

1 AN ACT in relation to cemeteries.

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

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

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

7 Sec. 1. Care by county.

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

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

31 (c) For the purposes of this Section:

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

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

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

26       (Source: P.A. 86-696.)

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

29       (60 ILCS 1/130-5)

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

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

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

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

27 (c) In this Section:

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

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

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

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

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

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

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

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

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

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

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

27 (d) In this Section:

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

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

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

20       (Source: Laws 1961, p. 576.)

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

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

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

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

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

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

9 "Parent company" means a corporation that has a  
10 controlling interest in another corporation.

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

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

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

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

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

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

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

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

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

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

13 (225 ILCS 45/1a-1)

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

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

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

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



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

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

9           (A) Each guaranteed price contract shall  
10 contain the following statement in 12 point bold  
11 type:

12           THIS CONTRACT GUARANTEES THE BENEFICIARY THE  
13 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO  
14 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED  
15 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE  
16 INCURRED FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT  
17 LIMITED TO, CASH ADVANCES, SHIPPING OF REMAINS FROM  
18 A DISTANT PLACE, OR DESIGNATED HONORARIA ORDERED OR  
19 DIRECTED BY SURVIVORS.

20           (B) Except as provided in subparagraph (C) of  
21 this paragraph (3), each non-guaranteed price  
22 contract shall contain the following statement in 12  
23 point bold type:

24           THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE  
25 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR  
26 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE  
27 ONLY A DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE  
28 OF THE GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL  
29 CHARGES MAY BE REQUIRED.

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

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

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

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

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

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

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

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

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

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

21 (d) All pre-need contracts must be in writing in at  
22 least 12 point type, numbered, and executed in duplicate and  
23 ~~no-pre-need-contract-form-shall-be-used-without-prior--filing~~  
24 ~~with-the-Comptroller.~~ A signed copy of the pre-need contract  
25 must be provided to the purchaser at the time of entry into  
26 the pre-need contract. ~~The--Comptroller--shall--review--all~~  
27 ~~pre-need--contract--forms--and--shall--prohibit--the--use--of~~  
28 ~~contract-forms-which-do-not-meet-the-requirements-of-this-Act~~  
29 ~~upon---written--notification--to--the--seller.~~ Any use or  
30 attempted use of any oral pre-need contract or any written  
31 pre-need contract in a ~~form-not-filed-with-the-Comptroller-or~~  
32 ~~in--a~~ form which does not meet the requirements of this Act  
33 shall be deemed a violation of this Act and is voidable by  
34 the purchaser without penalty. ~~Life--insurance-policies,~~

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

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

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

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

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

30 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

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

1 receipt.

2 (b) A trust established under this Act must be  
3 maintained:

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

9 (2) in a trust company authorized to do business in  
10 Illinois.

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

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

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

29 (f) Trust funds may be maintained in a financial  
30 institution described in subsection (b) which is located in a  
31 state adjoining this State where: (1) the financial  
32 institution is located within 50 miles of the border of this  
33 State, (2) its accounts are federally insured, and (3) it has  
34 registered with the Illinois Secretary of State for purposes

1 of service of process.

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

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

5 (225 ILCS 45/2a)

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

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

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

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

33 (d) If a life insurance policy or annuity contract is

1 used to fund a pre-need contract, except for guaranteed price  
 2 contracts permitted in Section 4(a) of this Act, the pre-need  
 3 contract must be revocable, and any the assignment provision  
 4 in the pre-need contract must contain the following  
 5 disclosure in 12 point bold type:

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

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

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

21 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

22 Sec. 3. Licensing.

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

- 29 (1) The full name and address (both residence and  
 30 place of business) of the applicant, and every member,  
 31 officer and director thereof if the applicant is a firm,  
 32 partnership, association, or corporation, and of every  
 33 shareholder holding more than 10% of the corporate stock

1 if the applicant is a corporation. Any--license--issued  
2 pursuant--to--the--application--shall--be--valid--only--at--the  
3 address--stated--in--the--application--for--such--applicant--or  
4 at---such---new---address--as--may--be--approved--by--the  
5 Comptroller;

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

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

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

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



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

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

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

1 benefit of the beneficiaries of such trust funds.

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

32 The licensee shall make reports to the Comptroller  
33 annually or at such other time as the Comptroller may  
34 require, on forms furnished by the Comptroller. The licensee

1 shall file the annual report with the Comptroller within 75  
2 days after the end of the licensee's fiscal year. The  
3 Comptroller shall for good cause shown grant an extension for  
4 the filing of the annual report upon the written request of  
5 the licensee. Such extension shall not exceed 60 days. If a  
6 licensee fails to submit an annual report to the Comptroller  
7 within the time specified in this Section, the Comptroller  
8 shall impose upon the licensee a penalty of \$5 for each and  
9 every day the licensee remains delinquent in submitting the  
10 annual report. Every application shall be accompanied by a  
11 check or money order in the amount of \$25 and every report  
12 shall be accompanied by a check or money order in the amount  
13 of \$10 payable to: Comptroller, State of Illinois.

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

1 Less than \$10,000.....no charge;  
 2 \$10,000 or more but less than \$50,000.....\$10;  
 3 \$50,000 or more but less than \$100,000.....\$40;  
 4 \$100,000 or more but less than \$250,000.....\$80;  
 5 \$250,000 or more.....\$100.

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

14 (1) material and unverified changes or fluctuations  
 15 in trust balances or insurance or annuity policy amounts;

16 (2) the licensee changing trustees more than twice  
 17 in any 12-month period;

18 (3) any withdrawals or attempted withdrawals from  
 19 the trusts, insurance policies, or annuity contracts in  
 20 violation of this Act; or

21 (4) failure to maintain or produce documentation  
 22 required by this Act for deposits into trust accounts,  
 23 trust investment activities, or life insurance or annuity  
 24 policies.

25 Prior to ordering an additional audit or examination, the  
 26 Comptroller shall request the licensee to respond and comment  
 27 upon the factors identified by the Comptroller as warranting  
 28 the subsequent examination or audit. The licensee shall have  
 29 30 days to provide a response to the Comptroller. If the  
 30 Comptroller decides to proceed with the additional  
 31 examination or audit, the licensee shall bear the full cost  
 32 of that examination or audit, up to a maximum of \$7,500. The  
 33 Comptroller may elect to pay for the examination or audit and  
 34 receive reimbursement from the licensee. Payment of the

1 costs of the examination or audit by a licensee shall be a  
2 condition of receiving, maintaining, or renewing a license  
3 under this Act. All moneys received by the Comptroller for  
4 examination or audit fees shall be maintained in a separate  
5 account to be known as the Comptroller's Administrative Fund.  
6 This Fund, subject to appropriation by the General Assembly,  
7 may be utilized by the Comptroller for enforcing this Act and  
8 other purposes that may be authorized by law.

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

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

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

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

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

3           (1) The applicant or licensee has made any  
4 misrepresentations or false statements or concealed any  
5 material fact.

6           (2) The applicant or licensee is insolvent.

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

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

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

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

16           (7) The trustee advisors or the trust agreement is  
17 not satisfactory to the Comptroller.

18           (8) The fidelity bond is not satisfactory to the  
19 Comptroller.

20           (9) As to any individual, the individual has  
21 conducted or is about to conduct any business on behalf  
22 of the applicant in a fraudulent manner; has been  
23 convicted of any felony or misdemeanor, an essential  
24 element of which is fraud; has had a judgment rendered  
25 against him or her based on fraud in any civil  
26 litigation; has failed to satisfy any enforceable  
27 judgment or decree rendered against him or her by any  
28 court of competent jurisdiction; or has been convicted of  
29 any felony or any theft-related offense.

30           (10) The applicant or licensee, including any  
31 member, officer, or director thereof if the applicant or  
32 licensee is a firm, partnership, association or  
33 corporation and any shareholder holding more than 10% of  
34 the corporate stock, has violated any provision of this

1 Act or any regulation, decision, order, or finding made  
2 by the Comptroller under this Act.

3 (11) The Comptroller finds any fact or condition  
4 existing which, if it had existed at the time of the  
5 original application for such license, would have  
6 warranted the Comptroller in refusing the issuance of the  
7 license.

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

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

31 Any authorized agent of the Comptroller may administer  
32 oaths to witnesses at any hearing which the Comptroller is  
33 authorized to conduct.

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

1 (225 ILCS 45/3a-5 new)

2 Section 3a-5. License requirements.

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

13 (b) Individual salespersons representing a licensee  
14 shall not be required to obtain licenses in their individual  
15 capacities, but must acknowledge, by affidavit, that they  
16 have been educated in the provisions of this Act and  
17 understand the penalties for failure to comply. The licensee  
18 shall retain copies of the affidavits of its sellers for its  
19 records and shall make the affidavits available to the  
20 Comptroller for examination upon request.

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

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

26 (e) No license shall be transferable or assignable  
27 without the express written consent of the Comptroller. A  
28 transfer of more than 50% of the ownership of any business  
29 licensed hereunder shall be deemed to be an attempted  
30 assignment of the license originally issued to the licensee  
31 for which consent of the Comptroller shall be required.

32 (f) Every license issued hereunder shall remain in force  
33 until it has been suspended, surrendered, or revoked in  
34 accordance with this Act. The Comptroller, upon the request



1 of an interested person or on his own motion, may issue new  
 2 licenses to a licensee whose license or licenses have been  
 3 revoked, if no factor or condition then exists which would  
 4 have warranted the Comptroller to originally refuse the  
 5 issuance of such license.

6 (225 ILCS 45/3e) (from Ch. 111 1/2, par. 73.103e)

7 Sec. 3e. Upon the revocation of, suspension of, or  
 8 refusal to renew any license, the licensee shall immediately  
 9 surrender the license or licenses and--any--branch--office  
 10 licenses to the Comptroller. If the licensee fails to do so,  
 11 the Comptroller shall have the right to seize the same.

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

13 (225 ILCS 45/3f)

14 Sec. 3f. Revocation of license.

15 (a) The Comptroller, upon determination that grounds  
 16 exist for the revocation or suspension of a license issued  
 17 under this Act, may revoke or suspend the license issued to a  
 18 particular branch office location with respect to which the  
 19 grounds for revocation or suspension may occur or exist.

20 (b) Whenever a license is revoked by the Comptroller, he  
 21 or she shall apply to the Circuit Court of the county wherein  
 22 the licensee is located for a receiver to administer the  
 23 trust funds of the licensee or to maintain the life insurance  
 24 policies and tax-deferred annuities held by the licensee  
 25 under a pre-need contract.

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

27 (225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

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

29 (a) The amount or amounts so deposited into trust, with  
 30 interest thereon, if any, shall not be withdrawn until the  
 31 death of the person or persons for whose funeral or burial

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

31 (b) If for any reason a ~~seller--or~~ provider who has  
32 engaged in pre-need sales has refused, cannot, or does not  
33 comply with the terms of the pre-need contract within a  
34 reasonable time after he or she is required to do so, the

1 purchaser or his or her heirs or assigns or duly authorized  
2 representative shall have the right to a refund of an amount  
3 equal to the sales proceeds price paid for undelivered  
4 merchandise or services plus otherwise earned undistributed  
5 interest amounts held in trust attributable to the contract,  
6 within 30 days of the filing of a sworn affidavit with the  
7 trustee setting forth the existence of the contract and the  
8 fact of breach. A copy of this affidavit shall be filed with  
9 the Comptroller and the seller. In the event a seller is  
10 prevented from performing by strike, shortage of materials,  
11 civil disorder, natural disaster, or any like occurrence  
12 beyond the control of the seller or provider, the seller or  
13 provider's time for performance shall be extended by the  
14 length of the delay. Nothing in this Section shall relieve  
15 the seller or provider from any liability for non-performance  
16 of his or her obligations under the pre-need contract.

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

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

33 (d) The placement and retention of all or a portion of a  
34 casket, combination casket-vault, urn, or outer burial

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

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

25 (225 ILCS 45/7.2)

26 Sec. 7.2. Investigation of unlawful practices. If it  
 27 appears to the Comptroller that a person has engaged in, is  
 28 engaging in, or is about to engage in any practice in  
 29 violation of ~~declared--to--be--unlawful--by~~ this Act, the  
 30 Comptroller may:

- 31 (1) require that person to file on such terms as
- 32 the Comptroller prescribes a statement or report in
- 33 writing, under oath or otherwise, containing all

1 information the Comptroller may consider necessary to  
2 ascertain whether a licensee is in compliance with this  
3 Act, or whether an unlicensed person is engaging in  
4 activities for which a license is required;

5 (2) examine under oath any person in connection  
6 with the books and records pertaining to or having an  
7 impact upon trust funds, insurance policies, or tax  
8 deferred annuities required or allowed to be maintained  
9 pursuant to this Act;

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

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

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

20 (225 ILCS 45/8) (from Ch. 111 1/2, par. 73.108)

21 Sec. 8. Any person who intentionally violates any  
22 provision of this Act is guilty of a Class 4 felony.

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

1           Any--violation--of--this--Act--for--which--a--fine--may--be  
 2 assessed--shall--be--established--by--rules--promulgated--by--the  
 3 Comptroller.

4           In addition to the other penalties and remedies provided  
 5 in this Act, the Comptroller may bring a civil action in the  
 6 county of residence of the licensee or any person accepting  
 7 trust funds to enjoin any violation or threatened violation  
 8 of this Act.

9           The powers vested in the Comptroller by this Section are  
 10 in addition to any and all other powers and remedies vested  
 11 in the Comptroller by law.

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

13 (225 ILCS 45/8.1 new)

14           Sec. 8.1. Sales; liability of purchaser for shortage. In  
 15 the event of a sale or transfer of all or substantially all  
 16 of the assets of the licensee, the sale or transfer of the  
 17 controlling interest of the corporate stock of the licensee  
 18 if the licensee is a corporation, the sale or transfer of the  
 19 controlling interest of the partnership if the licensee is a  
 20 partnership, or the sale of the licensee pursuant to  
 21 foreclosure proceedings, the purchaser is liable for any  
 22 shortages existing before or after the sale in the trust  
 23 funds required to be maintained in a trust pursuant to this  
 24 Act and shall honor all pre-need contracts and trusts entered  
 25 into by the licensee. Any shortages existing in the trust  
 26 funds constitute a prior lien in favor of the trust for the  
 27 total value of the shortages, and notice of that lien shall  
 28 be provided in all sales instruments.

29           In the event of a sale or transfer of all or  
 30 substantially all of the assets of the licensee, the sale or  
 31 transfer of the controlling interest of the corporate stock  
 32 of the licensee if the licensee is a corporation, or the sale  
 33 or transfer of the controlling interest of the partnership if

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

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

14 (ii) any delinquency existing in the trust funds has  
 15 been paid by the licensee, or arrangements satisfactory  
 16 to the Comptroller have been made by the licensee on the  
 17 sale or transfer for the payment of any delinquency; and

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

23 For purposes of this Section, a person, firm,  
 24 corporation, partnership, or institution that acquires the  
 25 licensee through a real estate foreclosure shall be subject  
 26 to the provisions of this Section.

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

29 (305 ILCS 5/12-4.11) (from Ch. 23, par. 12-4.11)

30 Sec. 12-4.11. Grant amounts. The Department, with due  
 31 regard for and subject to budgetary limitations, shall  
 32 establish grant amounts for each of the programs, by

1 regulation. The grant amounts may vary by program, size of  
2 assistance unit and geographic area.

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

9 In fixing standards to govern payments or reimbursements  
10 for funeral and burial expenses, the Department shall  
11 establish a minimum allowable amount of not less than \$1,000  
12 for Department payment of funeral services and not less than  
13 \$500 for Department payment of burial or cremation services.  
14 In establishing the minimum allowable amount, the Department  
15 shall take into account the services essential to a  
16 dignified, low-cost (i) funeral and (ii) burial or cremation,  
17 including reasonable amounts that may be necessary for burial  
18 space and cemetery charges, and any applicable taxes or other  
19 required governmental fees or charges. If no person has  
20 agreed to pay the total cost of the (i) funeral and (ii)  
21 burial or cremation charges, the Department shall pay the  
22 vendor the actual costs of the (i) funeral and (ii) burial or  
23 cremation, or the minimum allowable amount for each service  
24 as established by the Department, whichever is less, provided  
25 that the Department reduces its payments by the amount  
26 available from the following sources: the decedent's assets  
27 and available resources and the anticipated amounts of any  
28 death benefits available to the decedent's estate, and  
29 amounts paid and arranged to be paid by the decedent's  
30 legally responsible relatives. A legally responsible relative  
31 is expected to pay (i) funeral and (ii) burial or cremation  
32 expenses unless financially unable to do so.

33 Nothing contained in this Section or in any other Section  
34 of this Code shall be construed to prohibit the Illinois



1 Department (1) from consolidating existing standards on the  
 2 basis of any standards which are or were in effect on, or  
 3 subsequent to July 1, 1969, or (2) from employing any  
 4 consolidated standards in determining need for public aid and  
 5 the amount of money payment or grant for individual  
 6 recipients or recipient families.

7 (Source: P.A. 90-17, eff. 7-1-97; 90-326, eff. 8-8-97;  
 8 90-372, eff. 7-1-98; 90-655, eff. 7-30-98; 91-24, eff.  
 9 7-1-99.)

10 Section 30. The Cemetery Care Act is amended by changing  
 11 Sections 2a, 9, 10, 11, 11.1, 13, and 15b and adding Section  
 12 26 as follows:

13 (760 ILCS 100/2a) (from Ch. 21, par. 64.2a)

14 Sec. 2a. Powers and duties of cemetery authorities;  
 15 ~~cemetery-property-maintained-by-cemetery-care-funds.~~

16 (a) With respect to cemetery property maintained by  
 17 cemetery care funds, a cemetery authority is ~~shall--be~~  
 18 responsible for the performance of:

19 (1) ~~(a)~~ the care and maintenance of the cemetery  
 20 property it owns; and

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

24 (b) A cemetery authority owning, operating, controlling  
 25 or managing a privately operated cemetery shall provide  
 26 reasonable maintenance of the cemetery property and of the  
 27 lots, graves, crypts, and columbariums in the cemetery.  
 28 Reasonable maintenance includes, but is not limited to:

29 (1) the laying of seed, sod, or other suitable  
 30 ground cover as soon as practicable following an  
 31 interment given the weather conditions, climate, season,  
 32 and the interment's proximity to ongoing burial activity;

1           (2) the cutting of the lawn throughout the cemetery  
2           at reasonable intervals to prevent an overgrowth of grass  
3           and weeds given the weather conditions, climate, and  
4           season;

5           (3) the trimming of shrubs to prevent excessive  
6           overgrowth;

7           (4) the trimming of trees to remove dead limbs;

8           (5) keeping in repair the drains, water lines,  
9           roads, buildings, fences, and other structures; and

10          (6) keeping the cemetery premises free of trash and  
11          debris.

12          Reasonable maintenance by the cemetery authority shall  
13          not preclude the exercise of lawful rights by an owner of an  
14          interment, inurnment, or entombment right, or the owner's  
15          family and heirs, in accordance with the reasonable rules and  
16          regulations of the cemetery or other agreement of the  
17          cemetery authority. In the case of a cemetery dedicated as a  
18          nature preserve under the Illinois Natural Areas Preservation  
19          Act, reasonable maintenance by the cemetery authority shall  
20          be in accordance with the rules and master plan governing the  
21          dedicated nature preserve.

22          (c) A cemetery authority owning, operating, controlling  
23          or managing a privately operated cemetery shall make  
24          available for inspection, and upon reasonable request provide  
25          a copy of, its rules and regulations and its current prices  
26          of interment, inurnment, or entombment rights.

27          (d) A cemetery authority owning, operating, controlling  
28          or managing a privately operated cemetery may, from time to  
29          time as land in its cemetery may be required for burial  
30          purposes, survey and subdivide those lands and make and file  
31          in its office a map thereof delineating the lots or plots,  
32          avenues, paths, alleys, and walks and their respective  
33          designations. The cemetery authority shall open the map to  
34          public inspection. The cemetery authority may make available

1 a true copy of the map upon written request and payment of  
2 reasonable photocopy fees. Any unsold lots, plots or parts  
3 thereof, in which there are not human remains, may be  
4 resurveyed and altered in shape or size, and properly  
5 designated on such map. Nothing contained in this  
6 subsection, however, shall prevent the cemetery authority  
7 from enlarging an interment right by selling to the owner  
8 thereof the excess space next to such interment right and  
9 permitting interments therein, provided reasonable access to  
10 such interment right and to adjoining interment rights is not  
11 thereby eliminated.

12 (e) A cemetery authority owning, operating, controlling,  
13 or managing a privately operated cemetery shall keep a record  
14 of every interment, entombment, and inurnment in the  
15 cemetery. The record shall include the deceased's name, age,  
16 and date of burial, when these particulars can be  
17 conveniently obtained, and the lot, plot, or section where  
18 the human remains are interred, entombed, or inurned. The  
19 record shall be open to public inspection. The cemetery  
20 authority shall make available a true copy of the record upon  
21 written request and payment of reasonable copy costs.

22 (f) A cemetery authority owning, operating, controlling,  
23 or managing a privately operated cemetery shall provide  
24 access to the cemetery under the cemetery authority's  
25 reasonable rules and regulations.

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

27 (760 ILCS 100/9) (from Ch. 21, par. 64.9)

28 Sec. 9. Application for license.

29 (a) Prior to the acceptance of care funds authorized by  
30 Section 3 of this Act or the sale or transfer of the  
31 controlling interest of a licensed cemetery authority, a  
32 cemetery authority owning, operating, controlling, or  
33 managing a privately operated cemetery shall make application

1 to the Comptroller for a license to hold the funds. Whenever  
 2 a---cemetery--authority--owning,--operating,--controlling--or  
 3 managing-a-privately-operated-cemetery-is-newly-organized-and  
 4 such-cemetery-authority-desires-to-be-licensed-to-accept--the  
 5 care--funds--authorized-by-Section-3-of-this-Act,--or-whenver  
 6 there-is-a-sale-or-transfer-of-the-controlling-interest-of--a  
 7 licensed--cemetery--authority,--it-shall-make-application-for  
 8 such-license.

9 In the case of a sale or transfer of the controlling  
 10 interest of the cemetery authority, the prior license shall  
 11 remain in effect until the Comptroller issues a new license  
 12 to the newly-controlled cemetery authority as provided in  
 13 Section 15b. Upon issuance of the new license, the prior  
 14 license shall be deemed surrendered if the licensee has  
 15 agreed to the sale and transfer and has consented to the  
 16 surrender of the license. A sale or transfer of the  
 17 controlling interest of a cemetery authority to an immediate  
 18 family member is not considered a transfer of the controlling  
 19 interest for purposes of this Section.

20 (b) Applications for license shall be filed with the  
 21 Comptroller. Applications shall be in writing under oath,  
 22 signed by the applicant, and in the form furnished by the  
 23 Comptroller. The form furnished by the Comptroller shall  
 24 enable a cemetery authority to apply for license of multiple  
 25 cemetery locations within a single license application. A  
 26 check or money order in the amount of \$25 per license seeking  
 27 to be issued under the application, payable to: Comptroller,  
 28 State of Illinois, shall be included. Each application shall  
 29 contain the following:

- 30 (1) the full name and address (both of residence  
 31 and of place of business) of the applicant, if an  
 32 individual; of every member, if the applicant is a  
 33 partnership or association; of every officer, or  
 34 director, if the applicant is a corporation; and of any

1 party owning 10% or more of the cemetery authority, and  
2 the full name and address of the parent company, if any;

3 (2) a detailed statement of the applicant's assets  
4 and liabilities;

5 (2.1) the name, address, and legal boundaries of  
6 each cemetery for which the care funds shall be entrusted  
7 and at which books, accounts, and records shall be  
8 available for examination by the Comptroller as required  
9 by Section 13 of this Act;

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

26 (4) the total amount in trust and now available  
27 from sales of lots, graves, crypts or niches where part  
28 of the sale price has been placed in trust; the amount of  
29 money placed in the care funds of each applicant; the  
30 amount set aside in care funds from the sale of lots,  
31 graves, crypts and niches for the general care of the  
32 cemetery and the amount available for that purpose; the  
33 amount received in trust by special agreement for special  
34 care and the amount available for that purpose; the

1 amount of principal applicable to trust funds received by  
2 the applicant; and-

3 (5) any other information that the Comptroller may  
4 reasonably require in order to determine the  
5 qualifications of the applicant to be licensed under this  
6 Act.

7 Such information shall be furnished whether the care  
8 funds are held by the applicant as trustee or by an  
9 independent trustee. If the funds are not held by the  
10 applicant, the name of the independent trustee holding them  
11 is also to be furnished by the applicant.

12 (c) Applications for license shall also be accompanied  
13 by a fidelity bond issued by a bonding company or insurance  
14 company authorized to do business in this State or by an  
15 irrevocable, unconditional letter of credit issued by a bank  
16 or trust company authorized to do business in the State of  
17 Illinois, as approved by the State Comptroller, where such  
18 care funds exceed the sum of \$15,000. Such bond or letter of  
19 credit shall run to the Comptroller and his or her successor  
20 for the benefit of the care funds held by such cemetery  
21 authority or by the trustee of the care funds of such  
22 cemetery authority. Such bonds or letters of credit shall be  
23 in an amount equal to 1/10 of such care funds. However, such  
24 bond or letter of credit shall not be in an amount less than  
25 \$1,000; the first \$15,000 of such care funds shall not be  
26 considered in computing the amount of such bond or letter of  
27 credit. No application shall be accepted by the Comptroller  
28 unless accompanied by such bond or letter of credit.

29 Applications for license by newly organized cemetery  
30 authorities after January 1, 1960 shall also be accompanied  
31 by evidence of a minimum care fund deposit in an amount to be  
32 determined as follows: if the number of inhabitants, either  
33 in the county in which the cemetery is to be located or in  
34 the area included within a 10 mile radius from the cemetery

1 if the number of inhabitants therein is greater, is 25,000 or  
 2 less the deposit shall be \$7,500; if the number of  
 3 inhabitants is 25,001 to 50,000, the deposit shall be  
 4 \$10,000; if the number of inhabitants is 50,001 to 125,000,  
 5 the deposit shall be \$15,000; if the number of inhabitants is  
 6 over 125,000, the deposit shall be \$25,000.

7 After an amount equal to and in addition to the required  
 8 minimum care fund deposit has been deposited in trust, the  
 9 cemetery authority may withhold 50% of all future care funds  
 10 until it has recovered the amount of the minimum care fund  
 11 deposit.

12 (d) (Blank). ~~The applicant shall have a permanent~~  
 13 ~~address and any license issued pursuant to the application is~~  
 14 ~~valid only at the address or at any new address approved by~~  
 15 ~~the Comptroller.~~

16 (e) All bonds and bonding deposits made by any cemetery  
 17 authority may be returned to the cemetery authority or  
 18 cancelled as to care funds invested with an investment  
 19 company.

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

21 (760 ILCS 100/10) (from Ch. 21, par. 64.10)  
 22 Sec. 10. Upon receipt of such application for license,  
 23 the Comptroller shall issue a license to the applicant unless  
 24 the Comptroller determines that:

25 (a) The applicant has made any misrepresentations or  
 26 false statements or has concealed any essential or material  
 27 fact, or

28 (b) The applicant is insolvent; or

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

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

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

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

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

9 (h) The applicant or any ~~As--to--the--name--of--any~~  
10 individual listed in the license application, ~~such individual~~  
11 has conducted or is about to conduct any business on behalf  
12 of the applicant in a fraudulent manner; or has been  
13 convicted of a felony or any misdemeanor of which an  
14 essential element is fraud; or has been involved in any civil  
15 litigation in which a judgment has been entered against him  
16 or her based on fraud; or has failed to satisfy any  
17 enforceable judgment entered by the circuit court in any  
18 civil proceedings against such individual; or has been  
19 convicted of any felony; or has been convicted of any  
20 theft-related offense; or has failed to comply with the  
21 requirements of this Act; or has demonstrated a pattern of  
22 failing to open or close any graves, crypts, or niches for  
23 human remains in the cemetery within a reasonable time frame;  
24 or has demonstrated a pattern of placing human remains in a  
25 final resting place other than that required under an  
26 agreement with a consumer; or has demonstrated a pattern of  
27 improperly failing to honor a contract with a consumer; or

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

31 If the Comptroller so determines, then he or she shall  
32 conduct a hearing to determine whether to deny the  
33 application. However, no application shall be denied unless  
34 the applicant has had at least 10 days' notice of a hearing



1 on the application and an opportunity to be heard thereon. If  
2 the application is denied, the Comptroller shall within 20  
3 days thereafter prepare and keep on file in his or her office  
4 the transcript of the evidence taken and a written order of  
5 denial thereof, which shall contain his or her findings with  
6 respect thereto and the reasons supporting the denial, and  
7 shall send by United States mail a copy of the written order  
8 of denial to the applicant at the address set forth in the  
9 application, within 5 days after the filing of such order. A  
10 review of such decision may be had as provided in Section 20  
11 of this Act.

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

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

16 (760 ILCS 100/11) (from Ch. 21, par. 64.11)

17 Sec. 11. Issuance and display of license. A license  
18 issued under this Act authorizes the cemetery authority to  
19 accept care funds for the cemetery identified in the license.  
20 If a license application seeks licensure to accept care funds  
21 on behalf of more than one cemetery location, the  
22 Comptroller, upon approval of the license application, shall  
23 issue to the cemetery authority a separate license for each  
24 cemetery location indicated on the application. Each license  
25 issued by the Comptroller under this Act is independent of  
26 any other license that may be issued to a cemetery authority  
27 under a single license application.

28 Every license issued by the Comptroller shall state the  
29 number of the license and the address at which the business  
30 is to be conducted. Such license shall be kept conspicuously  
31 posted in the place of business of the licensee and shall not  
32 be transferable or assignable.

33 No more than one place of business shall be maintained

1 under the same license, but the Comptroller may issue more  
2 than one license to the same licensee upon compliance with  
3 the provisions of this Act governing an original issuance of  
4 a license, for each new license.

5 Whenever a licensee shall wish to change the name as  
6 originally set forth in his license, he shall give written  
7 notice thereof to the Comptroller together with the reasons  
8 for the change and if the change is approved by the  
9 Comptroller he shall issue a new license.

10 A license issued by the Comptroller shall remain in full  
11 force and effect until it is surrendered by the licensee or  
12 suspended or revoked by the Comptroller as provided in this  
13 Act.

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

15 (760 ILCS 100/11.1)

16 Sec. 11.1. Investigation of unlawful practices. If it  
17 appears to the Comptroller that a person has engaged in, is  
18 engaging in, or is about to engage in any practice declared  
19 to be unlawful by this Act, the Comptroller may:

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

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

32 (2.1) examine under oath any person in connection  
33 with the performance of duties required to be performed

1 under this Act;

2 (3) examine any books and records of the privately  
3 operated cemetery authority, licensee, trustee, or  
4 investment advisor that the Comptroller may consider  
5 necessary to ascertain compliance with this Act; and

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

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

12 (760 ILCS 100/13) (from Ch. 21, par. 64.13)

13 Sec. 13. Books, accounts, and records. Every licensee  
14 and the trustee of the care funds of every licensee shall be  
15 a resident of this State and shall keep in this State and use  
16 in its business such books, accounts and records as will  
17 enable the Comptroller to determine whether such licensee or  
18 trustee is complying with the provisions of this Act and with  
19 the rules, regulations and directions made by the Comptroller  
20 hereunder. The licensee shall update books, accounts, and  
21 records no less often than monthly. The licensee shall keep  
22 the books, accounts, and records at the location identified  
23 in the license issued by the Comptroller or as otherwise  
24 agreed by the Comptroller in writing. The books, accounts,  
25 and records shall be accessible for review upon demand of the  
26 Comptroller.

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

28 (760 ILCS 100/15b)

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

30 In the case of a sale of any privately operated cemetery  
31 or any part thereof or of any related personal property by a  
32 cemetery authority to a purchaser or pursuant to foreclosure

1 proceedings, except the sale of burial rights, services, or  
2 merchandise to a person for his or her personal or family  
3 burial or interment, the purchaser is liable for any  
4 shortages existing before or after the sale in the care funds  
5 required to be maintained in a trust pursuant to this Act and  
6 shall honor all instruments issued under Section 4 for that  
7 cemetery. Any shortages existing in the care funds constitute  
8 a prior lien in favor of the trust for the total value of the  
9 shortages, and notice of such lien shall be provided in all  
10 sales instruments.

11 In the event of a sale or transfer of all or  
12 substantially all of the assets of the cemetery authority, a  
13 sale or transfer of any cemetery land, including any portion  
14 of cemetery land in which no human remains have been  
15 interred, the sale or transfer of the controlling interest of  
16 the corporate stock of the cemetery authority if the cemetery  
17 authority is a corporation, or the sale or transfer of the  
18 controlling of the partnership if the cemetery authority is a  
19 partnership, the cemetery authority shall, at least 21 days  
20 prior to the sale or transfer, notify the Comptroller, in  
21 writing, of the pending date of sale or transfer so as to  
22 permit the Comptroller to audit the books and records of the  
23 cemetery authority. The audit must be commenced within 10 5  
24 business days of the receipt of the notification and  
25 completed within the 21 day notification period unless the  
26 Comptroller notifies the cemetery authority during that  
27 period that there is a basis for determining a deficiency  
28 which will require additional time to finalize. The sale or  
29 transfer may not be completed by the cemetery authority  
30 unless and until:

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

33 (b) Any delinquency existing in the care funds has  
34 been paid by the cemetery authority, or arrangements

1 satisfactory to the Comptroller have been made by the  
2 cemetery authority on the sale or transfer for the  
3 payment of any delinquency;

4 (c) The Comptroller issues a new cemetery care  
5 license upon application of the newly controlled  
6 corporation or partnership, which license must be applied  
7 for within 30 days of the anticipated date of the sale or  
8 transfer, subject to the payment of any delinquencies, if  
9 any, as stated in item (b) above.

10 For purposes of this Section, a person, firm,  
11 corporation, partnership, or institution that acquires the  
12 cemetery through a real estate foreclosure shall be subject  
13 to the provisions of this Section. The sale or transfer of  
14 the controlling interest of a cemetery authority to an  
15 immediate family member is not subject to the license  
16 application process required in item (c) of this Section.

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

18 (760 ILCS 100/26 new)

19 Sec. 26. Abandoned or neglected cemeteries; clean-up.  
20 The Comptroller may administer a program for the purpose of  
21 cleaning up abandoned or neglected cemeteries located in  
22 Illinois. Administration of this program may include the  
23 Comptroller's issuance of grants for that purpose to units of  
24 local government, school districts, and not-for-profit  
25 associations.

26 Section 40. The Cemetery Protection Act is amended by  
27 changing Section 1 as follows:

28 (765 ILCS 835/1) (from Ch. 21, par. 15)

29 Sec. 1. (a) Any person who acts without proper legal  
30 authority and who willfully and knowingly destroys or damages  
31 the remains of a deceased human being or who desecrates human

1 remains is guilty of a Class 3 felony.

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

8 (b) Any person who acts without proper legal authority  
9 and who willfully and knowingly:

10 (1) obliterates, vandalizes, or desecrates a burial  
11 ground where skeletal remains are buried or a grave,  
12 crypt, vault, mausoleum, or other repository of human  
13 remains;

14 (2) obliterates, vandalizes, or desecrates a park  
15 or other area clearly designated to preserve and  
16 perpetuate the memory of a deceased person or group of  
17 persons;

18 (3) obliterates, vandalizes, or desecrates plants,  
19 trees, shrubs, or flowers located upon or around a  
20 repository for human remains or within a human graveyard  
21 or cemetery; or

22 (4) obliterates, vandalizes, or desecrates a fence,  
23 rail, curb, or other structure of a similar nature  
24 intended for the protection or for the ornamentation of  
25 any tomb, monument, gravestone, or other structure of  
26 like character;

27 is guilty of a Class A misdemeanor if the amount of the  
28 damage is less than \$500, a Class 4 felony if the amount of  
29 the damage is at least \$500 and less than \$10,000, a Class 3  
30 felony if the amount of the damage is at least \$10,000 and  
31 less than \$100,000, or a Class 2 felony if the damage is  
32 \$100,000 or more and shall provide restitution to the  
33 cemetery authority or property owner for the amount of any  
34 damage caused.

1           (b-5) Any person who acts without proper legal authority  
2 and who willfully and knowingly defaces, vandalizes, injures,  
3 or removes a gravestone or other memorial, monument, or  
4 marker commemorating a deceased person or group of persons,  
5 whether located within or outside of a recognized cemetery,  
6 memorial park, or battlefield is guilty of a Class 4 felony  
7 for damaging at least one but no more than 4 gravestones, a  
8 Class 3 felony for damaging at least 5 but no more than 10  
9 gravestones, or a Class 2 felony for damaging more than 10  
10 gravestones and shall provide restitution to the cemetery  
11 authority or property owner for the amount of any damage  
12 caused.

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

19           (c) The provisions of this Section shall not apply to  
20 the removal or unavoidable breakage or injury by a cemetery  
21 authority of anything placed in or upon any portion of its  
22 cemetery in violation of any of the rules and regulations of  
23 the cemetery authority, nor to the removal of anything placed  
24 in the cemetery by or with the consent of the cemetery  
25 authority that in the judgment of the cemetery authority has  
26 become wrecked, unsightly, or dilapidated.

27           (d) If an unemancipated minor is found guilty of  
28 violating any of the provisions of subsection (b) of this  
29 Section and is unable to provide restitution to the cemetery  
30 authority or property owner, the parents or legal guardians  
31 of that minor shall provide restitution to the cemetery  
32 authority or property owner for the amount of any damage  
33 caused, up to the total amount allowed under the Parental  
34 Responsibility Law.

1 (e) Any person who shall hunt, shoot or discharge any  
2 gun, pistol or other missile, within the limits of any  
3 cemetery, or shall cause any shot or missile to be discharged  
4 into or over any portion thereof, or shall violate any of the  
5 rules made and established by the board of directors of such  
6 cemetery, for the protection or government thereof, is guilty  
7 of a Class C misdemeanor.

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

12 (g) All fines when recovered, shall be paid over by the  
13 court or officer receiving the same to the cemetery  
14 association and be applied, as far as possible in repairing  
15 the injury, if any, caused by such offense. Provided,  
16 nothing contained in this Act shall deprive such cemetery  
17 association, or the owner of any lot or monument from  
18 maintaining an action for the recovery of damages caused by  
19 any injury caused by a violation of the provisions of this  
20 Act, or of the rules established by the board of directors of  
21 such cemetery association. Nothing in this Section shall be  
22 construed to prohibit the discharge of firearms loaded with  
23 blank ammunition as part of any funeral, any memorial  
24 observance or any other patriotic or military ceremony.

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

26 Section 45. The Illinois Pre-Need Cemetery Sales Act is  
27 amended by changing Sections 1, 4, 5, 6, 7, 8, 8a, 9, 12, 14,  
28 16, 19, 20, and 22 and adding Section 27.1 as follows:

29 (815 ILCS 390/1) (from Ch. 21, par. 201)

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



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

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

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

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

9 (A) A- "Pre-need sales contract" or "Pre-need sales"  
10 means any agreement or contract or series or combination of  
11 agreements or contracts which have for a purpose the sale of  
12 cemetery merchandise, cemetery services or undeveloped  
13 interment, entombment or inurnment spaces where the terms of  
14 such sale require payment or payments to be made at a  
15 currently determinable time and where the merchandise,  
16 services or completed spaces are to be provided more than 120  
17 days following the initial payment on the account.

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

19 (1) Physical possession of the merchandise is  
20 transferred or the easement for burial rights in a  
21 completed space is executed, delivered and transferred to  
22 the buyer; or

23 (2) Following authorization by a purchaser under a  
24 pre-need sales contract, title to the merchandise has  
25 been transferred to the buyer and the merchandise has  
26 been paid for and is in the possession of the seller who  
27 has placed it, until needed, at the site of its ultimate  
28 use; except that burial of any item at the site of its  
29 ultimate use shall not constitute delivery for purposes  
30 of this Act; or

31 (3) ~~(A)~~ Following authorization by a purchaser  
32 under a pre-need sales contract, the merchandise has been  
33 permanently identified with the name of the buyer or the

1 beneficiary and delivered to a licensed and bonded  
2 warehouse and both title to the merchandise and a  
3 warehouse receipt have been delivered to the purchaser or  
4 beneficiary and a copy of the warehouse receipt has been  
5 delivered to the licensee for retention in its files;  
6 except that in the case of outer burial containers, the  
7 use of a licensed and bonded warehouse as set forth in  
8 this paragraph shall not constitute delivery for purposes  
9 of this Act. Nothing herein shall prevent a seller from  
10 perfecting a security interest in accordance with the  
11 Uniform Commercial Code on any merchandise covered under  
12 this Act.

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

15 (i) be either located in the State of Illinois  
16 or qualify as a foreign warehouse facility as  
17 defined herein;

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

23 (iii) permit the Comptroller or his designee  
24 at any time to examine stored merchandise and to  
25 examine any documents pertaining thereto;

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

31 (v) demonstrate to the Comptroller that the  
32 warehouse has procured and is maintaining a  
33 performance bond in the form, content and amount  
34 sufficient to unconditionally guarantee to the

1 purchaser or beneficiary the prompt shipment of the  
2 cemetery merchandise.

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

- 7 (1) memorials,
- 8 (2) markers,
- 9 (3) monuments,
- 10 (4) foundations, and
- 11 (5) outer burial containers.

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

- 17 (1) lawn crypt,
- 18 (2) mausoleum,
- 19 (3) garden crypt,
- 20 (4) columbarium, or
- 21 (5) cemetery section.

22 (E) "Cemetery services" means those services customarily  
23 performed by cemetery or crematory personnel in connection  
24 with the interment, entombment, inurnment or cremation of a  
25 dead human body.

26 (F) "Cemetery section" means a grouping of spaces  
27 intended to be developed simultaneously for the purpose of  
28 interring human remains.

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

1 (H) "Lawn crypt" means a permanent underground crypt  
2 usually constructed of reinforced concrete or similar  
3 material installed in multiple units for the interment of  
4 human remains.

5 (I) "Mausoleum" or "garden crypt" means a grouping of  
6 spaces constructed of reinforced concrete or similar material  
7 constructed or assembled above the ground for entombing human  
8 remains.

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

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

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

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

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

29 (O) "Municipal cemetery" means a cemetery owned,  
30 operated, controlled or managed by any city, village,  
31 incorporated town, township, county or other municipal  
32 corporation, political subdivision, or instrumentality  
33 thereof authorized by law to own, operate or manage a  
34 cemetery.

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

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

14 (Q) (Blank).

15 (R) "Provider" means a person who is responsible for  
16 performing cemetery services or furnishing cemetery  
17 merchandise, interment spaces, entombment spaces, or  
18 inurnment spaces under a pre-need sales contract.

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

22 (T) "Parent company" means a corporation that has a  
23 controlling interest in another corporation.

24 (U) "Foreign warehouse facility" means a warehouse  
25 facility now or hereafter located in any state or territory  
26 of the United States, including the District of Columbia,  
27 other than the State of Illinois.

28 A foreign warehouse facility shall be deemed to have  
29 appointed the Comptroller to be its true and lawful attorney  
30 upon whom may be served all legal process in any action or  
31 proceeding against it relating to or growing out of this Act,  
32 and the acceptance of the delivery of stored merchandise  
33 under this Act shall be signification of its agreement that  
34 any such process against it which is so served, shall be of

1 the same legal force and validity as though served upon it  
2 personally.

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

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

17 (815 ILCS 390/5) (from Ch. 21, par. 205)

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

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

23 (815 ILCS 390/6) (from Ch. 21, par. 206)

24 Sec. 6. License application.

25 (a) An application for a license shall be made in  
26 writing to the Comptroller on forms prescribed by him or her,  
27 signed by the applicant under oath verified by a notary  
28 public appointed and commissioned under the Illinois Notary  
29 Public Act, and shall be accompanied by a non-returnable \$25  
30 application fee. The Comptroller may prescribe abbreviated  
31 application forms for persons holding a license under the  
32 Cemetery Care Act. Applications (except abbreviated

1 applications) must include at least the following  
2 information:

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

10 (2) A detailed statement of applicant's assets and  
11 liabilities;

12 (2.1) The name and address of the applicant's  
13 principal place of business at which the books, accounts,  
14 and records are available for examination by the  
15 Comptroller as required by this Act;

16 (2.2) The name and address of the applicant's  
17 branch locations at which pre-need sales will be  
18 conducted and which will operate under the same license  
19 number as the applicant's principal place of business;

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

1 information, this information shall not be available to  
2 other licensees or the general public and shall be used  
3 only for the lawful purposes of the Comptroller in  
4 enforcing this Act;

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

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

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

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

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

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



1 (815 ILCS 390/7) (from Ch. 21, par. 207)

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

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

7 (b) The applicant or licensee is insolvent;

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

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

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

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

17 (g) The trustee advisors or the trust agreement is not  
18 satisfactory to the Comptroller;

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

21 (i) The fidelity bond is not satisfactory to the  
22 Comptroller;

23 (j) As to any individual listed, that such individual  
24 has conducted or is about to conduct any business on behalf  
25 of the applicant in a fraudulent manner, or has been convicted  
26 of any felony or misdemeanor an essential element of which is  
27 fraud, has had a judgment rendered against him or her based  
28 on fraud in any civil litigation, or has failed to satisfy  
29 any enforceable judgment or decree rendered against him by  
30 any court of competent jurisdiction, or has been convicted of  
31 any felony or any theft-related offense;

32 (k) The applicant or licensee has failed to make the  
33 annual report required by this Act or to comply with a final  
34 order, decision, or finding of the Comptroller made pursuant

1 to this Act;

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

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

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

13 (815 ILCS 390/8) (from Ch. 21, par. 208)

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

27 (b) Individual salespersons representing ~~employed--by~~ a  
28 licensee shall not be required to obtain licenses in their  
29 individual capacities but must acknowledge, by affidavit,  
30 that they have been educated in the provisions of this Act  
31 and must understand the penalties for failure to comply. The  
32 licensee must retain copies of the affidavits of its  
33 salespersons for its records and must make the affidavits

1 available to the Comptroller for examination upon request.

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

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

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

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

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

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

31 (815 ILCS 390/8a)

32 Sec. 8a. Investigation of unlawful practices. If it  
33 appears to the Comptroller that a person has engaged in, is

1 engaging in, or is about to engage in any practice in  
2 violation of ~~declared--to--be--unlawful--by~~ this Act, the  
3 Comptroller may:

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

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

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

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

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

25 (815 ILCS 390/9) (from Ch. 21, par. 209)

26 Sec. 9. The Comptroller may, upon his own motion  
27 investigate the actions of any person providing, selling, or  
28 offering pre-need sales contracts or of any applicant or any  
29 person or persons holding or claiming to hold a license under  
30 this Act. The Comptroller shall make such an investigation  
31 on receipt of the verified written complaint of any person  
32 setting forth facts which, if proved, would constitute  
33 grounds for refusal, suspension, or revocation of a license

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

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

30 Any authorized agent of the Comptroller may administer  
31 oaths to witnesses at any hearing which the Comptroller is  
32 authorized to conduct.

33 The Comptroller, at his expense, shall provide a  
34 certified shorthand reporter to take down the testimony and

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

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

13 (815 ILCS 390/12) (from Ch. 21, par. 212)

14 Sec. 12. License revocation or suspension.

15 (a) The Comptroller may, upon determination that grounds  
 16 exist for the revocation or suspension of a license issued  
 17 under this Act, revoke or suspend the license issued to a  
 18 particular branch office location with respect to which the  
 19 grounds for revocation or suspension may occur or exist.

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

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

26 (815 ILCS 390/14) (from Ch. 21, par. 214)

27 Sec. 14. Contract required.

28 (a) It is unlawful for any person ~~seller~~ doing business  
 29 within this State to accept sales proceeds, either directly  
 30 or indirectly, by any means, unless the seller enters into a  
 31 pre-need sales contract with the purchaser which meets the  
 32 following requirements:

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

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

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

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

29           (4) Each contract shall clearly disclose that the  
30 price of the merchandise or services is guaranteed and  
31 shall contain the following statement in 12 point bold  
32 type:

33           "THIS CONTRACT GUARANTEES THE BENEFICIARY THE  
34 SPECIFIC GOODS, AND SERVICES, INTERMENT SPACES,

1 ENTOMBMENT SPACES, AND INURNMENT SPACES CONTRACTED FOR.  
 2 NO ADDITIONAL CHARGES MAY BE REQUIRED FOR DESIGNATED  
 3 GOODS, AND SERVICES, AND SPACES. ADDITIONAL CHARGES MAY  
 4 BE INCURRED FOR UNEXPECTED EXPENSES."

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

12 (6) The pre-need contract shall also disclose any  
 13 specific penalties to be incurred by the purchaser as a  
 14 result of failure to make payments; and penalties to be  
 15 incurred or moneys or refunds to be received as a result  
 16 of cancellation of the contract.

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

19 (8) Each pre-need contract that authorizes the  
 20 delivery of cemetery merchandise to a licensed and bonded  
 21 warehouse shall provide that prior to or upon delivery of  
 22 the merchandise to the warehouse (i) the merchandise  
 23 shall be permanently identified with the name of the  
 24 buyer; and (ii) the title to the merchandise and a  
 25 warehouse receipt shall be delivered to the purchaser or  
 26 beneficiary. The pre-need contract shall contain the  
 27 following statement in 12 point bold type:

28 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO  
 29 A LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE  
 30 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE  
 31 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER  
 32 MAY PRECLUDE REFUND OF SALE PROCEEDS THAT ARE  
 33 ATTRIBUTABLE TO THE DELIVERED MERCHANDISE."

34 The purchaser shall initial the statement at the



1 time of entry into the pre-need contract.

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

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

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

15 (b) Every pre-need sales contract must be in writing.  
16 ~~and no pre-need sales contract form may be used unless it has~~  
17 ~~previously been filed with the Comptroller. The Comptroller~~  
18 ~~shall review all pre-need sales contract forms and, upon~~  
19 ~~written notification to the seller, shall prohibit the use of~~  
20 ~~contract forms that do not meet the requirements of this Act.~~  
21 Any use or attempted use of any oral pre-need sales contract  
22 or any written pre-need sales contract ~~in a form not filed~~  
23 ~~with the Comptroller or~~ in a form that does not meet the  
24 requirements of this Act shall be deemed a violation of this  
25 Act and is voidable by the purchaser without penalty. The  
26 Comptroller may by rule develop a model pre-need sales  
27 contract form that meets the requirements of this Act.

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

32 (d) No pre-need sales contract may be entered into in  
33 this State unless there is a provider for the cemetery  
34 merchandise, cemetery services, and undeveloped interment,

1 inurnment, and entombment spaces being sold. If the seller  
2 is not the provider, then the seller must have a binding  
3 agreement with a provider, and the identity of the provider  
4 and the nature of the agreement between the seller and the  
5 provider must be disclosed in the pre-need sales contract at  
6 the time of sale and before the receipt of any sale proceeds.  
7 The failure to disclose the identity of the provider, the  
8 nature of the agreement between the seller and the provider,  
9 or any changes thereto to the purchaser and beneficiary, or  
10 the failure to make the disclosures required by this Section  
11 constitutes an intentional violation of this Act.

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

21 (f) No pre-need contract may be entered into in this  
22 State unless the seller explains to the purchaser the terms  
23 of the pre-need contract prior to the purchaser's signing.

24 (g) The State Comptroller shall develop a booklet for  
25 consumers in plain English describing the scope, application,  
26 and consumer protections of this Act. After the booklet is  
27 developed, no pre-need contract may be sold in this State  
28 unless the seller distributes to the purchaser prior to the  
29 sale a booklet developed or approved for use by the State  
30 Comptroller.

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

32 (815 ILCS 390/16) (from Ch. 21, par. 216)

33 Sec. 16. Trust funds; disbursements.

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

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

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

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

30 (d) A trustee shall be allowed to withdraw from the  
31 trust funds maintained pursuant to this Act, payable solely  
32 from the income earned on such trust funds, a reasonable fee  
33 for all usual and customary services for the operation of the  
34 trust fund, including, but not limited to trustee fees,

1 investment advisor fees, allocation fees, annual audit fees  
2 and other similar fees. The maximum amount allowed to be  
3 withdrawn for these fees each year shall be the lesser of 3%  
4 of the balance of the trust calculated on an annual basis or  
5 the amount of annual income generated therefrom.

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

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

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

33 (815 ILCS 390/19) (from Ch. 21, par. 219)

1           Sec. 19. Construction or development of spaces.

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

23           (b) At any time within 12 months of a purchaser's  
24 entering into a pre-need contract for undeveloped interment,  
25 entombment or inurnment spaces, a purchaser may surrender and  
26 cancel his or her contract and upon cancellation shall be  
27 entitled to a refund of the actual amounts paid toward the  
28 purchase price plus interest attributable to such amount  
29 earned while in trust. Notwithstanding the foregoing, the  
30 cancellation and refund rights specified in this paragraph  
31 shall terminate as of the date the seller commences  
32 construction or development of the phase, section or sections  
33 of undeveloped spaces in which sales are made. After the  
34 rights of cancellation and refund specified herein have

1 terminated, if a purchaser defaults in making payments under  
 2 the pre-need contract, the seller shall have the right to  
 3 cancel the contract and withdraw from the trust fund the  
 4 entire balance to the credit of the defaulting purchaser's  
 5 account as liquidated damages. In such event, the trustee  
 6 shall deliver said balance to the seller upon its  
 7 certification, and upon receiving said certification the  
 8 trustee may rely thereon and shall not be liable to anyone  
 9 for such reliance.

10 (c) During the construction or development of interment,  
 11 entombment or inurnment spaces, upon the sworn certification  
 12 by the seller and the contractor to the trustee, the trustee  
 13 shall disburse from the trust fund the amount equivalent to  
 14 the cost of performed labor or delivered materials as  
 15 certified. Said certification shall be substantially in the  
 16 following form:

17 We, the undersigned, being respectively the Seller and  
 18 Contractor, do hereby certify that the Contractor has  
 19 performed labor or delivered materials or both to (address of  
 20 property) ....., in connection with a contract to  
 21 ....., and that as of this date the value of the labor  
 22 performed and materials delivered is \$.....

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

26 This Certificate is signed (insert date).

27 ..... .....

28 Seller Contractor

29 A person who executes and delivers a completion  
 30 certificate with actual knowledge of a falsity contained  
 31 therein shall be considered in violation of this Act and  
 32 subject to the penalties contained herein.

33 (d) Except as otherwise authorized by this Section,  
 34 every seller of undeveloped spaces shall provide facilities

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

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

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

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

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

6 (815 ILCS 390/20) (from Ch. 21, par. 220)

7 Sec. 20. Records.

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

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

26 (c) Each licensee shall submit reports to the  
27 Comptroller annually, under oath, on forms furnished by the  
28 Comptroller. The annual report shall contain, but shall not  
29 be limited to, the following:

30 (1) An accounting of the principal deposit and  
31 additions of principal during the fiscal year.

32 (2) An accounting of any withdrawal of principal or  
33 earnings.



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

3           (d) The annual report shall be filed by the licensee  
4           with the Comptroller within 75 days after the end of the  
5           licensee's fiscal year. An extension of up to 60 days may be  
6           granted by the Comptroller, upon a showing of need by the  
7           licensee. Any other reports shall be in the form furnished  
8           or specified by the Comptroller. If a licensee fails to  
9           submit an annual report to the Comptroller within the time  
10          specified in this Section, the Comptroller shall impose upon  
11          the licensee a penalty of \$5 for each and every day the  
12          licensee remains delinquent in submitting the annual report.  
13          Each report shall be accompanied by a check or money order in  
14          the amount of \$10 payable to: Comptroller, State of  
15          Illinois.

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

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

24                 (815 ILCS 390/22) (from Ch. 21, par. 222)

25                 Sec. 22. Cemetery Consumer Protection Fund.

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

1 (b) All monies paid into the fund together with all  
2 accumulated undistributed income thereon shall be held as a  
3 special fund in the State Treasury. The fund shall be used  
4 solely for the purpose of providing restitution to consumers  
5 who have suffered pecuniary loss arising out of pre-need  
6 sales.

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

17 (d) Whenever restitution is paid by the fund, the fund  
18 shall be subrogated to the amount of such restitution, and  
19 the Comptroller shall request the Attorney General to engage  
20 in all reasonable post judgment collection steps to collect  
21 said restitution from the judgment debtor and reimburse the  
22 fund.

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

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

29 (g) Notwithstanding any other provision of this Section,  
30 the payment of restitution from the fund shall be a matter of  
31 grace and not of right and no purchaser shall have any vested  
32 rights in the fund as a beneficiary or otherwise. Prior to  
33 seeking restitution from the fund, a purchaser or beneficiary  
34 seeking payment of restitution shall apply for restitution on

1 a form provided by the Comptroller. The form shall include  
2 any information the Comptroller may reasonably require in  
3 order for the Court to determine that restitution or  
4 completion of the project or delivery of merchandise or  
5 service is appropriate.

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

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

18 (815 ILCS 390/27.1 new)

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

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

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

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

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

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

32       Section 50. Severability. If any provision of this Act or  
33 its application to any person or circumstance is held

1     invalid, the invalidity of that provision or application does  
2     not affect other provisions or applications of this Act that  
3     can be given effect without the invalid provision or  
4     application.

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

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