

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****SB0482**

Introduced 2/16/2005, by Sen. Debbie DeFrancesco Halvorson - Deanna Demuzio - M. Maggie Crotty - William R. Haine - Antonio Munoz, et al.

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Funeral or Burial Funds Act. Provides that a separate completed contract shall be issued for cemetery merchandise, cemetery services, or undeveloped interment, entombment, or inurnment spaces, and not covered by this Act, unless certain conditions are met. Provides that licenses and license renewals shall be issued for a 5-year term. Provides requirements for license renewal and makes conforming changes in other provisions. Amends the Crematory Regulation Act, the Cemetery Care Act, and the Illinois Pre-Need Cemetery Sales Act. Provides that licenses and license renewals shall be issued for a 5-year term. Provides requirements for license renewal and makes conforming changes in other provisions of the Acts. Adds additional contract requirements under the Illinois Pre-Need Cemetery Sales Act. In the Cemetery Care Act, provides that the Comptroller shall examine at least annually every licensee who holds \$750,000 or more (was, \$250,000 or more) in its care funds. Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that no person authorized by law to sell funeral services on an at need basis may also sell cemetery services, cemetery merchandise, or interment, inurnment, or entombment spaces on an at need basis, unless the person is also authorized by law to sell such cemetery services, merchandise, or spaces and issues to the consumer a separate contract with the provider of such cemetery services, merchandise, or spaces. Provides requirements for completed contracts. Effective January 1, 2006.

LRB094 10608 AMC 40929 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Funeral or Burial Funds Act is
5 amended by changing Sections 1a-1, 3a, 3a-5, and 3f and by
6 adding Sections 3a-1, 3a-2, 3a-3, and 3a-4 as follows:

7 (225 ILCS 45/1a-1)

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

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

14 (1) It states the name and address of the principal
15 office of the seller and the parent company of the seller,
16 if any.

17 (2) It clearly identifies the provider's name and
18 address, the purchaser, and the beneficiary, if other than
19 the purchaser.

20 (2.5) If the provider has branch locations, the
21 contract gives the purchaser the opportunity to identify
22 the branch at which the funeral will be provided.

23 (3) It contains a complete description of the funeral
24 merchandise and services to be provided and the price of
25 the merchandise and services, and it clearly discloses
26 whether the price of the merchandise and services is
27 guaranteed or not guaranteed as to price.

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

30 THIS CONTRACT GUARANTEES THE BENEFICIARY THE
31 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO
32 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED

1 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE INCURRED
2 FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT LIMITED TO,
3 CASH ADVANCES, SHIPPING OF REMAINS FROM A DISTANT
4 PLACE, OR DESIGNATED HONORARIA ORDERED OR DIRECTED BY
5 SURVIVORS.

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

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

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

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

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

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

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

34 (B) The nature of the relationship among the person
35 funding the pre-need contract, the provider, and the
36 seller; and

1 (C) The impact on the pre-need contract of (i) any
2 changes in the funding arrangement including but not
3 limited to changes in the assignment, beneficiary
4 designation, or use of the funds; (ii) any specific
5 penalties to be incurred by the contract purchaser as a
6 result of failure to make payments; (iii) penalties to
7 be incurred or moneys or refunds to be received as a
8 result of cancellations; and (iv) all relevant
9 information concerning what occurs and whether any
10 entitlements or obligations arise if there is a
11 difference between the proceeds of the particular
12 funding arrangement and the amount actually needed to
13 pay for the funeral at-need.

14 (D) The method of changing the provider.

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

18 (c) No pre-need contract shall be sold in this State unless
19 there is a provider for the services and personal property
20 being sold. If the seller is not a provider, then the seller
21 must have a binding agreement with a provider, and the identity
22 of the provider and the nature of the agreement between the
23 seller and the provider shall be disclosed in the pre-need
24 contract at the time of the sale and before the receipt of any
25 sales proceeds. A separate completed contract, as required by
26 the Illinois Pre-Need Cemetery Sales Act, shall be issued for
27 cemetery merchandise, cemetery services, or undeveloped
28 interment, entombment, or inurnment spaces, as defined in the
29 Illinois Pre-Need Cemetery Sales Act, and not covered by this
30 Act, unless the seller is licensed under both Acts and all
31 disclosures are in compliance with both Acts. The failure to
32 disclose the identity of the provider, the nature of the
33 agreement between the seller and the provider, or any changes
34 thereto to the purchaser and beneficiary, or the failure to
35 make the disclosures required in subdivision (a)(1),
36 constitutes an intentional violation of this Act.

1 (d) All pre-need contracts must be in writing in at least
2 11 point type, numbered, and executed in duplicate. A signed
3 copy of the pre-need contract must be provided to the purchaser
4 at the time of entry into the pre-need contract. The
5 Comptroller may by rule develop a model pre-need contract form
6 which meets the requirements of this Act.

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

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

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

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

33 (225 ILCS 45/3a) (from Ch. 111 1/2, par. 73.103a)

34 Sec. 3a. Denial, nonrenewal, suspension, or revocation of
35 license.

1 (a) The Comptroller may refuse to issue or renew or may
2 suspend 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 any
12 enforceable judgment or decree rendered by any court of
13 competent jurisdiction against the applicant.

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

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

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

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

31 (10) The applicant or licensee, including any member,
32 officer, or director thereof if the applicant or licensee
33 is a firm, partnership, association or corporation and any
34 shareholder holding more than 10% of the corporate stock,
35 has violated any provision of this Act or any regulation,
36 decision, order, or finding made by the Comptroller under

1 this Act.

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

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

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

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

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

33 (225 ILCS 45/3a-1 new)

34 Sec. 3a-1. Term of license.

35 (a) Any license that was issued under this Act before the

1 effective date of this amendatory Act of the 94th General
2 Assembly shall expire 5 years after the effective date of this
3 amendatory Act of the 94th General Assembly and must thereafter
4 be renewed as provided in this Act. Beginning on the effective
5 date of this amendatory Act of the 94th General Assembly, a
6 license or license renewal under this Act shall be issued for a
7 5-year term, which shall expire as provided in this Act.

8 (b) The Comptroller by rule may adopt a system under which
9 licenses must be renewed by various dates during the year,
10 coinciding with the due date of the annual report of the
11 licensee or any extensions thereof.

12 (225 ILCS 45/3a-2 new)

13 Sec. 3a-2. Requirements for license renewal. In order to
14 complete the license renewal process, the licensee shall submit
15 a license renewal application to the Comptroller in writing
16 signed by the applicant and duly verified on forms furnished by
17 the Comptroller upon date of renewal. Each renewal application
18 must contain all the following:

19 (1) An affirmative statement indicating the licensee's
20 desire for renewal and agreement to abide by all applicable
21 statutes and rules.

22 (2) A \$25 nonrefundable renewal fee.

23 (3) A completed annual report.

24 (4) The following information for the applicant, and
25 each member, officer, and director thereof, if the
26 applicant is a firm, partnership, association, or
27 corporation, and each shareholder holding more than 10% of
28 the corporate stock, if the applicant is a corporation:

29 (A) His or her name and current address (both
30 residence and place of business).

31 (B) A detailed statement of the individual's
32 business experience for the 10 years immediately
33 preceding the application.

34 (C) Any present or prior connection between the
35 individual and any other person engaged in pre-need

1 sales.

2 (D) Any felony or misdemeanor convictions of which
3 fraud was an essential element and any charges or
4 complaints lodged against the individual of which
5 fraud was an essential element and that resulted in
6 civil or criminal litigation.

7 (E) Any failure of the individual to satisfy an
8 enforceable judgment entered against him or her based
9 upon fraud.

10 (F) Any other information requested by the
11 Comptroller relating to past business practices of the
12 individual.

13 Since the information required by this item (4) may be
14 confidential or contain proprietary information, this
15 information shall not be available to other licensees or
16 the general public and shall be used only for the lawful
17 purposes of the Comptroller in enforcing this Act.

18 (5) A current statement of the applicant's assets and
19 liabilities.

20 (6) The current name and address of the licensee's
21 principal place of business at which the books, accounts,
22 and records are available for examination by the
23 Comptroller as required by this Act.

24 (7) The current names and addresses of the licensee's
25 branch locations at which pre-need sales are conducted and
26 that operate under the same license number as the
27 applicant's principal place of business.

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

32 (9) Such other information as the Comptroller may
33 reasonably require in order to determine whether the
34 licensee's renewal application qualifies under this Act.

1 Sec. 3a-3. Remedy for delinquent license renewal.

2 (a) If a licensee continues to conduct activities requiring
3 a license but fails to submit a completed license renewal
4 application to the Comptroller within the time specified in
5 this Act, the Comptroller shall impose upon the licensee a
6 penalty in the amount of \$5 per day for each day the renewal
7 statement is not submitted. The Comptroller may abate all or
8 part of the \$5 daily penalty for good cause shown.

9 (b) In the event the renewal application is denied by the
10 Comptroller, the renewal fee paid is not refundable.

11 (225 ILCS 45/3a-4 new)

12 Sec. 3a-4. License renewal process. Once the licensee has
13 filed for license renewal, the expiring license shall remain in
14 effect until the renewal has been issued. Upon approval of the
15 Comptroller, the Comptroller shall issue a license renewal to
16 be posted in the place of business of the licensee.

17 (225 ILCS 45/3a-5)

18 Sec. 3a-5. License requirements.

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

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

1 Comptroller for examination upon request.

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

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

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

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

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

22 (225 ILCS 45/3f)

23 Sec. 3f. Revocation of license.

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

31 (b) Whenever a license is not renewed or is revoked by the
32 Comptroller, he or she shall apply to the Circuit Court of the
33 county wherein the licensee is located for a receiver to
34 administer the trust funds of the licensee or to maintain the
35 life insurance policies and tax-deferred annuities held by the

1 licensee under a pre-need contract.

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

3 Section 10. The Crematory Regulation Act is amended by
4 changing Sections 11, 11.5, 13, and 62.10 and by adding
5 Sections 10.1, 10.2, 10.3, and 10.4 as follows:

6 (410 ILCS 18/10.1 new)

7 Sec. 10.1. Term of license.

8 (a) Any license that was issued under this Act before the
9 effective date of this amendatory Act of the 94th General
10 Assembly shall expire 5 years after the effective date of this
11 amendatory Act of the 94th General Assembly and must thereafter
12 be renewed as provided in this Act. Beginning on the effective
13 date of this amendatory Act of the 94th General Assembly, a
14 license or license renewal shall be issued for a 5-year term,
15 which shall expire as provided in this Act.

16 (b) The Comptroller by rule may adopt a system under which
17 licenses must be renewed by various dates during the year,
18 coinciding with the due date of the annual report of the
19 licensee or any extensions thereof.

20 (410 ILCS 18/10.2 new)

21 Sec. 10.2. Requirements for license renewal. In order to
22 complete the license renewal process, the licensee shall submit
23 a license renewal application to the Comptroller in writing on
24 forms furnished by the Comptroller upon date of renewal. Each
25 renewal application shall contain all of the following:

26 (1) An affirmative statement indicating the licensee's
27 desire for renewal and agreement to abide by all applicable
28 statutes and rules.

29 (2) A \$25 nonrefundable renewal fee.

30 (3) A completed annual report.

31 (4) The current name and address (both residence and
32 business) of the licensee, if the licensee is an
33 individual; the full name and address of every member, if

1 the licensee is a partnership; the full name and address of
2 every member of the board of directors, if the licensee is
3 an association; and the name and address of every officer,
4 director, and shareholder holding more than 25% of the
5 corporate stock, if the licensee is a corporation.

6 (5) A description of the type of structure and
7 equipment used in the operation of the crematory, including
8 the operating permit number issued to the cremation device
9 by the Illinois Environmental Protection Agency.

10 (6) An updated attestation by the owner that cremation
11 services shall be by a person trained in accordance with
12 the requirements of Section 22 of this Act.

13 (7) A copy of the certifications issued by the
14 certification program to the person or persons who operate
15 the cremation device.

16 (8) Any further information that the Comptroller
17 reasonably may require.

18 (410 ILCS 18/10.3 new)

19 Sec. 10.3. Remedy for delinquent license renewal.

20 (a) If a licensee continues to conduct activities requiring
21 a license but fails to submit a completed license renewal
22 application to the Comptroller within the time specified in
23 this Act, the Comptroller shall impose upon the licensee a
24 penalty of \$5 for each day the licensee remains delinquent in
25 submitting the renewal application. The Comptroller may abate
26 all or part of the \$5 daily penalty for good cause shown.

27 (b) In the event the renewal application is denied by the
28 Comptroller, the renewal fee paid is not refundable.

29 (410 ILCS 18/10.4 new)

30 Sec. 10.4. License renewal process. Once the licensee has
31 filed for license renewal, the expiring license shall remain in
32 effect until the renewal has been issued. Upon approval of the
33 Comptroller, the Comptroller shall issue a license renewal to
34 be posted in the place of business of the licensee.

1 (410 ILCS 18/11)

2 Sec. 11. Grounds for refusal of license or license renewal
3 or suspension or revocation of license.

4 (a) In this Section, "applicant" means a person who has
5 applied for a license or license renewal under this Act.

6 (b) The Comptroller may refuse to issue or renew a license
7 under this Act, or may suspend or revoke a license issued under
8 this Act, on any of the following grounds:

9 (1) The applicant or licensee has made any
10 misrepresentation or false statement or concealed any
11 material fact in connection with a license application or
12 licensure under this Act.

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

15 (3) The applicant or licensee has refused to give
16 information required under this Act to be disclosed to the
17 Comptroller.

18 (4) The applicant or licensee has conducted or is about
19 to conduct cremation business in a fraudulent manner.

20 (5) As to any individual listed in the license or
21 license renewal application as required under Section 10 or
22 10.2, that individual has conducted or is about to conduct
23 any cremation business on behalf of the applicant in a
24 fraudulent manner or has been convicted of any felony or
25 misdemeanor an essential element of which is fraud.

26 (6) The applicant or licensee has failed to make the
27 annual report required by this Act or to comply with a
28 final order, decision, or finding of the Comptroller made
29 under this Act.

30 (7) The applicant or licensee, including any member,
31 officer, or director of the applicant or licensee if the
32 applicant or licensee is a firm, partnership, association,
33 or corporation and including any shareholder holding more
34 than 25% of the corporate stock of the applicant or
35 licensee, has violated any provision of this Act or any

1 regulation or order made by the Comptroller under this Act.

2 (8) The Comptroller finds any fact or condition
3 existing that, if it had existed at the time of the
4 original application for a license or license renewal under
5 this Act, would have warranted the Comptroller in refusing
6 the issuance of the license.

7 (Source: P.A. 92-675, eff. 7-1-03.)

8 (410 ILCS 18/11.5)

9 Sec. 11.5. License revocation or suspension; surrender of
10 license.

11 (a) Upon determining that grounds exist for the nonrenewal,
12 revocation, or suspension of a license issued under this Act,
13 the Comptroller, if appropriate, may revoke, ~~or~~ suspend, or
14 refuse to renew the license issued to the licensee.

15 (b) Upon the nonrenewal, revocation, or suspension of a
16 license issued under this Act, the licensee must immediately
17 surrender the license to the Comptroller. If the licensee fails
18 to do so, the Comptroller may seize the license.

19 (Source: P.A. 92-675, eff. 7-1-03.)

20 (410 ILCS 18/13)

21 Sec. 13. License; display; transfer; duration.

22 (a) Every license issued under this Act must state the
23 number of the license, the business name and address of the
24 licensee's principal place of business, and the licensee's
25 parent company, if any. The license must be conspicuously
26 posted in the place of business operating under the license.

27 (b) No license is transferable or assignable without the
28 express written consent of the Comptroller. A transfer of more
29 than 50% of the ownership of any business licensed under this
30 Act shall be deemed to be an attempted assignment of the
31 license originally issued to the licensee for whom consent of
32 the Comptroller is required.

33 (c) Every license issued under this Act shall remain in
34 force until it expires or has been surrendered, suspended, or

1 revoked in accordance with this Act. Upon the request of an
2 interested person or on the Comptroller's own motion, the
3 Comptroller may issue a new license to a licensee whose license
4 has been revoked under this Act if no factor or condition then
5 exists which would have warranted the Comptroller in originally
6 refusing the issuance of the license.

7 (Source: P.A. 92-675, eff. 7-1-03.)

8 (410 ILCS 18/62.10)

9 Sec. 62.10. Investigation of actions; hearing.

10 (a) The Comptroller shall make an investigation upon
11 discovering facts that, if proved, would constitute grounds for
12 refusal, denial, suspension, or revocation of a license under
13 this Act.

14 (b) Before refusing to issue or renew, and before
15 suspending or revoking, a license under this Act, the
16 Comptroller shall hold a hearing to determine whether the
17 applicant for a license or the licensee ("the respondent") is
18 entitled to hold such a license. At least 10 days before the
19 date set for the hearing, the Comptroller shall notify the
20 respondent in writing that (i) on the designated date a hearing
21 will be held to determine the respondent's eligibility for a
22 license and (ii) the respondent may appear in person or by
23 counsel. The written notice may be served on the respondent
24 personally, or by registered or certified mail sent to the
25 respondent's business address as shown in the respondent's
26 latest notification to the Comptroller. The notice must include
27 sufficient information to inform the respondent of the general
28 nature of the reason for the Comptroller's action.

29 (c) At the hearing, both the respondent and the complainant
30 shall be accorded ample opportunity to present in person or by
31 counsel such statements, testimony, evidence, and argument as
32 may be pertinent to the charge or to any defense to the charge.
33 The Comptroller may reasonably continue the hearing from time
34 to time. The Comptroller may subpoena any person or persons in
35 this State and take testimony orally, by deposition, or by

1 exhibit, in the same manner and with the same fees and mileage
2 as prescribed in judicial proceedings in civil cases. Any
3 authorized agent of the Comptroller may administer oaths to
4 witnesses at any hearing that the Comptroller is authorized to
5 conduct.

6 (d) The Comptroller, at the Comptroller's expense, shall
7 provide a certified shorthand reporter to take down the
8 testimony and preserve a record of every proceeding at the
9 hearing of any case involving the refusal to issue or renew a
10 license under this Act, the suspension or revocation of such a
11 license, the imposition of a monetary penalty, or the referral
12 of a case for criminal prosecution. The record of any such
13 proceeding shall consist of the notice of hearing, the
14 complaint, all other documents in the nature of pleadings and
15 written motions filed in the proceeding, the transcript of
16 testimony, and the report and orders of the Comptroller. Copies
17 of the transcript of the record may be purchased from the
18 certified shorthand reporter who prepared the record or from
19 the Comptroller.

20 (Source: P.A. 92-675, eff. 7-1-03.)

21 Section 15. The Cemetery Care Act is amended by changing
22 Sections 7, 8, 10, 11, 14, 15, 15.3, 15.4, and 18 and by adding
23 Sections 9.1, 9.2, 9.3, and 9.4 as follows:

24 (760 ILCS 100/7) (from Ch. 21, par. 64.7)

25 Sec. 7. License to hold care funds. No cemetery authority
26 owning, operating, controlling or managing a privately
27 operated cemetery may accept the care funds authorized by the
28 provisions of Section 3 of this Act without securing from the
29 Comptroller a license to hold the funds. The license shall be
30 secured by the cemetery authority whether the cemetery
31 authority is serving as trustee of the care funds or whether
32 the care funds are held by an independent trustee.

33 All licenses issued under the provisions of this Act by the
34 Department of Financial Institutions prior to the time the

1 administration of this Act was transferred to the Comptroller
2 shall remain valid for all purposes unless such license expires
3 or is terminated, surrendered or revoked as provided in this
4 Act.

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

6 (760 ILCS 100/8) (from Ch. 21, par. 64.8)

7 Sec. 8. Every cemetery authority shall register with the
8 Comptroller upon forms furnished by him or her. Such
9 registration statement shall state whether the cemetery
10 authority claims that the cemetery owned, operated,
11 controlled, or managed by it is a fraternal cemetery,
12 municipal, State, or federal cemetery, or religious cemetery,
13 or a family burying ground, as the case may be, as defined in
14 Section 2 of this Act, and shall state the date of
15 incorporation if a corporation and whether incorporated under
16 general or private act of the legislature. Such registration
17 statement shall be accompanied by a fee of \$5. Such fee shall
18 be paid to the Comptroller and no registration statement shall
19 be accepted by him without the payment of such fee. Every
20 cemetery authority that is not required to file an annual
21 report under this Act shall bear the responsibility of
22 informing the Comptroller whenever a change takes place
23 regarding status of cemetery, name of contact person, and that
24 person's address and telephone number.

25 Upon receipt of a registration statement, if a claim is
26 made that a cemetery is a fraternal cemetery, municipal
27 cemetery, or religious cemetery, or a family burying ground, as
28 the case may be, as defined in Section 2 of this Act, and the
29 Comptroller shall determine that such cemetery is not a
30 fraternal cemetery, a municipal cemetery, or a religious
31 cemetery, or a family burying ground, as the case may be, as
32 defined in Section 2 of this Act, the Comptroller shall notify
33 the cemetery authority making the claim of such determination;
34 provided, however, that no such claim shall be denied until the
35 cemetery authority making such claim has had at least 10 days'

1 notice of a hearing thereon and an opportunity to be heard.
2 When any such claim is denied, the Comptroller shall within 20
3 days thereafter prepare and keep on file in his office the
4 transcript of the evidence taken and a written order or
5 decision of denial of such claim and shall send by United
6 States mail a copy of such order or decision of denial to the
7 cemetery authority making such claim within 5 days after the
8 filing in his office of such order, finding or decision. A
9 review of any such order, finding or decision may be had as
10 provided in the Administrative Review Law, as now or hereafter
11 amended.

12 Where no claim is made that a cemetery is a fraternal
13 cemetery, municipal cemetery or religious cemetery or family
14 burying ground, as the case may be, as defined in Section 2 of
15 this Act, the registration statement shall be accompanied by a
16 fidelity bond in the amount required by Section 9 of this Act.
17 Upon receipt of such application, statement and bond, the
18 Comptroller shall issue a license to accept the care funds
19 authorized by the provisions of Section 3 of this Act to each
20 cemetery authority owning, operating, controlling or managing
21 a privately operated cemetery. However, the Comptroller shall
22 issue a license without the filing of a bond where the filing
23 of a bond is excused by Section 18 of this Act.

24 The license issued by the Comptroller shall remain in full
25 force and effect until it expires or is surrendered by the
26 licensee or revoked by the Comptroller as hereinafter provided.
27 (Source: P.A. 88-477.)

28 (760 ILCS 100/9.1 new)

29 Sec. 9.1. Term of license.

30 (a) Any license that was issued under this Act before the
31 effective date of this amendatory Act of the 94th General
32 Assembly shall expire 5 years after the effective date of this
33 amendatory Act of the 94th General Assembly and must thereafter
34 be renewed as provided in this Act. Beginning on the effective
35 date of this amendatory Act of the 94th General Assembly, a

1 license or license renewal shall be issued for a 5-year term,
2 which shall expire as provided in this Act.

3 (b) The Comptroller by rule may adopt a system under which
4 licenses must be renewed by various dates during the year,
5 coinciding with the due date of the annual report of the
6 licensee or any extensions thereof.

7 (760 ILCS 100/9.2 new)

8 Sec. 9.2. Requirements for license renewal. In order to
9 complete the license renewal process, the licensee shall submit
10 a license renewal application to the Comptroller in writing
11 signed by the applicant and on forms furnished by the
12 Comptroller upon date of renewal. The form furnished by the
13 Comptroller shall enable a cemetery authority to apply for
14 license renewal of multiple cemetery locations within a single
15 license renewal application. Each renewal application must
16 contain all the following:

17 (1) An affirmative statement indicating the licensee's
18 desire for renewal and agreement to abide by all applicable
19 statutes and rules.

20 (2) A \$25 nonrefundable renewal fee.

21 (3) A completed annual report.

22 (4) The following information for the licensee; each
23 member, if the licensee is a partnership or association;
24 each officer or director, if the licensee is a corporation;
25 and each party owning 10% or more of the cemetery authority
26 and the parent company, if any:

27 (A) Name and current address (both residence and
28 place of business).

29 (B) A detailed statement of the individual's
30 business experience for the 10 years immediately
31 preceding the application.

32 (C) Any present or prior connection between the
33 individual and any other cemetery or cemetery
34 authority.

35 (D) Any felony or misdemeanor convictions of which

1 fraud was an essential element, any judgment against
2 the person in a civil suit in which the complaint is
3 based on fraud, and whether the person is, at the time
4 of application, a defendant in a civil suit in which
5 the complaint is based on fraud.

6 (E) Any failure of the individual to satisfy an
7 enforceable judgment entered against him or her based
8 upon fraud.

9 Since the information required by this item (4) may be
10 confidential or contain proprietary information, this
11 information shall not be available to other licensees or
12 the general public and shall be used only for the lawful
13 purposes of the Comptroller in enforcing this Act.

14 (5) A current statement of the applicant's assets and
15 liabilities.

16 (6) The current name, address, and legal boundaries of
17 each cemetery for which the care funds are entrusted and at
18 which the books, accounts, and records are available for
19 examination by the Comptroller as required by Section 13 of
20 this Act.

21 (7) Any other information that the Comptroller may
22 reasonably require in order to determine whether the
23 licensee qualifies for license renewal under this Act.

24 (760 ILCS 100/9.3 new)

25 Sec. 9.3. Remedy for delinquent renewal.

26 (a) If a licensee continues to conduct activities requiring
27 a license but fails to submit a completed license renewal
28 application to the Comptroller within the time specified in
29 this Act, the Comptroller shall impose upon the licensee a
30 penalty of \$5 for each day the licensee remains delinquent in
31 submitting the renewal application. The Comptroller may abate
32 all or part of the \$5 daily penalty for good cause shown.

33 (b) In the event the renewal application is denied by the
34 Comptroller, the renewal fee paid is not refundable.

1 (760 ILCS 100/9.4 new)

2 Sec. 9.4. License renewal process. Once the licensee has
3 filed for license renewal, the expiring license shall remain in
4 effect until the renewal has been issued. Upon approval of the
5 Comptroller, the Comptroller shall issue a license renewal to
6 be posted in the place of business of the licensee.

7 (760 ILCS 100/10) (from Ch. 21, par. 64.10)

8 Sec. 10. Upon receipt of such application for license or
9 license renewal, the Comptroller shall issue a license or
10 license renewal to the applicant unless the Comptroller
11 determines that:

12 (a) The applicant has made any misrepresentations or false
13 statements or has concealed any essential or material fact, or

14 (b) The applicant is insolvent; or

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

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

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

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

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

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

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

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

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

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

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

31 (760 ILCS 100/11) (from Ch. 21, par. 64.11)

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

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

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

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

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

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

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

28 (760 ILCS 100/14) (from Ch. 21, par. 64.14)

29 Sec. 14. The Comptroller may at any time investigate the
30 cemetery business of every licensee with respect to its care
31 funds. The Comptroller shall examine at least annually every
32 licensee who holds \$750,000 ~~\$250,000~~ or more in its care funds.
33 For that purpose, the Comptroller shall have free access to the
34 office and places of business and to such records of all
35 licensees and of all trustees of the care funds of all

1 licensees as shall relate to the acceptance, use and investment
 2 of care funds. The Comptroller may require the attendance of
 3 and examine under oath all persons whose testimony he may
 4 require relative to such business and in such cases the
 5 Comptroller or any qualified representative of the Comptroller
 6 whom the Comptroller may designate, may administer oaths to all
 7 such persons called as witnesses, and the Comptroller, or any
 8 such qualified representative of the Comptroller, may conduct
 9 such examinations. The cost of an initial examination shall be
 10 borne by the cemetery authority if it has \$10,000 or more in
 11 such fund; otherwise, by the Comptroller. The charge made by
 12 the Comptroller for such examination shall be based upon the
 13 total amount of care funds held by the cemetery authority as of
 14 the end of the calendar or fiscal year for which a report is
 15 required by Section 12 of this Act and shall be in accordance
 16 with the following schedule:

17	less than \$10,000.....	no charge;
18	\$10,000 or more but less than	
19	\$50,000.....	\$10;
20	\$50,000 or more but less than	
21	\$100,000	\$40;
22	\$100,000 or more but less than	
23	\$250,000	\$80;
24	\$250,000 or more	\$100.

25 Any licensee which is not required to be examined annually
 26 shall submit an annual report to the Comptroller containing
 27 such information as the Comptroller reasonably may request.

28 The Comptroller may order additional audits or
 29 examinations as he or she may deem necessary or advisable to
 30 ensure the safety and stability of the trust funds and to
 31 ensure compliance with this Act. These additional audits or
 32 examinations shall only be made after good cause is established
 33 by the Comptroller in the written order. The grounds for
 34 ordering these additional audits or examinations may include,
 35 but shall not be limited to:

- 36 (1) material and unverified changes or fluctuations in

1 trust balances;

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

4 (3) any withdrawals or attempted withdrawals from the
5 trusts in violation of this Act; or

6 (4) failure to maintain or produce documentation
7 required by this Act for deposits into trust accounts or
8 trust investment activities.

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

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

28 (760 ILCS 100/15) (from Ch. 21, par. 64.15)

29 Sec. 15. The Comptroller may, upon 10 days' notice to the
30 licensee, by United States mail directed to the licensee at the
31 address set forth in the license, stating the contemplated
32 action and, in general, the grounds therefor, and upon
33 reasonable opportunity to be heard prior to such action, revoke
34 of fail to renew any license issued hereunder if he finds that:

35 (a) The licensee has failed to make the annual report or to

1 maintain in effect the required bond or to comply with an
2 order, decision, or finding of the Comptroller made pursuant to
3 this Act; or that

4 (b) The licensee has violated any provision of this Act or
5 any regulation or direction made by the Comptroller under this
6 Act; or that

7 (c) Any fact or condition exists which would constitute
8 grounds for denying an application for a new license or license
9 renewal.

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

11 (760 ILCS 100/15.3) (from Ch. 21, par. 64.15-3)

12 Sec. 15.3.

13 Every license issued hereunder shall remain in force until
14 the same expires or has been surrendered or revoked in
15 accordance with this Act, but the Comptroller may on his own
16 motion, issue new licenses to a licensee whose license or
17 licenses have been revoked if no fact or condition then exists
18 which clearly would have warranted the Comptroller in refusing
19 originally the issuance of such license under this Act.

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

21 (760 ILCS 100/15.4) (from Ch. 21, par. 64.15-4)

22 Sec. 15.4. No license shall be revoked or not renewed until
23 the licensee has had at least 10 days' notice of a hearing
24 thereon and an opportunity to be heard. When any license is so
25 revoked or not renewed, the Comptroller shall within 20 days
26 thereafter, prepare and keep on file in his office the
27 transcript of the evidence taken and a written order or
28 decision of revocation, and shall send by United States mail a
29 copy of such order or decision of revocation or failure to
30 renew to the licensee at the address set forth in the license
31 within 5 days after the filing in his office of such order,
32 finding or decision. A review of any such order, finding or
33 decision may be had as provided in Section 19 of this Act.

34 (Source: P.A. 83-333.)

1 (760 ILCS 100/18) (from Ch. 21, par. 64.18)

2 Sec. 18. Application; when bond is unnecessary. The
3 provisions of this Act as to the (a) registration, (b)
4 application for license or license renewal, (c) filing of a
5 fidelity bond, (d) filing of an annual report, and (e)
6 examination by the Comptroller, apply to a cemetery authority
7 owning, operating, controlling or managing a privately
8 operated cemetery whether the care funds are held by such
9 cemetery authority as trustee or by any independent trustee for
10 the same. However, no bond need be filed with the Comptroller
11 as to care funds of such cemetery authority held as trustee by
12 a bank or trust company authorized to do business in this State
13 as a trust company in accordance with Section 2-10 of the
14 Corporate Fiduciary Act or held by an investment company.

15 Upon application by such cemetery authority to the
16 Comptroller, and upon a showing that all of the care funds of
17 such cemetery authority are held by such bank or trust company
18 as trustee for such cemetery authority pursuant to an agreement
19 in writing approved from time to time by the Comptroller for
20 the handling and management of all of the care funds of such
21 cemetery authority, or are held by an investment company, the
22 Comptroller in writing may permit the licensee to operate
23 without the filing of any bond as to such care funds except
24 such fidelity bond as he or she may require for the protection
25 of such cemetery authority against defaults by its employees
26 engaged in the handling and collection of funds.

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

28 Section 20. The Illinois Pre-Need Cemetery Sales Act is
29 amended by changing Sections 7, 8, 9, 12, and 14 and by adding
30 Sections 6a, 6b, 6c, and 6d as follows:

31 (815 ILCS 390/6a new)

32 Sec. 6a. Term of license.

33 (a) Any license that was issued under this Act before the

1 effective date of this amendatory Act of the 94th General
2 Assembly shall expire 5 years after the effective date of this
3 amendatory Act of the 94th General Assembly and must thereafter
4 be renewed as provided in this Act. Beginning on the effective
5 date of this amendatory Act of the 94th General Assembly, a
6 license or license renewal shall be issued for a 5-year term,
7 which shall expire as provided in this Act.

8 (b) The Comptroller by rule may adopt a system under which
9 licenses must be renewed by various dates during the year,
10 coinciding with the due date of the annual report of the
11 licensee or any extensions thereof.

12 (815 ILCS 390/6b new)

13 Sec. 6b. Requirements for license renewal. In order to
14 complete the license renewal process, the licensee shall submit
15 a license renewal application to the Comptroller in writing
16 under oath, signed by the applicant and in the form furnished
17 by the Comptroller upon date of renewal. The Comptroller may
18 prescribe abbreviated license renewal application forms for
19 persons holding a license under the Cemetery Care Act. Each
20 renewal application (except abbreviated applications) shall
21 contain all of the following:

22 (1) An affirmative statement indicating the licensee's
23 desire for renewal and agreement to abide by all applicable
24 statutes and rules.

25 (2) A \$25 nonrefundable renewal fee.

26 (3) A completed annual report.

27 (4) The following information for the applicant, and
28 each member, officer, and director thereof, if the
29 applicant is a firm, partnership, association, or
30 corporation, and each shareholder holding more than 10% of
31 the corporate stock, if the applicant is a corporation:

32 (A) His or her name and current address (both
33 residence and place of business).

34 (B) A detailed statement of the individual's
35 business experience for the 10 years immediately

1 preceding the application.

2 (C) Any present or prior connection between the
3 individual and any other person engaged in pre-need
4 sales.

5 (D) Any felony or misdemeanor convictions of which
6 fraud was an essential element and any charges or
7 complaints lodged against the individual of which
8 fraud was an essential element and that resulted in
9 civil or criminal litigation.

10 (E) Any failure of the individual to satisfy an
11 enforceable judgment entered against him or her based
12 upon fraud.

13 (F) Any other information requested by the
14 Comptroller relating to past business practices of the
15 individual.

16 Since the information required by this item (4) may be
17 confidential or contain proprietary information, this
18 information shall not be available to other licensees or
19 the general public and shall be used only for the lawful
20 purposes of the Comptroller in enforcing this Act.

21 (5) A detailed statement of the licensee's current
22 assets and liabilities.

23 (6) The current name and address of the licensee's
24 principal place of business at which the books, accounts,
25 and records are available for examination by the
26 Comptroller as required by this Act.

27 (7) The current name and address of the licensee's
28 branch locations at which pre-need sales are conducted and
29 that operate under the same license number as the
30 licensee's principal place of business.

31 (8) A current copy of the trust agreement under which
32 the trust funds are to be held as required by this Act.

33 (9) Such other information as the Comptroller may
34 reasonably require in order to determine whether the
35 licensee's renewal application qualifies under this Act.

1 (815 ILCS 390/6c new)

2 Sec. 6c. Remedy for delinquent license renewal.

3 (a) If a licensee continues to conduct activities requiring
4 a license but fails to submit a completed license renewal
5 application to the Comptroller within the time specified in
6 this Act, the Comptroller shall impose upon the licensee a
7 penalty of \$5 for each day the licensee remains delinquent in
8 submitting the application. The Comptroller may abate all or
9 part of the \$5 daily penalty for good cause shown.

10 (b) In the event the renewal application is denied by the
11 Comptroller, the renewal fee paid is not refundable.

12 (815 ILCS 390/6d new)

13 Sec. 6d. License renewal process. Once the licensee has
14 filed for license renewal, the expiring license shall remain in
15 effect until the renewal has been issued. Upon approval of the
16 Comptroller, the Comptroller shall issue a license renewal to
17 be posted in the place of business of the licensee.

18 (815 ILCS 390/7) (from Ch. 21, par. 207)

19 Sec. 7. The Comptroller may refuse to issue or renew a
20 license or may suspend or revoke a license on any of the
21 following grounds:

22 (a) The applicant or licensee has made any
23 misrepresentations or false statements or concealed any
24 material fact;

25 (b) The applicant or licensee is insolvent;

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

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

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

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

1 (g) The trust agreement is not in compliance with State or
2 federal law;

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

5 (i) The fidelity bond is not satisfactory to the
6 Comptroller;

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

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

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

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

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

33 (815 ILCS 390/8) (from Ch. 21, par. 208)

34 Sec. 8. (a) Every license issued by the Comptroller shall
35 state the number of the license, the business name and address

1 of the licensee's principal place of business, each branch
2 location also operating under the license, and the licensee's
3 parent company, if any. The license shall be conspicuously
4 posted in each place of business operating under the license.
5 The Comptroller may issue additional licenses as may be
6 necessary for license branch locations upon compliance with the
7 provisions of this Act governing an original issuance of a
8 license for each new license.

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

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

19 (d) Any person not selling on behalf of a licensee shall be
20 required to obtain his or her own license.

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

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

33 (g) Every license issued hereunder shall remain in force
34 until the same expires or has been suspended, surrendered or
35 revoked in accordance with this Act, but the Comptroller, upon
36 the request of an interested person or on his own motion, may

1 issue new licenses to a licensee whose license or licenses have
2 been revoked, if no factor or condition then exists which would
3 have warranted the Comptroller in refusing originally the
4 issuance of such license.

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

6 (815 ILCS 390/9) (from Ch. 21, par. 209)

7 Sec. 9. The Comptroller may upon his own motion investigate
8 the actions of any person providing, selling, or offering
9 pre-need sales contracts or of any applicant or any person or
10 persons holding or claiming to hold a license under this Act.
11 The Comptroller shall make such an investigation on receipt of
12 the verified written complaint of any person setting forth
13 facts which, if proved, would constitute grounds for refusal to
14 issue or renew, suspension, or revocation of a license. Before
15 refusing to issue or renew, and before suspension or revocation
16 of a license, the Comptroller shall hold a hearing to determine
17 whether the applicant or licensee, hereafter called the
18 respondent, is entitled to hold such a license. At least 10
19 days prior to the date set for such hearing, the Comptroller
20 shall notify the respondent in writing that on the date
21 designated a hearing will be held to determine his eligibility
22 for a license and that he may appear in person or by counsel.
23 Such written notice may be served on the respondent personally,
24 or by registered or certified mail sent to the respondent's
25 business address as shown in his latest notification to the
26 Comptroller and shall include sufficient information to inform
27 the respondent of the general nature of the charge. At the
28 hearing, both the respondent and the complainant shall be
29 accorded ample opportunity to present in person or by counsel
30 such statements, testimony, evidence and argument as may be
31 pertinent to the charges or to any defense thereto. The
32 Comptroller may reasonably continue such hearing from time to
33 time.

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

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

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

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

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

20 (815 ILCS 390/12) (from Ch. 21, par. 212)

21 Sec. 12. License nonrenewal, revocation, or suspension.

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

29 (b) Upon the nonrenewal, revocation, or suspension of any
30 license, the licensee shall immediately surrender the license
31 or licenses to the Comptroller. If the licensee fails to do so,
32 the Comptroller has the right to seize the license or licenses.

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

34 (815 ILCS 390/14) (from Ch. 21, par. 214)

1 Sec. 14. Contract required.

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

7 (1) A written sales contract shall be executed in at
8 least 11 point type in duplicate for each pre-need sale
9 made by a licensee, and a signed copy given to the
10 purchaser. Each completed contract shall be numbered and
11 shall contain: (i) the name and address of the purchaser,
12 the principal office of the licensee, and the parent
13 company of the licensee; (ii) the name of the person, if
14 known, who is to receive the cemetery merchandise, cemetery
15 services or the completed interment, entombment or
16 inurnment spaces under the contract; ~~and~~ (iii) specific
17 identification of such merchandise, type of services to be
18 held by cemetery or crematory personnel, or spaces to be
19 provided, if a specific space or spaces are contracted for,
20 and the price of the merchandise, services, or space or
21 spaces; (iv) the location of the spaces to be provided, if
22 a specific space is contracted for, indicated on an overall
23 map of the site of the interment, entombment, or inurnment
24 spaces; and (v) a description of the type of care furnished
25 by a provider holding a valid license under the Cemetery
26 Care Act that is being purchased to maintain the interment,
27 entombment, or inurnment space, if a specific space is
28 contracted for. If no care is included in the contract, the
29 contract shall state in 11-point type "This contract does
30 not include maintenance care.", and this statement shall be
31 initialed by the purchaser.

32 (1.5) Each contract shall include a current copy of the
33 provider's rules and regulations pertaining to the site of
34 the completed interment, entombment, or inurnment spaces,
35 if such spaces are to be provided under the contract.

36 (2) In addition, such contracts must contain a

1 provision in distinguishing typeface as follows:

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

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

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

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

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

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

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

36 (8) Each pre-need contract that authorizes the

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

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

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

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

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

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

28 (b) Every pre-need sales contract must be in writing. The
29 Comptroller may by rule develop a model pre-need sales contract
30 form that meets the requirements of this Act.

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

35 (d) No pre-need sales contract may be entered into in this
36 State unless there is a provider for the cemetery merchandise,

1 cemetery services, and undeveloped interment, inurnment, and
2 entombment spaces being sold. If the seller is not the
3 provider, then the seller must have a binding agreement with a
4 provider, and the identity of the provider and the nature of
5 the agreement between the seller and the provider must be
6 disclosed in the pre-need sales contract at the time of sale
7 and before the receipt of any sale proceeds. The purchaser
8 shall make personal contact with the provider and visit the
9 site of the undeveloped interment, inurnment, or entombment
10 spaces being sold, unless the purchaser waives his or her right
11 to do so. Each pre-need contract that is sold by a seller who
12 is not the provider shall contain the following statements in
13 12-point bold type and the applicable statements shall be
14 initialed by the purchaser:

15 "I HAVE MADE PERSONAL CONTACT WITH THE PROVIDER OF THE
16 CEMETERY MERCHANDISE, CEMETERY SERVICES, OR UNDEVELOPED
17 INTERMENT, INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS
18 CONTRACT.

19 I HAVE VISITED THE SITE OF THE UNDEVELOPED INTERMENT,
20 INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS CONTRACT.

21 I HAVE WAIVED MY RIGHT TO MAKE PERSONAL CONTACT AND/OR
22 VISIT THE PROVIDER OF THE CEMETERY MERCHANDISE, CEMETERY
23 SERVICES, OR UNDEVELOPED INTERMENT, INURNMENT, OR
24 ENTOMBMENT SPACES BEING SOLD IN THIS CONTRACT.

25 A COPY OF THE PROVIDER'S RULES AND REGULATIONS HAS BEEN
26 MADE AVAILABLE TO ME."

27 A separate completed contract shall be issued for funeral
28 merchandise or funeral services covered by the Illinois Funeral
29 or Burial Funds Act, and not covered by this Act, unless the
30 seller is licensed under both Acts and all disclosures are in
31 compliance with both Acts. The failure to disclose the identity
32 of the provider, the nature of the agreement between the seller
33 and the provider, or any changes thereto to the purchaser and
34 beneficiary, or the failure to make the disclosures required by
35 this Section constitutes an intentional violation of this Act.

36 (e) No pre-need contract may be entered into in this State

1 unless it is accompanied by a funding mechanism permitted under
2 this Act and unless the seller is licensed by the Comptroller
3 as provided in this Act. Nothing in this Act is intended to
4 relieve providers or sellers of pre-need contracts from being
5 licensed under any other Act required for their profession or
6 business or from being subject to the rules promulgated to
7 regulate their profession or business, including rules on
8 solicitation and advertisement.

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

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

22 (Source: P.A. 91-7, eff. 1-1-00; 92-419, eff. 1-1-02.)

23 Section 25. The Consumer Fraud and Deceptive Business
24 Practices Act is amended by adding Section 2VV as follows:

25 (815 ILCS 505/2VV new)

26 Sec. 2VV. Cemetery or funeral contracts. No person
27 authorized by law to sell funeral services on an at need basis
28 may also sell cemetery services, cemetery merchandise, or
29 interment, inurnment, or entombment spaces on an at need basis,
30 unless the person is also authorized by law to sell such
31 cemetery services, merchandise, or spaces and issues to the
32 consumer a separate contract with the provider of such cemetery
33 services, merchandise, or spaces.

34 Each completed contract shall be numbered and shall

1 contain: (i) the name and address of the purchaser, the name
2 and pertinent information of the person who is to receive the
3 cemetary services, merchandise, or spaces, and the name and
4 address of the seller; (ii) specific identification of such
5 merchandise, type of services to be held by cemetery or
6 crematory personnel, or spaces to be provided and the price of
7 the merchandise, services, or spaces; (iii) the location of the
8 space to be provided, if a specific space is contracted for,
9 indicated on an overall map of the site of the interment,
10 entombment, or inurnment space; and (iv) a description of the
11 type of care furnished by a provider holding a valid license
12 under the Cemetery Care Act that is being purchased to maintain
13 the interment, entombment, or inurnment space, if a specific
14 space is contracted for. If no care is included in the
15 contract, the contract shall state in 11-point bold type: "This
16 contract does not include maintenance care.", and this
17 statement shall be initialed by the purchaser. Each contract
18 shall include a current copy of the provider's rules and
19 regulations pertaining to the site of the interment,
20 entombment, or inurnment spaces, if such spaces are to be
21 provided under the contract. The purchaser shall make personal
22 contact with the provider and visit the site of the undeveloped
23 interment, inurnment, or entombment spaces being sold, unless
24 the purchaser waives his or her right to do so. Each contract
25 that is sold by a seller who is not the provider shall contain
26 the following statements in 12-point bold type and the
27 applicable statements shall be initialed by the purchaser:

28 "I HAVE MADE PERSONAL CONTACT WITH THE PROVIDER OF THE
29 CEMETERY MERCHANDISE, CEMETERY SERVICES, OR INTERMENT,
30 INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS CONTRACT.

31 I HAVE VISITED THE SITE OF THE INTERMENT, INURNMENT, OR
32 ENTOMBMENT SPACES SOLD IN THIS CONTRACT.

33 I HAVE WAIVED MY RIGHT TO MAKE PERSONAL CONTACT AND
34 VISIT THE PROVIDER OF THE CEMETERY MERCHANDISE, CEMETERY
35 SERVICES, OR INTERMENT, INURNMENT, OR ENTOMBMENT SPACES
36 BEING SOLD IN THIS CONTRACT."

1 Any person who violates this Section commits an unlawful
2 practice within the meaning of this Act.

3 Section 99. Effective date. This Act takes effect January
4 1, 2006.

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- 4 815 ILCS 390/12 from Ch. 21, par. 212
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- 6 815 ILCS 505/2VV new