering for
23 sale cemetery merchandise, cemetery services or undeveloped
24 interment, entombment, or inurnment spaces in accordance with
25 a pre-need sales contract on-a-pre-need-basis.

26 (N) "Religious cemetery" means a cemetery owned,
27 operated, controlled or managed by any recognized church,
28 religious society, association or denomination or by any
29 cemetery authority or any corporation administering, or
30 through which is administered, the temporalities of any
31 recognized church, religious society, association or
32 denomination.

33 (O) "Municipal cemetery" means a cemetery owned,
34 operated, controlled or managed by any city, village,

1 incorporated town, township, county or other municipal
2 corporation, political subdivision, or instrumentality
3 thereof authorized by law to own, operate or manage a
4 cemetery.

5 (O-1) "Outer burial container" means a container made of
6 concrete, steel, wood, fiberglass, or similar material, used
7 solely at the interment site, and designed and used
8 exclusively to surround or enclose a separate casket and to
9 support the earth above such casket, commonly known as a
10 burial vault, grave box, or grave liner, but not including a
11 lawn crypt.

12 (P) "Sales price" means the gross amount paid by a
13 purchaser on a pre-need sales contract for cemetery
14 merchandise, cemetery services or undeveloped interment,
15 entombment or inurnment spaces, excluding sales taxes, credit
16 life insurance premiums, finance charges and Cemetery Care
17 Act contributions.

18 (Q) (Blank).

19 (R) "Provider" means a person who is responsible for
20 performing cemetery services or furnishing cemetery
21 merchandise, interment spaces, entombment spaces, or
22 inurnment spaces under a pre-need sales contract.

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

26 (T) "Parent company" means a corporation owning more than
27 12 cemeteries or funeral homes in more than one state.

28 (U) "Foreign warehouse facility" means a warehouse
29 facility now or hereafter located in any state or territory
30 of the United States, including the District of Columbia,
31 other than the State of Illinois.

32 A foreign warehouse facility shall be deemed to have
33 appointed the Comptroller to be its true and lawful attorney
34 upon whom may be served all legal process in any action or

1 proceeding against it relating to or growing out of this Act,
2 and the acceptance of the delivery of stored merchandise
3 under this Act shall be signification of its agreement that
4 any such process against it which is so served, shall be of
5 the same legal force and validity as though served upon it
6 personally.

7 Service of such process shall be made by delivering to
8 and leaving with the Comptroller, or any agent having charge
9 of the Comptroller's Department of Cemetery and Burial
10 Trusts, a copy of such process and such service shall be
11 sufficient service upon such foreign warehouse facility if
12 notice of such service and a copy of the process are, within
13 10 days thereafter, sent by registered mail by the plaintiff
14 to the foreign warehouse facility at its principal office and
15 the plaintiff's affidavit of compliance herewith is appended
16 to the summons. The Comptroller shall keep a record of all
17 process served upon him under this Section and shall record
18 therein the time of such service.

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

21 (815 ILCS 390/5) (from Ch. 21, par. 205)

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

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

27 (815 ILCS 390/6) (from Ch. 21, par. 206)

28 Sec. 6. License application.

29 (a) An application for a license shall be made in
30 writing to the Comptroller on forms prescribed by him or her,
31 signed by the applicant under oath verified by a notary
32 public, and shall ~~be~~ accompanied by a non-returnable \$25

1 application fee. The Comptroller may prescribe abbreviated
2 application forms for persons holding a license under the
3 Cemetery Care Act. Applications (except abbreviated
4 applications) must include at least the following
5 information:

6 (1) The full name and address, both residence and
7 business, of the applicant if the applicant is an
8 individual; of every member if applicant is a
9 partnership; of every member of the Board of Directors if
10 applicant is an association; and of every officer,
11 director and shareholder holding more than 10% 5% of the
12 corporate stock if applicant is a corporation;

13 (2) A detailed statement of applicant's assets and
14 liabilities;

15 (2.1) The name and address of the applicant's
16 principal place of business at which the books, accounts,
17 and records are available for examination by the
18 Comptroller as required by this Act;

19 (2.2) The name and address of the applicant's
20 branch locations at which pre-need sales will be
21 conducted and which will operate under the same license
22 number as the applicant's principal place of business;

23 (3) For each individual listed under (1) above, a
24 detailed statement of the individual's business
25 experience for the 10 years immediately preceding the
26 application; any present or prior connection between the
27 individual and any other person engaged in pre-need
28 sales; any felony or misdemeanor convictions for which
29 fraud was an essential element; any charges or complaints
30 lodged against the individual for which fraud was an
31 essential element and which resulted in civil or criminal
32 litigation; any failure of the individual to satisfy an
33 enforceable judgment entered against him or her based
34 upon fraud; and any other information requested by the

1 Comptroller relating to the past business practices of
2 the individual. Since the information required by this
3 paragraph may be confidential or contain proprietary
4 information, this information shall not be available to
5 other licensees or the general public and shall be used
6 only for the lawful purposes of the Comptroller in
7 enforcing this Act;

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

12 (5) Where applicable, the name of the corporate
13 surety company providing the performance bond for the
14 construction of undeveloped spaces and a copy of the
15 bond; and

16 (6) Such other information as the Comptroller may
17 reasonably require in order to determine the
18 qualification of the applicant to be licensed under this
19 Act.

20 (b) Applications for license shall be accompanied by a
21 fidelity bond executed by the applicant and a security
22 company authorized to do business in this State in such
23 amount, not exceeding \$10,000, as the Comptroller may
24 require. The Comptroller may require additional bond from
25 time to time in amounts equal to one-tenth of such trust
26 funds but not to exceed \$100,000, which bond shall run to the
27 Comptroller for the use and benefit of the beneficiaries of
28 such trust funds. Such licensee may by written permit of the
29 Comptroller be authorized to operate without additional bond,
30 except such fidelity bond as may be required by the
31 Comptroller for the protection of the licensee against loss
32 by default by any of its employees engaged in the handling of
33 trust funds.

34 (c) Any application not acted upon within 90 days may be

1 deemed denied.

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

3 (815 ILCS 390/7) (from Ch. 21, par. 207)

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

6 (a) The applicant or licensee has made any
7 misrepresentations or false statements or concealed any
8 material fact;

9 (b) The applicant or licensee is insolvent;

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

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

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

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

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

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

24 (i) The fidelity bond is not satisfactory to the
25 Comptroller;

26 (j) As to any individual listed in the license
27 application as required pursuant to Section 6, that such
28 individual has conducted or is about to conduct any business
29 on behalf of the applicant in a fraudulent manner, ~~;~~ has been
30 convicted of any felony or misdemeanor an essential element
31 of which is fraud, has had a judgment rendered against him or
32 her based on fraud in any civil litigation, ~~or~~ has failed to
33 satisfy any enforceable judgment or decree rendered against

1 him by any court of competent jurisdiction, or has been
2 convicted of any felony or any theft-related offense;

3 (k) The applicant or licensee has failed to make the
4 annual report required by this Act or to comply with a final
5 order, decision, or finding of the Comptroller made pursuant
6 to this Act;

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

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

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

18 (815 ILCS 390/8) (from Ch. 21, par. 208)

19 Sec. 8. (a) Every license issued by the Comptroller
20 shall state the number of the license, the business name and
21 address of the licensee's principal place of business, each
22 branch location also operating under the license, and the
23 licensee's parent company, if any. ~~license--at--which--the~~
24 ~~business--is--to--be--conducted,~~ The license shall be
25 conspicuously posted in each the place of business operating
26 under the license. ~~No more than one place of business shall~~
27 ~~be maintained under the same license,~~ but The Comptroller
28 may issue additional licenses as may be necessary for license
29 branch locations ~~more than one license to a licensee~~ upon
30 compliance with the provisions of this Act governing an
31 original issuance of a license for each new license.

32 (b) Individual salespersons representing ~~employed by a~~
33 licensee shall not be required to obtain licenses in their

1 individual capacities but must acknowledge, by affidavit,
2 that they have been provided a copy of and have read this
3 Act. The licensee must retain copies of the affidavits of
4 its salespersons for its records and must make the affidavits
5 available to the Comptroller for examination upon request.

6 (c) The licensee shall be responsible for the activities
7 of any person representing the licensee in selling or
8 offering a pre-need contract for sale all--individuals--or
9 sales-organizations-selling-under-contract-with,-as-agents-or
10 on-behalf-of-the-licensee.

11 (d) Any sales--company--or--other person not selling on
12 behalf of a licensee shall be required to obtain his or her
13 its own license.

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

20 (f) No license shall be transferable or assignable
21 without the express written consent of the Comptroller. A
22 transfer of more than 50% of the ownership of any business
23 licensed hereunder shall be deemed to be an attempted
24 assignment of the license originally issued to the licensee
25 for which consent of the Comptroller shall be required.

26 (g) Every license issued hereunder shall remain in force
27 until the same has been suspended, surrendered or revoked in
28 accordance with this Act, but the Comptroller, upon the
29 request of an interested person or on his own motion, may
30 issue new licenses to a licensee whose license or licenses
31 have been revoked, if no factor or condition then exists
32 which would have warranted the Comptroller in refusing
33 originally the issuance of such license.

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

1 (815 ILCS 390/8a)

2 Sec. 8a. Investigation of unlawful practices. If it
3 appears to the Comptroller that a person has engaged in, is
4 engaging in, or is about to engage in any practice in
5 violation of ~~declared--to--be--unlawful--by~~ this Act, the
6 Comptroller may:

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

14 (2) examine under oath any person in connection
15 with the books and records pertaining to or having an
16 impact upon the trust funds required 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 (815 ILCS 390/9) (from Ch. 21, par. 209)

29 Sec. 9. The Comptroller may, upon his own motion
30 investigate the actions of any person providing, selling, or
31 offering pre-need sales contracts or of any applicant or any
32 person or persons holding or claiming to hold a license under
33 this Act. The Comptroller shall make such an investigation

1 on receipt of the verified written complaint of any person
2 setting forth facts which, if proved, would constitute
3 grounds for refusal, suspension, or revocation of a license
4 ~~with respect to which grounds for revocation may occur or~~
5 ~~exist, or if he shall find that such grounds for revocation~~
6 ~~are of general application to all offices or to more than one~~
7 ~~office operated by such licensee, he may revoke all of the~~
8 ~~licenses issued to such licensee or such number of licensees~~
9 ~~to which grounds apply, as the case may be.~~ Before refusing
10 to issue, and before suspension or revocation of a license,
11 the Comptroller shall hold a hearing to determine whether the
12 applicant or licensee, hereafter called the respondent, is
13 entitled to hold such a license. At least 10 days prior to
14 the date set for such hearing, the Comptroller shall notify
15 the respondent in writing that on the date designated a
16 hearing will be held to determine his eligibility for a
17 license and that he may appear in person or by counsel.
18 Such written notice may be served on the respondent
19 personally, or by registered or certified mail sent to the
20 respondent's business address as shown in his latest
21 notification to the Comptroller and shall include sufficient
22 information to inform the respondent of the general nature of
23 the charge. At the hearing, both the respondent and the
24 complainant shall be accorded ample opportunity to present in
25 person or by counsel such statements, testimony, evidence and
26 argument as may be pertinent to the charges or to any defense
27 thereto. The Comptroller may reasonably continue such
28 hearing from time to time.

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

33 Any authorized agent of the Comptroller may administer
34 oaths to witnesses at any hearing which the Comptroller is

1 authorized to conduct.

2 The Comptroller, at his expense, shall provide a
3 certified shorthand reporter to take down the testimony and
4 preserve a record of all proceedings at the hearing of any
5 case involving the refusal to issue a license, the suspension
6 or revocation of a license, the imposition of a monetary
7 penalty, or the referral of a case for criminal prosecution.
8 The record of any such proceeding shall consist of the notice
9 of hearing, complaint, all other documents in the nature of
10 pleadings and written motions filed in the proceedings, the
11 transcript of testimony and the report and orders of the
12 Comptroller. Copies of the transcript of such record may be
13 purchased from the certified shorthand reporter who prepared
14 the record or from the Comptroller.

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

16 (815 ILCS 390/12) (from Ch. 21, par. 212)

17 Sec. 12. License revocation or suspension.

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

24 (b) Upon the revocation or suspension of any license,
25 the licensee shall immediately surrender the license or
26 licenses and--any-branch-office-licenses to the Comptroller.
27 If the licensee fails to do so, the Comptroller has the right
28 to seize the license or licenses same.

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

30 (815 ILCS 390/14) (from Ch. 21, par. 214)

31 Sec. 14. Contract required.

32 (a) It is unlawful for any person seller doing business

1 within this State to accept sales proceeds, either directly
2 or indirectly, by any means, unless the seller enters into a
3 pre-need sales contract with the purchaser which meets the
4 following requirements:

5 (1) A written sales contract shall be executed in
6 at least 11 point type in duplicate for each pre-need
7 sale made by a licensee, and a signed copy given to the
8 purchaser. Each completed contract shall be numbered and
9 shall contain: (i) the name and address of the purchaser,
10 the principal office of the licensee, and the parent
11 company of the licensee; (ii) and the seller, the name
12 of the person, if known, who is to receive the cemetery
13 merchandise, cemetery services or the completed
14 interment, entombment or inurnment spaces under the
15 contract; and (iii) specific identification of
16 specifically--identify such merchandise, services or
17 spaces to be provided, if a specific space or spaces are
18 contracted for, and the price of the merchandise,
19 services, or space or spaces.

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

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

27 (3) All pre-need sales contracts shall be sold on a
28 guaranteed price basis. At the time of performance of the
29 service or delivery of the merchandise, the seller shall
30 be prohibited from assessing the purchaser or his heirs
31 or assigns or duly authorized representative any
32 additional charges for the specific merchandise and
33 services listed on the pre-need sales contract.

34 (4) Each contract shall clearly disclose that the

1 price of the merchandise or services is guaranteed and
2 shall contain the following statement in 12 point bold
3 type:

4 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE
5 SPECIFIC GOODS, AND SERVICES, INTERMENT SPACES,
6 ENTOMBMENT SPACES, AND INURNMENT SPACES CONTRACTED FOR.
7 NO ADDITIONAL CHARGES MAY BE REQUIRED FOR DESIGNATED
8 GOODS, AND SERVICES, AND SPACES. ADDITIONAL CHARGES MAY
9 BE INCURRED FOR UNEXPECTED EXPENSES."

10 (5) The pre-need sales contract shall provide that
11 if the particular cemetery services, cemetery
12 merchandise, or spaces specified in the pre-need contract
13 are unavailable at the time of delivery, the seller shall
14 be required to furnish services, merchandise, and spaces
15 similar in style and at least equal in quality of
16 material and workmanship.

17 (6) The pre-need contract shall also disclose any
18 specific penalties to be incurred by the purchaser as a
19 result of failure to make payments; and penalties to be
20 incurred or moneys or refunds to be received as a result
21 of cancellation of the contract.

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

24 (8) Each pre-need contract that authorizes the
25 delivery of cemetery merchandise to a licensed and bonded
26 warehouse shall provide that prior to or upon delivery of
27 the merchandise to the warehouse the title to the
28 merchandise and a warehouse receipt shall be delivered to
29 the purchaser or beneficiary. The pre-need contract
30 shall contain the following statement in 12 point bold
31 type:

32 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO
33 A LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE
34 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE

1 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER
 2 MAY PRECLUDE REFUND OF SALE PROCEEDS THAT ARE
 3 ATTRIBUTABLE TO THE DELIVERED MERCHANDISE."

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

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

11 "THIS CONTRACT AUTHORIZES THE PLACEMENT OF MERCHANDISE AT
 12 THE SITE OF ITS ULTIMATE USE PRIOR TO THE TIME THAT THE
 13 MERCHANDISE IS NEEDED BY THE BENEFICIARY. DELIVERY OF THE
 14 MERCHANDISE IN THIS MANNER MAY PRECLUDE REFUND OF SALE
 15 PROCEEDS THAT ARE ATTRIBUTABLE TO THE DELIVERED
 16 MERCHANDISE."

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

19 (b) Every pre-need sales contract must be in writing.
 20 and no pre-need sales contract form may be used unless it has
 21 previously been filed with the Comptroller. The Comptroller
 22 shall review all pre-need sales contract forms and upon
 23 written notification to the seller shall prohibit the use of
 24 contract forms that do not meet the requirements of this Act.
 25 Any use or attempted use of any oral pre-need sales contract
 26 or any written pre-need sales contract in a form not filed
 27 with the Comptroller or in a form that does not meet the
 28 requirements of this Act shall be deemed a violation of this
 29 Act. The Comptroller may by rule develop a model pre-need
 30 sales contract form that meets the requirements of this Act.

31 (c) To the extent the Rule is applicable, every pre-need
 32 sales contract is subject to the Federal Trade Commission
 33 Rule concerning the Cooling-Off Period for Door-to-Door Sales
 34 (16 CFR Part 429).

1 (d) No pre-need sales contract may be entered into in
2 this State unless there is a provider for the cemetery
3 merchandise, cemetery services, and undeveloped interment,
4 inurnment, and entombment spaces being sold. If the seller
5 is not the provider, then the seller must have a binding
6 agreement with a provider, and the identity of the provider
7 and the nature of the agreement between the seller and the
8 provider must be disclosed in the pre-need sales contract at
9 the time of sale and before the receipt of any sale proceeds.
10 The failure to disclose the identity of the provider, the
11 nature of the agreement between the seller and the provider,
12 or any changes thereto to the purchaser and beneficiary, or
13 the failure to make the disclosures required by this Section
14 constitutes an intentional violation of this Act.

15 (e) No pre-need contract may be entered into in this
16 State unless it is accompanied by a funding mechanism
17 permitted under this Act and unless the seller is licensed by
18 the Comptroller as provided in this Act. Nothing in this Act
19 is intended to relieve providers or sellers of pre-need
20 contracts from being licensed under any other Act required
21 for their profession or business or from being subject to the
22 rules promulgated to regulate their profession or business,
23 including rules on solicitation and advertisement.

24 (f) No pre-need contract may be entered into in this
25 State unless the seller explains to the purchaser the terms
26 of the pre-need contract prior to the purchaser signing and
27 the purchaser initials a statement in the contract confirming
28 that the seller has explained the terms of the contract prior
29 to the purchaser signing.

30 (g) The State Comptroller shall develop a booklet for
31 consumers in plain English describing the scope, application,
32 and consumer protections of this Act. After the booklet is
33 developed, no pre-need contract may be sold in this State
34 unless the seller distributes to the purchaser prior to the

1 sale a booklet developed or approved for use by the State
2 Comptroller.

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

4 (815 ILCS 390/16) (from Ch. 21, par. 216)

5 Sec. 16. Trust funds; disbursements.

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

8 (b) A trustee shall, with respect to the investment of
9 such trust funds, exercise the judgment and care under the
10 circumstances then prevailing which persons of prudence,
11 discretion and intelligence exercise in the management of
12 their own affairs, not in regard to speculation, but in
13 regard to the permanent disposition of their funds,
14 considering the probable income as well as the probable
15 safety of their capital.

16 The seller shall act as trustee of all amounts received
17 for cemetery merchandise, services, or undeveloped spaces
18 until those amounts have been deposited into the trust fund.
19 The seller may continue to be the trustee of up to \$500,000
20 that has been deposited into the trust fund, but the seller
21 must retain an independent trustee for any amount of trust
22 funds in excess of \$500,000. A seller holding trust funds in
23 excess of \$500,000 ~~on-the-effective-date-of--this--amendatory~~
24 ~~Act--of--1996--shall--have--36--months--to--retain--an--independent~~
25 ~~trustee--for--the--amounts--over--\$500,000;--any--other--seller~~ must
26 retain an independent trustee for its trust funds in excess
27 of \$500,000 as soon as may be practical. The Comptroller
28 shall have the right to disqualify the trustee upon the same
29 grounds as for refusing to grant or revoking a license
30 hereunder. Upon notice to the Comptroller, the seller may
31 change the trustee of the trust fund.

32 (c) The trustee may rely upon certifications and
33 affidavits made to it under the provisions of this Act, and

1 shall not be liable to any person for such reliance.

2 (d) A trustee shall be allowed to withdraw from the
3 trust funds maintained pursuant to this Act, payable solely
4 from the income earned on such trust funds, a reasonable fee
5 for all usual and customary services for the operation of the
6 trust fund, including, but not limited to trustee fees,
7 investment advisor fees, allocation fees, annual audit fees
8 and other similar fees. The maximum amount allowed to be
9 withdrawn for these fees each year shall be the lesser of 3%
10 of the balance of the trust calculated on an annual basis or
11 the amount of annual income generated therefrom.

12 (e) The trust shall be a single-purpose trust fund. In
13 the event of the seller's bankruptcy, insolvency or
14 assignment for the benefit of creditors, or an adverse
15 judgment, the trust funds shall not be available to any
16 creditor as assets of the seller or to pay any expenses of
17 any bankruptcy or similar proceeding, but shall be
18 distributed to the purchasers or managed for their benefit by
19 the trustee holding the funds. Except in an action by the
20 Comptroller to revoke a license issued pursuant to this Act
21 and for creation of a receivership as provided in this Act,
22 the trust shall not be subject to judgment, execution,
23 garnishment, attachment, or other seizure by process in
24 bankruptcy or otherwise, nor to sale, pledge, mortgage, or
25 other alienation, and shall not be assignable except as
26 approved by the Comptroller. The changes made by this
27 amendatory Act of the 91st General Assembly are intended to
28 clarify existing law regarding the inability of licensees to
29 pledge the trust.

30 (f) Because it is not known at the time of deposit or at
31 the time that income is earned on the trust account to whom
32 the principal and the accumulated earnings will be
33 distributed, for purposes of determining the Illinois Income
34 Tax due on these trust funds, the principal and any accrued

1 earnings or losses relating to each individual account shall
2 be held in suspense until the final determination is made as
3 to whom the account shall be paid.

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

5 (815 ILCS 390/19) (from Ch. 21, par. 219)

6 Sec. 19. Construction or development of spaces.

7 (a) The construction or development of undeveloped
8 interment, entombment or inurnment spaces shall be commenced
9 on that phase, section or sections of undeveloped ground or
10 section of lawn crypts, mausoleums, garden crypts,
11 columbariums or cemetery spaces in which sales are made
12 within 3 years of the date of the first such sale. The
13 seller shall give written notice to the Comptroller no later
14 than 30 days after the first sale. Such notice shall include
15 a description of the project. Once commenced, construction
16 or development shall be pursued diligently to completion.
17 The construction must be completed within 6 years of the
18 first sale. If construction or development is not commenced
19 or completed within the times specified herein, any purchaser
20 may surrender and cancel the contract and upon cancellation
21 shall be entitled to a refund of the actual amounts paid
22 toward the purchase price plus interest attributable to such
23 amount earned while in trust; provided however that any delay
24 caused by strike, shortage of materials, civil disorder,
25 natural disaster or any like occurrence beyond the control of
26 the seller shall extend the time of such commencement and
27 completion by the length of such delay.

28 (b) At any time within 12 months of a purchaser's
29 entering into a pre-need contract for undeveloped interment,
30 entombment or inurnment spaces, a purchaser may surrender and
31 cancel his or her contract and upon cancellation shall be
32 entitled to a refund of the actual amounts paid toward the
33 purchase price plus interest attributable to such amount

1 earned while in trust. Notwithstanding the foregoing, the
 2 cancellation and refund rights specified in this paragraph
 3 shall terminate as of the date the seller commences
 4 construction or development of the phase, section or sections
 5 of undeveloped spaces in which sales are made. After the
 6 rights of cancellation and refund specified herein have
 7 terminated, if a purchaser defaults in making payments under
 8 the pre-need contract, the seller shall have the right to
 9 cancel the contract and withdraw from the trust fund the
 10 entire balance to the credit of the defaulting purchaser's
 11 account as liquidated damages. In such event, the trustee
 12 shall deliver said balance to the seller upon its
 13 certification, and upon receiving said certification the
 14 trustee may rely thereon and shall not be liable to anyone
 15 for such reliance.

16 (c) During the construction or development of interment,
 17 entombment or inurnment spaces, upon the sworn certification
 18 by the seller and the contractor to the trustee, the trustee
 19 shall disburse from the trust fund the amount equivalent to
 20 the cost of performed labor or delivered materials as
 21 certified. Said certification shall be substantially in the
 22 following form:

23 We, the undersigned, being respectively the Seller and
 24 Contractor, do hereby certify that the Contractor has
 25 performed labor or delivered materials or both to (address of
 26 property), in connection with a contract to
 27, and that as of this date the value of the labor
 28 performed and materials delivered is \$.....

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

32 This Certificate is signed (insert date).

33

34 Seller Contractor

1 A person who executes and delivers a completion
 2 certificate with actual knowledge of a falsity contained
 3 therein shall be considered in violation of this Act and
 4 subject to the penalties contained herein.

5 (d) Except as otherwise authorized by this Section,
 6 every seller of undeveloped spaces shall provide facilities
 7 for temporary interment, entombment or inurnment for
 8 purchasers or beneficiaries of contracts who die prior to
 9 completion of the space. Such temporary facilities shall be
 10 constructed of permanent materials, and, insofar as
 11 practical, be landscaped and groomed to the extent customary
 12 in the cemetery industry in that community. The heirs,
 13 assigns, or personal representative of a purchaser or
 14 beneficiary shall not be required to accept temporary
 15 underground interment spaces where the undeveloped space
 16 contracted for was an above ground entombment or inurnment
 17 space. In the event that temporary facilities as described
 18 in this paragraph are not made available, upon the death of a
 19 purchaser or beneficiary, the heirs, assigns, or personal
 20 representative is entitled to a refund of the entire sales
 21 price paid plus undistributed interest attributable to such
 22 amount while in trust.

23 (e) If the seller delivers a completed space acceptable
 24 to the heirs, assigns or personal representative of a
 25 purchaser or beneficiary, other than the temporary facilities
 26 specified herein, in lieu of the undeveloped space purchased,
 27 the seller shall provide the trustee with a delivery
 28 certificate and all sums deposited under the pre-need sales
 29 contract, including the undistributed income, shall be paid
 30 to the seller.

31 (f) Upon completion of the phase, section or sections of
 32 the project as certified to the trustee by the seller and the
 33 contractor and delivery of the deed or certificate of
 34 ownership to the completed interment, entombment, or

1 inurnment space to all of the purchasers entitled to receive
 2 those ownership documents, the trust fund requirements set
 3 forth herein shall terminate and all funds held in the
 4 preconstruction trust fund attributable to the completed
 5 phase, section or sections, including interest accrued
 6 thereon, shall be returned to the seller.

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

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

12 (815 ILCS 390/20) (from Ch. 21, par. 220)

13 Sec. 20. Records.

14 (a) Each licensee must keep accurate accounts, books and
 15 records in this State at the principal place of business
 16 identified in the licensee's license application or as
 17 otherwise approved by the Comptroller in writing of all
 18 transactions, copies of agreements, dates and amounts of
 19 payments made or received, the names and addresses of the
 20 contracting parties, the names and addresses of persons for
 21 whose benefit funds are received, if known, and the names of
 22 the trust depositories. Additionally, for a period not to
 23 exceed 6 months after the performance of all terms in a
 24 pre-need sales contract, the licensee shall maintain copies
 25 of each pre-need contract at the licensee branch location
 26 where the contract was entered or at some other location
 27 agreed to by the Comptroller in writing.

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

33 (c) Each licensee shall submit reports to the

1 Comptroller annually, under oath, on forms furnished by the
2 Comptroller. The annual report shall contain, but shall not
3 be limited to, the following:

4 (1) An accounting of the principal deposit and
5 additions of principal during the fiscal year.

6 (2) An accounting of any withdrawal of principal or
7 earnings.

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

10 (d) The annual report shall be filed by the licensee
11 with the Comptroller within 75 days after the end of the
12 licensee's fiscal year. An extension of up to 60 days may be
13 granted by the Comptroller, upon a showing of need by the
14 licensee. Any other reports shall be in the form furnished
15 or specified by the Comptroller. If a licensee fails to
16 submit an annual report to the Comptroller within the time
17 specified in this Section, the Comptroller shall impose upon
18 the licensee a penalty of \$5 for each and every day the
19 licensee remains delinquent in submitting the annual report.
20 The Comptroller may abate all or part of the \$5 daily penalty
21 for good cause shown. Each report shall be accompanied by a
22 check or money order in the amount of \$10 payable to:
23 Comptroller, State of Illinois.

24 (e) On and after the effective date of this amendatory
25 Act of the 91st General Assembly, a licensee may report all
26 required information concerning the sale of outer burial
27 containers on the licensee's annual report required to be
28 filed under this Act and shall not be required to report that
29 information under the Illinois Funeral or Burial Funds Act,
30 as long as the information is reported under this Act.

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

32 (815 ILCS 390/22) (from Ch. 21, par. 222)

33 Sec. 22. Cemetery Consumer Protection Fund.

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

9 (b) All monies paid into the fund together with all
10 accumulated undistributed income thereon shall be held as a
11 special fund in the State Treasury. The fund shall be used
12 solely for the purpose of providing restitution to consumers
13 who have suffered pecuniary loss arising out of pre-need
14 sales.

15 (c) The fund shall be applied only to restitution or
16 completion of the project or delivery of the merchandise or
17 services, where such has been ordered by the Circuit Court in
18 a lawsuit brought under this Act by the Attorney General of
19 the State of Illinois on behalf of the Comptroller and in
20 which it has been determined by the Court that the obligation
21 is non-collectible from the judgment debtor. Restitution
22 shall not exceed the amount of the sales price paid plus
23 interest at the statutory rate. The fund shall not be used
24 for the payment of any attorney or other fees.

25 (d) Whenever restitution is paid by the fund, the fund
26 shall be subrogated to the amount of such restitution, and
27 the Comptroller shall request the Attorney General to engage
28 in all reasonable post judgment collection steps to collect
29 said restitution from the judgment debtor and reimburse the
30 fund.

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

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

3 (g) Notwithstanding any other provision of this Section,
4 the payment of restitution from the fund shall be a matter of
5 grace and not of right and no purchaser shall have any vested
6 rights in the fund as a beneficiary or otherwise. Prior to
7 seeking restitution from the fund, a purchaser or beneficiary
8 seeking payment of restitution shall apply for restitution on
9 a form provided by the Comptroller. The form shall include
10 any information the Comptroller may reasonably require in
11 order for the Court to determine that restitution or
12 completion of the project or delivery of merchandise or
13 service is appropriate.

14 (h) Annually, the status of the fund shall be reviewed
15 by the Comptroller, and if he determines that the fund
16 together with all accumulated income earned thereon, equals
17 or exceeds \$10,000,000 and that the total number of
18 outstanding claims filed against the fund is less than 10% of
19 the fund's current balance, then payments to the fund shall
20 be suspended until such time as the fund's balance drops
21 below \$10,000,000 or the total number of outstanding claims
22 filed against the fund is more than 10% of the fund's current
23 balance, but on such suspension, the fund shall not be
24 considered inactive.

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

26 (815 ILCS 390/23) (from Ch. 21, par. 223)

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

32 (b) If any person violates this Act or fails or refuses
33 to comply with any order of the Comptroller or any part

1 thereof which to such person has become final and is still in
2 effect, the Comptroller may, after notice and hearing at
3 which it is determined that a violation of this Act or such
4 order has been committed, further order that such person
5 shall forfeit and pay to the State of Illinois a sum not to
6 exceed \$5,000 for each violation. Such liability shall be
7 enforced in an action brought in any court of competent
8 jurisdiction by the Comptroller in the name of the people of
9 the State of Illinois.

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

15 (d) Whenever a licensee fails or refuses to make a
16 required report or whenever it appears to the Comptroller
17 from any report or examination that such licensee has
18 committed a violation of law or that the trust funds have not
19 been administered properly or that it is unsafe or
20 inexpedient for such licensee or the trustee of the trust
21 funds of such licensee to continue to administer such funds
22 or that any officer of such licensee or of the trustee of the
23 trust funds of such licensee has abused his trust or has been
24 guilty of misconduct or breach of trust in his official
25 position injurious to such licensee or that such licensee has
26 suffered as to its trust funds a serious loss by larceny,
27 embezzlement, burglary, repudiation or otherwise, the
28 Comptroller shall, by order, direct the discontinuance of
29 such illegal, unsafe or unauthorized practices and shall
30 direct strict conformity with the requirements of the law and
31 safety and security in its transactions and may apply to the
32 circuit court of the county where such licensee is located to
33 prevent any disbursements or expenditures by such licensee
34 until the trust funds are in such condition that it would not

1 be jeopardized thereby and the Comptroller shall communicate
2 the facts to the Attorney General of the State of Illinois
3 who shall thereupon institute such proceedings against the
4 licensee or its trustee or the officers of either or both as
5 the nature of the case may require.

6 (e) In addition to the other penalties and remedies
7 provided in this Act, the Comptroller may bring a civil
8 action in the county of residence of the licensee or any
9 person engaging in pre-need sales, to enjoin any violation or
10 threatened violation of this Act.

11 (f) The powers vested in the Comptroller by this Section
12 are additional to any and all other powers and remedies
13 vested in the Comptroller by law, and nothing herein
14 contained shall be construed as requiring that the
15 Comptroller shall employ the powers conferred herein instead
16 of or as a condition precedent to the exercise of any other
17 power or remedy vested in the Comptroller.

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

19 (815 ILCS 390/27.1 new)

20 Sec. 27.1. Sales; liability of purchaser for shortage.
21 In the event of a sale or transfer of all or substantially
22 all of the assets of the licensee, the sale or transfer of
23 the controlling interest of the corporate stock of the
24 licensee if the licensee is a corporation, the sale or
25 transfer of the controlling interest of the partnership if
26 the licensee is a partnership, or sale pursuant to
27 foreclosure proceedings, the purchaser is liable for any
28 shortages existing before or after the sale in the trust
29 funds required to be maintained in a trust under this Act and
30 shall honor all pre-need contracts and trusts entered into by
31 the licensee. Any shortages existing in the trust funds
32 constitute a prior lien in favor of the trust for the total
33 value of the shortages, and notice of that lien must be

1 provided in all sales instruments.

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

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

20 (ii) any delinquency existing in the trust funds has
 21 been paid by the licensee, or arrangements satisfactory
 22 to the Comptroller have been made by the licensee on the
 23 sale or transfer for the payment of any delinquency;

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

29 For purposes of this Section, a person, firm,
 30 corporation, partnership, or institution that acquires the
 31 licensee through a real estate foreclosure is subject to the
 32 provisions of this Section.

33 Section 50. Severability. If any provision of this Act or

1 its application to any person or circumstance is held
2 invalid, the invalidity of that provision or application does
3 not affect other provisions or applications of this Act that
4 can be given effect without the invalid provision or
5 application.

6 Section 99. Effective date. This Act takes effect
7 January 1, 2002.