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09400SB0482sam002

LRB094 10608 AMC 43297 a

1 AMENDMENT TO SENATE BILL 482

2 AMENDMENT NO. _____. Amend Senate Bill 482 by replacing
3 everything after the enacting clause with the following:

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

1 the merchandise and services, and it clearly discloses
2 whether the price of the merchandise and services is
3 guaranteed or not guaranteed as to price.

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

6 THIS CONTRACT GUARANTEES THE BENEFICIARY THE
7 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO
8 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED
9 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE INCURRED
10 FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT LIMITED TO,
11 CASH ADVANCES, SHIPPING OF REMAINS FROM A DISTANT
12 PLACE, OR DESIGNATED HONORARIA ORDERED OR DIRECTED BY
13 SURVIVORS.

14 (B) Except as provided in subparagraph (C) of this
15 paragraph (3), each non-guaranteed price contract
16 shall contain the following statement in 12 point bold
17 type:

18 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE
19 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR
20 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A
21 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE
22 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES
23 MAY BE REQUIRED.

24 (C) If a non-guaranteed price contract may
25 subsequently become guaranteed, the contract shall
26 clearly disclose the nature of the guarantee and the
27 time, occurrence, or event upon which the contract
28 shall become a guaranteed price contract.

29 (4) It provides that if the particular supplies and
30 services specified in the pre-need contract are
31 unavailable at the time of delivery, the provider shall be
32 required to furnish supplies and services similar in style
33 and at least equal in quality of material and workmanship.

34 (5) It discloses any penalties or restrictions,

1 including but not limited to geographic restrictions or the
2 inability of the provider to perform, on the delivery of
3 merchandise, services, or pre-need contract guarantees.

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

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

8 (B) The nature of the relationship among the person
9 funding the pre-need contract, the provider, and the
10 seller; and

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

24 (D) The method of changing the provider.

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

28 (c) No pre-need contract shall be sold in this State unless
29 there is a provider for the services and personal property
30 being sold. If the seller is not a provider, then the seller
31 must have a binding agreement with a provider, and the identity
32 of the provider and the nature of the agreement between the
33 seller and the provider shall be disclosed in the pre-need
34 contract at the time of the sale and before the receipt of any

1 sales proceeds. A separate completed contract, as required by
2 the Illinois Pre-Need Cemetery Sales Act, shall be issued for
3 cemetery merchandise, cemetery services, or undeveloped
4 interment, entombment, or inurnment spaces, as defined in the
5 Illinois Pre-Need Cemetery Sales Act, and not covered by this
6 Act, unless the seller is licensed under both Acts and all
7 disclosures are in compliance with both Acts. The failure to
8 disclose the identity of the provider, the nature of the
9 agreement between the seller and the provider, or any changes
10 thereto to the purchaser and beneficiary, or the failure to
11 make the disclosures required in subdivision (a)(1),
12 constitutes an intentional violation of this Act.

13 (d) All pre-need contracts must be in writing in at least
14 11 point type, numbered, and executed in duplicate. A signed
15 copy of the pre-need contract must be provided to the purchaser
16 at the time of entry into the pre-need contract. The
17 Comptroller may by rule develop a model pre-need contract form
18 which meets the requirements of this Act.

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

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

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

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

11 (225 ILCS 45/3a) (from Ch. 111 1/2, par. 73.103a)

12 Sec. 3a. Denial, nonrenewal, suspension, or revocation of
13 license.

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

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

19 (2) The applicant or licensee is insolvent.

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

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

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

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

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

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

33 (9) As to any individual required to be listed in the

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

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

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

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

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

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

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

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

15 (225 ILCS 45/3a-1 new)

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

17 (a) Any license that was issued under this Act before the
18 effective date of this amendatory Act of the 94th General
19 Assembly shall expire according to a schedule developed by the
20 Comptroller pursuant to the original date of issuance and must
21 thereafter be renewed as provided in this Act. Beginning on the
22 effective date of this amendatory Act of the 94th General
23 Assembly, a license or license renewal under this Act shall be
24 issued for a 5-year term, which shall expire as provided in
25 this Act.

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

30 (225 ILCS 45/3a-2 new)

31 Sec. 3a-2. Requirements for license renewal. In order to
32 complete the license renewal process, the licensee shall submit

1 a license renewal application to the Comptroller in writing
2 signed by the licensee and duly verified on forms furnished by
3 the Comptroller upon the date of renewal. The Comptroller may
4 prescribe abbreviated license renewal application forms for
5 persons holding multiple licenses issued by the Comptroller.
6 Each renewal application (except abbreviated applications)
7 shall contain all the following:

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

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

12 (3) A completed annual report.

13 (4) The following information for the licensee, and
14 each member, officer, and director thereof, if the licensee
15 is a firm, partnership, association, or corporation, and
16 each shareholder holding more than 10% of the corporate
17 stock, if the licensee is a corporation:

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

20 (B) A detailed statement of the individual's
21 business experience for the 10 years immediately
22 preceding the application.

23 (C) Any present or prior connection between the
24 individual and any other person engaged in pre-need
25 sales.

26 (D) Any felony or misdemeanor convictions of which
27 fraud was an essential element and any charges or
28 complaints lodged against the individual of which
29 fraud was an essential element and that resulted in
30 civil or criminal litigation.

31 (E) Any failure of the individual to satisfy an
32 enforceable judgment entered against him or her based
33 upon fraud.

34 (F) Any other information requested by the

1 Comptroller relating to past business practices of the
2 individual.

3 Since the information required by this item (4) and item
4 (5) may be confidential or contain proprietary
5 information, this information shall not be available to
6 other licensees or the general public and shall be used
7 only for the lawful purposes of the Comptroller in
8 enforcing this Act.

9 (5) A current statement of the licensee's assets and
10 liabilities.

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

15 (7) The current names and addresses of the licensee's
16 branch locations at which pre-need sales are conducted and
17 that operate under the same license number as the
18 licensee's principal place of business.

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

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

26 (225 ILCS 45/3a-3 new)

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

28 (a) If a licensee continues to conduct activities requiring
29 a license but fails to submit a completed license renewal
30 application to the Comptroller within the time specified in
31 this Act, the Comptroller shall impose upon the licensee a
32 penalty in the amount of \$5 per day for each day the renewal
33 statement is not submitted. The Comptroller may abate all or

1 part of the \$5 daily penalty for good cause shown.

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

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

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

10 (225 ILCS 45/3a-5)

11 Sec. 3a-5. License requirements.

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

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

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

32 (d) Any person not selling on behalf of a licensee shall

1 obtain its own license.

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

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

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

17 (225 ILCS 45/3f)

18 Sec. 3f. Revocation of license.

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

26 (b) Whenever a license is not renewed or is revoked by the
27 Comptroller, he or she shall apply to the Circuit Court of the
28 county wherein the licensee is located for a receiver to
29 administer the trust funds of the licensee or to maintain the
30 life insurance policies and tax-deferred annuities held by the
31 licensee under a pre-need contract.

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

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

4 (410 ILCS 18/10.1 new)

5 Sec. 10.1. Term of license.

6 (a) Any license that was issued under this Act before the
7 effective date of this amendatory Act of the 94th General
8 Assembly shall expire according to a schedule developed by the
9 Comptroller pursuant to the original date of issuance and must
10 thereafter be renewed as provided in this Act. Beginning on the
11 effective date of this amendatory Act of the 94th General
12 Assembly, a license or license renewal shall be issued for a
13 5-year term, which shall expire as provided in this Act.

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

18 (410 ILCS 18/10.2 new)

19 Sec. 10.2. Requirements for license renewal. In order to
20 complete the license renewal process, the licensee shall submit
21 a license renewal application to the Comptroller in writing on
22 forms furnished by the Comptroller upon the date of renewal.
23 The Comptroller may prescribe abbreviated license renewal
24 application forms for persons holding multiple licenses issued
25 by the Comptroller. Each renewal application (except
26 abbreviated applications) shall contain all of the following:

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

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

31 (3) A completed annual report.

32 (4) The current name and address (both residence and

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

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

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

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

18 (8) Any further information that the Comptroller
19 reasonably may require.

20 (410 ILCS 18/10.3 new)

21 Sec. 10.3. Remedy for delinquent license renewal.

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

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

31 (410 ILCS 18/10.4 new)

32 Sec. 10.4. License renewal process. Once the licensee has

1 filed for license renewal, the expiring license shall remain in
2 effect until the renewal has been issued. Upon approval of the
3 Comptroller, the Comptroller shall issue a license renewal to
4 be posted in the place of business of the licensee.

5 (410 ILCS 18/11)

6 Sec. 11. Grounds for refusal of license or license renewal
7 or suspension or revocation of license.

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

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

13 (1) The applicant or licensee has made any
14 misrepresentation or false statement or concealed any
15 material fact in connection with a license application or
16 licensure under this Act.

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

19 (3) The applicant or licensee has refused to give
20 information required under this Act to be disclosed to the
21 Comptroller.

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

24 (5) As to any individual listed in the license or
25 license renewal application as required under Section 10 or
26 10.2, that individual has conducted or is about to conduct
27 any cremation business on behalf of the applicant in a
28 fraudulent manner or has been convicted of any felony or
29 misdemeanor an essential element of which is fraud.

30 (6) The applicant or licensee has failed to make the
31 annual report required by this Act or to comply with a
32 final order, decision, or finding of the Comptroller made
33 under this Act.

1 (7) The applicant or licensee, including any member,
2 officer, or director of the applicant or licensee if the
3 applicant or licensee is a firm, partnership, association,
4 or corporation and including any shareholder holding more
5 than 25% of the corporate stock of the applicant or
6 licensee, has violated any provision of this Act or any
7 regulation or order made by the Comptroller under this Act.

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

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

14 (410 ILCS 18/11.5)

15 Sec. 11.5. License revocation or suspension; surrender of
16 license.

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

21 (b) Upon the nonrenewal, revocation, or suspension of a
22 license issued under this Act, the licensee must immediately
23 surrender the license to the Comptroller. If the licensee fails
24 to do so, the Comptroller may seize the license.

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

26 (410 ILCS 18/13)

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

28 (a) Every license issued under this Act must state the
29 number of the license, the business name and address of the
30 licensee's principal place of business, and the licensee's
31 parent company, if any. The license must be conspicuously
32 posted in the place of business operating under the license.

1 (b) No license is transferable or assignable without the
2 express written consent of the Comptroller. A transfer of more
3 than 50% of the ownership of any business licensed under this
4 Act shall be deemed to be an attempted assignment of the
5 license originally issued to the licensee for whom consent of
6 the Comptroller is required.

7 (c) Every license issued under this Act shall remain in
8 force until it expires or has been surrendered, suspended, or
9 revoked in accordance with this Act. Upon the request of an
10 interested person or on the Comptroller's own motion, the
11 Comptroller may issue a new license to a licensee whose license
12 has been revoked under this Act if no factor or condition then
13 exists which would have warranted the Comptroller in originally
14 refusing the issuance of the license.

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

16 (410 ILCS 18/62.10)

17 Sec. 62.10. Investigation of actions; hearing.

18 (a) The Comptroller shall make an investigation upon
19 discovering facts that, if proved, would constitute grounds for
20 refusal, denial, suspension, or revocation of a license under
21 this Act.

22 (b) Before refusing to issue or renew, and before
23 suspending or revoking, a license under this Act, the
24 Comptroller shall hold a hearing to determine whether the
25 applicant for a license or the licensee ("the respondent") is
26 entitled to hold such a license. At least 10 days before the
27 date set for the hearing, the Comptroller shall notify the
28 respondent in writing that (i) on the designated date a hearing
29 will be held to determine the respondent's eligibility for a
30 license and (ii) the respondent may appear in person or by
31 counsel. The written notice may be served on the respondent
32 personally, or by registered or certified mail sent to the
33 respondent's business address as shown in the respondent's

1 latest notification to the Comptroller. The notice must include
2 sufficient information to inform the respondent of the general
3 nature of the reason for the Comptroller's action.

4 (c) At the hearing, both the respondent and the complainant
5 shall be accorded ample opportunity to present in person or by
6 counsel such statements, testimony, evidence, and argument as
7 may be pertinent to the charge or to any defense to the charge.
8 The Comptroller may reasonably continue the hearing from time
9 to time. The Comptroller may subpoena any person or persons in
10 this State and take testimony orally, by deposition, or by
11 exhibit, in the same manner and with the same fees and mileage
12 as prescribed in judicial proceedings in civil cases. Any
13 authorized agent of the Comptroller may administer oaths to
14 witnesses at any hearing that the Comptroller is authorized to
15 conduct.

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

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

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

1 (760 ILCS 100/7) (from Ch. 21, par. 64.7)

2 Sec. 7. License to hold care funds. No cemetery authority
3 owning, operating, controlling or managing a privately
4 operated cemetery may accept the care funds authorized by the
5 provisions of Section 3 of this Act without securing from the
6 Comptroller a license to hold the funds. The license shall be
7 secured by the cemetery authority whether the cemetery
8 authority is serving as trustee of the care funds or whether
9 the care funds are held by an independent trustee.

10 All licenses issued under the provisions of this Act by the
11 Department of Financial Institutions prior to the time the
12 administration of this Act was transferred to the Comptroller
13 shall remain valid for all purposes unless such license expires
14 or is terminated, surrendered or revoked as provided in this
15 Act.

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

17 (760 ILCS 100/8) (from Ch. 21, par. 64.8)

18 Sec. 8. Every cemetery authority shall register with the
19 Comptroller upon forms furnished by him or her. Such
20 registration statement shall state whether the cemetery
21 authority claims that the cemetery owned, operated,
22 controlled, or managed by it is a fraternal cemetery,
23 municipal, State, or federal cemetery, or religious cemetery,
24 or a family burying ground, as the case may be, as defined in
25 Section 2 of this Act, and shall state the date of
26 incorporation if a corporation and whether incorporated under
27 general or private act of the legislature. Such registration
28 statement shall be accompanied by a fee of \$5. Such fee shall
29 be paid to the Comptroller and no registration statement shall
30 be accepted by him without the payment of such fee. Every
31 cemetery authority that is not required to file an annual
32 report under this Act shall bear the responsibility of

1 informing the Comptroller whenever a change takes place
2 regarding status of cemetery, name of contact person, and that
3 person's address and telephone number.

4 Upon receipt of a registration statement, if a claim is
5 made that a cemetery is a fraternal cemetery, municipal
6 cemetery, or religious cemetery, or a family burying ground, as
7 the case may be, as defined in Section 2 of this Act, and the
8 Comptroller shall determine that such cemetery is not a
9 fraternal cemetery, a municipal cemetery, or a religious
10 cemetery, or a family burying ground, as the case may be, as
11 defined in Section 2 of this Act, the Comptroller shall notify
12 the cemetery authority making the claim of such determination;
13 provided, however, that no such claim shall be denied until the
14 cemetery authority making such claim has had at least 10 days'
15 notice of a hearing thereon and an opportunity to be heard.
16 When any such claim is denied, the Comptroller shall within 20
17 days thereafter prepare and keep on file in his office the
18 transcript of the evidence taken and a written order or
19 decision of denial of such claim and shall send by United
20 States mail a copy of such order or decision of denial to the
21 cemetery authority making such claim within 5 days after the
22 filing in his office of such order, finding or decision. A
23 review of any such order, finding or decision may be had as
24 provided in the Administrative Review Law, as now or hereafter
25 amended.

26 Where no claim is made that a cemetery is a fraternal
27 cemetery, municipal cemetery or religious cemetery or family
28 burying ground, as the case may be, as defined in Section 2 of
29 this Act, the registration statement shall be accompanied by a
30 fidelity bond in the amount required by Section 9 of this Act.
31 Upon receipt of such application, statement and bond, the
32 Comptroller shall issue a license to accept the care funds
33 authorized by the provisions of Section 3 of this Act to each
34 cemetery authority owning, operating, controlling or managing

1 a privately operated cemetery. However, the Comptroller shall
2 issue a license without the filing of a bond where the filing
3 of a bond is excused by Section 18 of this Act.

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

8 (760 ILCS 100/9.1 new)

9 Sec. 9.1. Term of license.

10 (a) Any license that was issued under this Act before the
11 effective date of this amendatory Act of the 94th General
12 Assembly shall expire according to a schedule developed by the
13 Comptroller pursuant to the original date of issuance and must
14 thereafter be renewed as provided in this Act. Beginning on the
15 effective date of this amendatory Act of the 94th General
16 Assembly, a license or license renewal shall be issued for a
17 5-year term, which shall expire as provided in this Act.

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

22 (760 ILCS 100/9.2 new)

23 Sec. 9.2. Requirements for license renewal. In order to
24 complete the license renewal process, the licensee shall submit
25 a license renewal application to the Comptroller in writing
26 signed by the licensee and on forms furnished by the
27 Comptroller upon the date of renewal. The Comptroller may
28 prescribe abbreviated license renewal forms for persons
29 holding multiple licenses issued by the Comptroller. Each
30 renewal application (except abbreviated applications) shall
31 contain all the following:

32 (1) An affirmative statement indicating the licensee's

1 desire for renewal and agreement to abide by all applicable
2 statutes and rules.

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

4 (3) A completed annual report.

5 (4) The following information for the licensee; each
6 member, if the licensee is a partnership or association;
7 each officer or director, if the licensee is a corporation;
8 and each party owning 10% or more of the cemetery authority
9 and the parent company, if any:

10 (A) Name and current address (both residence and
11 place of business).

12 (B) A detailed statement of the individual's
13 business experience for the 10 years immediately
14 preceding the application.

15 (C) Any present or prior connection between the
16 individual and any other cemetery or cemetery
17 authority.

18 (D) Any felony or misdemeanor convictions of which
19 fraud was an essential element, any judgment against
20 the person in a civil suit in which the complaint is
21 based on fraud, and whether the person is, at the time
22 of application, a defendant in a civil suit in which
23 the complaint is based on fraud.

24 (E) Any failure of the individual to satisfy an
25 enforceable judgment entered against him or her based
26 upon fraud.

27 Since the information required by this item (4) and the
28 following item (5) may be confidential or contain
29 proprietary information, this information shall not be
30 available to other licensees or the general public and
31 shall be used only for the lawful purposes of the
32 Comptroller in enforcing this Act.

33 (5) A current statement of the licensee's assets and
34 liabilities.

1 (6) The current name, address, and legal boundaries of
2 each cemetery for which the care funds are entrusted and at
3 which the books, accounts, and records are available for
4 examination by the Comptroller as required by Section 13 of
5 this Act.

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

9 (760 ILCS 100/9.3 new)

10 Sec. 9.3. Remedy for delinquent renewal.

11 (a) If a licensee continues to conduct activities requiring
12 a license but fails to submit a completed license renewal
13 application to the Comptroller within the time specified in
14 this Act, the Comptroller shall impose upon the licensee a
15 penalty of \$5 for each day the licensee remains delinquent in
16 submitting the renewal application. The Comptroller may abate
17 all or part of the \$5 daily penalty for good cause shown.

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

20 (760 ILCS 100/9.4 new)

21 Sec. 9.4. License renewal process. Once the licensee has
22 filed for license renewal, the expiring license shall remain in
23 effect until the renewal has been issued. Upon approval of the
24 Comptroller, the Comptroller shall issue a license renewal to
25 be posted in the place of business of the licensee.

26 (760 ILCS 100/10) (from Ch. 21, par. 64.10)

27 Sec. 10. Upon receipt of such application for license or
28 license renewal, the Comptroller shall issue a license or
29 license renewal to the applicant unless the Comptroller
30 determines that:

31 (a) The applicant or licensee has made any

1 misrepresentations or false statements or has concealed any
2 essential or material fact, or

3 (b) The applicant or licensee is insolvent; or

4 (c) The applicant or licensee is or has been using
5 practices in the conducting of the cemetery business that work
6 or tend to work a fraud; or

7 (d) The applicant or licensee has refused to furnish or
8 give pertinent data to the Comptroller; or

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

12 (f) The applicant or licensee has failed to satisfy any
13 enforceable judgment entered by the circuit court in any civil
14 proceedings against such applicant; or

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

17 (h) The applicant or licensee or any individual listed in
18 the license or license renewal application has conducted or is
19 about to conduct any business on behalf of the applicant in a
20 fraudulent manner; or has been convicted of a felony or any
21 misdemeanor of which an essential element is fraud; or has been
22 involved in any civil litigation in which a judgment has been
23 entered against him or her based on fraud; or has failed to
24 satisfy any enforceable judgment entered by the circuit court
25 in any civil proceedings against such individual; or has been
26 convicted of any felony of which fraud is an essential element;
27 or has been convicted of any theft-related offense; or has
28 failed to comply with the requirements of this Act; or has
29 demonstrated a pattern of improperly failing to honor a
30 contract with a consumer; or

31 (i) The applicant or licensee has ever had a license
32 involving cemeteries or funeral homes revoked, suspended, or
33 refused to be issued in Illinois or elsewhere.

34 If the Comptroller so determines, then he or she shall

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

16 The license or license renewal issued by the Comptroller
17 shall remain in full force and effect until it expires or is
18 surrendered by the licensee or revoked by the Comptroller as
19 hereinafter provided.

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

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

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

33 Every license issued by the Comptroller shall state the

1 number of the license and the address at which the business is
2 to be conducted. Such license shall be kept conspicuously
3 posted in the place of business of the licensee and shall not
4 be transferable or assignable.

5 No more than one place of business shall be maintained
6 under the same license, but the Comptroller may issue more than
7 one license to the same licensee upon compliance with the
8 provisions of this Act governing an original issuance of a
9 license, for each new license.

10 Whenever a licensee shall wish to change the name as
11 originally set forth in his license, he shall give written
12 notice thereof to the Comptroller together with the reasons for
13 the change and if the change is approved by the Comptroller he
14 shall issue a new license.

15 A license issued by the Comptroller shall remain in full
16 force and effect until it expires or is surrendered by the
17 licensee or suspended or revoked by the Comptroller as provided
18 in this Act.

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

20 (760 ILCS 100/14) (from Ch. 21, par. 64.14)

21 Sec. 14. The Comptroller may at any time investigate the
22 cemetery business of every licensee with respect to its care
23 funds. The Comptroller shall examine at least annually every
24 licensee who holds \$750,000 ~~\$250,000~~ or more in its care funds.
25 For that purpose, the Comptroller shall have free access to the
26 office and places of business and to such records of all
27 licensees and of all trustees of the care funds of all
28 licensees as shall relate to the acceptance, use and investment
29 of care funds. The Comptroller may require the attendance of
30 and examine under oath all persons whose testimony he may
31 require relative to such business and in such cases the
32 Comptroller or any qualified representative of the Comptroller
33 whom the Comptroller may designate, may administer oaths to all

1 such persons called as witnesses, and the Comptroller, or any
 2 such qualified representative of the Comptroller, may conduct
 3 such examinations. The cost of an initial examination shall be
 4 borne by the cemetery authority if it has \$10,000 or more in
 5 such fund; otherwise, by the Comptroller. The charge made by
 6 the Comptroller for such examination shall be based upon the
 7 total amount of care funds held by the cemetery authority as of
 8 the end of the calendar or fiscal year for which a report is
 9 required by Section 12 of this Act and shall be in accordance
 10 with the following schedule:

11	less than \$10,000.....	no charge;
12	\$10,000 or more but less than	
13	\$50,000.....	\$10;
14	\$50,000 or more but less than	
15	\$100,000	\$40;
16	\$100,000 or more but less than	
17	\$250,000	\$80;
18	\$250,000 or more	\$100.

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

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

- 30 (1) material and unverified changes or fluctuations in
- 31 trust balances;
- 32 (2) the licensee changing trustees more than twice in
- 33 any 12-month period;
- 34 (3) any withdrawals or attempted withdrawals from the

1 trusts in violation of this Act; or

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

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

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

24 (760 ILCS 100/15) (from Ch. 21, par. 64.15)

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

31 (a) The licensee has failed to make the annual report or to
32 maintain in effect the required bond or to comply with an
33 order, decision, or finding of the Comptroller made pursuant to

1 this Act; or that

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

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

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

9 (760 ILCS 100/15.3) (from Ch. 21, par. 64.15-3)

10 Sec. 15.3. Every license issued hereunder shall remain in
11 force until the same expires or has been surrendered or revoked
12 in accordance with this Act, but the Comptroller may on his own
13 motion, issue new licenses to a licensee whose license or
14 licenses have been revoked if no fact or condition then exists
15 which clearly would have warranted the Comptroller in refusing
16 originally the issuance of such license under this Act.

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

18 (760 ILCS 100/15.4) (from Ch. 21, par. 64.15-4)

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

31 (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.

1 (a) Any license that was issued under this Act before the
2 effective date of this amendatory Act of the 94th General
3 Assembly shall expire according to a schedule developed by the
4 Comptroller pursuant to the original date of issuance and must
5 thereafter be renewed as provided in this Act. Beginning on the
6 effective date of this amendatory Act of the 94th General
7 Assembly, a license or license renewal shall be issued for a
8 5-year term, which shall expire as provided in this Act.

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

13 (815 ILCS 390/6b new)

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

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

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

27 (3) A completed annual report.

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

33 (A) His or her name and current address (both

1 residence and place of business).

2 (B) A detailed statement of the individual's
3 business experience for the 10 years immediately
4 preceding the application.

5 (C) Any present or prior connection between the
6 individual and any other person engaged in pre-need
7 sales.

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

13 (E) Any failure of the individual to satisfy an
14 enforceable judgment entered against him or her based
15 upon fraud.

16 (F) Any other information requested by the
17 Comptroller relating to past business practices of the
18 individual.

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

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

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

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

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

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

6 (815 ILCS 390/6c new)

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

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

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

17 (815 ILCS 390/6d new)

18 Sec. 6d. License renewal process. Once the licensee has
19 filed for license renewal, the expiring license shall remain in
20 effect until the renewal has been issued. Upon approval of the
21 Comptroller, the Comptroller shall issue a license renewal to
22 be posted in the place of business of the licensee.

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

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

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

30 (b) The applicant or licensee is insolvent;

31 (c) The applicant or licensee has been engaged in business

1 practices that work a fraud;

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

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

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

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

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

13 (i) The fidelity bond is not satisfactory to the
14 Comptroller;

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

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

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

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

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

7 (815 ILCS 390/8) (from Ch. 21, par. 208)

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

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

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

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

30 (e) Any person engaged in pre-need sales, as defined
31 herein, prior to the effective date of this Act may continue
32 operations until the application for license under this Act is
33 denied; provided that such person shall make application for a

1 license within 60 days of the date that application forms are
2 made available by the Comptroller.

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

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

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

18 (815 ILCS 390/9) (from Ch. 21, par. 209)

19 Sec. 9. The Comptroller may upon his own motion investigate
20 the actions of any person providing, selling, or offering
21 pre-need sales contracts or of any applicant or any person or
22 persons holding or claiming to hold a license under this Act.
23 The Comptroller shall make such an investigation on receipt of
24 the verified written complaint of any person setting forth
25 facts which, if proved, would constitute grounds for refusal to
26 issue or renew, suspension, or revocation of a license. Before
27 refusing to issue or renew, and before suspension or revocation
28 of a license, the Comptroller shall hold a hearing to determine
29 whether the applicant or licensee, hereafter called the
30 respondent, is entitled to hold such a license. At least 10
31 days prior to the date set for such hearing, the Comptroller
32 shall notify the respondent in writing that on the date
33 designated a hearing will be held to determine his eligibility

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

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

17 Any authorized agent of the Comptroller may administer
18 oaths to witnesses at any hearing which the Comptroller is
19 authorized to conduct.

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

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

1 (815 ILCS 390/12) (from Ch. 21, par. 212)

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

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

10 (b) Upon the nonrenewal, revocation, or suspension of any
11 license, the licensee shall immediately surrender the license
12 or licenses to the Comptroller. If the licensee fails to do so,
13 the Comptroller has the right to seize the license or licenses.
14 (Source: P.A. 92-419, eff. 1-1-02.)

15 (815 ILCS 390/14) (from Ch. 21, par. 214)

16 Sec. 14. Contract required.

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

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

1 provided, if a specific space or spaces are contracted for,
2 and the price of the merchandise, services, or space or
3 spaces; (iv) the location of the spaces to be provided, if
4 a specific space is contracted for, indicated on a copy of
5 an overall map of the site or section of the interment,
6 entombment, or inurnment spaces; and (v) a description of
7 the type of care furnished by a provider holding a valid
8 license under the Cemetery Care Act that is being purchased
9 to maintain the interment, entombment, or inurnment space,
10 if a specific space is contracted for. If no care is
11 included in the contract, the contract shall state in
12 11-point type "This contract does not include maintenance
13 care.", and this statement shall be initialed by the
14 purchaser.

15 (1.5) Upon request by the purchaser, each contract may
16 include a current copy of the provider's rules and
17 regulations pertaining to the site of the completed
18 interment, entombment, or inurnment spaces, if such spaces
19 are to be provided under the contract.

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

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

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

34 (4) Each contract shall clearly disclose that the price

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (d) No pre-need sales contract may be entered into in this
24 State unless there is a provider for the cemetery merchandise,
25 cemetery services, and undeveloped interment, inurnment, and
26 entombment spaces being sold. If the seller is not the
27 provider, then the seller must have a binding agreement with a
28 provider, and the identity of the provider and the nature of
29 the agreement between the seller and the provider must be
30 disclosed in the pre-need sales contract at the time of sale
31 and before the receipt of any sale proceeds. The purchaser
32 shall make personal contact with the provider and visit the
33 site of the undeveloped interment, inurnment, or entombment
34 spaces being sold, unless the purchaser waives his or her right

1 to do so. Each pre-need contract that is sold by a seller who
2 is not the provider shall contain the following statements in
3 12-point bold type and the applicable statements shall be
4 initialed by the purchaser:

5 "I HAVE MADE PERSONAL CONTACT WITH THE PROVIDER OF THE
6 CEMETERY MERCHANDISE, CEMETERY SERVICES, OR UNDEVELOPED
7 INTERMENT, INURNMENT, OR ENTOMBMENT SPACES SOLD IN THIS
8 CONTRACT.

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

11 I HAVE WAIVED MY RIGHT TO MAKE PERSONAL CONTACT AND/OR
12 VISIT THE PROVIDER OF THE CEMETERY MERCHANDISE, CEMETERY
13 SERVICES, OR UNDEVELOPED INTERMENT, INURNMENT, OR
14 ENTOMBMENT SPACES BEING SOLD IN THIS CONTRACT.

15 A COPY OF THE PROVIDER'S RULES AND REGULATIONS HAS BEEN
16 MADE AVAILABLE TO ME UPON MY REQUEST."

17 A separate completed contract shall be issued for funeral
18 merchandise or funeral services covered by the Illinois Funeral
19 or Burial Funds Act, and not covered by this Act, unless the
20 seller is licensed under both Acts and all disclosures are in
21 compliance with both Acts. The failure to disclose the identity
22 of the provider, the nature of the agreement between the seller
23 and the provider, or any changes thereto to the purchaser and
24 beneficiary, or the failure to make the disclosures required by
25 this Section constitutes an intentional violation of this Act.

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

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

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

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

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

17 (815 ILCS 505/2VV new)

18 Sec. 2VV. Cemetery or funeral contracts. No person
19 authorized by law to sell funeral services on an at need basis
20 may also sell or arrange for the purchase of cemetery services,
21 cemetery merchandise, or interment, inurnment, or entombment
22 spaces on an at need basis, unless the person is also
23 authorized by law to sell or arrange for the purchase of such
24 cemetery services, merchandise, or spaces and issues to the
25 consumer a separate contract with the provider of such cemetery
26 services, merchandise, or spaces.

27 Each completed contract shall be numbered and shall
28 contain: (i) the name and address of the purchaser, the name
29 and pertinent information of the person who is to receive the
30 cemetery services, merchandise, or spaces, and the name and
31 address of the seller; (ii) specific identification of such
32 merchandise, type of services to be held by cemetery or

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

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

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

29 I HAVE WAIVED MY RIGHT TO MAKE PERSONAL CONTACT AND
30 VISIT THE PROVIDER OF THE CEMETERY MERCHANDISE, CEMETERY
31 SERVICES, OR INTERMENT, INURNMENT, OR ENTOMBMENT SPACES
32 BEING SOLD IN THIS CONTRACT.

33 A COPY OF THE PROVIDER'S RULES AND REGULATIONS HAS BEEN
34 MADE AVAILABLE TO ME UPON MY REQUEST."

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.".