

1 AMENDMENT TO HOUSE BILL 2283

2 AMENDMENT NO. _____. Amend House Bill 2283, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 (55 ILCS 70/1) (from Ch. 21, par. 61)

8 Sec. 1. Care by county.

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

13 (b) A county that has within its territory an abandoned
14 cemetery may enter the cemetery grounds and cause the grounds
15 to be cleared and made orderly. Provided, in no event shall a
16 county enter an abandoned cemetery under this subsection if
17 the owner of the property or the legally responsible cemetery
18 authority provides written notification to the county, prior
19 to the county's entry (1) demonstrating the ownership or
20 authority to control or manage the cemetery and (2) declining
21 the county authorization to enter the property. In making a
22 cemetery orderly under this Section, the county may take

1 necessary measures to correct dangerous conditions that exist
2 in regard to markers, memorials, or other cemetery artifacts
3 but may not permanently remove those items from their
4 location on the cemetery grounds. If an abandoned cemetery
5 is dedicated as an Illinois nature preserve under the
6 Illinois Natural Areas Preservation Act, any actions to cause
7 the grounds to be cleared and kept orderly shall be
8 consistent with the rules and master plan governing the
9 dedicated nature preserve.

10 (c) For the purposes of this Section:

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

18 "Diligent search" includes, but is not limited to,
19 publication of a notice in a newspaper of local circulation
20 not more than 45 but at least 30 days prior to a county's
21 entry and cleanup of cemetery grounds. The notice shall
22 provide (1) notice of the county's intended entry and cleanup
23 of the cemetery; (2) the name, if known, and geographic
24 location of the cemetery; (3) the right of the cemetery
25 authority or owner of the property to deny entry to the
26 county upon written notice to the county; and (4) the date or
27 dates of the intended cleanup.

28 "Inadequate maintenance" includes, but is not limited to,
29 the failure to cut the lawn throughout a cemetery to prevent
30 an overgrowth of grass and weeds; the failure to trim shrubs
31 to prevent excessive overgrowth; the failure to trim trees so
32 as to remove dead limbs; the failure to keep in repair the
33 drains, water lines, roads, buildings, fences, and other
34 structures of the cemetery premises; or the failure to keep

1 the cemetery premises free of trash and debris.

2 (Source: P.A. 86-696.)

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

5 (60 ILCS 1/130-5)

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

7 (a) A township may establish and maintain cemeteries
8 within and without its territory, may acquire lands for
9 cemeteries by condemnation or otherwise, may lay out lots of
10 convenient size for families, and may sell lots for a family
11 burying ground or to individuals for burial purposes.
12 Associations duly incorporated under the laws of this State
13 for cemetery purposes shall have the same power and authority
14 to purchase lands and sell lots for burial purposes as are
15 conferred upon townships under this Article.

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

1 cleared and kept orderly shall be consistent with the rules
2 and master plan governing the dedicated nature preserve.

3 (c) In this Section:

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

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

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

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

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

32 (65 ILCS 5/11-49-1) (from Ch. 24, par. 11-49-1)

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

2 (a) The corporate authorities of each municipality may
3 establish and regulate cemeteries within or without the
4 municipal limits; may acquire lands therefor, by purchase or
5 otherwise; may cause cemeteries to be removed; and may
6 prohibit their establishment within one mile of the municipal
7 limits.

8 (b) The corporate authorities also may enter into
9 contracts to purchase existing cemeteries, or lands for
10 cemetery purposes, on deferred installments to be paid solely
11 from the proceeds of sale of cemetery lots. Every such
12 contract shall empower the purchasing municipality, in its
13 own name, to execute and deliver deeds to purchasers of
14 cemetery lots for burial purposes.

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

1 consistent with the rules and master plan governing the
2 dedicated nature preserve.

3 (d) In this Section:

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

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

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

30 (Source: Laws 1961, p. 576.)

31 Section 20. The Illinois Funeral or Burial Funds Act is
32 amended by changing Sections 1a, 1a-1, 2, 2a, 3, 3a, 3e, 3f,
33 4, 7.2, and 8 and by adding Sections 3a-5 and 8.1 as follows:

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

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

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

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

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

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

20 "Person" means any person, partnership, association,
21 corporation, or other entity.

22 "Pre-need contract" means any agreement or contract, or
23 any series or combination of agreements or contracts, whether
24 funded by trust deposits or life insurance policies or
25 annuities, which has for a purpose the furnishing or
26 performance of funeral services or the furnishing or delivery
27 of any personal property, merchandise, or services of any
28 nature in connection with the final disposition of a dead
29 human body. Nothing in this Act is intended to regulate the
30 content of a life insurance policy or a tax-deferred annuity.

31 "Provider" means a person who is obligated for furnishing
32 or performing funeral services or the furnishing or delivery
33 of any personal property, merchandise, or services of any
34 nature in connection with the final disposition of a dead

1 human body.

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

4 "Sales proceeds" means the entire amount paid to a
5 seller, exclusive of sales taxes paid by the seller, finance
6 charges paid by the purchaser, and credit life, accident or
7 disability insurance premiums, upon any agreement or
8 contract, or series or combination of agreements or
9 contracts, for the purpose of performing funeral services or
10 furnishing personal property, merchandise, or services of any
11 nature in connection with the final disposition of a dead
12 human body, including, but not limited to, the retail price
13 paid for such services and personal property and merchandise.

14 "Purchase price" means the sales proceeds less finance
15 charges on retail installment contracts.

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

19 "Trustee" means a person authorized to hold funds under
20 this Act.

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

22 (225 ILCS 45/1a-1)

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

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

29 (1) It states the name and address of the principal
30 office of the seller and the parent company of the
31 seller, if any provider, or clearly discloses that the
32 provider will be selected by the purchaser or the
33 purchaser's survivor or legal representative at a later

1 date, except that no contract shall contain any provision
 2 restricting the right of the contract purchaser during
 3 his or her lifetime in making his or her own selection of
 4 a provider.

5 (2) It clearly identifies the provider's seller's
 6 name and address, the purchaser, and the beneficiary, if
 7 other than the purchaser, and the provider, if different
 8 than the seller or discloses that the provider will be
 9 selected at a later date.

10 (2.5) If the provider has branch locations, the
 11 contract gives the purchaser the opportunity to identify
 12 the branch at which the funeral will be provided.

13 (3) It contains a complete description of the
 14 funeral merchandise and services to be provided and the
 15 price of the merchandise and services, and it clearly
 16 discloses whether the price of the merchandise and
 17 services is guaranteed or not guaranteed as to price.

18 (A) Each guaranteed price contract shall
 19 contain the following statement in 12 point bold
 20 type:

21 THIS CONTRACT GUARANTEES THE BENEFICIARY THE
 22 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO
 23 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED
 24 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE
 25 INCURRED FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT
 26 LIMITED TO, CASH ADVANCES, SHIPPING OF REMAINS FROM
 27 A DISTANT PLACE, OR DESIGNATED HONORARIA ORDERED OR
 28 DIRECTED BY SURVIVORS.

29 (B) Except as provided in subparagraph (C) of
 30 this paragraph (3), each non-guaranteed price
 31 contract shall contain the following statement in 12
 32 point bold type:

33 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE
 34 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR

1 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE
2 ONLY A DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE
3 OF THE GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL
4 CHARGES MAY BE REQUIRED.

5 (C) If a non-guaranteed price contract may
6 subsequently become guaranteed, the contract shall
7 clearly disclose the nature of the guarantee and the
8 time, occurrence, or event upon which the contract
9 shall become a guaranteed price contract.

10 (4) It provides that if the particular supplies and
11 services specified in the pre-need contract are
12 unavailable at the time of delivery, the provider shall
13 be required to furnish supplies and services similar in
14 style and at least equal in quality of material and
15 workmanship.

16 (5) It discloses any penalties or restrictions,
17 including but not limited to geographic restrictions or
18 the inability of the provider, ~~if selected,~~ to perform,
19 on the delivery of merchandise, services, or pre-need
20 contract guarantees.

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

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

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

28 (C) The impact on the pre-need contract of (i)
29 any changes in the funding arrangement including but
30 not limited to changes in the assignment,
31 beneficiary designation, or use of the funds; (ii)
32 any specific penalties to be incurred by the
33 contract purchaser as a result of failure to make
34 payments; (iii) penalties to be incurred or moneys

1 or refunds to be received as a result of
 2 cancellations; and (iv) all relevant information
 3 concerning what occurs and whether any entitlements
 4 or obligations arise if there is a difference
 5 between the proceeds of the particular funding
 6 arrangement and the amount actually needed to pay
 7 for the funeral at-need, and

8 (D) The method of changing ~~or selecting~~ the
 9 designation of the provider.

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

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

30 (d) All pre-need contracts must be in writing in at
 31 least 11 point type, numbered, and executed in duplicate and
 32 ~~no pre-need contract form shall be used without prior filing~~
 33 ~~with the Comptroller.~~ A signed copy of the pre-need contract
 34 must be provided to the purchaser at the time of entry into

1 the pre-need contract. The--Comptroller--shall--review--all
2 pre-need--contract--forms--and--shall--prohibit--the--use--of
3 contract-forms-which-do-not-meet-the-requirements-of-this-Act
4 upon--written--notification--to--the--seller.---Any--use---or
5 attempted--use--of--any-oral-pre-need-contract-or-any-written
6 pre-need-contract-in-a-form-not-filed-with-the-Comptroller-or
7 in-a-form-which-does-not-meet-the-requirements--of--this--Act
8 shall--be--deemed--a--violation--of--this-Act.---Life-insurance
9 policies, tax-deferred annuities, endorsements, riders, or
10 applications for life insurance or tax-deferred annuities are
11 not--subject--to--filing--with--the--Comptroller. The Comptroller
12 may by rule develop a model pre-need contract form which
13 meets the requirements of this Act.

14 (e) The State Comptroller shall by rule develop a
15 booklet for consumers in plain English describing the scope,
16 application, and consumer protections of this Act. After the
17 adoption of these rules, no pre-need contract shall be sold
18 in this State unless (i) the seller distributes to the
19 purchaser prior to the sale a booklet promulgated or approved
20 for use by the State Comptroller; (ii) the seller explains to
21 the purchaser the terms of the pre-need contract prior to the
22 purchaser signing; and (iii) the purchaser initials a
23 statement in the contract confirming that the seller has
24 explained the terms of the contract prior to the purchaser
25 signing.

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

31 (g) No pre-need contract shall be sold in this State
32 unless it is accompanied by a funding mechanism permitted
33 under this Act, and unless the seller is licensed by the
34 Comptroller as provided in Section 3 of this Act. Nothing in

1 this Act is intended to relieve sellers of pre-need contracts
 2 from being licensed under any other Act required for their
 3 profession or business, and being subject to the rules
 4 promulgated to regulate their profession or business,
 5 including rules on solicitation and advertisement.

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

7 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

8 Sec. 2. (a) If a purchaser selects a trust arrangement
 9 to fund the pre-need contract, all trust deposits as
 10 determined by Section 1b shall be made within 30 days of
 11 receipt.

12 (b) A trust established under this Act must be
 13 maintained:

14 (1) in a trust account established in a bank,
 15 savings and loan association, savings bank, or credit
 16 union authorized to do business in Illinois in which
 17 accounts are insured by an agency of the federal
 18 government; or

19 (2) in a trust company authorized to do business in
 20 Illinois.

21 (c) Trust agreements and amendments to the trust
 22 agreements used to fund a pre-need contract shall be filed
 23 with the Comptroller.

24 (d) ~~(Blank). Trust-agreements-shall-follow-the-format-of~~
 25 ~~the--standard--Funeral--Trust--Agreements--approved--by--the~~
 26 ~~Comptroller--for--guaranteed--or-non-guaranteed-price-funeral~~
 27 ~~plans.~~

28 (e) A seller or provider shall furnish to the trustee
 29 and depositary the name of each payor and the amount of
 30 payment on each such account for which deposit is being so
 31 made. Nothing shall prevent the trustee or a seller or
 32 provider acting as a trustee in accordance with this Act from
 33 commingling the deposits in any such trust fund for purposes

1 of its management and the investment of its funds as provided
2 in the Common Trust Fund Act. In addition, multiple trust
3 funds maintained under this Act may be commingled or
4 commingled with other funeral or burial related trust funds
5 if all record keeping requirements imposed by law are met.

6 (f) Trust funds may be maintained in a financial
7 institution described in subsection (b) which is located in a
8 state adjoining this State where: (1) the financial
9 institution is located within 50 miles of the border of this
10 State, (2) its accounts are federally insured, and (3) it has
11 registered with the Illinois Secretary of State for purposes
12 of service of process.

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

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

16 (225 ILCS 45/2a)

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

18 (a) If a purchaser selects the purchase of a life
19 insurance policy or tax-deferred annuity contract to fund the
20 pre-need contract, the application and collected premium
21 shall be mailed within 30 days of signing the pre-need
22 contract.

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

31 (c) Nothing shall prohibit the purchaser from
32 irrevocably assigning ownership of the policy or annuity used
33 to fund a guaranteed price pre-need contract to a person or

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

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

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

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

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

32 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

33 Sec. 3. Licensing.

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

7 (1) The full name and address (both residence and
8 place of business) of the applicant, and every member,
9 officer and director thereof if the applicant is a firm,
10 partnership, association, or corporation, and of every
11 shareholder holding more than 10% of the corporate stock
12 if the applicant is a corporation. Any-license-issued
13 pursuant-to-the-application-shall-be-valid--only--at--the
14 address--stated--in-the-application-for-such-applicant-or
15 at--such--new--address--as--may--be---approved---by---the
16 Comptroller;

17 (2) A statement of the applicant's assets and
18 liabilities approximate-net-worth;

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

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

27 (5) For each individual listed under item (1) above,
28 a detailed statement of the individual's business
29 experience for the 10 years immediately preceding the
30 application; any present or prior connection between the
31 individual and any other person engaged in pre-need
32 sales; any felony or misdemeanor convictions for which
33 fraud was an essential element; any charges or complaints
34 lodged against the individual for which fraud was an

1 essential element and which resulted in civil or criminal
 2 litigation; any failure of the individual to satisfy an
 3 enforceable judgment entered against him based upon
 4 fraud; and any other information requested by the
 5 Comptroller relating to past business practices of the
 6 individual. Since the information required by this item
 7 (5) may be confidential or contain proprietary
 8 information, this information shall not be available to
 9 other licensees or the general public and shall be used
 10 only for the lawful purposes of the Comptroller in
 11 enforcing this Act;

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

16 (7) 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. and-(3)

20 (b) Applications for license shall be accompanied by a
 21 fidelity bond executed by the applicant and a surety company
 22 authorized to do business in this State or an irrevocable,
 23 unconditional letter of credit issued by a bank, credit
 24 union, or trust company authorized to do business in the
 25 State of Illinois, as approved by the State Comptroller, in
 26 such amount not exceeding \$10,000 as the Comptroller may
 27 require. Individual--salespersons--employed--by--a--licensee
 28 shall--not-be-required-to-obtain-licenses-in-their-individual
 29 capacities.--Upon-receipt-of-such--application--and--bond--or
 30 letter-of-credit-the-Comptroller-shall-issue-a-license-unless
 31 he--or--she-shall-determine-that-the-applicant-has-made-false
 32 statements-or-representations--in--such--application,--or--is
 33 insolvent,--or--has--conducted--or--is--about--to-conduct-his
 34 business-in-a-fraudulent-manner,--or-is-not-duly-authorized-to

1 ~~transact-business-in-this-State.-Such-license-shall--be--kept~~
2 ~~conspicuously---posted--in--the--place--of--business--of--the~~
3 ~~licensee.~~ If, after notice and an opportunity to be heard, it
4 has been determined that a licensee has violated this Act
5 within the past 5 calendar years, or if a licensee does not
6 retain a corporate fiduciary, as defined in the Corporate
7 Fiduciary Act, to manage the funds in trust pursuant to this
8 Act, the Comptroller may require an additional bond or letter
9 of credit from the licensee from time to time in amounts
10 equal to one-tenth of such trust funds, which bond or letter
11 of credit shall run to the Comptroller for the use and
12 benefit of the beneficiaries of such trust funds.

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

1 Comptroller in writing, of all insurance policies and
2 tax-deferred annuities used to fund the pre-need contract,
3 the name and address of insured, annuitant, and initial
4 beneficiary, and the name and address of the insurance
5 company issuing the policy or annuity. If a life insurance
6 policy or tax-deferred annuity is used to fund a pre-need
7 contract, the licensee shall notify the insurance company of
8 the name of each pre-need contract purchaser and the amount
9 of each payment when the pre-need contract, insurance policy
10 or annuity is purchased.

11 The licensee shall make reports to the Comptroller
12 annually or at such other time as the Comptroller may
13 require, on forms furnished by the Comptroller. The licensee
14 shall file the annual report with the Comptroller within 75
15 days after the end of the licensee's fiscal year. The
16 Comptroller shall for good cause shown grant an extension for
17 the filing of the annual report upon the written request of
18 the licensee. Such extension shall not exceed 60 days. If a
19 licensee fails to submit an annual report to the Comptroller
20 within the time specified in this Section, the Comptroller
21 shall impose upon the licensee a penalty of \$5 for each and
22 every day the licensee remains delinquent in submitting the
23 annual report. The Comptroller may abate all or part of the
24 \$5 daily penalty for good cause shown. Every application
25 shall be accompanied by a check or money order in the amount
26 of \$25 and every report shall be accompanied by a check or
27 money order in the amount of \$10 payable to: Comptroller,
28 State of Illinois.

29 The licensee shall make all required books and records
30 pertaining to trust funds, insurance policies, or
31 tax-deferred annuities available to the Comptroller for
32 examination. The Comptroller, or a person designated by the
33 Comptroller who is trained to perform such examinations, may
34 at any time investigate the books, records and accounts of

1 the licensee with respect to trust funds, insurance policies,
 2 or tax-deferred annuities and for that purpose may require
 3 the attendance of and examine under oath all persons whose
 4 testimony he may require. The licensee shall pay a fee for
 5 such examination in accordance with a schedule established by
 6 the Comptroller. The fee shall not exceed the cost of such
 7 examination. For pre-need contracts funded by trust
 8 arrangements, the cost of an initial examination shall be
 9 borne by the licensee if it has \$10,000 or more in trust
 10 funds, otherwise, by the Comptroller. The charge made by the
 11 Comptroller for an examination shall be based upon the total
 12 amount of trust funds held by the licensee at the end of the
 13 calendar or fiscal year for which the report is required by
 14 this Act and shall be in accordance with the following
 15 schedule:

16 Less than \$10,000.....no charge;
 17 \$10,000 or more but less than \$50,000.....\$10;
 18 \$50,000 or more but less than \$100,000.....\$40;
 19 \$100,000 or more but less than \$250,000.....\$80;
 20 \$250,000 or more.....\$100.

21 The Comptroller may order additional audits or
 22 examinations as he or she may deem necessary or advisable to
 23 ensure the safety and stability of the trust funds and to
 24 ensure compliance with this Act. These additional audits or
 25 examinations shall only be made after good cause is
 26 established by the Comptroller in the written order. The
 27 grounds for ordering these additional audits or examinations
 28 may include, but shall not be limited to:

- 29 (1) material and unverified changes or fluctuations
 30 in trust balances or insurance or annuity policy amounts;
 31 (2) the licensee changing trustees more than twice
 32 in any 12-month period;
 33 (3) any withdrawals or attempted withdrawals from
 34 the trusts, insurance policies, or annuity contracts in

1 violation of this Act; or

2 (4) failure to maintain or produce documentation
3 required by this Act for deposits into trust accounts,
4 trust investment activities, or life insurance or annuity
5 policies.

6 Prior to ordering an additional audit or examination, the
7 Comptroller shall request the licensee to respond and comment
8 upon the factors identified by the Comptroller as warranting
9 the subsequent examination or audit. The licensee shall have
10 30 days to provide a response to the Comptroller. If the
11 Comptroller decides to proceed with the additional
12 examination or audit, the licensee shall bear the full cost
13 of that examination or audit, up to a maximum of \$7,500. The
14 Comptroller may elect to pay for the examination or audit and
15 receive reimbursement from the licensee. Payment of the
16 costs of the examination or audit by a licensee shall be a
17 condition of receiving, maintaining, or renewing a license
18 under this Act. All moneys received by the Comptroller for
19 examination or audit fees shall be maintained in a separate
20 account to be known as the Comptroller's Administrative Fund.
21 This Fund, subject to appropriation by the General Assembly,
22 may be utilized by the Comptroller for enforcing this Act and
23 other purposes that may be authorized by law.

24 For pre-need contracts funded by life insurance or a
25 tax-deferred annuity, the cost of an examination shall be
26 borne by the licensee if it has received \$10,000 or more in
27 premiums during the preceding calendar year. The fee schedule
28 for such examination shall be established in rules
29 promulgated by the Comptroller. In the event such
30 investigation or other information received by the
31 Comptroller discloses a substantial violation of the
32 requirements of this Act, the Comptroller shall revoke the
33 license of such person upon a hearing as provided in this
34 Act. Such licensee may terminate all further responsibility

1 for compliance with the requirements of this Act by
2 voluntarily surrendering the license to the Comptroller, or
3 in the event of its loss, furnishing the Comptroller with a
4 sworn statement to that effect, which states the licensee's
5 intention to discontinue acceptance of funds received under
6 pre-need contracts. Such license or statement must be
7 accompanied by an affidavit that said licensee has lawfully
8 expended or refunded all funds received under pre-need
9 contracts, and that the licensee will accept no additional
10 sales proceeds. The Comptroller shall immediately cancel or
11 revoke said license.

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

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

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

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

17 (1) The applicant or licensee has made any
18 misrepresentations or false statements or concealed any
19 material fact.

20 (2) The applicant or licensee is insolvent.

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

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

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

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

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

32 (8) The fidelity bond is not satisfactory to the
33 Comptroller.

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

12 (10) The applicant or licensee, including any
13 member, officer, or director thereof if the applicant or
14 licensee is a firm, partnership, association or
15 corporation and any shareholder holding more than 10% of
16 the corporate stock, has violated any provision of this
17 Act or any regulation, decision, order, or finding made
18 by the Comptroller under this Act.

19 (11) The Comptroller finds any fact or condition
20 existing which, if it had existed at the time of the
21 original application for such license, would have
22 warranted the Comptroller in refusing the issuance of the
23 license.

24 (b) Before refusal to issue or renew and before
25 suspension or revocation of a license, the Comptroller shall
26 hold a hearing to determine whether the applicant or
27 licensee, hereinafter referred to as the respondent, is
28 entitled to hold such a license. At least 10 days prior to
29 the date set for such hearing, the Comptroller shall notify
30 the respondent in writing that on the date designated a
31 hearing will be held to determine his eligibility for a
32 license and that he may appear in person or by counsel. Such
33 written notice may be served on the respondent personally, or
34 by registered or certified mail sent to the respondent's

1 business address as shown in his latest notification to the
2 Comptroller. At the hearing, both the respondent and the
3 complainant shall be accorded ample opportunity to present in
4 person or by counsel such statements, testimony, evidence and
5 argument as may be pertinent to the charges or to any defense
6 thereto. The Comptroller may reasonably continue such
7 hearing from time to time.

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

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

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

17 (225 ILCS 45/3a-5 new)

18 Section 3a-5. License requirements.

19 (a) Every license issued by the Comptroller shall state
20 the number of the license, the business name and address of
21 the licensee's principal place of business, each branch
22 location also operating under the license, and the licensee's
23 parent company, if any. The license shall be conspicuously
24 posted in each place of business operating under the license.
25 The Comptroller may issue such additional licenses as may be
26 necessary for licensee branch locations upon compliance with
27 the provisions of this Act governing an original issuance of
28 a license for each new license.

29 (b) Individual salespersons representing a licensee
30 shall not be required to obtain licenses in their individual
31 capacities, but must acknowledge, by affidavit, that they
32 have been provided with a copy of and have read this Act. The
33 licensee shall retain copies of the affidavits of its sellers

1 for its records and shall make the affidavits available to
2 the Comptroller for examination upon request.

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

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

8 (e) No license shall be transferable or assignable
9 without the express written consent of the Comptroller. A
10 transfer of more than 50% of the ownership of any business
11 licensed hereunder shall be deemed to be an attempted
12 assignment of the license originally issued to the licensee
13 for which consent of the Comptroller shall be required.

14 (f) Every license issued hereunder shall remain in force
15 until it has been suspended, surrendered, or revoked in
16 accordance with this Act. The Comptroller, upon the request
17 of an interested person or on his own motion, may issue new
18 licenses to a licensee whose license or licenses have been
19 revoked, if no factor or condition then exists which would
20 have warranted the Comptroller to originally refuse the
21 issuance of such license.

22 (225 ILCS 45/3e) (from Ch. 111 1/2, par. 73.103e)

23 Sec. 3e. Upon the revocation of, suspension of, or
24 refusal to renew any license, the licensee shall immediately
25 surrender the license or licenses and--any--branch--office
26 licenses to the Comptroller. If the licensee fails to do so,
27 the Comptroller shall have the right to seize the same.

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

29 (225 ILCS 45/3f)

30 Sec. 3f. Revocation of license.

31 (a) The Comptroller, upon determination that grounds
32 exist for the revocation or suspension of a license issued

1 under this Act, may revoke or suspend, if appropriate, the
2 license issued to a licensee or to a particular branch office
3 location with respect to which the grounds for revocation or
4 suspension may occur or exist.

5 (b) Whenever a license is revoked by the Comptroller, he
6 or she shall apply to the Circuit Court of the county wherein
7 the licensee is located for a receiver to administer the
8 trust funds of the licensee or to maintain the life insurance
9 policies and tax-deferred annuities held by the licensee
10 under a pre-need contract.

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

12 (225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

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

14 (a) The amount or amounts so deposited into trust, with
15 interest thereon, if any, shall not be withdrawn until the
16 death of the person or persons for whose funeral or burial
17 such funds were paid, unless sooner withdrawn and repaid to
18 the person who originally paid the money under or in
19 connection with the pre-need contract or to his or her legal
20 representative. The life insurance policies or tax-deferred
21 annuities shall not be surrendered until the death of the
22 person or persons for whose funeral or burial the policies or
23 annuities were purchased, unless sooner surrendered and
24 repaid to the owner of the policy purchased under or in
25 connection with the pre-need contract or to his or her legal
26 representative. If, however, the agreement or series of
27 agreements provides for forfeiture and retention of any or
28 all payments as and for liquidated damages as provided in
29 Section 6, then the trustee may withdraw the deposits. In
30 addition, nothing in this Section (i) prohibits the change of
31 depositary by the trustee and the transfer of trust funds
32 from one depositary to another or (ii) prohibits a contract
33 purchaser who is or may become eligible for public assistance

1 under any applicable federal or State law or local ordinance
2 including, but not limited to, eligibility under 24 C.F.R.,
3 Part 913 relating to family insurance under federal Housing
4 and Urban Development Policy from irrevocably waiving, in
5 writing, and renouncing the right to cancel a pre-need
6 contract for funeral services in an amount prescribed by rule
7 of the Illinois Department of Public Aid. No guaranteed price
8 pre-need funeral contract may prohibit a purchaser from
9 making a contract irrevocable to the extent that federal law
10 or regulations require that such a contract be irrevocable
11 for purposes of the purchaser's eligibility for Supplemental
12 Security Income benefits, Medicaid, or another public
13 assistance program, as permitted under federal law.

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

34 (c) After final payment on a pre-need contract, any

1 purchaser may, upon written demand to a seller, demand that
2 the pre-need contract with the seller be terminated. The
3 seller shall, within 30 days, initiate a refund to the
4 purchaser of the entire amount held in trust attributable to
5 undelivered merchandise and unperformed services, including
6 otherwise earned undistributed interest earned thereon or the
7 cash surrender value of a life insurance policy or
8 tax-deferred annuity.

9 (c-5) If no funeral merchandise or services are provided
10 or if the funeral is conducted by another person, the seller
11 may keep no more than 10% of the payments made under the
12 pre-need contract or \$300, whichever sum is less. The
13 remainder of the trust funds or insurance or annuity proceeds
14 shall be forwarded to the legal heirs of the deceased or as
15 determined by probate action.

16 (d) The placement and retention of all or a portion of a
17 casket, combination casket-vault, urn, or outer burial
18 container comprised of materials which are designed to
19 withstand prolonged storage in the manner set forth in this
20 paragraph without adversely affecting the structural
21 integrity or aesthetic characteristics of such merchandise in
22 a specific burial space in which the person or persons for
23 whose funeral or burial the merchandise was intended has a
24 right of interment, or the placement of the merchandise in a
25 specific mausoleum crypt or lawn crypt in which such person
26 has a right of entombment, or the placement of the
27 merchandise in a specific niche in which such person has a
28 right of inurnment, or delivery to such person and retention
29 by such person until the time of need shall constitute actual
30 delivery to the person who originally paid the money under or
31 in connection with said agreement or series of agreements.
32 Actual delivery shall eliminate, from and after the date of
33 actual delivery, any requirement under this Act to place or
34 retain in trust any funds received for the sale of such

1 merchandise. The delivery, prior to the time of need, of any
 2 funeral or burial merchandise in any manner other than
 3 authorized by this Section shall not constitute actual
 4 delivery and shall not eliminate any requirement under this
 5 Act to place or retain in trust any funds received for the
 6 sale of such merchandise.

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

8 (225 ILCS 45/7.2)

9 Sec. 7.2. Investigation of unlawful practices. If it
 10 appears to the Comptroller that a person has engaged in, is
 11 engaging in, or is about to engage in any practice in
 12 violation of ~~declared--to--be--unlawful--by~~ this Act, the
 13 Comptroller may:

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

21 (2) examine under oath any person in connection
 22 with the books and records pertaining to or having an
 23 impact upon trust funds, insurance policies, or tax
 24 deferred annuities required or allowed to be maintained
 25 pursuant to this Act;

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

30 (4) require the production of a copy of any record,
 31 book, document, account, or paper that is produced in
 32 accordance with this Act and retain it in his or her
 33 possession until the completion of all proceedings in

1 connection with which it is produced.

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

3 (225 ILCS 45/8) (from Ch. 111 1/2, par. 73.108)

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

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 the 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 the order has been committed, further order that the
16 person shall forfeit and pay to the State of Illinois a sum
17 not to exceed \$5,000 for each violation. This 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 ~~Any violation of this Act for which a fine may be~~
22 ~~assessed shall be established by rules promulgated by the~~
23 ~~Comptroller.~~

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

29 The powers vested in the Comptroller by this Section are
30 in addition to any and all other powers and remedies vested
31 in the Comptroller by law.

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

1 (225 ILCS 45/8.1 new)

2 Sec. 8.1. Sales; liability of purchaser for shortage. In
3 the event of a sale or transfer of all or substantially all
4 of the assets of the licensee, the sale or transfer of the
5 controlling interest of the corporate stock of the licensee
6 if the licensee is a corporation, the sale or transfer of the
7 controlling interest of the partnership if the licensee is a
8 partnership, or the sale of the licensee pursuant to
9 foreclosure proceedings, the purchaser is liable for any
10 shortages existing before or after the sale in the trust
11 funds required to be maintained in a trust pursuant to this
12 Act and shall honor all pre-need contracts and trusts entered
13 into by the licensee. Any shortages existing in the trust
14 funds constitute a prior lien in favor of the trust for the
15 total value of the shortages, and notice of that lien shall
16 be provided in all sales instruments.

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

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

1 (ii) any delinquency existing in the trust funds has
 2 been paid by the licensee, or arrangements satisfactory
 3 to the Comptroller have been made by the licensee on the
 4 sale or transfer for the payment of any delinquency; and

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

10 For purposes of this Section, a person, firm,
 11 corporation, partnership, or institution that acquires the
 12 licensee through a real estate foreclosure shall be subject
 13 to the provisions of this Section.

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

16 (305 ILCS 5/12-4.11) (from Ch. 23, par. 12-4.11)

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

22 Aid payments shall not be reduced except: (1) for changes
 23 in the cost of items included in the grant amounts, or (2)
 24 for changes in the expenses of the recipient, or (3) for
 25 changes in the income or resources available to the
 26 recipient, or (4) for changes in grants resulting from
 27 adoption of a consolidated grant amount.

28 In fixing standards to govern payments or reimbursements
 29 for funeral and burial expenses, the Department shall
 30 establish a minimum allowable amount of not less than \$1,000
 31 for Department payment of funeral services and not less than
 32 \$500 for Department payment of burial or cremation services.

1 In establishing the minimum allowable amount, the Department
2 shall take into account the services essential to a
3 dignified, low-cost (i) funeral and (ii) burial or cremation,
4 including reasonable amounts that may be necessary for burial
5 space and cemetery charges, and any applicable taxes or other
6 required governmental fees or charges. If no person has
7 agreed to pay the total cost of the (i) funeral and (ii)
8 burial or cremation charges, the Department shall pay the
9 vendor the actual costs of the (i) funeral and (ii) burial or
10 cremation, or the minimum allowable amount for each service
11 as established by the Department, whichever is less, provided
12 that the Department reduces its payments by the amount
13 available from the following sources: the decedent's assets
14 and available resources and the anticipated amounts of any
15 death benefits available to the decedent's estate, and
16 amounts paid and arranged to be paid by the decedent's
17 legally responsible relatives. A legally responsible relative
18 is expected to pay (i) funeral and (ii) burial or cremation
19 expenses unless financially unable to do so.

20 Nothing contained in this Section or in any other Section
21 of this Code shall be construed to prohibit the Illinois
22 Department (1) from consolidating existing standards on the
23 basis of any standards which are or were in effect on, or
24 subsequent to July 1, 1969, or (2) from employing any
25 consolidated standards in determining need for public aid and
26 the amount of money payment or grant for individual
27 recipients or recipient families.

28 (Source: P.A. 90-17, eff. 7-1-97; 90-326, eff. 8-8-97;
29 90-372, eff. 7-1-98; 90-655, eff. 7-30-98; 91-24, eff.
30 7-1-99.)

31 Section 27. The Crematory Regulation Act is amended by
32 changing Section 10 as follows:

1 (410 ILCS 18/10)

2 Sec. 10. Establishment of crematory and registration of
3 crematory authority.

4 (a) Any person doing business in this State, or any
5 cemetery, funeral establishment, corporation, partnership,
6 joint venture, voluntary organization or any other entity,
7 may erect, maintain, and operate a crematory in this State
8 and provide the necessary appliances and facilities for the
9 cremation of human remains in accordance with this Act.

10 (b) A crematory shall be subject to all local, State,
11 and federal health and environmental protection requirements
12 and shall obtain all necessary licenses and permits from the
13 Department, the federal Department of Health and Human
14 Services, and the Illinois and federal Environmental
15 Protection Agencies, or such other appropriate local, State,
16 or federal agencies.

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

20 (d) An application for registration as a crematory
21 authority shall be in writing on forms furnished by the
22 Comptroller. Applications shall be accompanied by a fee of
23 \$50 and shall contain all of the following:

24 (1) The full name and address, both residence and
25 business, of the applicant if the applicant is an
26 individual; the full name and address of every member if
27 the applicant is a partnership; the full name and address
28 of every member of the board of directors if the
29 applicant is an association; and the name and address of
30 every officer, director, and shareholder holding more
31 than 25% of the corporate stock if the applicant is a
32 corporation.

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

34 (3) A description of the type of structure and

1 equipment to be used in the operation of the crematory.

2 (4) Any further information that the Comptroller
3 reasonably may require.

4 (e) Each crematory authority shall file an annual report
5 with the Comptroller, accompanied with a \$25 fee, providing
6 any changes required in the information provided under
7 subsection (d) or indicating that no changes have occurred.
8 The annual report shall be filed by a crematory authority on
9 or before March 15 of each calendar year, in the Office of
10 the Comptroller. If the fiscal year of a crematory authority
11 is other than on a calendar year basis, then the crematory
12 authority shall file the report required by this Section
13 within 75 days after the end of its fiscal year. The
14 Comptroller shall, for good cause shown, grant an extension
15 for the filing of the annual report upon the written request
16 of the crematory authority. An extension shall not exceed 60
17 days. If a crematory authority fails to submit an annual
18 report to the Comptroller within the time specified in this
19 Section, the Comptroller shall impose upon the crematory
20 authority a penalty of \$5 for each and every day the
21 crematory authority remains delinquent in submitting the
22 annual report. The Comptroller may abate all or part of the
23 \$5 daily penalty for good cause shown.

24 (f) All records relating to the registration and annual
25 report of the crematory authority required to be filed under
26 this Section shall be subject to inspection by the
27 Comptroller upon reasonable notice.

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

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

32 (760 ILCS 100/2a) (from Ch. 21, par. 64.2a)

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

3 (a) With respect to cemetery property maintained by
4 cemetery care funds, a cemetery authority shall be
5 responsible for the performance of:

6 (1) ~~(a)~~ the care and maintenance of the cemetery
7 property it owns; and

8 (2) ~~(b)~~ the opening and closing of all graves,
9 crypts, or niches for human remains in any cemetery
10 property it owns.

11 (b) A cemetery authority owning, operating, controlling
12 or managing a privately operated cemetery shall make
13 available for inspection, and upon reasonable request provide
14 a copy of, its rules and regulations and its current prices
15 of interment, inurnment, or entombment rights.

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

1 the requirements of this subsection (c) for good cause shown.

2 (d) A cemetery authority owning, operating, controlling,
3 or managing a privately operated cemetery shall keep a record
4 of every interment, entombment, and inurnment in the
5 cemetery. The record shall include the deceased's name, age,
6 and date of burial, when these particulars can be
7 conveniently obtained, and the lot, plot, or section where
8 the human remains are interred, entombed, or inurned. The
9 record shall be open to public inspection consistent with
10 State and federal law. The cemetery authority shall make
11 available, consistent with State and federal law, a true copy
12 of the record upon written request and payment of reasonable
13 copy costs.

14 (e) A cemetery authority owning, operating, controlling,
15 or managing a privately operated cemetery shall provide
16 access to the cemetery under the cemetery authority's
17 reasonable rules and regulations.

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

19 (760 ILCS 100/9) (from Ch. 21, par. 64.9)

20 Sec. 9. Application for license.

21 (a) Prior to the acceptance of care funds authorized by
22 Section 3 of this Act or the sale or transfer of the
23 controlling interest of a licensed cemetery authority, a
24 cemetery authority owning, operating, controlling, or
25 managing a privately operated cemetery shall make application
26 to the Comptroller for a license to hold the funds. Whenever
27 a---cemetery--authority--owning,--operating,--controlling--or
28 managing-a-privately-operated-cemetery-is-newly-organized-and
29 such-cemetery-authority-desires-to-be-licensed-to-accept--the
30 care--funds--authorized-by-Section-3-of-this-Act,--or-whenver
31 there-is-a-sale-or-transfer-of-the-controlling-interest-of--a
32 licensed--cemetery--authority,--it-shall-make-application-for
33 such-license.

1 In the case of a sale or transfer of the controlling
2 interest of the cemetery authority, the prior license shall
3 remain in effect until the Comptroller issues a new license
4 to the newly-controlled cemetery authority as provided in
5 Section 15b. Upon issuance of the new license, the prior
6 license shall be deemed surrendered if the licensee has
7 agreed to the sale and transfer and has consented to the
8 surrender of the license. A sale or transfer of the
9 controlling interest of a cemetery authority to an immediate
10 family member is not considered a transfer of the controlling
11 interest for purposes of this Section.

12 (b) Applications for license shall be filed with the
13 Comptroller. Applications shall be in writing under oath,
14 signed by the applicant, and in the form furnished by the
15 Comptroller. The form furnished by the Comptroller shall
16 enable a cemetery authority to apply for license of multiple
17 cemetery locations within a single license application. A
18 check or money order in the amount of \$25 per license seeking
19 to be issued under the application, payable to: Comptroller,
20 State of Illinois, shall be included. Each application shall
21 contain the following:

22 (1) the full name and address (both of residence
23 and of place of business) of the applicant, if an
24 individual; of every member, if the applicant is a
25 partnership or association; of every officer, or
26 director, if the applicant is a corporation; and of any
27 party owning 10% or more of the cemetery authority, and
28 the full name and address of the parent company, if any;

29 (2) a detailed statement of the applicant's assets
30 and liabilities;

31 (2.1) the name, address, and legal boundaries of
32 each cemetery for which the care funds shall be entrusted
33 and at which books, accounts, and records shall be
34 available for examination by the Comptroller as required

1 by Section 13 of this Act;

2 (3) as to the name of each individual person listed
3 under (1) above, a detailed statement of each person's
4 business experience for the 10 years immediately
5 preceding the application; the present and previous
6 connection, if any, of each person with any other
7 cemetery or cemetery authority; whether each person has
8 ever been convicted of any a felony or has ever been
9 convicted of any misdemeanor of which an essential
10 element is fraud or has been involved in any civil
11 litigation in which a judgment has been entered against
12 him or her based on fraud; whether each person is
13 currently a defendant in any lawsuit in which the
14 complaint against the person is based upon fraud; whether
15 such person has failed to satisfy any enforceable
16 judgment entered by a court of competent jurisdiction in
17 any civil proceedings against such individual; and

18 (4) the total amount in trust and now available
19 from sales of lots, graves, crypts or niches where part
20 of the sale price has been placed in trust; the amount of
21 money placed in the care funds of each applicant; the
22 amount set aside in care funds from the sale of lots,
23 graves, crypts and niches for the general care of the
24 cemetery and the amount available for that purpose; the
25 amount received in trust by special agreement for special
26 care and the amount available for that purpose; the
27 amount of principal applicable to trust funds received by
28 the applicant; and-

29 (5) any other information that the Comptroller may
30 reasonably require in order to determine the
31 qualifications of the applicant to be licensed under this
32 Act.

33 Such information shall be furnished whether the care
34 funds are held by the applicant as trustee or by an

1 independent trustee. If the funds are not held by the
2 applicant, the name of the independent trustee holding them
3 is also to be furnished by the applicant.

4 (c) Applications for license shall also be accompanied
5 by a fidelity bond issued by a bonding company or insurance
6 company authorized to do business in this State or by an
7 irrevocable, unconditional letter of credit issued by a bank
8 or trust company authorized to do business in the State of
9 Illinois, as approved by the State Comptroller, where such
10 care funds exceed the sum of \$15,000. Such bond or letter of
11 credit shall run to the Comptroller and his or her successor
12 for the benefit of the care funds held by such cemetery
13 authority or by the trustee of the care funds of such
14 cemetery authority. Such bonds or letters of credit shall be
15 in an amount equal to 1/10 of such care funds. However, such
16 bond or letter of credit shall not be in an amount less than
17 \$1,000; the first \$15,000 of such care funds shall not be
18 considered in computing the amount of such bond or letter of
19 credit. No application shall be accepted by the Comptroller
20 unless accompanied by such bond or letter of credit.

21 Applications for license by newly organized cemetery
22 authorities after January 1, 1960 shall also be accompanied
23 by evidence of a minimum care fund deposit in an amount to be
24 determined as follows: if the number of inhabitants, either
25 in the county in which the cemetery is to be located or in
26 the area included within a 10 mile radius from the cemetery
27 if the number of inhabitants therein is greater, is 25,000 or
28 less the deposit shall be \$7,500; if the number of
29 inhabitants is 25,001 to 50,000, the deposit shall be
30 \$10,000; if the number of inhabitants is 50,001 to 125,000,
31 the deposit shall be \$15,000; if the number of inhabitants is
32 over 125,000, the deposit shall be \$25,000.

33 After an amount equal to and in addition to the required
34 minimum care fund deposit has been deposited in trust, the

1 cemetery authority may withhold 50% of all future care funds
2 until it has recovered the amount of the minimum care fund
3 deposit.

4 (d) (Blank). ~~The applicant shall have a permanent
5 address and any license issued pursuant to the application is
6 valid only at the address or at any new address approved by
7 the Comptroller.~~

8 (e) All bonds and bonding deposits made by any cemetery
9 authority may be returned to the cemetery authority or
10 cancelled as to care funds invested with an investment
11 company.

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

13 (760 ILCS 100/10) (from Ch. 21, par. 64.10)

14 Sec. 10. Upon receipt of such application for license,
15 the Comptroller shall issue a license to the applicant unless
16 the Comptroller determines that:

17 (a) The applicant has made any misrepresentations or
18 false statements or has concealed any essential or material
19 fact, or

20 (b) The applicant is insolvent; or

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

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

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

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

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

1 (h) The applicant or any ~~As--to--the--name--of--any~~
2 individual listed in the license application, ~~such individual~~
3 has conducted or is about to conduct any business on behalf
4 of the applicant in a fraudulent manner; or has been
5 convicted of a felony or any misdemeanor of which an
6 essential element is fraud; or has been involved in any civil
7 litigation in which a judgment has been entered against him
8 or her based on fraud; or has failed to satisfy any
9 enforceable judgment entered by the circuit court in any
10 civil proceedings against such individual; or has been
11 convicted of any felony of which fraud is an essential
12 element; or has been convicted of any theft-related offense;
13 or has failed to comply with the requirements of this Act; or
14 has demonstrated a pattern of improperly failing to honor a
15 contract with a consumer; or

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

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

34 The license issued by the Comptroller shall remain in

1 full force and effect until it is surrendered by the licensee
2 or revoked by the Comptroller as hereinafter provided.
3 (Source: P.A. 88-477.)

4 (760 ILCS 100/11) (from Ch. 21, par. 64.11)
5 Sec. 11. Issuance and display of license. A license
6 issued under this Act authorizes the cemetery authority to
7 accept care funds for the cemetery identified in the license.
8 If a license application seeks licensure to accept care funds
9 on behalf of more than one cemetery location, the
10 Comptroller, upon approval of the license application, shall
11 issue to the cemetery authority a separate license for each
12 cemetery location indicated on the application. Each license
13 issued by the Comptroller under this Act is independent of
14 any other license that may be issued to a cemetery authority
15 under a single license application.

16 Every license issued by the Comptroller shall state the
17 number of the license and the address at which the business
18 is to be conducted. Such license shall be kept conspicuously
19 posted in the place of business of the licensee and shall not
20 be transferable or assignable.

21 No more than one place of business shall be maintained
22 under the same license, but the Comptroller may issue more
23 than one license to the same licensee upon compliance with
24 the provisions of this Act governing an original issuance of
25 a license, for each new license.

26 Whenever a licensee shall wish to change the name as
27 originally set forth in his license, he shall give written
28 notice thereof to the Comptroller together with the reasons
29 for the change and if the change is approved by the
30 Comptroller he shall issue a new license.

31 A license issued by the Comptroller shall remain in full
32 force and effect until it is surrendered by the licensee or
33 suspended or revoked by the Comptroller as provided in this

1 Act.

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

3 (760 ILCS 100/12) (from Ch. 21, par. 64.12)

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

7 (a) The amount of the principal of the care funds held
8 in trust by the trustee of the care funds at the beginning of
9 such year and in addition thereto all moneys or property
10 received during such year (1) under and by virtue of the sale
11 of a lot, grave, crypt or niche; (2) under or by virtue of
12 the terms of the contract authorized by the provisions of
13 Section 3 of this Act; (3) under or by virtue of any gift,
14 grant, legacy, payment or other contribution made either
15 prior to or subsequent to the effective date of this Act, and
16 (4) under or by virtue of any contract or conveyance made
17 either prior to or subsequent to the effective date of this
18 Act;

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

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

23 (d) The expenditures made from said income during the
24 preceding calendar year, or fiscal year, as the case may be;
25 and

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

28 Where any of the care funds of a licensee are held by an
29 independent trustee, the report filed by the licensee shall
30 contain a certificate signed by the trustee of the care funds
31 of such licensee certifying to the truthfulness of the
32 statements in the report as to (1) the total amount of
33 principal of the care funds held by the trustee, (2) the

1 securities in which such care funds are invested and the cash
2 on hand as of the date of the report and (3) the income
3 received from such care funds during the preceding calendar
4 year, or fiscal year, as the case may be.

5 Such report shall be filed by such licensee on or before
6 March 15 of each calendar year, in the office of the
7 Comptroller. If the fiscal year of such licensee is other
8 than on a calendar year basis, then such licensee shall file
9 the report required by this Section within 2 1/2 months of
10 the end of its fiscal year. The Comptroller shall for good
11 cause shown grant an extension for the filing of the annual
12 report upon the written request of the licensee. Such
13 extension shall not exceed 60 days. If a licensee fails to
14 submit an annual report to the Comptroller within the time
15 specified in this Section, the Comptroller shall impose upon
16 the licensee a penalty of \$5 for each and every day the
17 licensee remains delinquent in submitting the annual report.
18 The Comptroller may abate all or part of the \$5 daily penalty
19 for good cause shown.

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

24 If any annual report shows that the amount of the care
25 funds held in trust at the end of the preceding calendar year
26 or fiscal year, as the case may be, has increased in amount
27 over that shown by the next preceding report, then the
28 fidelity bond theretofore filed shall be increased to the
29 amount required by Section 9 of this Act. Such increased
30 fidelity bond shall accompany the report and no report shall
31 be accepted by the Comptroller unless accompanied by such
32 bond, except where the filing of a bond is excused by Section
33 18 of this Act.

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

1 (760 ILCS 100/13) (from Ch. 21, par. 64.13)

2 Sec. 13. Books, accounts, and records. Every licensee
3 and the trustee of the care funds of every licensee shall be
4 a resident of this State and shall keep in this State and use
5 in its business such books, accounts and records as will
6 enable the Comptroller to determine whether such licensee or
7 trustee is complying with the provisions of this Act and with
8 the rules, regulations and directions made by the Comptroller
9 hereunder. The licensee shall keep the books, accounts, and
10 records at the location identified in the license issued by
11 the Comptroller or as otherwise agreed by the Comptroller in
12 writing. The books, accounts, and records shall be
13 accessible for review upon demand of the Comptroller.

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

15 (760 ILCS 100/15b)

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

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

30 In the event of a sale or transfer of all or
31 substantially all of the assets of the cemetery authority,
32 the sale or transfer of the controlling interest of the
33 corporate stock of the cemetery authority if the cemetery

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

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

17 (b) Any delinquency existing in the care funds has
18 been paid by the cemetery authority, or arrangements
19 satisfactory to the Comptroller have been made by the
20 cemetery authority on the sale or transfer for the
21 payment of any delinquency;

22 (c) The Comptroller issues a new cemetery care
23 license upon application of the newly controlled
24 corporation or partnership, which license must be applied
25 for within 30 days of the anticipated date of the sale or
26 transfer, subject to the payment of any delinquencies, if
27 any, as stated in item (b) above.

28 For purposes of this Section, a person, firm,
29 corporation, partnership, or institution that acquires the
30 cemetery through a real estate foreclosure shall be subject
31 to the provisions of this Section. The sale or transfer of
32 the controlling interest of a cemetery authority to an
33 immediate family member is not subject to the license
34 application process required in item (c) of this Section.

1 In the event of a sale or transfer of any cemetery land,
2 including any portion of cemetery land in which no human
3 remains have been interred, a licensee shall, at least 21
4 days prior to the sale or transfer, notify the Comptroller,
5 in writing, of the pending sale or transfer.

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

7 (760 ILCS 100/24) (from Ch. 21, par. 64.24)

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

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

28 In addition to the other penalties and remedies provided
29 in this Act, the Comptroller may bring a civil action in the
30 county of residence of the licensee or any person accepting
31 care funds to enjoin any violation or threatened violation of
32 this Act.

33 The powers vested in the Comptroller by this Section are

1 additional to any and all other powers and remedies vested in
2 the Comptroller by law.

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

4 (760 ILCS 100/26 new)

5 Sec. 26. Abandoned or neglected cemeteries; clean-up.

6 The Comptroller may administer a program for the purpose of
7 cleaning up abandoned or neglected cemeteries located in
8 Illinois. Administration of this program may include the
9 Comptroller's issuance of grants for that purpose to units of
10 local government, school districts, and not-for-profit
11 associations.

12 Section 40. The Cemetery Protection Act is amended by
13 changing Section 1 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

1 or other area clearly designated to preserve and
2 perpetuate the memory of a deceased person or group of
3 persons;

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

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

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

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

33 (b-7) Any person who acts without proper legal authority
34 and who willfully and knowingly removes with the intent to

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

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

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

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

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

32 (g) All fines when recovered, shall be paid over by the
33 court or officer receiving the same to the cemetery
34 association and be applied, as far as possible in repairing

1 the injury, if any, caused by such offense. Provided,
 2 nothing contained in this Act shall deprive such cemetery
 3 association, or the owner of any lot or monument from
 4 maintaining an action for the recovery of damages caused by
 5 any injury caused by a violation of the provisions of this
 6 Act, or of the rules established by the board of directors of
 7 such cemetery association. Nothing in this Section shall be
 8 construed to prohibit the discharge of firearms loaded with
 9 blank ammunition as part of any funeral, any memorial
 10 observance or any other patriotic or military ceremony.
 11 (Source: P.A. 89-36, eff. 1-1-96.)

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

15 (815 ILCS 390/1) (from Ch. 21, par. 201)

16 Sec. 1. Purpose. It is the purpose of this Act to
 17 assure adequate protection for those who contract through
 18 pre-need contracts for the purchase of certain cemetery
 19 merchandise and cemetery services and undeveloped interment,
 20 entombment or inurnment space, when the seller may delay
 21 delivery or performance more than 120 days following initial
 22 payment on the account.

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

24 (815 ILCS 390/4) (from Ch. 21, par. 204)

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

27 (A) A- "Pre-need sales contract" or "Pre-need sales"
 28 means any agreement or contract or series or combination of
 29 agreements or contracts which have for a purpose the sale of
 30 cemetery merchandise, cemetery services or undeveloped
 31 interment, entombment or inurnment spaces where the terms of

1 such sale require payment or payments to be made at a
2 currently determinable time and where the merchandise,
3 services or completed spaces are to be provided more than 120
4 days following the initial payment on the account. An
5 agreement or contract for a memorial, marker, or monument
6 shall not be deemed a "pre-need sales contract" or a
7 "pre-need sale" if the memorial, marker, or monument is
8 delivered within 180 days following initial payment on the
9 account and work thereon commences a reasonably short time
10 after initial payment on the account.

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

12 (1) Physical possession of the merchandise is
13 transferred or the easement for burial rights in a
14 completed space is executed, delivered and transferred to
15 the buyer; or

16 (2) Following authorization by a purchaser under a
17 pre-need sales contract, title to the merchandise has
18 been transferred to the buyer and the merchandise has
19 been paid for and is in the possession of the seller who
20 has placed it, until needed, at the site of its ultimate
21 use; or

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

1 Uniform Commercial Code on any merchandise covered under
2 this Act.

3 (B) All warehouse facilities to which sellers
4 deliver merchandise pursuant to this Act shall:

5 (i) be either located in the State of Illinois
6 or qualify as a foreign warehouse facility as
7 defined herein;

8 (ii) submit to the Comptroller not less than
9 annually, by March 1 of each year, a report of all
10 cemetery merchandise stored by each licensee under
11 this Act which is in storage on the date of the
12 report;

13 (iii) permit the Comptroller or his designee
14 at any time to examine stored merchandise and to
15 examine any documents pertaining thereto;

16 (iv) submit evidence satisfactory to the
17 Comptroller that all merchandise stored by said
18 warehouse for licensees under this Act is insured
19 for casualty or other loss normally assumed by a
20 bailee for hire;

21 (v) demonstrate to the Comptroller that the
22 warehouse has procured and is maintaining a
23 performance bond in the form, content and amount
24 sufficient to unconditionally guarantee to the
25 purchaser or beneficiary the prompt shipment of the
26 cemetery merchandise.

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

- 31 (1) memorials,
- 32 (2) markers,
- 33 (3) monuments,
- 34 (4) foundations, and

1 (5) outer burial containers.

2 (D) "Undeveloped interment, entombment or inurnment
3 spaces" or "undeveloped spaces" means any space to be used
4 for the reception of human remains that is not completely and
5 totally constructed at the time of initial payment therefor
6 in a:

7 (1) lawn crypt,

8 (2) mausoleum,

9 (3) garden crypt,

10 (4) columbarium, or

11 (5) cemetery section.

12 (E) "Cemetery services" means those services customarily
13 performed by cemetery or crematory personnel in connection
14 with the interment, entombment, inurnment or cremation of a
15 dead human body.

16 (F) "Cemetery section" means a grouping of spaces
17 intended to be developed simultaneously for the purpose of
18 interring human remains.

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

25 (H) "Lawn crypt" means a permanent underground crypt
26 usually constructed of reinforced concrete or similar
27 material installed in multiple units for the entombment
28 ~~interment~~ of human remains.

29 (I) "Mausoleum" or "garden crypt" means a grouping of
30 spaces constructed of reinforced concrete or similar material
31 constructed or assembled above the ground for entombing human
32 remains.

33 (J) "Memorials, markers and monuments" means the object
34 usually comprised of a permanent material such as granite or

1 bronze used to identify and memorialize the deceased.

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

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

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

12 (N) "Religious cemetery" means a cemetery owned,
13 operated, controlled or managed by any recognized church,
14 religious society, association or denomination or by any
15 cemetery authority or any corporation administering, or
16 through which is administered, the temporalities of any
17 recognized church, religious society, association or
18 denomination.

19 (O) "Municipal cemetery" means a cemetery owned,
20 operated, controlled or managed by any city, village,
21 incorporated town, township, county or other municipal
22 corporation, political subdivision, or instrumentality
23 thereof authorized by law to own, operate or manage a
24 cemetery.

25 (O-1) "Outer burial container" means a container made of
26 concrete, steel, wood, fiberglass, or similar material, used
27 solely at the interment site, and designed and used
28 exclusively to surround or enclose a separate casket and to
29 support the earth above such casket, commonly known as a
30 burial vault, grave box, or grave liner, but not including a
31 lawn crypt.

32 (P) "Sales price" means the gross amount paid by a
33 purchaser on a pre-need sales contract for cemetery
34 merchandise, cemetery services or undeveloped interment,

1 entombment or inurnment spaces, excluding sales taxes, credit
2 life insurance premiums, finance charges and Cemetery Care
3 Act contributions.

4 (Q) (Blank).

5 (R) "Provider" means a person who is responsible for
6 performing cemetery services or furnishing cemetery
7 merchandise, interment spaces, entombment spaces, or
8 inurnment spaces under a pre-need sales contract.

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

12 (T) "Parent company" means a corporation owning more than
13 12 cemeteries or funeral homes in more than one state.

14 (U) "Foreign warehouse facility" means a warehouse
15 facility now or hereafter located in any state or territory
16 of the United States, including the District of Columbia,
17 other than the State of Illinois.

18 A foreign warehouse facility shall be deemed to have
19 appointed the Comptroller to be its true and lawful attorney
20 upon whom may be served all legal process in any action or
21 proceeding against it relating to or growing out of this Act,
22 and the acceptance of the delivery of stored merchandise
23 under this Act shall be signification of its agreement that
24 any such process against it which is so served, shall be of
25 the same legal force and validity as though served upon it
26 personally.

27 Service of such process shall be made by delivering to
28 and leaving with the Comptroller, or any agent having charge
29 of the Comptroller's Department of Cemetery and Burial
30 Trusts, a copy of such process and such service shall be
31 sufficient service upon such foreign warehouse facility if
32 notice of such service and a copy of the process are, within
33 10 days thereafter, sent by registered mail by the plaintiff
34 to the foreign warehouse facility at its principal office and

1 the plaintiff's affidavit of compliance herewith is appended
2 to the summons. The Comptroller shall keep a record of all
3 process served upon him under this Section and shall record
4 therein the time of such service.

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

7 (815 ILCS 390/5) (from Ch. 21, par. 205)

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

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

13 (815 ILCS 390/6) (from Ch. 21, par. 206)

14 Sec. 6. License application.

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

24 (1) The full name and address, both residence and
25 business, of the applicant if the applicant is an
26 individual; of every member if applicant is a
27 partnership; of every member of the Board of Directors if
28 applicant is an association; and of every officer,
29 director and shareholder holding more than 10% 5% of the
30 corporate stock if applicant is a corporation;

31 (2) A detailed statement of applicant's assets and
32 liabilities;

1 (2.1) The name and address of the applicant's
2 principal place of business at which the books, accounts,
3 and records are available for examination by the
4 Comptroller as required by this Act;

5 (2.2) The name and address of the applicant's
6 branch locations at which pre-need sales will be
7 conducted and which will operate under the same license
8 number as the applicant's principal place of business;

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

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

32 (5) Where applicable, the name of the corporate
33 surety company providing the performance bond for the
34 construction of undeveloped spaces and a copy of the

1 bond; and

2 (6) Such other information as the Comptroller may
3 reasonably require in order to determine the
4 qualification of the applicant to be licensed under this
5 Act.

6 (b) Applications for license shall be accompanied by a
7 fidelity bond executed by the applicant and a security
8 company authorized to do business in this State in such
9 amount, not exceeding \$10,000, as the Comptroller may
10 require. The Comptroller may require additional bond from
11 time to time in amounts equal to one-tenth of such trust
12 funds but not to exceed \$100,000, which bond shall run to the
13 Comptroller for the use and benefit of the beneficiaries of
14 such trust funds. Such licensee may by written permit of the
15 Comptroller be authorized to operate without additional bond,
16 except such fidelity bond as may be required by the
17 Comptroller for the protection of the licensee against loss
18 by default by any of its employees engaged in the handling of
19 trust funds.

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

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

23 (815 ILCS 390/7) (from Ch. 21, par. 207)

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

26 (a) The applicant or licensee has made any
27 misrepresentations or false statements or concealed any
28 material fact;

29 (b) The applicant or licensee is insolvent;

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

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

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

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

6 (g) The ~~trustee-advisers-or-the~~ trust agreement is not
7 in compliance with State or federal law satisfactory to the
8 Comptroller;

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

11 (i) The fidelity bond is not satisfactory to the
12 Comptroller;

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

23 (k) The applicant or licensee has failed to make the
24 annual report required by this Act or to comply with a final
25 order, decision, or finding of the Comptroller made pursuant
26 to this Act;

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

33 (m) The Comptroller finds any fact or condition existing
34 which, if it had existed at the time of the original

1 application for such license would have warranted the
2 Comptroller in refusing the issuance of the license.

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

4 (815 ILCS 390/8) (from Ch. 21, par. 208)

5 Sec. 8. (a) Every license issued by the Comptroller
6 shall state the number of the license, the business name and
7 address of the licensee's principal place of business, each
8 branch location also operating under the license, and the
9 licensee's parent company, if any. ~~licensee--at--which--the~~
10 ~~business--is--to--be--conducted,~~ The license shall be
11 conspicuously posted in each the place of business operating
12 under the license. ~~No more than one place of business shall~~
13 ~~be maintained under the same license,~~ but The Comptroller
14 may issue additional licenses as may be necessary for license
15 branch locations ~~more than one license to a licensee~~ upon
16 compliance with the provisions of this Act governing an
17 original issuance of a license for each new license.

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

25 (c) The licensee shall be responsible for the activities
26 of any person representing the licensee in selling or
27 offering a pre-need contract for sale ~~all individuals or~~
28 ~~sales organizations selling under contract with, as agents or~~
29 ~~on behalf of the licensee.~~

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

33 (e) Any person engaged in pre-need sales, as defined

1 herein, prior to the effective date of this Act may continue
2 operations until the application for license under this Act
3 is denied; provided that such person shall make application
4 for a license within 60 days of the date that application
5 forms are made available by the Comptroller.

6 (f) No license shall be transferable or assignable
7 without the express written consent of the Comptroller. A
8 transfer of more than 50% of the ownership of any business
9 licensed hereunder shall be deemed to be an attempted
10 assignment of the license originally issued to the licensee
11 for which consent of the Comptroller shall be required.

12 (g) Every license issued hereunder shall remain in force
13 until the same has been suspended, surrendered or revoked in
14 accordance with this Act, but the Comptroller, upon the
15 request of an interested person or on his own motion, may
16 issue new licenses to a licensee whose license or licenses
17 have been revoked, if no factor or condition then exists
18 which would have warranted the Comptroller in refusing
19 originally the issuance of such license.

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

21 (815 ILCS 390/8a)

22 Sec. 8a. Investigation of unlawful practices. If it
23 appears to the Comptroller that a person has engaged in, is
24 engaging in, or is about to engage in any practice in
25 violation of ~~declared--to--be--unlawful--by~~ this Act, the
26 Comptroller may:

27 (1) require that person to file on such terms as
28 the Comptroller prescribes a statement or report in
29 writing, under oath or otherwise, containing all
30 information the Comptroller may consider necessary to
31 ascertain whether a licensee is in compliance with this
32 Act, or whether an unlicensed person is engaging in
33 activities for which a license is required;

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

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

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

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

15 (815 ILCS 390/9) (from Ch. 21, par. 209)

16 Sec. 9. The Comptroller may, upon his own motion
 17 investigate the actions of any person providing, selling, or
 18 offering pre-need sales contracts or of any applicant or any
 19 person or persons holding or claiming to hold a license under
 20 this Act. The Comptroller shall make such an investigation
 21 on receipt of the verified written complaint of any person
 22 setting forth facts which, if proved, would constitute
 23 grounds for refusal, suspension, or revocation of a license
 24 ~~with--respect--to--which--grounds--for--revocation--may--occur--or~~
 25 ~~exist,--or--if--he--shall--find--that--such--grounds--for--revocation~~
 26 ~~are--of--general--application--to--all--offices--or--to--more--than--one~~
 27 ~~office--operated--by--such--licensee,--he--may--revoke--all--of--the~~
 28 ~~licenses--issued--to--such--licensee--or--such--number--of--licensees~~
 29 ~~to--which--grounds--apply,--as--the--case--may--be.~~ Before refusing
 30 to issue, and before suspension or revocation of a license,
 31 the Comptroller shall hold a hearing to determine whether the
 32 applicant or licensee, hereafter called the respondent, is
 33 entitled to hold such a license. At least 10 days prior to

1 the date set for such hearing, the Comptroller shall notify
2 the respondent in writing that on the date designated a
3 hearing will be held to determine his eligibility for a
4 license and that he may appear in person or by counsel.
5 Such written notice may be served on the respondent
6 personally, or by registered or certified mail sent to the
7 respondent's business address as shown in his latest
8 notification to the Comptroller and shall include sufficient
9 information to inform the respondent of the general nature of
10 the charge. At the hearing, both the respondent and the
11 complainant shall be accorded ample opportunity to present in
12 person or by counsel such statements, testimony, evidence and
13 argument as may be pertinent to the charges or to any defense
14 thereto. The Comptroller may reasonably continue such
15 hearing from time to time.

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

20 Any authorized agent of the Comptroller may administer
21 oaths to witnesses at any hearing which the Comptroller is
22 authorized to conduct.

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

1 the record or from the Comptroller.

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

3 (815 ILCS 390/12) (from Ch. 21, par. 212)

4 Sec. 12. License revocation or suspension.

5 (a) The Comptroller may, upon determination that grounds
6 exist for the revocation or suspension of a license issued
7 under this Act, revoke or suspend, if appropriate, the
8 license issued to a licensee or to a particular branch office
9 location with respect to which the grounds for revocation or
10 suspension may occur or exist.

11 (b) Upon the revocation or suspension of any license,
12 the licensee shall immediately surrender the license or
13 licenses and--any-branch-office-licenses to the Comptroller.
14 If the licensee fails to do so, the Comptroller has the right
15 to seize the license or licenses same.

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

17 (815 ILCS 390/14) (from Ch. 21, par. 214)

18 Sec. 14. Contract required.

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

24 (1) A written sales contract shall be executed in
25 at least 11 point type in duplicate for each pre-need
26 sale made by a licensee, and a signed copy given to the
27 purchaser. Each completed contract shall be numbered and
28 shall contain: (i) the name and address of the purchaser,
29 the principal office of the licensee, and the parent
30 company of the licensee; (ii) and-the seller, the name
31 of the person, if known, who is to receive the cemetery
32 merchandise, cemetery services or the completed

1 interment, entombment or inurnment spaces under the
 2 contract; and (iii) specific identification of
 3 specifically--identify such merchandise, services or
 4 spaces to be provided, if a specific space or spaces are
 5 contracted for, and the price of the merchandise,
 6 services, or space or spaces.

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

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

14 (3) All pre-need sales contracts shall be sold on a
 15 guaranteed price basis. At the time of performance of the
 16 service or delivery of the merchandise, the seller shall
 17 be prohibited from assessing the purchaser or his heirs
 18 or assigns or duly authorized representative any
 19 additional charges for the specific merchandise and
 20 services listed on the pre-need sales contract.

21 (4) Each contract shall clearly disclose that the
 22 price of the merchandise or services is guaranteed and
 23 shall contain the following statement in 12 point bold
 24 type:

25 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE
 26 SPECIFIC GOODS, AND SERVICES, INTERMENT SPACES,
 27 ENTOMBMENT SPACES, AND INURNMENT SPACES CONTRACTED FOR.
 28 NO ADDITIONAL CHARGES MAY BE REQUIRED FOR DESIGNATED
 29 GOODS, AND SERVICES, AND SPACES. ADDITIONAL CHARGES MAY
 30 BE INCURRED FOR UNEXPECTED EXPENSES."

31 (5) The pre-need sales contract shall provide that
 32 if the particular cemetery services, cemetery
 33 merchandise, or spaces specified in the pre-need contract
 34 are unavailable at the time of delivery, the seller shall

1 be required to furnish services, merchandise, and spaces
2 similar in style and at least equal in quality of
3 material and workmanship.

4 (6) The pre-need contract shall also disclose any
5 specific penalties to be incurred by the purchaser as a
6 result of failure to make payments; and penalties to be
7 incurred or moneys or refunds to be received as a result
8 of cancellation of the contract.

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

11 (8) Each pre-need contract that authorizes the
12 delivery of cemetery merchandise to a licensed and bonded
13 warehouse shall provide that prior to or upon delivery of
14 the merchandise to the warehouse the title to the
15 merchandise and a warehouse receipt shall be delivered to
16 the purchaser or beneficiary. The pre-need contract
17 shall contain the following statement in 12 point bold
18 type:

19 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO
20 A LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE
21 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE
22 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER
23 MAY PRECLUDE REFUND OF SALE PROCEEDS THAT ARE
24 ATTRIBUTABLE TO THE DELIVERED MERCHANDISE."

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

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

32 "THIS CONTRACT AUTHORIZES THE PLACEMENT OF MERCHANDISE AT
33 THE SITE OF ITS ULTIMATE USE PRIOR TO THE TIME THAT THE
34 MERCHANDISE IS NEEDED BY THE BENEFICIARY. DELIVERY OF THE

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

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

6 (b) Every pre-need sales contract must be in writing.
 7 ~~and no pre-need sales contract form may be used unless it has~~
 8 ~~previously been filed with the Comptroller. The Comptroller~~
 9 ~~shall review all pre-need sales contract forms and, upon~~
 10 ~~written notification to the seller, shall prohibit the use of~~
 11 ~~contract forms that do not meet the requirements of this Act.~~
 12 ~~Any use or attempted use of any oral pre-need sales contract~~
 13 ~~or any written pre-need sales contract in a form not filed~~
 14 ~~with the Comptroller or in a form that does not meet the~~
 15 ~~requirements of this Act shall be deemed a violation of this~~
 16 ~~Act. The Comptroller may by rule develop a model pre-need~~
 17 ~~sales contract form that meets the requirements of this Act.~~

18 (c) To the extent the Rule is applicable, every pre-need
 19 sales contract is subject to the Federal Trade Commission
 20 Rule concerning the Cooling-Off Period for Door-to-Door Sales
 21 (16 CFR Part 429).

22 (d) No pre-need sales contract may be entered into in
 23 this State unless there is a provider for the cemetery
 24 merchandise, cemetery services, and undeveloped interment,
 25 inurnment, and entombment spaces being sold. If the seller
 26 is not the provider, then the seller must have a binding
 27 agreement with a provider, and the identity of the provider
 28 and the nature of the agreement between the seller and the
 29 provider must be disclosed in the pre-need sales contract at
 30 the time of sale and before the receipt of any sale proceeds.
 31 The failure to disclose the identity of the provider, the
 32 nature of the agreement between the seller and the provider,
 33 or any changes thereto to the purchaser and beneficiary, or
 34 the failure to make the disclosures required by this Section

1 constitutes an intentional violation of this Act.

2 (e) No pre-need contract may be entered into in this
3 State unless it is accompanied by a funding mechanism
4 permitted under this Act and unless the seller is licensed by
5 the Comptroller as provided in this Act. Nothing in this Act
6 is intended to relieve providers or sellers of pre-need
7 contracts from being licensed under any other Act required
8 for their profession or business or from being subject to the
9 rules promulgated to regulate their profession or business,
10 including rules on solicitation and advertisement.

11 (f) No pre-need contract may be entered into in this
12 State unless the seller explains to the purchaser the terms
13 of the pre-need contract prior to the purchaser signing and
14 the purchaser initials a statement in the contract confirming
15 that the seller has explained the terms of the contract prior
16 to the purchaser signing.

17 (g) The State Comptroller shall develop a booklet for
18 consumers in plain English describing the scope, application,
19 and consumer protections of this Act. After the booklet is
20 developed, no pre-need contract may be sold in this State
21 unless the seller distributes to the purchaser prior to the
22 sale a booklet developed or approved for use by the State
23 Comptroller.

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

25 (815 ILCS 390/16) (from Ch. 21, par. 216)

26 Sec. 16. Trust funds; disbursements.

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

29 (b) A trustee shall, with respect to the investment of
30 such trust funds, exercise the judgment and care under the
31 circumstances then prevailing which persons of prudence,
32 discretion and intelligence exercise in the management of
33 their own affairs, not in regard to speculation, but in

1 regard to the permanent disposition of their funds,
2 considering the probable income as well as the probable
3 safety of their capital.

4 The seller shall act as trustee of all amounts received
5 for cemetery merchandise, services, or undeveloped spaces
6 until those amounts have been deposited into the trust fund.
7 The seller may continue to be the trustee of up to \$500,000
8 that has been deposited into the trust fund, but the seller
9 must retain an independent trustee for any amount of trust
10 funds in excess of \$500,000. A seller holding trust funds in
11 excess of \$500,000 ~~on-the-effective-date-of--this--amendatory~~
12 ~~Act--of--1996--shall--have--36--months--to--retain--an--independent~~
13 ~~trustee--for--the--amounts--over--\$500,000--any--other--seller~~ must
14 retain an independent trustee for its trust funds in excess
15 of \$500,000 as soon as may be practical. The Comptroller
16 shall have the right to disqualify the trustee upon the same
17 grounds as for refusing to grant or revoking a license
18 hereunder. Upon notice to the Comptroller, the seller may
19 change the trustee of the trust fund.

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

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

33 (e) The trust shall be a single-purpose trust fund. In
34 the event of the seller's bankruptcy, insolvency or

1 assignment for the benefit of creditors, or an adverse
2 judgment, the trust funds shall not be available to any
3 creditor as assets of the seller or to pay any expenses of
4 any bankruptcy or similar proceeding, but shall be
5 distributed to the purchasers or managed for their benefit by
6 the trustee holding the funds. Except in an action by the
7 Comptroller to revoke a license issued pursuant to this Act
8 and for creation of a receivership as provided in this Act,
9 the trust shall not be subject to judgment, execution,
10 garnishment, attachment, or other seizure by process in
11 bankruptcy or otherwise, nor to sale, pledge, mortgage, or
12 other alienation, and shall not be assignable except as
13 approved by the Comptroller. The changes made by this
14 amendatory Act of the 91st General Assembly are intended to
15 clarify existing law regarding the inability of licensees to
16 pledge the trust.

17 (f) Because it is not known at the time of deposit or at
18 the time that income is earned on the trust account to whom
19 the principal and the accumulated earnings will be
20 distributed, for purposes of determining the Illinois Income
21 Tax due on these trust funds, the principal and any accrued
22 earnings or losses relating to each individual account shall
23 be held in suspense until the final determination is made as
24 to whom the account shall be paid.

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

26 (815 ILCS 390/19) (from Ch. 21, par. 219)

27 Sec. 19. Construction or development of spaces.

28 (a) The construction or development of undeveloped
29 interment, entombment or inurnment spaces shall be commenced
30 on that phase, section or sections of undeveloped ground or
31 section of lawn crypts, mausoleums, garden crypts,
32 columbariums or cemetery spaces in which sales are made
33 within 3 years of the date of the first such sale. The

1 seller shall give written notice to the Comptroller no later
2 than 30 days after the first sale. Such notice shall include
3 a description of the project. Once commenced, construction
4 or development shall be pursued diligently to completion.
5 The construction must be completed within 6 years of the
6 first sale. If construction or development is not commenced
7 or completed within the times specified herein, any purchaser
8 may surrender and cancel the contract and upon cancellation
9 shall be entitled to a refund of the actual amounts paid
10 toward the purchase price plus interest attributable to such
11 amount earned while in trust; provided however that any delay
12 caused by strike, shortage of materials, civil disorder,
13 natural disaster or any like occurrence beyond the control of
14 the seller shall extend the time of such commencement and
15 completion by the length of such delay.

16 (b) At any time within 12 months of a purchaser's
17 entering into a pre-need contract for undeveloped interment,
18 entombment or inurnment spaces, a purchaser may surrender and
19 cancel his or her contract and upon cancellation shall be
20 entitled to a refund of the actual amounts paid toward the
21 purchase price plus interest attributable to such amount
22 earned while in trust. Notwithstanding the foregoing, the
23 cancellation and refund rights specified in this paragraph
24 shall terminate as of the date the seller commences
25 construction or development of the phase, section or sections
26 of undeveloped spaces in which sales are made. After the
27 rights of cancellation and refund specified herein have
28 terminated, if a purchaser defaults in making payments under
29 the pre-need contract, the seller shall have the right to
30 cancel the contract and withdraw from the trust fund the
31 entire balance to the credit of the defaulting purchaser's
32 account as liquidated damages. In such event, the trustee
33 shall deliver said balance to the seller upon its
34 certification, and upon receiving said certification the

1 trustee may rely thereon and shall not be liable to anyone
2 for such reliance.

3 (c) During the construction or development of interment,
4 entombment or inurnment spaces, upon the sworn certification
5 by the seller and the contractor to the trustee, the trustee
6 shall disburse from the trust fund the amount equivalent to
7 the cost of performed labor or delivered materials as
8 certified. Said certification shall be substantially in the
9 following form:

10 We, the undersigned, being respectively the Seller and
11 Contractor, do hereby certify that the Contractor has
12 performed labor or delivered materials or both to (address of
13 property), in connection with a contract to
14, and that as of this date the value of the labor
15 performed and materials delivered is \$.....

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

19 This Certificate is signed (insert date).

20
21 Seller Contractor

22 A person who executes and delivers a completion
23 certificate with actual knowledge of a falsity contained
24 therein shall be considered in violation of this Act and
25 subject to the penalties contained herein.

26 (d) Except as otherwise authorized by this Section,
27 every seller of undeveloped spaces shall provide facilities
28 for temporary interment, entombment or inurnment for
29 purchasers or beneficiaries of contracts who die prior to
30 completion of the space. Such temporary facilities shall be
31 constructed of permanent materials, and, insofar as
32 practical, be landscaped and groomed to the extent customary
33 in the cemetery industry in that community. The heirs,
34 assigns, or personal representative of a purchaser or

1 beneficiary shall not be required to accept temporary
2 underground interment spaces where the undeveloped space
3 contracted for was an above ground entombment or inurnment
4 space. In the event that temporary facilities as described
5 in this paragraph are not made available, upon the death of a
6 purchaser or beneficiary, the heirs, assigns, or personal
7 representative is entitled to a refund of the entire sales
8 price paid plus undistributed interest attributable to such
9 amount while in trust.

10 (e) If the seller delivers a completed space acceptable
11 to the heirs, assigns or personal representative of a
12 purchaser or beneficiary, other than the temporary facilities
13 specified herein, in lieu of the undeveloped space purchased,
14 the seller shall provide the trustee with a delivery
15 certificate and all sums deposited under the pre-need sales
16 contract, including the undistributed income, shall be paid
17 to the seller.

18 (f) Upon completion of the phase, section or sections of
19 the project as certified to the trustee by the seller and the
20 contractor and delivery of the deed or certificate of
21 ownership to the completed interment, entombment, or
22 inurnment space to all of the purchasers entitled to receive
23 those ownership documents, the trust fund requirements set
24 forth herein shall terminate and all funds held in the
25 preconstruction trust fund attributable to the completed
26 phase, section or sections, including interest accrued
27 thereon, shall be returned to the seller.

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

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

33 (815 ILCS 390/20) (from Ch. 21, par. 220)

1 Sec. 20. Records.

2 (a) Each licensee must keep accurate accounts, books and
3 records in this State at the principal place of business
4 identified in the licensee's license application or as
5 otherwise approved by the Comptroller in writing of all
6 transactions, copies of agreements, dates and amounts of
7 payments made or received, the names and addresses of the
8 contracting parties, the names and addresses of persons for
9 whose benefit funds are received, if known, and the names of
10 the trust depositories. Additionally, for a period not to
11 exceed 6 months after the performance of all terms in a
12 pre-need sales contract, the licensee shall maintain copies
13 of each pre-need contract at the licensee branch location
14 where the contract was entered or at some other location
15 agreed to by the Comptroller in writing.

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

21 (c) Each licensee shall submit reports to the
22 Comptroller annually, under oath, on forms furnished by the
23 Comptroller. The annual report shall contain, but shall not
24 be limited to, the following:

25 (1) An accounting of the principal deposit and
26 additions of principal during the fiscal year.

27 (2) An accounting of any withdrawal of principal or
28 earnings.

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

31 (d) The annual report shall be filed by the licensee
32 with the Comptroller within 75 days after the end of the
33 licensee's fiscal year. An extension of up to 60 days may be
34 granted by the Comptroller, upon a showing of need by the

1 licensee. Any other reports shall be in the form furnished
2 or specified by the Comptroller. If a licensee fails to
3 submit an annual report to the Comptroller within the time
4 specified in this Section, the Comptroller shall impose upon
5 the licensee a penalty of \$5 for each and every day the
6 licensee remains delinquent in submitting the annual report.
7 The Comptroller may abate all or part of the \$5 daily penalty
8 for good cause shown. Each report shall be accompanied by a
9 check or money order in the amount of \$10 payable to:
10 Comptroller, State of Illinois.

11 (e) On and after the effective date of this amendatory
12 Act of the 91st General Assembly, a licensee may report all
13 required information concerning the sale of outer burial
14 containers on the licensee's annual report required to be
15 filed under this Act and shall not be required to report that
16 information under the Illinois Funeral or Burial Funds Act,
17 as long as the information is reported under this Act.

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

19 (815 ILCS 390/22) (from Ch. 21, par. 222)

20 Sec. 22. Cemetery Consumer Protection Fund.

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

29 (b) All monies paid into the fund together with all
30 accumulated undistributed income thereon shall be held as a
31 special fund in the State Treasury. The fund shall be used
32 solely for the purpose of providing restitution to consumers
33 who have suffered pecuniary loss arising out of pre-need

1 sales.

2 (c) The fund shall be applied only to restitution or
3 completion of the project or delivery of the merchandise or
4 services, where such has been ordered by the Circuit Court in
5 a lawsuit brought under this Act by the Attorney General of
6 the State of Illinois on behalf of the Comptroller and in
7 which it has been determined by the Court that the obligation
8 is non-collectible from the judgment debtor. Restitution
9 shall not exceed the amount of the sales price paid plus
10 interest at the statutory rate. The fund shall not be used
11 for the payment of any attorney or other fees.

12 (d) Whenever restitution is paid by the fund, the fund
13 shall be subrogated to the amount of such restitution, and
14 the Comptroller shall request the Attorney General to engage
15 in all reasonable post judgment collection steps to collect
16 said restitution from the judgment debtor and reimburse the
17 fund.

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

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

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

1 (h) Annually, the status of the fund shall be reviewed
2 by the Comptroller, and if he determines that the fund
3 together with all accumulated income earned thereon, equals
4 or exceeds \$10,000,000 and that the total number of
5 outstanding claims filed against the fund is less than 10% of
6 the fund's current balance, then payments to the fund shall
7 be suspended until such time as the fund's balance drops
8 below \$10,000,000 or the total number of outstanding claims
9 filed against the fund is more than 10% of the fund's current
10 balance, but on such suspension, the fund shall not be
11 considered inactive.

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

13 (815 ILCS 390/23) (from Ch. 21, par. 223)

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

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

30 (c) Whenever a license is revoked by the Comptroller, or
31 the Comptroller determines that any person is engaged in
32 pre-need sales without a license, he shall apply to the
33 circuit court of the county where such person is located for

1 a receiver to administer the business of such person.

2 (d) Whenever a licensee fails or refuses to make a
3 required report or whenever it appears to the Comptroller
4 from any report or examination that such licensee has
5 committed a violation of law or that the trust funds have not
6 been administered properly or that it is unsafe or
7 inexpedient for such licensee or the trustee of the trust
8 funds of such licensee to continue to administer such funds
9 or that any officer of such licensee or of the trustee of the
10 trust funds of such licensee has abused his trust or has been
11 guilty of misconduct or breach of trust in his official
12 position injurious to such licensee or that such licensee has
13 suffered as to its trust funds a serious loss by larceny,
14 embezzlement, burglary, repudiation or otherwise, the
15 Comptroller shall, by order, direct the discontinuance of
16 such illegal, unsafe or unauthorized practices and shall
17 direct strict conformity with the requirements of the law and
18 safety and security in its transactions and may apply to the
19 circuit court of the county where such licensee is located to
20 prevent any disbursements or expenditures by such licensee
21 until the trust funds are in such condition that it would not
22 be jeopardized thereby and the Comptroller shall communicate
23 the facts to the Attorney General of the State of Illinois
24 who shall thereupon institute such proceedings against the
25 licensee or its trustee or the officers of either or both as
26 the nature of the case may require.

27 (e) In addition to the other penalties and remedies
28 provided in this Act, the Comptroller may bring a civil
29 action in the county of residence of the licensee or any
30 person engaging in pre-need sales, to enjoin any violation or
31 threatened violation of this Act.

32 (f) The powers vested in the Comptroller by this Section
33 are additional to any and all other powers and remedies
34 vested in the Comptroller by law, and nothing herein

1 contained shall be construed as requiring that the
2 Comptroller shall employ the powers conferred herein instead
3 of or as a condition precedent to the exercise of any other
4 power or remedy vested in the Comptroller.

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

6 (815 ILCS 390/27.1 new)

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

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

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

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

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

7 (ii) any delinquency existing in the trust funds has
8 been paid by the licensee, or arrangements satisfactory
9 to the Comptroller have been made by the licensee on the
10 sale or transfer for the payment of any delinquency;

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

16 For purposes of this Section, a person, firm,
17 corporation, partnership, or institution that acquires the
18 licensee through a real estate foreclosure is subject to the
19 provisions of this Section.

20 Section 50. Severability. If any provision of this Act or
21 its application to any person or circumstance is held
22 invalid, the invalidity of that provision or application does
23 not affect other provisions or applications of this Act that
24 can be given effect without the invalid provision or
25 application.

26 Section 99. Effective date. This Act takes effect
27 January 1, 2002."