



Rep. Michael J. Madigan

Filed: 10/27/2009

09600SB1471ham002

LRB096 06292 AMC 30451 a

1 AMENDMENT TO SENATE BILL 1471

2 AMENDMENT NO. _____. Amend Senate Bill 1471, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Article 5.
6 General Provisions

7 Section 5-1. Short title. This Act may be cited as the
8 Cemetery Oversight Act.

9 Section 5-5. Findings and purpose. The citizens of
10 Illinois have a compelling interest in the expectation that
11 their loved ones will be treated with the same dignity and
12 respect in death as they are entitled to be treated in life.
13 The laws of the State should provide adequate protection in
14 upholding the sanctity of the handling and disposition of human
15 remains and the preservation of final resting places, but

1 without unduly restricting family, ethnic, cultural, and
2 religious traditions. The purpose of this Act is to ensure that
3 the deceased be accorded equal treatment and respect for human
4 dignity without reference to ethnic origins, cultural
5 backgrounds, or religious affiliations.

6 Section 5-10. Declaration of public policy. The practice
7 of cemetery operation in the State of Illinois is hereby
8 declared to affect the public health, safety, and well-being of
9 its citizens and to be subject to regulation and control in the
10 public interest. It is further declared that cemetery
11 operation, as defined in this Act, should merit the confidence
12 of the public and that only qualified persons shall be
13 authorized to own, operate, manage, or otherwise control a
14 cemetery in the State of Illinois. This Act shall be liberally
15 construed to best carry out this purpose.

16 Section 5-15. Definitions. In this Act:

17 "Address of record" means the designated address recorded
18 by the Department in the applicant's or licensee's application
19 file or license file. It is the duty of the applicant or
20 licensee to inform the Department of any change of address
21 within 14 days either through the Department's website or by
22 contacting the Department's licensure maintenance unit. The
23 address of record for a cemetery authority shall be the
24 permanent street address of the cemetery.

1 "Applicant" means a person applying for licensure under
2 this Act as a cemetery authority, cemetery manager, or customer
3 service employee. Any applicant or any person who holds himself
4 or herself out as an applicant is considered a licensee for
5 purposes of enforcement, investigation, hearings, and the
6 Illinois Administrative Procedure Act.

7 "Burial permit" means a permit for the disposition of a
8 dead human body that is filed with the Illinois Department of
9 Public Health.

10 "Care" means the maintenance of a cemetery and of the lots,
11 graves, crypts, niches, family mausoleums, memorials, and
12 markers therein, including: (i) the cutting and trimming of
13 lawn, shrubs, and trees at reasonable intervals; (ii) keeping
14 in repair the drains, water lines, roads, buildings, fences,
15 and other structures, in keeping with a well-maintained
16 cemetery as provided for in Section 20-5 of this Act and
17 otherwise as required by rule; (iii) maintenance of machinery,
18 tools, and equipment for such care; (iv) compensation of
19 employees, any discretionary payment of insurance premiums,
20 and any reasonable payments for employees' pension and other
21 benefits plans; and (v) the payment of expenses necessary for
22 such purposes and for maintaining necessary records of lot
23 ownership, transfers, and burials.

24 "Care funds", as distinguished from receipts from annual
25 charges or gifts for current or annual care, means any realty
26 or personalty impressed with a trust by the terms of any gift,

1 grant, contribution, payment, legacy, or pursuant to contract,
2 accepted by any cemetery authority or by any trustee, licensee,
3 agent, or custodian for the same, under Article 15 of this Act,
4 and any income accumulated therefrom, where legally so directed
5 by the terms of the transaction by which the principal was
6 established.

7 "Cemetery" means any land or structure in this State
8 dedicated to and used, or intended to be used, for the
9 interment, inurnment, or entombment of human remains.

10 "Cemetery association" means an association of 6 or more
11 persons, and their successors in trust, who have received
12 articles of organization from the Secretary of State to operate
13 a cemetery; the articles of organization shall be in perpetuity
14 and in trust for the use and benefit of all persons who may
15 acquire burial lots in a cemetery.

16 "Cemetery authority" means any individual or legal entity
17 that owns or controls cemetery lands or property.

18 "Cemetery manager" means an individual who is engaged in,
19 or holding himself or herself out as engaged in, those
20 activities involved in or incidental to supervising the
21 following: the maintenance, operation, development, or
22 improvement of a cemetery licensed under this Act; the
23 interment of human remains; or the care, preservation, and
24 embellishment of cemetery property. This definition also
25 includes, without limitation, an individual that is an
26 independent contractor or individual employed or contracted by

1 an independent contractor who is engaged in, or holding himself
2 or herself out as engaged in, those activities involved in or
3 incidental to supervising the following: the maintenance,
4 operation, development, or improvement of a cemetery licensed
5 under this Act; the interment of human remains; or the care,
6 preservation, and embellishment of cemetery property.

7 "Cemetery operation" means to engage or attempt to engage
8 in the interment, inurnment, or entombment of human remains or
9 to engage in or attempt to engage in the care of a cemetery.

10 "Cemetery Oversight Database" means a database certified
11 by the Department as effective in tracking the interment,
12 entombment, or inurnment of human remains.

13 "Certificate of organization" means the document received
14 by a cemetery association from the Secretary of State that
15 indicates that the cemetery association shall be deemed fully
16 organized as a body corporate under the name adopted and in its
17 corporate name may sue and be sued.

18 "Comptroller" means the Comptroller of the State of
19 Illinois.

20 "Consumer" means a person, or the persons given priority
21 for the disposition of an individual's remains under the
22 Disposition of Remains Act, who purchases or is considering
23 purchasing cemetery, burial, or cremation products or services
24 from a cemetery authority or crematory authority, whether for
25 themselves or for another.

26 "Customer service employee" means a cemetery employee who

1 has direct contact with consumers and explains cemetery
2 merchandise or services or negotiates, develops, or finalizes
3 contracts with consumers. This definition includes, without
4 limitation, an individual that is an independent contractor or
5 an individual employed or contracted by an independent
6 contractor who has direct contact with consumers and explains
7 cemetery merchandise or services or negotiates, develops, or
8 finalizes contracts with consumers. This definition does not
9 include a cemetery employee, an individual that is an
10 independent contractor, or an individual employed or
11 contracted by an independent contractor who merely provides a
12 printed cemetery list to a consumer, processes payment from a
13 consumer, or performs sales functions related solely to
14 incidental merchandise like flowers, souvenirs, or other
15 similar items.

16 "Department" means the Department of Financial and
17 Professional Regulation.

18 "Employee" means a person who works for a cemetery
19 authority where the cemetery authority has the right to control
20 what work is performed and the details of how the work is
21 performed regardless of whether federal or State payroll taxes
22 are withheld. This definition also includes, without
23 limitation, an individual who is an independent contractor, or
24 an individual employed or contracted by an independent
25 contractor.

26 "Entombment right" means the right to place individual

1 human remains or individual cremated human remains in a
2 specific mausoleum crypt or lawn crypt selected by a consumer
3 for use as a final resting place.

4 "Family burying ground" means a cemetery in which no lots
5 are sold to the public and in which interments are restricted
6 to the immediate family or a group of individuals related to
7 each other by blood or marriage.

8 "Full exemption" means an exemption granted to a cemetery
9 authority pursuant to subsection (a) of Section 5-20.

10 "Funeral director" means a funeral director as defined by
11 the Funeral Directors and Embalmers Licensing Code.

12 "Grave" means a space of ground in a cemetery used or
13 intended to be used for burial.

14 "Green burial or cremation disposition" means burial or
15 cremation practices that reduce the greenhouse gas emissions,
16 waste, and toxic chemicals ordinarily created in burial or
17 cremation or, in the case of greenhouse gas emissions, mitigate
18 or offset emissions. Such practices include standards for
19 burial or cremation certified by the Green Burial Council or
20 any other organization or method that the Department may name
21 by rule.

22 "Immediate family" means the designated agent of a person
23 or the persons given priority for the disposition of a person's
24 remains under the Disposition of Remains Act.

25 "Imputed value" means the retail price of comparable rights
26 within the same or similar area of the cemetery.

1 "Independent contractor" means a person who works for a
2 cemetery authority where the cemetery authority has the right
3 to control or direct only the result of the work and not the
4 means and methods of accomplishing the result.

5 "Individual" means a natural person.

6 "Interment right" means the right to place individual human
7 remains or cremated human remains in a specific underground
8 location selected by a consumer for use as a final resting
9 place.

10 "Inurnment right" means the right to place individual
11 cremated human remains in a specific niche selected by the
12 consumer for use as a final resting place.

13 "Investment Company Act of 1940" means Title 15 of the
14 United States Code, Sections 80a-1 to 80a-64, inclusive, as
15 amended.

16 "Investment company" means any issuer (a) whose securities
17 are purchasable only with care funds or trust funds, or both;
18 (b) that is an open and diversified management company as
19 defined in and registered under the Investment Company Act of
20 1940; and (c) that has entered into an agreement with the
21 Department containing such provisions as the Department by
22 regulation requires for the proper administration of this Act.

23 "Lawn crypt" means a permanent underground crypt usually
24 constructed of reinforced concrete or similar material
25 installed in multiple units for the entombment of human
26 remains.

1 "Licensee" means a person licensed under this Act as a
2 cemetery authority, cemetery manager, or customer service
3 employee. Anyone who holds himself or herself out as a licensee
4 or who is accused of unlicensed practice is considered a
5 licensee for purposes of enforcement, investigation, hearings,
6 and the Illinois Administrative Procedure Act. This definition
7 does not include a registered cemetery employee.

8 "Mausoleum crypt" means a space in a mausoleum used or
9 intended to be used, above or under ground, to entomb human
10 remains.

11 "Niche" means a space in a columbarium used, or intended to
12 be used, for inurnment of cremated human remains.

13 "Partial exemption" means an exemption granted to a
14 cemetery authority pursuant to subsection (b) of Section 5-20.

15 "Permanent parcel identification number" means a unique
16 and permanent number assigned to a grave, plot, crypt, or niche
17 that enables the Department to ascertain the precise location
18 of a decedent's remains.

19 "Person" means any individual, firm, partnership,
20 association, corporation, limited liability company, trustee,
21 government or political subdivision, or other entity.

22 "Registered cemetery employee card" means a card issued by
23 the Department to an individual who has applied to the
24 Department for licensure as a registered cemetery employee and
25 meets the requirements for employment by a licensed cemetery
26 authority.

1 "Secretary" means the Secretary of Financial and
2 Professional Regulation.

3 "Term burial" means a right of interment sold to a consumer
4 in which the cemetery authority retains the right to disinter
5 and relocate the remains, subject to the provisions of
6 subsection (d) of Section 35-15 of this Act.

7 "Trustee" means any person authorized to hold funds under
8 this Act.

9 "Unique personal identifier" means the permanent parcel
10 identification number in addition to the term of burial in
11 years; the numbered level or depth in the grave, plot, crypt,
12 or niche; and the year of death.

13 Section 5-20. Exemptions.

14 (a) Notwithstanding any provision of law to the contrary,
15 this Act does not apply to (1) any cemetery authority operating
16 as a family burying ground, (2) any cemetery authority that has
17 not engaged in an interment, inurnment, or entombment of human
18 remains within the last 10 years and does not accept or
19 maintain care funds, or (3) any cemetery authority that is less
20 than 2 acres and does not accept or maintain care funds. For
21 purposes of determining the applicability of this subsection,
22 the number of interments, inurnments, and entombments shall be
23 aggregated for each calendar year. A cemetery authority
24 claiming a full exemption shall apply for exempt status as
25 provided for in Article 10 of this Act. A cemetery authority

1 that performs activities that would disqualify it from a full
2 exemption is required to apply for licensure within the
3 calendar year following the date on which its activities would
4 disqualify it for a full exemption. A cemetery authority that
5 previously qualified for and maintained a full exemption that
6 fails to timely apply for licensure shall be deemed to have
7 engaged in unlicensed practice and shall be subject to
8 discipline in accordance with Article 25 of this Act.

9 (b) Notwithstanding any provision of law to the contrary, a
10 cemetery authority that does not qualify for a full exemption
11 that is operating as a cemetery authority that engages in 25 or
12 fewer interments, inurnments, or entombments of human remains
13 for each of the preceding 2 calendar years and does not accept
14 or maintain care funds is exempt from this Act, but is required
15 to comply with the investigation and mediation procedure
16 established by Section 25-3 of this Act. Cemetery authorities
17 claiming a partial exemption shall apply for the partial
18 exemption as provided in Article 10 of this Act. A cemetery
19 authority that changes to a status that would disqualify it
20 from a partial exemption is required to apply for licensure
21 within the calendar year following the date on which it changes
22 its status. A cemetery authority that maintains a partial
23 exemption that fails to timely apply for licensure shall be
24 deemed to have engaged in unlicensed practice and shall be
25 subject to discipline in accordance with Article 25 of this
26 Act.

1 Section 5-25. Powers of the Department. Subject to the
2 provisions of this Act, the Department may exercise the
3 following powers:

4 (1) Authorize examinations to ascertain the qualifications
5 and fitness of applicants for licensing as a licensed cemetery
6 manager or as a customer service employee and pass upon the
7 qualifications of applicants for licensure.

8 (2) Examine and audit a licensed cemetery authority's
9 records from any year, care funds from any year, or any other
10 aspects of cemetery operation as the Department deems
11 appropriate.

12 (3) Investigate any and all cemetery-related activity.

13 (4) Conduct hearings on proceedings to refuse to issue or
14 renew licenses or to revoke, suspend, place on probation,
15 reprimand, or otherwise discipline a license under this Act or
16 take other non-disciplinary action.

17 (5) Adopt rules required for the administration of this
18 Act.

19 (6) Prescribe forms to be issued for the administration and
20 enforcement of this Act.

21 (7) Maintain rosters of the names and addresses of all
22 licensees and all persons whose licenses have been suspended,
23 revoked, denied renewal, or otherwise disciplined within the
24 previous calendar year. These rosters shall be available upon
25 written request and payment of the required fee as established

1 by rule.

2 Article 10.

3 Licensing and Registration Provisions

4 Section 10-5. Restrictions and limitations. No person
5 shall, without a valid license issued by the Department, (i)
6 hold himself or herself out in any manner to the public as a
7 licensed cemetery authority, licensed cemetery manager, or
8 customer service employee; (ii) attach the title "licensed
9 cemetery authority", "licensed cemetery manager", or "licensed
10 customer service employee" to his or her name; (iii) render or
11 offer to render services constituting the practice of cemetery
12 operation; or (iv) accept care funds within the meaning of this
13 Act or otherwise hold funds for care and maintenance unless
14 such person is holding and managing funds on behalf of a
15 cemetery authority and is authorized to conduct a trust
16 business under the Corporate Fiduciary Act or the federal
17 National Bank Act.

18 Section 10-10. Current licensees. A person acting as a
19 cemetery authority that is licensed on the effective date of
20 this Act under the Cemetery Care Act or Cemetery Association
21 Act need not comply with the licensure requirement in this
22 Article until the Department takes action on the person's
23 application for a cemetery authority license. The application

1 for a cemetery authority license must be submitted to the
2 Department within 9 months after the effective date of this
3 Act. If the person fails to submit the application within 9
4 months after the effective date of this Act, the person shall
5 be considered to be engaged in unlicensed practice and shall be
6 subject to discipline in accordance with Article 25 of this
7 Act.

8 Section 10-15. Persons formerly unregulated.

9 (a) A person acting as a cemetery authority, cemetery
10 manager, or customer service employee who, prior to the
11 effective date of this Act, was not required to obtain
12 licensure need not comply with the licensure requirement in
13 this Article until the Department takes action on the person's
14 application for a license. The application for a cemetery
15 authority, cemetery manager, or customer service employee
16 license must be submitted to the Department within 6 months
17 after the effective date of this Act. If the person fails to
18 submit the application within 6 months after the effective date
19 of this Act, the person shall be considered to be engaged in
20 unlicensed practice and shall be subject to discipline in
21 accordance with Article 25 of this Act.

22 (b) Persons who are cemetery employees on the effective
23 date of this Act must comply with the registration and
24 Employee's Statement requirements in Section 10-22 of this Act.

25 (c) Persons who become cemetery employees after the

1 effective date of this Act must comply with the registration
2 and Employee's Statement requirements in Section 10-22 of this
3 Act.

4 Section 10-20. Application for original license or
5 exemption.

6 (a) Applications for original licensure as a cemetery
7 authority, cemetery manager, or customer service employee
8 authorized by this Act, or application for exemption from
9 licensure as a cemetery authority, shall be made to the
10 Department on forms prescribed by the Department, which shall
11 include the applicant's Social Security number or FEIN number,
12 or both, and shall be accompanied by the required fee as set by
13 rule. If a cemetery authority seeks to practice at more than
14 one location, it shall meet all licensure requirements at each
15 location as required by this Act and by rule, including
16 submission of application and fee. A person licensed as a
17 cemetery manager or customer service employee need not register
18 as an employee of the cemetery authority.

19 (b) If the application for licensure as a cemetery
20 authority does not claim a full exemption or partial exemption,
21 then the cemetery authority license application shall be
22 accompanied by a fidelity bond or letter of credit in the
23 amount required by rule. If care funds of a cemetery authority
24 are held by any entity authorized to do a trust business under
25 the Corporate Fiduciary Act or held by an investment company,

1 then the Department may waive the requirement of a bond or
2 letter of credit as established by rule. If the Department
3 finds at any time that the bond or letter of credit is insecure
4 or exhausted or otherwise doubtful, then an additional bond or
5 letter of credit in like amount to be approved by the
6 Department shall be filed by the cemetery authority applicant
7 or licensee within 30 days after written demand is served upon
8 the applicant or licensee by the Department. If the cemetery
9 authority application does not claim a full exemption or
10 partial exemption, then the license application shall be
11 accompanied by a surety bond or letter of credit in a principal
12 amount to be determined by rule. The surety bond or letter of
13 credit shall run to the Secretary and shall be for the benefit
14 of any consumer of such cemetery authority for any liability
15 incurred by the cemetery authority related to the rendering of
16 any of the services referred to in this Act. The procedure by
17 which claims on the surety bond or letter of credit are made
18 and paid shall be determined by rule. The fidelity bond or the
19 surety bond shall be issued by a bonding company authorized to
20 do business in this State. The letter of credit shall be issued
21 by a financial institution authorized to do business in this
22 State. Maintaining the bonds or letters of credit required
23 under this subsection is a continuing obligation for licensure.
24 A bonding company may terminate a bond or a financial
25 institution may terminate a letter of credit and avoid further
26 liability by filing a 60-day notice of termination with the

1 Department and at the same time sending the same notice to the
2 cemetery authority.

3 (c) After initial licensure, if any person comes to obtain
4 at least 25% of the ownership over the licensed cemetery
5 authority, then the cemetery authority shall have to apply for
6 a new license and receive licensure in the required time as set
7 by rule. The current license remains in effect until the
8 Department takes action on the application for a new license.

9 (d) All applications shall contain the information that, in
10 the judgment of the Department, will enable the Department to
11 pass on the qualifications of the applicant for an exemption
12 from licensure or for a license to practice as a cemetery
13 authority, cemetery manager, or customer service employee as
14 set by rule.

15 Section 10-21. Qualifications for licensure.

16 (a) An applicant is qualified for licensure as a cemetery
17 authority if the applicant meets all of the following
18 qualifications:

19 (1) The applicant is of good moral character, including
20 compliance with the Code of Professional Conduct and Ethics
21 as provided for by rule, and has not committed any act or
22 offense in any jurisdiction that would constitute the basis
23 for discipline under this Act. In determining good moral
24 character, the Department may take into consideration
25 conviction of any crime under the laws of any jurisdiction.

1 If the applicant is a corporation, limited liability
2 company, partnership, or other entity permitted by law,
3 then each principal, owner, member, officer, and
4 shareholder holding 25% or more of corporate stock is to be
5 of good moral character. Good moral character is a
6 continuing requirement of licensure.

7 (2) The applicant provides evidence satisfactory to
8 the Department that the applicant has sufficient financial
9 resources to operate a cemetery as established by rule.
10 Maintaining sufficient financial resources is a continuing
11 requirement for licensure.

12 (3) The applicant has complied with all other
13 requirements of this Act and rules adopted for the
14 implementation of this Act.

15 (b) The cemetery manager and customer service employees of
16 a licensed cemetery authority shall apply for licensure as a
17 cemetery manager or customer service employee on forms
18 prescribed by the Department and pay the required fee. A person
19 is qualified for licensure as a cemetery manager or customer
20 service employee if he or she meets all of the following
21 requirements:

22 (1) Is at least 18 years of age.

23 (2) Is of good moral character, including compliance
24 with the Code of Professional Conduct and Ethics as
25 provided for by rule. Good moral character is a continuing
26 requirement of licensure. In determining good moral

1 character, the Department may take into consideration
2 conviction of any crime under the laws of any jurisdiction.

3 (3) Submits proof of successful completion of a high
4 school education or its equivalent as established by rule.

5 (4) Submits his or her fingerprints in accordance with
6 subsection (c) of this Section.

7 (5) Has not committed a violation of this Act or any
8 rules adopted under this Act that, in the opinion of the
9 Department, renders the applicant unqualified to be a
10 cemetery manager.

11 (6) Successfully passes the examination authorized by
12 the Department for cemetery manager or customer service
13 employee, whichever is applicable.

14 (7) Has complied with all other requirements of this
15 Act and rules adopted for the implementation of this Act.

16 (8) In the case of a customer service employee, can be
17 reasonably expected to treat consumers professionally,
18 fairly, and ethically.

19 (c) Each applicant for a cemetery manager or customer
20 service employee license shall have his or her fingerprints
21 submitted to the Department of State Police in an electronic
22 format that complies with the form and manner for requesting
23 and furnishing criminal history record information that is
24 prescribed by the Department of State Police. These
25 fingerprints shall be checked against the Department of State
26 Police and Federal Bureau of Investigation criminal history

1 record databases. The Department of State Police shall charge
2 applicants a fee for conducting the criminal history records
3 check, which shall be deposited in the State Police Services
4 Fund and shall not exceed the actual cost of the records check.
5 The Department of State Police shall furnish, pursuant to
6 positive identification, records of Illinois convictions to
7 the Department. The Department may require applicants to pay a
8 separate fingerprinting fee, either to the Department or
9 directly to a designated fingerprint vendor. The Department, in
10 its discretion, may allow an applicant who does not have
11 reasonable access to a designated fingerprint vendor to provide
12 his or her fingerprints in an alternative manner. The
13 Department, in its discretion, may also use other procedures in
14 performing or obtaining criminal background checks of
15 applicants. Instead of submitting his or her fingerprints, an
16 individual may submit proof that is satisfactory to the
17 Department that an equivalent security clearance has been
18 conducted.

19 Section 10-22. Employee registration.

20 (a) All employees shall apply for registration as a
21 registered cemetery employee on forms prescribed by the
22 Department, meet all requirements contained in this Section,
23 and pay the required fee.

24 The holder of a cemetery authority license issued under
25 this Act may employ or contract with employees who are not

1 licensed cemetery managers or customer service employees, in
2 the conduct of the licensee's business under the following
3 circumstances:

4 (1) No individual that fails to obtain a registered
5 cemetery employee card may be employed by or contracted to
6 do work for a cemetery authority under this Section.

7 (2) No individual may be employed by or contracted to
8 do work for a cemetery authority or manager under this
9 Section until he or she has executed and furnished to the
10 cemetery authority, on forms furnished by the Department, a
11 verified statement to be known as "Employee's Statement"
12 setting forth all of the following:

13 (i) The individual's full name, age, and residence
14 address.

15 (ii) The individual's work history for the 5 years
16 immediately before the date of the execution of the
17 statement, the place where the business or occupation
18 was engaged in, and the names of employers, if any.

19 (iii) That the individual has not had licensure as
20 a cemetery authority, cemetery manager, or customer
21 service employee denied, revoked, or suspended under
22 this Act within one year before the date the
23 individual's application for registration as a
24 registered cemetery employee is received by the
25 Department.

26 (iv) Any declaration of incompetence by a court of

1 competent jurisdiction that has not been restored.

2 (v) Any other information as may be required by any
3 rule of the Department to show the good character,
4 competency, and integrity of the individual executing
5 the statement.

6 (3) The Department shall issue a registered cemetery
7 employee card, in a form the Department prescribes, to an
8 individual who applies within 90 days after receipt of an
9 application.

10 (4) Notwithstanding the other provisions of this
11 subsection, a cemetery authority may employ or contract
12 with an individual without a registered cemetery employee
13 card if the individual applies for a registered cemetery
14 employee card on the first day of his or her employment.

15 (4.5) Notwithstanding the other provisions of this
16 subsection, a cemetery authority may continue to employ or
17 contract with an individual under its employ on the
18 effective date of this Act if the individual applies for a
19 registered cemetery employee card within 10 days after the
20 effective date of this Act.

21 (5) The holder of a registered cemetery employee card
22 shall carry the card at all times while engaged in the
23 performance of the duties of his or her employment or
24 contract. Expiration and requirements for renewal of
25 registered cemetery employee cards shall be established by
26 rule of the Department. Possession of a registered cemetery

1 employee card does not in any way imply that the holder of
2 the card is employed or contracted by a cemetery authority
3 unless the registered cemetery employee card is
4 accompanied by the employee identification card required
5 by subsection (f) of this Section.

6 (b) Each cemetery authority shall maintain a record of each
7 employee that is accessible to the Department. The record shall
8 contain the following information:

9 (1) A photograph taken within 10 days of the date that
10 the employee begins employment with the cemetery
11 authority. The photograph shall be replaced with a current
12 photograph no later than 4 calendar years after the date of
13 employment and every 4 years thereafter. The photo may
14 consist of the employee's driver's license.

15 (2) The Employee's Statement specified in subsection
16 (b) of this Section.

17 (3) A copy of the employee's registered cemetery
18 employee card.

19 (4) All correspondence or documents relating to the
20 character and integrity of the employee received by the
21 cemetery authority from any former employer, cemetery
22 association, government agency, or law enforcement agency.

23 (5) The Department may, by rule, prescribe further
24 record requirements.

25 (c) Every cemetery authority shall furnish an employee
26 identification card to each employee. This employee

1 identification card shall contain a recent photograph of the
2 employee, the employee's name, the name and cemetery authority
3 license number of the cemetery authority, the employee's
4 physical description, the signature of an authorized
5 individual on behalf of the cemetery authority, the signature
6 of that employee, the date of issuance, and an employee
7 identification card number.

8 (d) No cemetery authority may issue an employee
9 identification card to any individual who is not employed by
10 the cemetery authority in accordance with this Section or
11 falsely state or represent that a person is or has been in his
12 or her employ.

13 (e) Every cemetery authority shall confiscate the employee
14 identification card of any employee whose employment is
15 terminated.

16 Section 10-25. Examination; failure or refusal to take the
17 examination.

18 (a) The Department shall authorize examinations of
19 cemetery manager and customer service employee applicants at
20 such times and places as it may determine. The examinations
21 shall fairly test an applicant's qualifications to practice as
22 cemetery manager or customer service employee, whatever the
23 case may be, and knowledge of the theory and practice of
24 cemetery operation and management or cemetery customer
25 service, whichever is applicable. The examination shall

1 further test the extent to which the applicant understands and
2 appreciates that the final disposal of a deceased human body
3 should be attended with appropriate observance and
4 understanding, having due regard and respect for the reverent
5 care of the human body and for those bereaved and for the
6 overall spiritual dignity of an individual.

7 (b) Applicants for examinations shall pay, either to the
8 Department or to the designated testing service, a fee covering
9 the cost of providing the examination. Failure to appear for
10 the examination on the scheduled date at the time and place
11 specified after the application for examination has been
12 received and acknowledged by the Department or the designated
13 testing service shall result in forfeiture of the examination
14 fee.

15 (c) If the applicant neglects, fails, or refuses to take an
16 examination or fails to pass an examination for a license under
17 this Act within one year after filing an application, then the
18 application shall be denied. However, the applicant may
19 thereafter submit a new application accompanied by the required
20 fee. The applicant shall meet the requirements in force at the
21 time of making the new application.

22 (d) The Department may employ consultants for the purpose
23 of preparing and conducting examinations.

24 (e) The Department shall have the authority to adopt or
25 recognize, in part or in whole, examinations prepared,
26 administered, or graded by other organizations in the cemetery

1 industry that are determined appropriate to measure the
2 qualifications of an applicant for licensure.

3 Section 10-30. Continuing education. The Department shall
4 adopt rules for continuing education of cemetery managers and
5 customer service employees. The requirements of this Section
6 apply to any person seeking renewal or restoration under
7 Section 10-40 of this Act.

8 Section 10-40. Expiration and renewal of license. The
9 expiration date, renewal period, and other requirements for
10 each license or registration shall be set by rule.

11 Section 10-45. Transfer or sale, preservation of license,
12 liability for shortage.

13 (a) In the case of a sale of any cemetery or any part
14 thereof or of any related personal property by a cemetery
15 authority to a purchaser or pursuant to foreclosure
16 proceedings, except the sale of burial rights, services, or
17 merchandise to a person for his or her personal or family
18 burial or interment, the purchaser is liable for any shortages
19 existing before or after the sale in the care funds required to
20 be maintained in a trust pursuant to this Act and shall honor
21 all instruments issued under Article 15 of this Act for that
22 cemetery. Any shortages existing in the care funds constitute a
23 prior lien in favor of the trust for the total value of the

1 shortages and notice of such lien shall be provided in all
2 sales instruments.

3 (b) In the event of a sale or transfer of all or
4 substantially all of the assets of the cemetery authority, the
5 sale or transfer of the controlling interest of the corporate
6 stock of the cemetery authority, if the cemetery authority is a
7 corporation, or the sale or transfer of the controlling
8 interest of the partnership, if the cemetery authority is a
9 partnership, or the sale or transfer of the controlling
10 membership, if the cemetery authority is a limited liability
11 company, the cemetery authority shall, at least 30 days prior
12 to the sale or transfer, notify the Department, in writing, of
13 the pending date of sale or transfer so as to permit the
14 Department to audit the books and records of the cemetery
15 authority. The audit must be commenced within 10 business days
16 of the receipt of the notification and completed within the
17 30-day notification period unless the Department notifies the
18 cemetery authority during that period that there is a basis for
19 determining a deficiency that will require additional time to
20 finalize. The sale or transfer may not be completed by the
21 cemetery authority unless and until:

22 (1) the Department has completed the audit of the
23 cemetery authority's books and records;

24 (2) any delinquency existing in the care funds has been
25 paid by the cemetery authority or arrangements
26 satisfactory to the Department have been made by the

1 cemetery authority on the sale or transfer for the payment
2 of any delinquency; and

3 (3) the Department issues a new cemetery authority
4 license upon application of the newly controlled
5 corporation or partnership, which license must be applied
6 for at least 30 days prior to the anticipated date of the
7 sale or transfer, subject to the payment of any
8 delinquencies, if any, as stated in item (2) of this
9 subsection (b).

10 (c) In the event of a sale or transfer of any cemetery
11 land, including any portion of cemetery land in which no human
12 remains have been interred, a licensee shall, at least 45 days
13 prior to the sale or transfer, notify the Department, in
14 writing, of the pending sale or transfer. The cemetery
15 authority shall submit a current survey of the land within 30
16 days after the transfer or sale.

17 (d) For purposes of this Section, a person who acquires the
18 cemetery through a real estate foreclosure shall be subject to
19 the provisions of this Section pertaining to the purchaser,
20 including licensure.

21 Section 10-50. Dissolution. Where any licensed cemetery
22 authority or any trustee thereof has accepted care funds within
23 the meaning of this Act, and dissolution is sought by such
24 cemetery authority in any manner, by resolution of such
25 cemetery authority, or the trustees thereof, notice shall be

1 given to the Department of such intention to dissolve and
2 proper disposition shall be made of the care funds so held for
3 the general benefit of such lot owners by or for the benefit of
4 such cemetery authority, as provided by law, or in accordance
5 with the trust provisions of any gift, grant, contribution,
6 payment, legacy, or pursuant to any contract whereby such funds
7 were created. The Department, represented by the Attorney
8 General, may apply to the circuit court for the appointment of
9 a receiver, trustee, successor in trust, or for directions of
10 such court as to the proper disposition to be made of such care
11 funds, to the end that the uses and purposes for which such
12 trust or care funds were created may be accomplished, and for
13 proper continued operation of the cemetery.

14 Section 10-55. Fees.

15 (a) Except as provided in subsection (b) of this Section,
16 the fees for the administration and enforcement of this Act,
17 including, but not limited to, original licensure, renewal, and
18 restoration fees, shall be set by the Department by rule. The
19 fees shall not be refundable.

20 (b) Applicants for examination shall be required to pay,
21 either to the Department or the designated testing service, a
22 fee covering the cost of providing the examination.

23 (c) All fees and other moneys collected under this Act
24 shall be deposited in the Cemetery Oversight Licensing and
25 Disciplinary Fund.

1 Section 10-60. Returned checks; fines. Any person who
2 delivers a check or other payment to the Department that is
3 returned to the Department unpaid by the financial institution
4 upon which it is drawn shall pay to the Department, in addition
5 to the amount already owed to the Department, a fine of \$50.
6 The fines imposed by this Section are in addition to any other
7 discipline provided under this Act for unlicensed practice or
8 practice on a non-renewed license. The Department shall notify
9 the person that payment of fees and fines shall be paid to the
10 Department by certified check or money order within 30 calendar
11 days of the notification. If, after the expiration of 30 days
12 from the date of the notification, the person has failed to
13 submit the necessary remittance, the Department shall
14 automatically terminate the license or deny the application,
15 without hearing.

16 If, after termination or denial, the person seeks a
17 license, then he or she shall apply to the Department for
18 restoration or issuance of the license and pay all fees and
19 fines due to the Department. The Department may establish a fee
20 for the processing of an application for restoration of a
21 license to pay all expenses of processing this application. The
22 Secretary may waive the fines due under this Section in
23 individual cases where the Secretary finds that the fines would
24 be unreasonable or unnecessarily burdensome.

1 Article 15.

2 Trust Funds

3 Section 15-5. Gifts and contributions; trust funds.

4 (a) A licensed cemetery authority is hereby authorized and
5 empowered to accept any gift, grant, contribution, payment,
6 legacy, or pursuant to contract, any sum of money, funds,
7 securities, or property of any kind, or the income or avails
8 thereof, and to establish a trust fund to hold the same in
9 perpetuity for the care of its cemetery, or for the care of any
10 lot, grave, crypt, or niche in its cemetery, or for the special
11 care of any lot, grave, crypt, or niche or of any family
12 mausoleum or memorial, marker, or monument in its cemetery. Not
13 less than the following amounts will be set aside and deposited
14 in trust:

15 (1) For interment rights, \$1 per square foot of the
16 space sold or 15% of the sales price or imputed value,
17 whichever is the greater, with a minimum of \$25 for each
18 individual interment right.

19 (2) For entombment rights, not less than 10% of the
20 sales price or imputed value with a minimum of \$25 for each
21 individual entombment right.

22 (3) For inurnment rights, not less than 10% of the
23 sales price or imputed value with a minimum of \$15 for each
24 individual inurnment right.

25 (4) For any transfer of interment rights, entombment

1 rights, or inurnment rights recorded in the records of the
2 cemetery authority, excepting only transfers between
3 members of the immediate family of the transferor, a
4 minimum of \$25 for each such right transferred.

5 (5) Upon an interment, entombment, or inurnment in a
6 grave, crypt, or niche in which rights of interment,
7 entombment, or inurnment were originally acquired from a
8 cemetery authority prior to January 1, 1948, a minimum of
9 \$25 for each such right exercised.

10 (6) For the special care of any lot, grave, crypt, or
11 niche or of a family mausoleum, memorial, marker, or
12 monument, the full amount received.

13 (b) The cemetery authority shall act as trustee of all
14 amounts received for care until they have been deposited with a
15 corporate fiduciary as defined in Section 1-5.05 of the
16 Corporate Fiduciary Act. All trust deposits shall be made
17 within 30 days after receipt.

18 (c) No gift, grant, legacy, payment, or other contribution
19 shall be invalid by reason of any indefiniteness or uncertainty
20 as to the beneficiary designated in the instrument creating the
21 gift, grant, legacy, payment, or other contribution. If any
22 gift, grant, legacy, payment, or other contribution consists of
23 non-income producing property, then the cemetery authority
24 accepting it is authorized and empowered to sell such property
25 and to invest the funds obtained in accordance with subsection
26 (d) of this Section.

1 (d) The care funds authorized by this Section and provided
2 for in this Article shall be held intact and, unless otherwise
3 restricted by the terms of the gift, grant, legacy,
4 contribution, payment, contract, or other payment, as to
5 investments made after June 11, 1951, the trustee of the care
6 funds of the cemetery authority, in acquiring, investing,
7 reinvesting, exchanging, retaining, selling, and managing
8 property for any such trust, shall act in accordance with the
9 duties for trustees set forth in the Illinois Trusts and
10 Trustees Act. Within the limitations of the foregoing standard,
11 the trustee of the care funds of the cemetery authority is
12 authorized to acquire and retain every kind of property, real,
13 personal, or mixed, and every kind of investment, including
14 specifically, but without limiting the generality of the
15 foregoing, bonds, debentures and other corporate obligations,
16 preferred or common stocks and real estate mortgages, which
17 persons of prudence, discretion, and intelligence acquire or
18 retain for their own account. Within the limitations of the
19 foregoing standard, the trustee is authorized to retain
20 property properly acquired, without limitation as to time and
21 without regard to its suitability for original purchase. The
22 care funds authorized by this Section may be commingled with
23 other trust funds received by such cemetery authority for the
24 care of its cemetery or for the care or special care of any
25 lot, grave, crypt, niche, private mausoleum, memorial, marker,
26 or monument in its cemetery, whether received by gift, grant,

1 legacy, contribution, payment, contract, or other conveyance
2 made to such cemetery authority. Such care funds may be
3 invested with common trust funds as provided in the Common
4 Trust Fund Act. The net income only from the investment of such
5 care funds shall be allocated and used for the purposes
6 specified in the transaction by which the principal was
7 established in the proportion that each contribution bears to
8 the entire sum invested.

9 Section 15-10. Restrictions on loans, gifts, and
10 investments.

11 (a) No loan; investment; purchase of insurance on the life
12 of any trustee, cemetery owner, or employee; purchase of any
13 real estate; or any other transaction using care funds by any
14 trustee, licensee, cemetery manager, or any other cemetery
15 employee shall be made to or for the benefit of any person,
16 officer, director, trustee, or party owning or having any
17 interest in any licensee, or to any firm, corporation, trade
18 association or partnership in which any officer, director,
19 trustee, or party has any interest, is a member of, or serves
20 as an officer or director. A violation of this Section shall
21 constitute the intentional and improper withdrawal of trust
22 funds under Section 25-105 of this Act.

23 (b) No loan or investment in any unproductive real estate
24 or real estate outside of this State or in permanent
25 improvements of the cemetery or any of its facilities shall be

1 made, unless specifically authorized by the instrument whereby
2 the principal fund was created. No commission or brokerage fee
3 for the purchase or sale of any property shall be paid in
4 excess of that usual and customary at the time and in the
5 locality where such purchase or sale is made, and all such
6 commissions and brokerage fees shall be fully reported in the
7 next annual statement of such cemetery authority or trustee.

8 (c) The prohibitions provided for in this Section apply to
9 and include the spouse of and immediate family living with the
10 officer, member, director, trustee, party owning any portion of
11 such cemetery authority, or licensee under this Act.

12 Section 15-15. Care funds; deposits; investments.

13 (a) Whenever a cemetery authority accepts care funds,
14 either in connection with the sale or giving away at an imputed
15 value of an interment right, entombment right, or inurnment
16 right, or in pursuance of a contract, or whenever, as a
17 condition precedent to the purchase or acceptance of an
18 interment right, entombment right, or inurnment right, such
19 cemetery authority shall establish a care fund or deposit the
20 funds in an already existing care fund.

21 (b) The cemetery authority shall execute and deliver to the
22 person from whom it received the care funds an instrument in
23 writing that shall specifically state: (i) the nature and
24 extent of the care to be furnished and (ii) that such care
25 shall be furnished only in so far as net income derived from

1 the amount deposited in trust will permit (the income from the
2 amount so deposited, less necessary expenditures of
3 administering the trust, shall be deemed the net income).

4 (c) The setting-aside and deposit of care funds shall be
5 made by such cemetery authority no later than 30 days after the
6 close of the month in which the cemetery authority gave away
7 for an imputed value or received the final payment on the
8 purchase price of interment rights, entombment rights, or
9 inurnment rights, or received the final payment for the general
10 or special care of a lot, grave, crypt, or niche or of a family
11 mausoleum, memorial, marker, or monument, and such amounts
12 shall be held by the trustee of the care funds of such cemetery
13 authority in trust in perpetuity for the specific purposes
14 stated in the written instrument described in subsection (b).
15 For all care funds received by a cemetery authority, except for
16 care funds received by a cemetery authority pursuant to a
17 specific gift, grant, contribution, payment, legacy, or
18 contract that are subject to investment restrictions more
19 restrictive than the investment provisions set forth in this
20 Act, and except for care funds otherwise subject to a trust
21 agreement executed by a person or persons responsible for
22 transferring the specific gift, grant, contribution, payment,
23 or legacy to the cemetery authority that contains investment
24 restrictions more restrictive than the investment provisions
25 set forth in this Act, the cemetery authority may, without the
26 necessity of having to obtain prior approval from any court in

1 this State, designate a new trustee in accordance with this Act
2 and invest the care funds in accordance with this Section,
3 notwithstanding any contrary limitation contained in the trust
4 agreement.

5 (d) Any cemetery authority engaged in selling or giving
6 away at an imputed value interment rights, entombment rights,
7 or inurnment rights, in conjunction with the selling or giving
8 away at an imputed value any other merchandise or services not
9 covered by this Act, shall be prohibited from increasing the
10 sales price or imputed value of those items not requiring a
11 care fund deposit under this Act with the purpose of allocating
12 a lesser sales price or imputed value to items that require a
13 care fund deposit.

14 (e) If any sale that requires a deposit to a cemetery
15 authority's care fund is made by a cemetery authority on an
16 installment basis, and the installment contract is factored,
17 discounted, or sold to a third party, then the cemetery
18 authority shall deposit the amount due to the care fund within
19 30 days after the close of the month in which the installment
20 contract was factored, discounted, or sold. If, subsequent to
21 such deposit, the purchaser defaults on the contract such that
22 no care fund deposit on that contract would have been required,
23 then the cemetery authority may apply the amount deposited as a
24 credit against future required deposits.

25 (f) The trust authorized by this Section shall be a single
26 purpose trust fund. In the event of the cemetery authority's

1 bankruptcy, insolvency, or assignment for the benefit of
2 creditors, or an adverse judgment, the trust funds shall not be
3 available to any creditor as assets of the cemetery authority
4 or to pay any expenses of any bankruptcy or similar proceeding,
5 but shall be retained intact to provide for the future
6 maintenance of the cemetery. Except in an action by the
7 Department to revoke a license issued pursuant to this Act and
8 for creation of a receivership as provided in this Act, the
9 trust shall not be subject to judgment, execution, garnishment,
10 attachment, or other seizure by process in bankruptcy or
11 otherwise, nor to sale, pledge, mortgage, or other alienation,
12 and shall not be assignable except as approved by the
13 Department.

14 Section 15-25. Funds purpose and exemptions. The trust
15 funds authorized by this Article, and the income therefrom, and
16 any funds received under a contract to furnish care of a burial
17 space for a definite number of years, shall be held for the
18 general benefit of the lot owners and are exempt from taxation.
19 The trust funds authorized by the provisions of this Article,
20 and the income therefrom, are exempt from the operation of all
21 laws of mortmain and the laws against perpetuities and
22 accumulations.

23 Section 15-40. Trust examinations and audits.

24 (a) The Department shall examine at least annually every

1 licensee who holds \$250,000 or more in its care funds. For that
2 purpose, the Department shall have free access to the office
3 and places of business and to such records of all licensees and
4 of all trustees of the care funds of all licensees as shall
5 relate to the acceptance, use, and investment of care funds.
6 The Department may require the attendance of and examine under
7 oath all persons whose testimony may be required relative to
8 such business. In such cases the Department, or any qualified
9 representative of the Department whom the Department may
10 designate, may administer oaths to all such persons called as
11 witnesses, and the Department, or any such qualified
12 representative of the Department, may conduct such
13 examinations. The cost of an initial examination shall be
14 determined by rule.

15 (b) The Department may order additional audits or
16 examinations as it may deem necessary or advisable to ensure
17 the safety and stability of the trust funds and to ensure
18 compliance with this Act. These additional audits or
19 examinations shall only be made after good cause is established
20 by the Department in the written order. The grounds for
21 ordering these additional audits or examinations may include,
22 but shall not be limited to:

23 (1) material and unverified changes or fluctuations in
24 trust balances;

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

1 crypts, and columbariums in the cemetery based on the type and
2 size of the cemetery, topographic limitations, and contractual
3 commitments with consumers. Subject to the provision of this
4 subsection (a), reasonable maintenance includes:

5 (1) the laying of seed, sod, or other suitable ground
6 cover as soon as practical following an interment given the
7 weather conditions, climate, and season and the
8 interment's proximity to ongoing burial activity;

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

12 (3) the trimming of shrubs to prevent excessive
13 overgrowth;

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

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

17 (6) keeping the cemetery premises free of trash and
18 debris.

19 Reasonable maintenance by the cemetery authority shall not
20 preclude the exercise of lawful rights by the owner of an
21 interment, inurnment, or entombment right, or by the decedent's
22 immediate family or other heirs, in accordance with reasonable
23 rules and regulations of the cemetery or other agreement of the
24 cemetery authority. In the case of a cemetery dedicated as a
25 nature preserve under the Illinois Natural Areas Preservation
26 Act, reasonable maintenance by the cemetery authority shall be

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

3 (a-5) The Department shall adopt rules to provide greater
4 detail as to what constitutes the reasonable maintenance
5 required under this Section. The rules shall differentiate
6 between cemeteries based on, among other things, the size and
7 financial strength of the cemeteries. The rules shall also
8 provide a reasonable opportunity for a cemetery to cure any
9 violation of the reasonable maintenance standard in a timely
10 manner given the weather conditions, climate, and season before
11 the Department initiates formal proceedings.

12 (b) A cemetery authority, before commencing cemetery
13 operations or within 6 months after the effective date of this
14 Act, shall cause an overall map of its cemetery property,
15 delineating all lots or plots, blocks, sections, avenues,
16 walks, alleys, and paths and their respective designations, to
17 be filed at its on-site office, or if it does not maintain an
18 on-site office, at its principal place of business, and
19 recorded in the recorder's office of the county where the
20 cemetery land is situated. The map must have attached an index
21 that indicates the name of the owner of each lot or plot and,
22 if applicable, the name of the person interred, entombed, or
23 inurned in each lot or plot. A licensed cemetery manager's
24 certificate acknowledging, accepting, and adopting the map
25 shall also be included on the map. If the Department has
26 reasonable suspicion to believe that one or more violations of

1 this Act have occurred or are occurring, the Department may
2 order that the cemetery authority obtain a cemetery plat and
3 that it be filed at its on-site office, or if it does not
4 maintain an on-site office, at its principal place of business,
5 and recorded in the recorder's office of the county where the
6 cemetery land is situated. In exercising this discretion, the
7 Department shall consider whether the cemetery authority would
8 experience an undue hardship as a result of obtaining the plat.
9 The cemetery plat shall be surveyed by and prepared under the
10 direct supervision of an Illinois professional land surveyor
11 licensed pursuant to the Illinois Professional Land Surveyor
12 Act of 1989 and shall delineate, describe, and set forth all
13 lots or plots, blocks, sections, avenues, walks, alleys, and
14 paths and their respective designations. The plat must have
15 attached an index that indicates the name of the owner of each
16 lot or plot and, if applicable, the name of the person
17 interred, entombed, or inurned in each lot or plot. A licensed
18 cemetery manager's certificate acknowledging, accepting, and
19 adopting the plat shall also be included on the plat.

20 (c) The cemetery authority shall open the cemetery map or
21 plat to public inspection. The cemetery authority shall make
22 available a copy of the overall cemetery map or plat upon
23 written request and shall, if practical, provide a copy of a
24 segment of the cemetery plat where interment rights are located
25 upon the payment of reasonable photocopy fees. Any unsold lots,
26 plots, or parts thereof, in which there are not human remains,

1 may be resurveyed and altered in shape or size and properly
2 designated on the cemetery map or plat. However, sold lots,
3 plots, or parts thereof in which there are human remains may
4 not be renumbered or renamed. Nothing contained in this
5 subsection, however, shall prevent the cemetery authority from
6 enlarging an interment right by selling to its owner the excess
7 space next to the interment right and permitting interments
8 therein, provided reasonable access to the interment right and
9 to adjoining interment rights is not thereby eliminated.

10 (d) A cemetery authority shall keep a record of every
11 interment, entombment, and inurnment completed after the
12 effective date of this Act. The record shall include the
13 deceased's name, age, date of burial, and permanent parcel
14 identification number identifying where the human remains are
15 interred, entombed, or inurned. The record shall also include
16 the unique personal identifier as may be further defined by
17 rule, which is the permanent parcel identification number in
18 addition to the term of burial in years; the numbered level or
19 depth in the grave, plot, crypt, or niche; and the year of
20 death.

21 (e) A cemetery authority shall file in a timely manner, as
22 provided for by rule, with the Department the cemetery plat
23 required by subsection (b) and any updates or corrections to
24 the cemetery plat or records.

25 (f) A cemetery authority shall make available for
26 inspection and, upon reasonable request and the payment of a

1 reasonable copying fee, provide a copy of its rules and
2 regulations and its current prices of interment, inurnment, or
3 entombment rights.

4 (g) A cemetery authority shall provide access to the
5 cemetery under the cemetery authority's reasonable rules and
6 regulations.

7 (h) A cemetery authority shall be responsible for the
8 proper opening and closing of all graves, crypts, or niches for
9 human remains in any cemetery property it owns.

10 (i) Any corporate or other business organization trustee of
11 the care funds of every licensed cemetery authority shall be
12 located in or a resident of this State. The licensed cemetery
13 authority and the trustee of care funds shall keep in this
14 State and use in its business such books, accounts, and records
15 as will enable the Department to determine whether such
16 licensee or trustee is complying with the provisions of this
17 Act and with the rules, regulations, and directions made by the
18 Department under this Act. The licensed cemetery authority
19 shall keep the books, accounts, and records at the location
20 identified in the license issued by the Department or as
21 otherwise agreed by the Department in writing. The books,
22 accounts, and records shall be accessible for review upon
23 demand of the Department.

24 Section 20-6. Cemetery Oversight Database.

25 (a) Within 72 hours after an interment, entombment, or

1 inurnment of human remains, the cemetery manager shall cause a
2 record of the interment, entombment, or inurnment to be entered
3 into the Cemetery Oversight Database. The requirement of this
4 subsection (a) also applies in any instance in which human
5 remains are relocated.

6 (b) Within 9 months after the effective date of this Act,
7 the Department shall certify a database as the Cemetery
8 Oversight Database. Upon certifying the database, the
9 Department shall:

10 (1) provide reasonable notice to all licensed cemetery
11 authorities identifying the database; and

12 (2) immediately upon certification, require each
13 licensed cemetery authority to use the Cemetery Oversight
14 Database as a means of complying with subsection (a).

15 (c) In certifying the Cemetery Oversight Database, the
16 Department shall ensure that the database:

17 (1) provides real-time access through an Internet
18 connection or, if real-time access through an Internet
19 connection becomes unavailable due to technical problems
20 with the Cemetery Oversight Database incurred by the
21 database provider, through alternative mechanisms,
22 including, but not limited to, telephone;

23 (2) is accessible to the Department and to licensed
24 cemetery managers in order to ensure compliance with this
25 Act and in order to provide any other information that the
26 Department deems necessary;

1 (3) requires licensees to input whatever information
2 required by the Department;

3 (4) maintains a real-time copy of the required
4 reporting information that is available to the Department
5 at all times and is the property of the Department; and

6 (5) contains safeguards to ensure that all information
7 contained in the Cemetery Oversight Database is secure.

8 (d) A licensee may rely on the information contained in the
9 Cemetery Oversight Database as accurate and is not subject to
10 any administrative penalty or liability as a result of relying
11 on inaccurate information contained in the database.

12 (e) The Cemetery Oversight Database provider shall
13 indemnify licensees against all claims and actions arising from
14 illegal, willful, or wanton acts on the part of the Database
15 provider.

16 Section 20-8. Vehicle traffic control. A cemetery
17 authority shall make every effort to ensure that funeral
18 processions enter and exit the cemetery grounds with minimal
19 disruption to vehicle traffic on the streets and roadways
20 surrounding the cemetery. The cemetery authority and funeral
21 directors arranging funeral processions to the cemetery are
22 both under a duty to exercise their best efforts to help
23 prevent multiple funeral processions from arriving at the
24 cemetery simultaneously.

1 Section 20-10. Statement of services. At the time cemetery
2 arrangements are made and prior to rendering the cemetery
3 services, a licensed cemetery authority shall furnish a written
4 statement, in a form to be determined by the Department, to be
5 provided to the consumer, signed by both parties, that shall
6 contain: (i) contact information, as set out in Section 20-11,
7 and the date on which the arrangements were made; (ii) the
8 price of the service selected and the services and merchandise
9 included for that price; (iii) a clear disclosure that the
10 person or persons making the arrangement may decline and
11 receive credit for any service or merchandise that is not
12 desired or specified by the original interment right owner and
13 is not required by law or by the cemetery authority's rules and
14 regulations; (iv) the supplemental items of service and
15 merchandise requested and the price of each item; (v) the terms
16 or method of payment agreed upon; and (vi) a statement as to
17 any monetary advances made on behalf of the family. The
18 cemetery authority shall maintain a copy of such written
19 statement of services in its permanent records.

20 Section 20-11. Contact information in statement of
21 services. All licensed cemetery authorities shall include in
22 the statement of services described in Section 20-10 the name,
23 address, and telephone number of the cemetery authority. Upon
24 written request to a cemetery authority by a consumer, the
25 cemetery authority shall provide: (1) the cemetery authority's

1 registered agent, if any; (2) the cemetery authority's
2 proprietor, if the cemetery authority is an individual; (3)
3 every partner, if the cemetery authority is a partnership; (4)
4 the president, secretary, executive and senior vice
5 presidents, directors, and individuals owning 25% or more of
6 the corporate stock, if the cemetery authority is a
7 corporation; and (5) the manager, if the cemetery authority is
8 a limited liability company.

9 Section 20-12. Method of payment; receipt. No licensed
10 cemetery authority shall require payment for any goods,
11 services, or easement by cash only. Each cemetery authority
12 subject to this Section shall permit payment by at least one
13 other option, including, but not limited to, personal check,
14 cashier's check, money order, or credit or debit card. In
15 addition to the statement of services for the sale of cemetery
16 goods, services, or easements, the cemetery authority shall
17 provide a receipt to the consumer upon payment in part or full,
18 whatever the case may be.

19 Section 20-15. Interment or inurnment in cemetery. After
20 the effective date of this Act, for interments and inurnments
21 at cemeteries, the cemetery authority shall place on the outer
22 burial container, cremation inurnment container, or other
23 container or on the inside of a crypt or niche a tag or
24 permanent identifying marker listing the name of the decedent,

1 the date of birth, and the date of death. The materials and the
2 location of the tag or marker may be more specifically
3 described by rule. No cemetery authority shall interfere with a
4 licensed funeral director or his or her designated agent
5 observing the final burial or disposition of a body for which
6 the funeral director has a contract for services related to
7 that deceased individual. No funeral director or his or her
8 designated agent shall interfere with a licensed cemetery
9 authority or its designated agent's rendering of burial or
10 other disposition services for a body for which the cemetery
11 authority has a contract for goods, services, or property
12 related to that deceased individual.

13 Section 20-20. Display of license. Every cemetery
14 authority, cemetery manager, and customer service employee
15 license issued by the Department shall state the number of the
16 license and the address at which the business is to be
17 conducted. Such license shall be kept conspicuously posted in
18 the place of business of the licensee and shall not be
19 transferable or assignable.

20 Section 20-25. Annual report. Each licensed cemetery
21 authority shall annually, on or before April 15, file a report
22 with the Department giving such information as the Department
23 may reasonably require concerning the business and operations
24 during the preceding calendar year as provided for by rule. The

1 report must be received by the Department on or before April
2 15, unless such date is extended for reasonable cause up to 90
3 days by the Department. The report shall be made under oath and
4 in a form prescribed by the Department. The Department may fine
5 each licensee an amount as determine by rule for each day
6 beyond April 15 the report is filed.

7 Section 20-30. Signage. Cemetery authorities shall
8 conspicuously post signs in English and Spanish in the cemetery
9 office, in a form provided by the Department, that contain the
10 Department's consumer hotline number, information on how to
11 file a complaint, and whatever other information that the
12 Department deems appropriate.

13 Article 22.

14 Cemetery Associations

15 Section 22-1. Cemetery association requirements. The
16 requirements of this Article apply to those entities formed as
17 and acting as cemetery associations that act as a cemetery and
18 are otherwise exempt from this Act pursuant to Section 5-20 of
19 this Act. A cemetery association offering or providing services
20 as a cemetery that is exempt pursuant to Section 5-20 of this
21 Act shall remain subject to the provisions of this Article and
22 its requirements, mandates, and discipline in accordance with
23 the provisions of this Act. Any cemetery association not exempt

1 in accordance with Section 5-20 of this Act shall obtain a
2 license from the Department in accordance with the provisions
3 of this Act and shall remain subject to all provisions of this
4 Act.

5 Section 22-2. Cemetery association formation.

6 (a) Any 6 or more persons may organize a cemetery
7 association, to be owned, managed, and controlled in the manner
8 provided in this Article.

9 (b) Whenever 6 or more persons shall present to the
10 Secretary of State a petition setting forth that they desire to
11 organize a cemetery association under this Act, which shall
12 specify the county in which the cemetery association will be
13 located and the name and style of the cemetery association, the
14 Secretary of State shall issue to such persons and their
15 successors in trust, a certificate of organization, which shall
16 be in perpetuity and in trust for the use and benefit of all
17 persons who may acquire burial lots in the cemetery.

18 Section 22-3. Certificate of organization. Any person who
19 has received a certificate of organization from the Secretary
20 of State must record the certificate of organization with the
21 recorder's office of the county in which the cemetery is
22 situated, and when so recorded, the association shall be deemed
23 fully organized as a body corporate under the name adopted and
24 in its corporate name may sue and be sued. Whenever two-thirds

1 of the trustees of the cemetery association approve a
2 resolution to change the name of the cemetery association, a
3 copy of such resolution and approval thereof duly certified by
4 the President and Secretary of the association shall be filed
5 with the Department and upon approval thereof shall be filed in
6 the Office of the Secretary of State. Whenever two-thirds of
7 the trustees of a cemetery association approve a resolution to
8 dissolve the association, a copy of such resolution and
9 approval of the trustees of the cemetery association duly
10 certified by the President and Secretary shall be submitted to
11 the Department, and if approved by the Department, a copy of
12 such resolution and approval of the Department shall be duly
13 filed by the Department in the Office of the Secretary of
14 State. If the association has care funds as defined in this
15 Act, the Department shall not approve the dissolution of any
16 cemetery association unless proper disposition has been made of
17 such care funds, as provided by law, and in accordance with
18 this Act. Upon the filing of the resolution of either change of
19 name or dissolution of such cemetery association in the Office
20 of the Secretary of State, such change of name or dissolution
21 of such cemetery association shall be complete. The Department
22 shall so notify the trustees of such cemetery association.
23 Thereupon the trustees shall cause a copy of such resolution of
24 either change of name or dissolution to be recorded in the
25 recorder's office of the county where the cemetery is situated.

1 Section 22-4. Cemetery association composition; board of
2 trustees. A cemetery association meeting the requirements set
3 forth in Section 22-3 of this Act shall proceed to elect from
4 their own number a board of trustees for the association. The
5 board shall consist of not less than 6 and not more than 10
6 members. The trustees, once elected, shall immediately
7 organize by electing from their own membership a president,
8 vice president, and treasurer, and shall also elect a
9 secretary, who may or may not be a member of the board of
10 trustees. The officers shall hold their respective offices for
11 and during the period of one year, and until their successors
12 are duly elected and qualified. Trustees, once elected, shall
13 divide themselves by lot into 2 classes, the first of which
14 shall hold their offices for a period of 3 years, and the
15 second of which shall hold their offices for a period of 6
16 years. Thereafter the term of office of the trustees shall be 6
17 years. Upon the expiration of the term of office of any of the
18 trustees, or the resignation or death or removal from the State
19 of Illinois of any trustees, or their removal from office as
20 provided in this Act, the remaining trustees shall fill the
21 vacancy by electing a person residing in the county where the
22 cemetery is located for a new 6-year term or, if no one can be
23 nominated, the President of the cemetery association shall
24 notify the Department of such vacancy or vacancies in writing.
25 Thereafter the Department shall fill the vacancy or vacancies
26 by appointing a suitable person or persons as trustees. In

1 making such appointments, the Department shall exercise its
2 power such that at least two-thirds of the trustees shall be
3 selected from suitable persons residing within 15 miles of the
4 cemetery, or some part thereof, and the other appointees may be
5 suitable persons interested in said cemetery association
6 through family interments or otherwise who are citizens of the
7 State of Illinois.

8 Section 22-5. Right to acquire land. Any cemetery
9 association shall have the right to acquire the necessary
10 amount of land for the use of the cemetery association. Land
11 may be acquired by purchase or by gift, and the association is
12 authorized to receive by gift or legacy any property, either
13 real, personal, or mixed, which may be donated to the
14 association to hold and keep inviolate any such property for
15 the uses of the cemetery association. A cemetery association
16 may receive and administer endowments for the care and
17 oversight of such cemetery or any part thereof. All cemetery
18 associations shall be subject to and shall comply with the
19 provisions of the other Articles of this Act unless otherwise
20 exempted by the provisions of this Act.

21 Section 22-6. Plat; plots; recordation. All cemetery
22 associations may divide and lay out into lots any real estate
23 that it may acquire. When such division takes place, the lots
24 shall be of suitable size for burial lots. A plat of any land

1 that is laid out into lots as provided in this Section shall be
2 surveyed by a licensed Illinois professional land surveyor and
3 recorded by the cemetery association in the recorder's office
4 of the county in which the cemetery association is located. The
5 cemetery association shall have the right to sell to any person
6 or persons a lot or lots in the cemetery for burial purposes
7 only, and to convey to such person or persons a lot by a proper
8 deed of conveyance. A person or persons purchasing a lot or
9 lots shall have the right to use the same for burial purposes
10 as limited by the reasonable rules of the cemetery association;
11 but no cemetery association shall make or enforce any rule
12 prohibiting the erection of any monument or headstone on any
13 lot or lots as may be prescribed or provided by the United
14 States or the State of Illinois for a soldier, sailor, or
15 marine having served and been honorably discharged from the
16 Army or Navy or Air Force of the United States or the State of
17 Illinois according to the established and written rules and
18 regulations of the cemetery.

19 Section 22-7. Funds; loans. The treasurer of a cemetery
20 association may from time to time loan money that the
21 association may have that is not needed for the immediate use
22 of the association by taking proper security for the loan, and
23 the loan and the security for the loan shall, before the loan
24 becomes effective, be approved by the board of trustees of the
25 cemetery association.

1 Section 22-8. Officer trustee compensation; salary. No
2 officer or trustee of a cemetery association shall receive any
3 compensation of any kind for any services rendered by him or
4 her on behalf of the association, except that officers and
5 trustees may be reimbursed for reasonable expenses, and the
6 secretary and treasurer of the association may receive such
7 salary as may be fixed by the board of trustees.

8 Section 22-9. Payment of earnings or dividends. No earnings
9 or dividends shall be declared or paid to any officer or other
10 person from the funds of a cemetery association. Such earnings
11 and dividends shall be kept inviolate and be used only for
12 purposes of the association and the care, preservation, and
13 ornamentation of the cemetery.

14 Section 22-10. Annual reports. The board of trustees for
15 any cemetery association that is exempt in accordance with the
16 provisions of this Act and subject to the provisions of this
17 Article shall annually prepare and file with the Department the
18 report required to be filed by a licensee under Section 20-25.
19 The Department shall examine such report to determine whether
20 the association has fully complied with the requirements of
21 this Act. If a cemetery association fails to submit an annual
22 report to the Department within the time specified in Section
23 20-25, the Department shall impose upon the cemetery

1 association a fine as provided for by rule for each and every
2 day the cemetery licensee remains delinquent in submitting the
3 report. Any fine established pursuant to this Section shall be
4 paid within 60 days after the effective date of the order
5 imposing the fine unless such time is extended, the fine is
6 reduced, or the fine is otherwise waived. The order shall
7 constitute a judgment and may be filed and execution had
8 thereon in the same manner as any judgment from any court of
9 record.

10 Section 22-11. Fees; fines. Except as otherwise provided in
11 this Act, the fees for the administration and enforcement of
12 this Article shall be set by rule of the Department. The fees
13 shall be nonrefundable.

14 Section 22-12. Deposit of fees and fines. All of the fees,
15 fines, or other moneys collected by the Department from
16 cemetery associations under this Article shall be deposited
17 into the Cemetery Oversight Licensing and Disciplinary Fund.

18 Section 22-13. Injunctive relief.

19 (a) If any cemetery association otherwise exempted under
20 the provisions of this Act violates any of the provisions of
21 this Article, the Department, any interested party, any person
22 injured thereby, the Attorney General of the State of Illinois,
23 or the State's Attorney in the county in which the offense

1 occurs may petition to the circuit court of the county in which
2 the violation or some part thereof occurred or of the county
3 where the association has its principal place of business for
4 an order enjoining the violation or for an order enforcing
5 compliance with this Act. Upon the filing of a verified
6 petition in court, the court may issue a temporary restraining
7 order, without notice or bond, and may preliminarily and
8 permanently enjoin the violation. If it is established that the
9 person has violated or is violating the injunction, the court
10 may punish the offender for contempt of court. Proceedings
11 under this Section shall be in addition to, and not in lieu of,
12 all other remedies and penalties provided by this Article.

13 (b) For misconduct in office any trustee of a cemetery
14 association may be removed from office by a court of competent
15 jurisdiction. Any trustee of an association who converts any
16 funds of an association to his or her own use or to a use other
17 than that intended shall be guilty of embezzlement as provided
18 by State law.

19 (c) All cemetery associations shall remain subject to the
20 duties, obligations, and requirements of this Act unless
21 otherwise exempted by this Act. Those cemetery associations
22 exempted under this Act shall comply with the provisions of
23 this Article.

24 Section 22-14. Rules; bond requirement.

25 (a) The board of trustees of the cemetery association may

1 make any and all rules and regulations for the management of
2 the association not inconsistent with this Article or this Act.

3 (b) The trustees of any cemetery association exempted under
4 the provisions of this Act shall obtain and maintain a bond or
5 letter of credit on behalf of the cemetery association in those
6 amounts as required for a licensee under this Act.

7 (c) Each cemetery association exempted under the
8 provisions of this Act shall maintain in force a surety bond,
9 issued by an insurance company authorized to transact fidelity
10 and surety business in the State of Illinois, or a letter of
11 credit, issued by a financial institution authorized to do
12 business in the State of Illinois. The bond or letter of credit
13 shall be for the benefit of any individual who obtains a
14 judgment from a court of competent jurisdiction based on the
15 failure of the cemetery association to fulfill the terms of any
16 contractual agreement entered into between the association and
17 any person. No action on the bond or letter of credit shall be
18 commenced more than one year after a judgment has been obtained
19 against the cemetery association from a court of competent
20 jurisdiction. The bond or letter of credit shall be in the form
21 and amount as is required from a licensee under this Act. The
22 bond or letter of credit shall be continuous in form, unless
23 terminated by the insurance company or financial institution
24 respectively. An insurance company may terminate a bond or a
25 financial institution may terminate a letter of credit and
26 avoid further liability by filing a 60-day notice of

1 termination with the Department and at the same time sending
2 the same notice to the cemetery association. The requirement to
3 maintain a bond or letter of credit by the cemetery association
4 shall be a continuing requirement while operating a cemetery by
5 the cemetery association.

6 (d) All members of the board of trustees of a cemetery
7 association which fails to maintain the bond or letter of
8 credit as required in this section shall remain jointly and
9 severally liable for damages and each shall be guilty of a
10 Class A misdemeanor for the first offense and a Class 4 felony
11 for second and subsequent offenses.

12 Section 22-15. Conveyance of property. Any cemetery
13 association organized under this Act may convey any property
14 that it may hold within a city, village, incorporated town,
15 county not under township organization, or town, to the city,
16 village, incorporated town, county, or town within which this
17 property is located and may convey any property that it may
18 hold within one mile of any city, village, or incorporated town
19 to such city, village, or incorporated town. If the city,
20 village, incorporated town, county, or town accepts the
21 conveyance, then such property shall thereafter be under the
22 control, management, maintenance, and ownership of the city,
23 village, incorporated town, county, or town.

24 Section 22-16. Grants. Any cemetery association organized

1 under this Article shall be authorized to obtain a grant or
2 grants of federal funds from the United States Government, or
3 from any proper agency thereof, for the construction of a
4 memorial gateway and entrance on property of a cemetery
5 association that is maintained as a national cemetery. Any
6 cemetery association organized under this Act shall be
7 authorized to convey in fee simple to the United States
8 Government, or to any proper agency thereof, such portion of
9 property of such cemetery as is now or may hereafter be
10 maintained as a national cemetery.

11 Section 22-17. Taxable property. The property, both real
12 and personal, of any cemetery association organized under this
13 Act shall be forever exempt from taxation for any and all
14 purposes.

15 Section 22-18. Additional property. A cemetery association
16 organized under this Act that has acquired or may hereafter
17 acquire land by purchase, deed, will, or otherwise, and has
18 platted, mapped, and used the land for cemetery purposes, may,
19 when necessary, acquire additional land adjoining or abutting
20 the cemetery.

21 Section 22-21. Administrative rules. The Department shall
22 have authority to promulgate and implement administrative
23 rules relating to all Sections under this Article. The rules

1 may include, but shall not be limited to, rules in those areas
2 relating to forms, fees, requirements, notices, discipline,
3 and any other rule necessary to properly implement the intent
4 of this Article.

5 Article 25.

6 Administration and Enforcement

7 Section 25-1. Denial of license or exemption from
8 licensure. If the Department determines that an application for
9 licensure or exemption from licensure should be denied pursuant
10 to Section 25-10, then the applicant shall be sent a notice of
11 intent to deny license or exemption from licensure and the
12 applicant shall be given the opportunity to request, within 20
13 days of the notice, a hearing on the denial. If the applicant
14 requests a hearing, then the Secretary shall schedule a hearing
15 within 30 days after the request for a hearing, unless
16 otherwise agreed to by the parties. The Secretary shall have
17 the authority to appoint an attorney duly licensed to practice
18 law in the State of Illinois to serve as the hearing officer.
19 The hearing officer shall have full authority to conduct the
20 hearing. The hearing shall be held at the time and place
21 designated by the Secretary. The Secretary shall have the
22 authority to prescribe rules for the administration of this
23 Section.

1 Section 25-3. Exemption, investigation, mediation. All
2 cemetery authorities maintaining a partial exemption must
3 submit to the following investigation and mediation procedure
4 by the Department in the event of a consumer complaint:

5 (a) Complaints to cemetery:

6 (1) the cemetery authority shall make every effort to
7 first resolve a consumer complaint; and

8 (2) if the complaint is not resolved, then the cemetery
9 authority shall advise the consumer of his or her right to
10 seek investigation and mediation by the Department.

11 (b) Complaints to the Department:

12 (1) if the Department receives a complaint, the
13 Department shall make an initial determination as to
14 whether the complaint has a reasonable basis and pertains
15 to this Act;

16 (2) if the Department determines that the complaint has
17 a reasonable basis and pertains to this Act, it shall
18 inform the cemetery authority of the complaint and give it
19 30 days to tender a response;

20 (3) upon receiving the cemetery authority's response,
21 or after the 30 days provided in subsection (2) of this
22 subsection, whichever comes first, the Department shall
23 attempt to resolve the complaint telephonically with the
24 parties involved;

25 (4) if the complaint still is not resolved, then the
26 Department shall conduct an investigation and mediate the

1 complaint as provided for by rule;

2 (5) if the Department conducts an on-site
3 investigation and face-to-face mediation with the parties,
4 then it may charge the cemetery authority a single
5 investigation and mediation fee, which fee shall be set by
6 rule and shall be calculated on an hourly basis; and

7 (6) if all attempts to resolve the consumer complaint
8 as provided for in paragraphs (1) through (5) fail, then
9 the cemetery authority may be subject to proceedings for
10 penalties and discipline under this Article when it is
11 determined by the Department that the cemetery authority
12 may have engaged in any of the following: (i) gross
13 malpractice; (ii) dishonorable, unethical, or
14 unprofessional conduct of a character likely to deceive,
15 defraud, or harm the public; (iii) gross, willful, or
16 continued overcharging for services; (iv) incompetence;
17 (v) unjustified failure to honor its contracts; or (vi)
18 failure to adequately maintain its premises. The
19 Department may issue a citation or institute disciplinary
20 action and cause the matter to be prosecuted and may
21 thereafter issue and enforce its final order as provided in
22 this Act.

23 Section 25-5. Citations.

24 (a) The Department may adopt rules to permit the issuance
25 of citations for non-frivolous complaints. The citation shall

1 be issued to the licensee and shall contain the licensee's name
2 and address, the licensee's license number, a brief factual
3 statement, the Sections of the law allegedly violated, and the
4 penalty imposed. The citation must clearly state that the
5 licensee may choose, in lieu of accepting the citation, to
6 request a hearing. If the licensee does not dispute the matter
7 in the citation with the Department within 30 days after the
8 citation is served, then the citation shall become a final
9 order and shall constitute discipline. The penalty shall be a
10 fine or other conditions as established by rule.

11 (b) The Department shall adopt rules designating
12 violations for which a citation may be issued. Such rules shall
13 designate as citation violations those violations for which
14 there is no substantial threat to the public health, safety,
15 and welfare. Citations shall not be utilized if there was any
16 significant consumer harm resulting from the violation.

17 (c) A citation must be issued within 6 months after the
18 reporting of a violation that is the basis for the citation.

19 (d) Service of a citation may be made by personal service
20 or certified mail to the licensee at the licensee's address of
21 record.

22 Section 25-10. Grounds for disciplinary action.

23 (a) The Department may refuse to issue or renew a license
24 or may revoke, suspend, place on probation, reprimand, or take
25 other disciplinary action as the Department may deem

1 appropriate, including imposing fines not to exceed \$10,000 for
2 each violation, with regard to any license under this Act, for
3 any one or combination of the following:

4 (1) Material misstatement in furnishing information to
5 the Department.

6 (2) Violations of this Act or of the rules promulgated
7 under this Act.

8 (3) Conviction of, or entry of a plea of guilty or nolo
9 contendere to, any crime within the last 5 years that is a
10 Class X felony or is a felony involving fraud and
11 dishonesty under the laws of the United States or any state
12 or territory thereof.

13 (4) Making any misrepresentation for the purpose of
14 obtaining licensure or violating any provision of this Act
15 or the rules promulgated under this Act.

16 (5) Professional incompetence.

17 (6) Gross malpractice.

18 (7) Aiding or assisting another person in violating any
19 provision of this Act or rules promulgated under this Act.

20 (8) Failing, within 10 days, to provide information in
21 response to a written request made by the Department.

22 (9) Engaging in dishonorable, unethical, or
23 unprofessional conduct of a character likely to deceive,
24 defraud, or harm the public.

25 (10) Inability to practice with reasonable judgment,
26 skill, or safety as a result of habitual or excessive use

1 of alcohol, narcotics, stimulants, or any other chemical
2 agent or drug.

3 (11) Discipline by another state, District of
4 Columbia, territory, or foreign nation, if at least one of
5 the grounds for the discipline is the same or substantially
6 equivalent to those set forth in this Section.

7 (12) Directly or indirectly giving to or receiving from
8 any person, firm, corporation, partnership, or association
9 any fee, commission, rebate, or other form of compensation
10 for professional services not actually or personally
11 rendered.

12 (13) A finding by the Department that the licensee,
13 after having his or her license placed on probationary
14 status, has violated the terms of probation.

15 (14) Willfully making or filing false records or
16 reports in his or her practice, including, but not limited
17 to, false records filed with any governmental agency or
18 department.

19 (15) Inability to practice the profession with
20 reasonable judgment, skill, or safety.

21 (16) Failure to file an annual report or to maintain in
22 effect the required bond or to comply with an order,
23 decision, or finding of the Department made pursuant to
24 this Act.

25 (17) Gross, willful, or continued overcharging for
26 professional services, including filing false statements

1 for collection of fees for which services are not rendered.

2 (18) Practicing under a false or, except as provided by
3 law, an assumed name.

4 (19) Fraud or misrepresentation in applying for, or
5 procuring, a license under this Act or in connection with
6 applying for renewal of a license under this Act.

7 (20) Cheating on or attempting to subvert the licensing
8 examination administered under this Act.

9 (21) Unjustified failure to honor its contracts.

10 (22) Negligent supervision of a cemetery manager or
11 employee.

12 (23) A pattern of practice or other behavior which
13 demonstrates incapacity or incompetence to practice under
14 this Act.

15 (24) Allowing an independent contractor that is not
16 licensed or registered under this Act to perform the
17 following services: openings and closings of vaults and
18 graves, stone settings, inurnments, interments,
19 entombments, and all other work that is performed by one or
20 more cemetery employees on the effective date of this Act,
21 including, but not limited to, the preparation of
22 foundations for memorials and routine cemetery
23 maintenance. For purposes of this subsection, "routine
24 cemetery maintenance" includes those activities described
25 in subsections (1), (2), (3), and (6) of Section 20-5(a) of
26 this Act.

1 (b) No action may be taken under this Act against a person
2 licensed under this Act unless the action is commenced within 5
3 years after the occurrence of the alleged violations. A
4 continuing violation shall be deemed to have occurred on the
5 date when the circumstances last existed that give rise to the
6 alleged violation.

7 Section 25-13. Independent contractors.

8 (a) Notwithstanding any provision of this Act to the
9 contrary, a cemetery authority may allow an independent
10 contractor to perform services to address an immediate threat
11 to public health or public safety, or to make repairs to
12 cemetery property that are immediately needed to protect
13 against further loss of or damage to cemetery property.

14 (b) Notwithstanding any provision of this Act to the
15 contrary, a vault company may deliver and close the specific
16 vaults that it has sold or contracted under the direct
17 supervision of the cemetery manager, and a monument dealer may
18 set the specific memorials it has sold or contracted under the
19 direct supervision of the cemetery manager.

20 (c) Notwithstanding any provision of this Act to the
21 contrary, a cemetery authority may hire an independent
22 contractor for a specific project as long as the skills and
23 expertise necessary for the specific project fall outside the
24 cemetery employees' skills and expertise.

1 Section 25-14. Mandatory reports.

2 (a) If a cemetery authority receives a consumer complaint
3 that is not resolved to the satisfaction of the consumer within
4 60 days of the complaint, the cemetery authority shall advise
5 the consumer of the right to seek investigation by the
6 Department and shall report the consumer complaint to the
7 Department within the next 30 days. Cemetery authorities shall
8 report to the Department within 30 days after the settlement of
9 any liability insurance claim or cause of action, or final
10 judgment in any cause of action, that alleges negligence,
11 fraud, theft, misrepresentation, misappropriation, or breach
12 of contract.

13 (b) The State's Attorney of each county shall report to the
14 Department all instances in which an individual licensed as a
15 cemetery manager or customer service employee or registered as
16 a cemetery employee, or any individual listed on a licensed
17 cemetery authority's application under this Act, is convicted
18 or otherwise found guilty of the commission of any felony. The
19 report shall be submitted to the Department within 60 days
20 after conviction or finding of guilty.

21 Section 25-15. Cease and desist.

22 (a) The Secretary may issue an order to cease and desist to
23 any licensee or other person doing business without the
24 required license when, in the opinion of the Secretary, the
25 licensee or other person is violating or is about to violate

1 any provision of this Act or any rule or requirement imposed in
2 writing by the Department.

3 (b) The Secretary may issue an order to cease and desist
4 prior to a hearing and such order shall be in full force and
5 effect until a final administrative order is entered.

6 (c) The Secretary shall serve notice of his or her action,
7 designated as an order to cease and desist made pursuant to
8 this Section, including a statement of the reasons for the
9 action, either personally or by certified mail, return receipt
10 requested. Service by certified mail shall be deemed completed
11 when the notice is deposited in the United States mail and sent
12 to the address of record or, in the case of unlicensed
13 activity, the address known to the Department.

14 (d) Within 15 days after service of the order to cease and
15 desist, the licensee or other person may request, in writing, a
16 hearing.

17 (e) The Secretary shall schedule a hearing within 30 days
18 after the request for a hearing unless otherwise agreed to by
19 the parties.

20 (f) The Secretary shall have the authority to prescribe
21 rules for the administration of this Section.

22 (g) If, after hearing, it is determined that the Secretary
23 has the authority to issue the order to cease and desist, he or
24 she may issue such orders as may be reasonably necessary to
25 correct, eliminate, or remedy such conduct.

26 (h) The powers vested in the Secretary by this Section are

1 additional to any and all other powers and remedies vested in
2 the Secretary by law and nothing in this Section shall be
3 construed as requiring that the Secretary shall employ the
4 power conferred in this Section instead of or as a condition
5 precedent to the exercise of any other power or remedy vested
6 in the Secretary.

7 (i) The cost for the administrative hearing shall be set by
8 rule.

9 Section 25-25. Investigations, notice, hearings.

10 (a) The Department may at any time investigate the actions
11 of any applicant or of any person or persons rendering or
12 offering to render services as a cemetery authority, cemetery
13 manager, or customer service employee of or any person holding
14 or claiming to hold a license as a licensed cemetery authority,
15 cemetery manager, or customer service employee. If it appears
16 to the Department that a person has engaged in, is engaging in,
17 or is about to engage in any practice declared to be unlawful
18 by this Act, then the Department may: (1) require that person
19 to file on such terms as the Department prescribes a statement
20 or report in writing, under oath or otherwise, containing all
21 information the Department may consider necessary to ascertain
22 whether a licensee is in compliance with this Act, or whether
23 an unlicensed person is engaging in activities for which a
24 license is required; (2) examine under oath any individual in
25 connection with the books and records pertaining to or having

1 an impact upon the operation of a cemetery or trust funds
2 required to be maintained pursuant to this Act; (3) examine any
3 books and records of the licensee, trustee, or investment
4 advisor that the Department may consider necessary to ascertain
5 compliance with this Act; and (4) require the production of a
6 copy of any record, book, document, account, or paper that is
7 produced in accordance with this Act and retain it in his or
8 her possession until the completion of all proceedings in
9 connection with which it is produced.

10 (b) The Secretary may, after 10 days notice by certified
11 mail with return receipt requested to the licensee at the
12 address of record or to the last known address of any other
13 person stating the contemplated action and in general the
14 grounds therefor, fine such licensee an amount not exceeding
15 \$10,000 per violation or revoke, suspend, refuse to renew,
16 place on probation, or reprimand any license issued under this
17 Act if he or she finds that:

18 (1) the licensee has failed to comply with any
19 provision of this Act or any order, decision, finding,
20 rule, regulation, or direction of the Secretary lawfully
21 made pursuant to the authority of this Act; or

22 (2) any fact or condition exists which, if it had
23 existed at the time of the original application for the
24 license, clearly would have warranted the Secretary in
25 refusing to issue the license.

26 (c) The Secretary may fine, revoke, suspend, refuse to

1 renew, place on probation, reprimand, or take any other
2 disciplinary action as to the particular license with respect
3 to which grounds for the fine, revocation, suspension, refuse
4 to renew, probation, or reprimand, or other disciplinary action
5 occur or exist, but if the Secretary finds that grounds for
6 revocation are of general application to all offices or to more
7 than one office of the licensee, the Secretary shall fine,
8 revoke, suspend, refuse to renew, place on probation,
9 reprimand, or otherwise discipline every license to which such
10 grounds apply.

11 (d) In every case in which a license is revoked, suspended,
12 placed on probation, reprimanded, or otherwise disciplined,
13 the Secretary shall serve the licensee with notice of his or
14 her action, including a statement of the reasons for his or her
15 actions, either personally or by certified mail, return receipt
16 requested. Service by certified mail shall be deemed completed
17 when the notice is deposited in the United States mail and sent
18 to the address of record.

19 (e) An order assessing a fine, an order revoking,
20 suspending, placing on probation, or reprimanding a license or,
21 an order denying renewal of a license shall take effect upon
22 service of the order unless the licensee requests, in writing,
23 within 20 days after the date of service, a hearing. In the
24 event a hearing is requested, an order issued under this
25 Section shall be stayed until a final administrative order is
26 entered.

1 (f) If the licensee requests a hearing, then the Secretary
2 shall schedule a hearing within 30 days after the request for a
3 hearing unless otherwise agreed to by the parties. The
4 Secretary shall have the authority to appoint an attorney duly
5 licensed to practice law in the State of Illinois to serve as
6 the hearing officer in any disciplinary action with regard to a
7 license. The hearing officer shall have full authority to
8 conduct the hearing.

9 (g) The hearing shall be held at the time and place
10 designated by the Secretary.

11 (h) The Secretary shall have the authority to prescribe
12 rules for the administration of this Section.

13 (i) The cost for the administrative hearing shall be set by
14 rule.

15 (j) Fines imposed and any costs assessed shall be paid
16 within 60 days.

17 Section 25-30. Consent order. At any point in any
18 investigation or disciplinary proceeding provided for in this
19 Act, both parties may agree to a negotiated consent order. The
20 consent order shall be final upon signature of the Secretary.

21 Section 25-35. Record of proceedings; transcript. The
22 Department, at its expense, shall preserve a record of all
23 proceedings at the formal hearing of any case. Any notice, all
24 documents in the nature of pleadings, written motions filed in

1 the proceedings, the transcripts of testimony, and orders of
2 the Department shall be in the record of the proceeding.

3 Section 25-40. Subpoenas; depositions; oaths.

4 (a) The Department has the power to subpoena documents,
5 books, records, or other materials and to bring before it any
6 individual and to take testimony either orally or by
7 deposition, or both, with the same fees and mileage and in the
8 same manner as prescribed in civil cases in the courts of this
9 State.

10 (b) The Secretary and the designated hearing officer have
11 the power to administer oaths to witnesses at any hearing that
12 the Department is authorized to conduct and any other oaths
13 authorized in any Act administered by the Department.

14 (c) Every individual having taken an oath or affirmation in
15 any proceeding or matter wherein an oath is required by this
16 Act, who shall swear willfully, corruptly, and falsely in a
17 matter material to the issue or point in question, or shall
18 suborn any other individual to swear as aforesaid, shall be
19 guilty of perjury or subornation of perjury, as the case may be
20 and shall be punished as provided by State law relative to
21 perjury and subornation of perjury.

22 Section 25-45. Compelling testimony. Any circuit court,
23 upon application of the Department or designated hearing
24 officer may enter an order requiring the attendance of

1 witnesses and their testimony, and the production of documents,
2 papers, files, books, and records in connection with any
3 hearing or investigation. The court may compel obedience to its
4 order by proceedings for contempt.

5 Section 25-50. Findings and recommendations.

6 (a) At the conclusion of the hearing, the hearing officer
7 shall present to the Secretary a written report of its findings
8 of fact, conclusions of law, and recommendations. The report
9 shall contain a finding whether the accused person violated
10 this Act or its rules or failed to comply with the conditions
11 required in this Act or its rules. The hearing officer shall
12 specify the nature of any violations or failure to comply and
13 shall make his or her recommendations to the Secretary. In
14 making recommendations for any disciplinary actions, the
15 hearing officer may take into consideration all facts and
16 circumstances bearing upon the reasonableness of the conduct of
17 the accused and the potential for future harm to the public,
18 including, but not limited to, previous discipline of the
19 accused by the Department, intent, degree of harm to the public
20 and likelihood of harm in the future, any restitution made by
21 the accused, and whether the incident or incidents contained in
22 the complaint appear to be isolated or represent a continuing
23 pattern of conduct. In making its recommendations for
24 discipline, the hearing officer shall endeavor to ensure that
25 the severity of the discipline recommended is reasonably

1 related to the severity of the violation.

2 (b) The report of findings of fact, conclusions of law, and
3 recommendation of the hearing officer shall be the basis for
4 the Department's final order refusing to issue, restore, or
5 renew a license, or otherwise disciplining a licensee. If the
6 Secretary disagrees with the recommendations of the hearing
7 officer, the Secretary may issue an order in contravention of
8 the hearing officer's recommendations. The finding is not
9 admissible in evidence against the person in a criminal
10 prosecution brought for a violation of this Act, but the
11 hearing and finding are not a bar to a criminal prosecution
12 brought for a violation of this Act.

13 Section 25-55. Rehearing. At the conclusion of the
14 hearing, a copy of the hearing officer's report shall be served
15 upon the applicant, licensee, or unlicensed person by the
16 Department, either personally or as provided in this Act.
17 Within 20 days after service, the applicant or licensee may
18 present to the Department a motion in writing for a rehearing,
19 which shall specify the particular grounds for rehearing. The
20 Department may respond to the motion for rehearing within 20
21 days after its service on the Department. If no motion for
22 rehearing is filed, then upon the expiration of the time
23 specified for filing such a motion, or if a motion for
24 rehearing is denied, then upon denial, the Secretary may enter
25 a final order in accordance with recommendations of the hearing

1 officer except as provided in Section 25-60 of this Act. If the
2 applicant, licensee, or unlicensed person orders from the
3 reporting service and pays for a transcript of the record
4 within the time for filing a motion for rehearing, the 20-day
5 period within which a motion may be filed shall commence upon
6 the delivery of the transcript to the applicant or licensee.

7 Section 25-60. Secretary; rehearing. Whenever the
8 Secretary believes that substantial justice has not been done
9 in the revocation, suspension, or refusal to issue, restore, or
10 renew a license, or other discipline of an applicant or
11 licensee, he or she may order a rehearing by the same or other
12 hearing officers.

13 Section 25-65. Order or certified copy; prima facie proof.
14 An order or certified copy thereof, over the seal of the
15 Department and purporting to be signed by the Secretary, is
16 prima facie proof that:

17 (1) the signature is the genuine signature of the
18 Secretary;

19 (2) the Secretary is duly appointed and qualified; and

20 (3) the hearing officer is qualified to act.

21 Section 25-70. Receivership. In the event a cemetery
22 authority license is suspended or revoked or where an
23 unlicensed person has conducted activities requiring cemetery

1 authority licensure under this Act, the Department, through the
2 Attorney General, may petition the circuit courts of this State
3 for appointment of a receiver to administer the care funds of
4 such licensee or unlicensed person or to operate the cemetery.

5 (a) The court shall appoint a receiver if the court
6 determines that a receivership is necessary or advisable:

7 (1) to ensure the orderly and proper conduct of a
8 licensee's professional business and affairs during or in
9 the aftermath of the administrative proceeding to revoke or
10 suspend the cemetery authority's license;

11 (2) for the protection of the public's interest and
12 rights in the business, premises, or activities of the
13 person sought to be placed in receivership;

14 (3) upon a showing of actual or constructive
15 abandonment of premises or business licensed or which was
16 not but should have been licensed under this Act;

17 (4) upon a showing of serious and repeated violations
18 of this Act demonstrating an inability or unwillingness of
19 a licensee to comply with the requirements of this Act;

20 (5) to prevent loss, wasting, dissipation, theft, or
21 conversion of assets that should be marshaled and held
22 available for the honoring of obligations under this Act;
23 or

24 (6) upon proof of other grounds that the court deems
25 good and sufficient for instituting receivership action
26 concerning the respondent sought to be placed in

1 receivership.

2 (b) A receivership under this Section may be temporary, or
3 for the winding up and dissolution of the business, as the
4 Department may request and the court determines to be necessary
5 or advisable in the circumstances. Venue of receivership
6 proceedings may be, at the Department's election, in Cook
7 County or the county where the subject of the receivership is
8 located. The appointed receiver shall be the Department or such
9 person as the Department may nominate and the court shall
10 approve.

11 (c) The Department may adopt rules for the implementation
12 of this Section.

13 Section 25-75. Abandoned or neglected cemeteries;
14 clean-up. The Department of Natural Resources may develop and
15 administer a program for the purpose of cleaning up abandoned
16 or neglected cemeteries located in Illinois. Administration of
17 this program may include the Department of Natural Resources'
18 issuance of grants for that purpose to units of local
19 government, school districts, and not-for-profit associations
20 as determined by rule. If an abandoned or neglected cemetery
21 has been dedicated as an Illinois nature preserve under the
22 Illinois Natural Areas Preservation Act, any action to cause
23 the clean-up of the cemetery under the provisions of this
24 Section shall be consistent with the rules and master plan
25 governing the dedicated nature preserve.

1 Section 25-80. Surrender of license. Upon the revocation
2 or suspension of a license under this Act, the licensee shall
3 immediately surrender his or her license to the Department. If
4 the licensee fails to do so, the Department has the right to
5 seize the license.

6 Section 25-85. Inactive status.

7 (a) Any licensed manager or customer service employee or
8 registered cemetery employee who notifies the Department in
9 writing on forms prescribed by the Department as determined by
10 rule, may elect to place his or her license on an inactive
11 status and shall, subject to rules of the Department, be
12 excused from payment of renewal fees until he or she notifies
13 the Department in writing of his or her desire to resume active
14 status. Any licensed manager or registered cemetery employee
15 requesting restoration from inactive status shall pay the
16 current renewal fee and meet requirements as provided by rule.
17 Any licensee whose license is in inactive status shall not
18 practice in the State of Illinois.

19 (b) A cemetery authority license may only go on inactive
20 status by following the provisions for dissolution set forth in
21 Section 10-50 or transfer in Section 10-45.

22 Section 25-90. Restoration of license from discipline. At
23 any time after the successful completion of a term of

1 indefinite probation, suspension, or revocation of a license,
2 the Department may restore the license to the licensee, unless
3 after an investigation and a hearing the Secretary determines
4 that restoration is not in the public interest.

5 Section 25-95. Administrative review; venue.

6 (a) All final administrative decisions of the Department
7 are subject to judicial review under the Administrative Review
8 Law and its rules. The term "administrative decision" is
9 defined as in Section 3-101 of the Code of Civil Procedure.

10 (b) Proceedings for judicial review shall be commenced in
11 the circuit court of the county in which the party applying for
12 review resides, but if the party is not a resident of Illinois,
13 the venue shall be in Sangamon County.

14 Section 25-100. Certifications of record; costs. The
15 Department shall not be required to certify any record to the
16 court, to file an answer in court, or to otherwise appear in
17 any court in a judicial review proceeding unless and until the
18 Department has received from the plaintiff payment of the costs
19 of furnishing and certifying the record, which costs shall be
20 determined by the Department. Failure on the part of the
21 plaintiff to file the receipt in court is grounds for dismissal
22 of the action.

23 Section 25-105. Violations. Any person who is found to

1 have violated any provision of this Act or any applicant for
2 licensure who files with the Department the fingerprints of an
3 individual other than himself or herself is guilty of a Class A
4 misdemeanor. Upon conviction of a second or subsequent offense
5 the violator shall be guilty of a Class 4 felony. However,
6 whoever intentionally fails to deposit the required amounts
7 into a trust provided for in this Act or intentionally and
8 improperly withdraws or uses trust funds for his or her own
9 benefit shall be guilty of a Class 4 felony and each day such
10 provisions are violated shall constitute a separate offense.

11 Section 25-110. Civil action and civil penalties. In
12 addition to the other penalties and remedies provided in this
13 Act, the Department may bring a civil action in the county in
14 which the cemetery is located against a licensee or any other
15 person to enjoin any violation or threatened violation of this
16 Act. In addition to any other penalty provided by law, any
17 person who violates this Act shall forfeit and pay a civil
18 penalty to the Department in an amount not to exceed \$10,000
19 for each violation as determined by the Department. The civil
20 penalty shall be assessed by the Department in accordance with
21 the provisions of this Act. Any civil penalty shall be paid
22 within 60 days after the effective date of the order imposing
23 the civil penalty. The order shall constitute a judgment and
24 may be filed and execution had thereon in the same manner as
25 any judgment from any court of record. All moneys collected

1 under this Section shall be deposited into the Cemetery
2 Oversight Licensing and Disciplinary Fund.

3 Section 25-115. Illinois Administrative Procedure Act;
4 application. The Illinois Administrative Procedure Act is
5 expressly adopted and incorporated in this Act as if all of the
6 provisions of that Act were included in this Act, except that
7 the provision of paragraph (d) of Section 10-65 of the Illinois
8 Administrative Procedure Act, which provides that at hearings
9 the licensee has the right to show compliance with all lawful
10 requirements for retention or continuation or renewal of the
11 license, is specifically excluded. For the purpose of this Act,
12 the notice required under Section 10-25 of the Illinois
13 Administrative Procedure Act is considered sufficient when
14 mailed to the address of record.

15 Section 25-120. Whistleblower protection.

16 (a) "Retaliatory action" means the reprimand, discharge,
17 suspension, demotion, denial of promotion or transfer, or
18 change in the terms and conditions of employment of any
19 cemetery manager or registered cemetery employee that is taken
20 in retaliation for a cemetery manager's or registered cemetery
21 employee's involvement in protected activity, as set forth in
22 this Section.

23 (b) A cemetery authority shall not take any retaliatory
24 action against a cemetery manager or registered cemetery

1 employee because the cemetery manager or registered cemetery
2 employee does any of the following:

3 (1) Discloses or threatens to disclose to a supervisor
4 or to a public body an activity, policy, or practice of a
5 cemetery manager or the cemetery authority that the
6 cemetery manager or cemetery employee reasonably believes
7 is in violation of a law, rule, or regulation.

8 (2) Provides information to or testifies before any
9 public body conducting an investigation, hearing, or
10 inquiry into any violation of a law, rule, or regulation by
11 a cemetery manager or cemetery authority.

12 (3) Assists or participates in a proceeding to enforce
13 the provisions of this Act.

14 (c) A violation of this Section may be established only
15 upon a finding that (i) the cemetery manager or registered
16 cemetery employee engaged in conduct described in subsection
17 (b) of this Section and (ii) that this conduct was a
18 contributing factor in the retaliatory action alleged by the
19 cemetery manager or registered cemetery employee. It is not a
20 violation, however, if it is demonstrated by clear and
21 convincing evidence that the cemetery manager or cemetery
22 authority would have taken the same unfavorable personnel
23 action in the absence of that conduct.

24 (d) The cemetery manager or registered cemetery employee
25 may be awarded all remedies necessary to make the cemetery
26 manager or registered cemetery employee whole and to prevent

1 future violations of this Section. Remedies imposed by the
2 court may include, but are not limited to, all of the
3 following:

4 (1) reinstatement of the employee to either the same
5 position held before the retaliatory action or to an
6 equivalent position;

7 (2) two times the amount of back pay;

8 (3) interest on the back pay;

9 (4) the reinstatement of full fringe benefits and
10 seniority rights; and

11 (5) the payment of reasonable costs and attorneys'
12 fees.

13 (e) Nothing in this Section shall be deemed to diminish the
14 rights, privileges, or remedies of a cemetery manager or
15 registered cemetery employee under any other federal or State
16 law, rule, or regulation or under any employment contract.

17 Section 25-125. Cemetery Oversight Board. The Cemetery
18 Oversight Board is created and shall consist of the Secretary,
19 who shall serve as its chairperson, and 6 members appointed by
20 the Secretary. Appointments shall be made within 90 days after
21 the effective date of this Act. Two members shall represent the
22 segment of the cemetery industry that does not maintain a
23 partial exemption or full exemption, one member shall represent
24 the segment of the cemetery industry that maintains a partial
25 exemption, 2 members shall be consumers as defined in this Act,

1 and one member shall represent the general public. No member
2 shall be a licensed professional from a non-cemetery segment of
3 the death care industry. Board members shall serve 5-year terms
4 and until their successors are appointed and qualified. The
5 membership of the Board should reasonably reflect
6 representation from the geographic areas in this State. No
7 member shall be reappointed to the Board for a term that would
8 cause his or her continuous service on the Board to be longer
9 than 10 successive years. Appointments to fill vacancies shall
10 be made in the same manner as original appointments, for the
11 unexpired portion of the vacated term. Four members of the
12 Board shall constitute a quorum. A quorum is required for Board
13 decisions. The Secretary may remove any member of the Board for
14 misconduct, incompetence, neglect of duty, or for reasons
15 prescribed by law for removal of State officials. The Secretary
16 may remove a member of the Board who does not attend 2
17 consecutive meetings. The Department may, at any time, seek the
18 expert advice and knowledge of the Board on any matter relating
19 to the administration or enforcement of this Act. The Secretary
20 shall consider the recommendations of the Board in the
21 development of proposed rules under this Act and for
22 establishing guidelines and examinations as may be required
23 under this Act. Notice of any proposed rulemaking under this
24 Act shall be transmitted to the Board and the Department shall
25 review the response of the Board and any recommendations made
26 therein.

1 Article 35.

2 Consumer Bill of Rights

3 Section 35-5. Penalties. Cemetery authorities shall
4 respect the rights of consumers of cemetery products and
5 services as put forth in this Article. Failure to abide by the
6 cemetery duties listed in this Article or to comply with a
7 request by a consumer based on a consumer's privileges under
8 this Article may activate the mediation, citation, or
9 disciplinary processes in Article 25 of this Act.

10 Section 35-10. Consumer privileges.

11 (a) The record required under this Section shall be open to
12 public inspection consistent with State and federal law. The
13 cemetery authority shall make available, consistent with State
14 and federal law, a true copy of the record upon written request
15 and payment of reasonable copy costs. At the time of the
16 interment, entombment, or inurnment, the cemetery authority
17 shall provide the record of the deceased's name and date of
18 burial to the person who would have authority to dispose of the
19 decedent's remains under the Disposition of Remains Act.

20 (b) Consumers have the right to purchase merchandise or
21 services directly from the cemetery authority when available or
22 through a third-party vendor of the consumer's choice without
23 incurring a penalty or additional charge by the cemetery

1 authority; provided, however, that consumers do not have the
2 right to purchase types of merchandise that would violate
3 applicable law or the cemetery authority's rules and
4 regulations

5 (c) Consumers have the right to complain to the cemetery
6 authority or to the Department regarding cemetery-related
7 products and services as well as issues with customer service,
8 maintenance, or other cemetery activities. Complaints may be
9 brought by a consumer or the consumer's agent appointed for
10 that purpose.

11 Section 35-15. Cemetery duties.

12 (a) Prices for all cemetery-related products offered for
13 sale by the cemetery authority must be disclosed to the
14 consumer in writing on a standardized price list.
15 Memorialization pricing may be disclosed in price ranges. The
16 price list shall include the effective dates of the prices. The
17 price list shall include not only the range of interment,
18 inurnment, and entombment rights, and the cost of extending the
19 term of any term burial, but also any related merchandise or
20 services offered by the cemetery authority. Charges for
21 installation of markers, monuments, and vaults in cemeteries
22 must be the same without regard to where the item is purchased.

23 (b) A contract for the interment, inurnment, or entombment
24 of human remains must be signed by both parties: the consumer
25 and the cemetery authority or its representative. Before a

1 contract is signed, the prices for the purchased services and
2 merchandise must be disclosed on the contract and in plain
3 language. If a contract is for a term burial, the term must be
4 in bold print and discussed with the consumer. Any contract for
5 the sale of a burial plot, when designated, must disclose the
6 exact location of the burial plot based on the survey of the
7 cemetery plat on file with the Department.

8 (c) A cemetery authority that has the legal right to extend
9 a term burial shall, prior to disinterment, provide the family
10 or other authorized agent under the Disposition of Remains Act
11 the opportunity to extend the term of a term burial for the
12 cost as stated on the cemetery authority's current price list.
13 Regardless of whether the family or other authorized agent
14 chooses to extend the term burial, the cemetery authority
15 shall, prior to disinterment, provide notice to the family or
16 other authorized agent under the Disposition of Remains Act of
17 the cemetery authority's intention to disinter the remains and
18 to inter different human remains in that space.

19 (d) If any rules or regulations, including the operational
20 or maintenance requirements, of a cemetery change after the
21 date a contract is signed for the purchase of cemetery-related
22 or funeral-related products or services, the cemetery may not
23 require the consumer, purchaser, or such individual's relative
24 or representative to purchase any merchandise or service not
25 included in the original contract or in the rules and
26 regulations in existence when the contract was entered unless

1 the purchase is reasonable and not overly burdensome on the
2 consumer or required to make the cemetery authority compliant
3 with applicable law.

4 (e) No cemetery authority or its agent may engage in
5 deceptive or unfair practices. The cemetery authority and its
6 agents may not misrepresent legal or cemetery requirements.

7 (f) The cemetery authority shall notify the consumer of the
8 existence of green burial and crematory disposition options if
9 the cemetery authority offers green disposition services or
10 products. The Department may promulgate rules regarding green
11 burial certification, green cremation products and methods,
12 and consumer education.

13 (g) The contractual requirements contained in this Section
14 only apply to contracts executed after the effective date of
15 this Act.

16 Article 75.

17 Administrative Provisions

18 Section 75-5. Conflict of interest. No investigator may
19 hold an active license issued pursuant to this Act, nor may an
20 investigator have a financial interest in a business licensed
21 under this Act. Any individual licensed under this Act who is
22 employed by the Department shall surrender his or her license
23 to the Department for the duration of that employment. The
24 licensee shall be exempt from all renewal fees while employed.

1 Section 75-15. Civil Administrative Code. The Department
2 shall exercise the powers and duties prescribed by the Civil
3 Administrative Code of Illinois and shall exercise all other
4 powers and duties set forth in this Act.

5 Section 75-20. Rules. The Department may promulgate rules
6 for the administration and enforcement of this Act. The rules
7 shall include standards for licensure, professional conduct,
8 and discipline.

9 Section 75-25. Home rule. The regulation and licensing as
10 provided for in this Act are exclusive powers and functions of
11 the State. A home rule unit may not regulate or license
12 cemetery authorities, cemetery managers, customer service
13 employees, registered cemetery employees, or any activities
14 relating to the operation of a cemetery. This Section is a
15 denial and limitation of home rule powers and functions under
16 subsection (h) of Section 6 of Article VII of the Illinois
17 Constitution.

18 Section 75-35. Roster. The Department shall, upon request
19 and payment of the required fee, provide a list of the names
20 and business addresses of all licensees under this Act.

21 Section 75-45. Fees. The Department shall by rule provide

1 for fees for the administration and enforcement of this Act,
2 and those fees are nonrefundable. All of the fees and fines
3 collected under this Act shall be deposited into the Cemetery
4 Oversight Licensing and Disciplinary Fund and be appropriated
5 to the Department for the ordinary and contingent expenses of
6 the Department in the administration and enforcement of this
7 Act.

8 Section 75-50. Burial permits. Notwithstanding any law to
9 the contrary, a cemetery authority shall ensure that every
10 burial permit applicable to that cemetery authority contains
11 the decedent's permanent parcel identification number or other
12 information as provided by rule regarding the location of the
13 interment, entombment, or inurnment of the deceased that would
14 enable the Department to determine the precise location of the
15 decedent.

16 Section 75-55. Transition.

17 (a) Within 60 days after the effective date of this Act,
18 the Comptroller shall provide the Department copies of records
19 in the Comptroller's possession pertaining to the Cemetery Care
20 Act and the Crematory Regulation Act that are necessary for the
21 Department's immediate responsibilities under this Act. All
22 other records pertaining to the Cemetery Care Act and the
23 Crematory Regulation Act shall be transferred to the Department
24 by July 1, 2011. In the case of records that pertain both to

1 the administration of the Cemetery Care Act or the Crematory
2 Regulation Act and to a function retained by the Comptroller,
3 the Comptroller, in consultation with the Department, shall
4 determine, within 60 days after the repeal of the Cemetery Care
5 Act, whether the records shall be transferred, copied, or left
6 with the Comptroller; until this determination has been made
7 the transfer shall not occur.

8 (b) Within 120 days after the effective date of this Act,
9 the Auditor General shall tender to the Governor, the General
10 Assembly, and the Department a report based on an audit of the
11 Office of the Comptroller and any other State agency. The audit
12 report shall contain detailed findings of the following:

13 (1) the financial status and solvency of each trust
14 account overseen by the Comptroller that is related to the
15 care and disposition of human remains;

16 (2) the annual fiscal appropriation necessary to
17 administer this Act and all other acts pertaining to the
18 care and disposition of human remains;

19 (3) recommendations for adequate staffing levels and
20 types of staff, including an organizational chart and job
21 descriptions;

22 (4) recommendations for effective implementation,
23 administration, and enforcement of this Act and all other
24 acts pertaining to the care and disposition of human
25 remains;

26 (5) recommendations as to meeting the needs of cemetery

1 authorities that bury persons of limited means and the
2 amount of charges to consumers and payments to providers
3 that are reasonable under those circumstances;

4 (6) any other information or recommendations that will
5 assist the Department in carrying out the intent and
6 purpose of this Act;

7 (7) any other information that the Department
8 requests, provided, however, that the Department shall
9 tender such requests to the Auditor General no later than
10 30 days after the effective date of this Act.

11 (c) A person licensed under one of the Acts listed in
12 subsection (a) of this Section or regulated under the Cemetery
13 Association Act shall continue to comply with the provisions of
14 those Acts until such time as the person is licensed under this
15 Act or those Acts are repealed or the amendatory changes made
16 by this amendatory Act of the 96th General Assembly take
17 effect, as the case may be, whichever is earlier.

18 (d) To support the costs that may be associated with
19 implementing and maintaining a licensure and regulatory
20 process for the licensure and regulation of cemetery
21 authorities, cemetery managers, customer service employees,
22 and registered cemetery employees, all cemetery authorities
23 not maintaining a full exemption or partial exemption shall pay
24 an annual fee of \$20 to the Department plus an additional
25 charge of \$1 per burial unit per year within the cemetery. The
26 Department may establish forms for the collection of the fee

1 established under this subsection and shall deposit such fee
2 into the Cemetery Oversight Licensing and Disciplinary Fund.
3 The Department may begin to collect the aforementioned fee
4 after the effective date of this Act. In addition, the
5 Department may establish rules for the collection process,
6 which may include, but shall not be limited to, dates, forms,
7 enforcement, or other procedures necessary for the effective
8 collection, deposit, and overall process regarding this
9 Section.

10 (e) Any cemetery authority that fails to pay to the
11 Department the required fee or submits the incorrect amount
12 shall be subject to the penalties provided for in Section
13 25-110 of this Act.

14 (f) Except as otherwise specifically provided, all fees,
15 fines, penalties, or other moneys received or collected
16 pursuant to this Act shall be deposited in the Cemetery
17 Oversight Licensing and Disciplinary Fund.

18 (g) All proportionate funds held in the Comptroller's
19 Administrative Fund related to unexpended moneys collected
20 under the Cemetery Care Act and the Crematory Regulation Act
21 shall be transferred to the Cemetery Oversight Licensing and
22 Disciplinary Fund within 60 days after the effective date of
23 the repeal of the Cemetery Care Act.

24 (h) Personnel employed by the Comptroller on June 30, 2011,
25 to perform the duties pertaining to the administration of the
26 Cemetery Care Act and the Crematory Regulation Act, are

1 transferred to the Department on July 1, 2011.

2 The rights of State employees, the State, and its agencies
3 under the Comptroller Merit Employment Code and applicable
4 collective bargaining agreements and retirement plans are not
5 affected under this Act, except that all positions transferred
6 to the Department shall be subject to the Personnel Code
7 effective July 1, 2011.

8 All transferred employees who are members of collective
9 bargaining units shall retain their seniority, continuous
10 service, salary, and accrued benefits. During the pendency of
11 the existing collective bargaining agreement, the rights
12 provided for under that agreement shall not be abridged.

13 The Department shall continue to honor during their
14 pendency all bargaining agreements in effect at the time of the
15 transfer and to recognize all collective bargaining
16 representatives for the employees who perform or will perform
17 functions transferred by this Act. For all purposes with
18 respect to the management of the existing agreement and the
19 negotiation and management of any successor agreements, the
20 Department shall be deemed the employer of employees who
21 perform or will perform functions transferred to the Department
22 by this Act.

23 Article 90.

24 Amendatory Provisions and Repeals

1 Section 90-1. The Regulatory Sunset Act is amended by
2 adding Section 8.31 as follows:

3 (5 ILCS 80/8.31 new)

4 Sec. 8.31. Acts repealed on January 1, 2021. The following
5 Acts are repealed on January 1, 2021:

6 The Crematory Regulation Act.

7 The Cemetery Oversight Act.

8 Section 90-5. The Human Skeletal Remains Protection Act is
9 amended by changing Section 1 as follows:

10 (20 ILCS 3440/1) (from Ch. 127, par. 2661)

11 Sec. 1. Definitions. For the purposes of this Act:

12 (a) "Human skeletal remains" include the bones and
13 decomposed fleshy parts of a deceased human body.

14 (b) "Unregistered graves" are any graves or locations where
15 a human body has been buried or deposited; is over 100 years
16 old; and is not in a cemetery under the authority of the
17 Illinois Department of Financial and Professional Regulation
18 pursuant to the Cemetery Oversight Act ~~registered with the~~
19 ~~State Comptroller under the Cemetery Care Act.~~

20 (c) "Grave artifacts" are any item of human manufacture or
21 use that is associated with the human skeletal remains in an
22 unregistered grave.

23 (d) "Grave markers" are any tomb, monument, stone,

1 ornament, mound, or other item of human manufacture that is
2 associated with an unregistered grave.

3 (e) "Person" means any natural individual, firm, trust,
4 estate, partnership, association, joint stock company, joint
5 venture, corporation or a receiver, trustee, guardian or other
6 representatives appointed by order of any court, the Federal
7 and State governments, including State Universities created by
8 statute or any city, town, county or other political
9 subdivision of this State.

10 (f) "Disturb" includes excavating, removing, exposing,
11 defacing, mutilating, destroying, molesting, or desecrating in
12 any way human skeletal remains, unregistered graves, and grave
13 markers.

14 (Source: P.A. 86-151.)

15 Section 90-10. The State Finance Act is amended by adding
16 Sections 5.755 and 5.756 as follows:

17 (30 ILCS 105/5.755 new)

18 Sec. 5.755. The Cemetery Oversight Licensing and
19 Disciplinary Fund.

20 (30 ILCS 105/5.756 new)

21 Sec. 5.756. The Pre-need Funeral Consumer Protection Fund.

22 Section 90-15. The Illinois Funeral or Burial Funds Act is

1 amended by changing Sections 1, 1a-1, 1b, 2, 3, 4, 4a, 5, and
2 8.1 and by adding Section 1a-2 as follows:

3 (225 ILCS 45/1) (from Ch. 111 1/2, par. 73.101)

4 Sec. 1. Payment under pre-need contract. Except as
5 otherwise provided in this Section, all sales proceeds paid to
6 any person, partnership, association or corporation with
7 respect to merchandise or services covered by this Act, upon
8 any agreement or contract, or any series or combination of
9 agreements or contracts, which has for a purpose the furnishing
10 or performance of funeral services, or the furnishing or
11 delivery of any personal property, merchandise, or services of
12 any nature in connection with the final disposition of a dead
13 human body, including, but not limited to, outer burial
14 containers, urns, combination casket-vault units, caskets and
15 clothing, for future use at a time determinable by the death of
16 the person or persons whose body or bodies are to be so
17 disposed of, shall be held to be trust funds, and shall be
18 placed in trust in accordance with Sections 1b and 2, or shall
19 be used to purchase life insurance or annuities in accordance
20 with Section 2a. The person, partnership, association or
21 corporation receiving said payments under a pre-need contract
22 is hereby declared to be a trustee thereof until deposits of
23 funds are made in accordance with Section 1b or 2a of this Act.
24 ~~Persons holding less than \$500,000 in trust funds may continue~~
25 ~~to act as the trustee after the funds are deposited in~~

1 ~~accordance with subsection (d) of Section 1b.~~

2 Nothing in this Act shall be construed to prohibit the
3 inclusion of outer burial containers in sales contracts under
4 the Illinois Pre-Need Cemetery Sales Act.

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

6 (225 ILCS 45/1a-1)

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

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

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

16 (1.5) If funded by a trust, it clearly identifies the
17 trustee's name and address and the primary state or federal
18 regulator of the trustee as a corporate fiduciary.

19 (1.7) If funded by life insurance, it clearly
20 identifies the life insurance provider and the primary
21 regulator of the life insurance provider.

22 (2) It clearly identifies the provider's name and
23 address, the purchaser, and the beneficiary, if other than
24 the purchaser.

25 (2.5) If the provider has branch locations, the

1 contract gives the purchaser the opportunity to identify
2 the branch at which the funeral will be provided.

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

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

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

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

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

1 MAY BE REQUIRED.

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

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

12 (5) It discloses any penalties or restrictions,
13 including but not limited to geographic restrictions or the
14 inability of the provider to perform, on the delivery of
15 merchandise, services, or pre-need contract guarantees.

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

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

20 (B) The nature of the relationship among the person
21 funding the pre-need contract, the provider, and the
22 seller; and

23 (C) The impact on the pre-need contract of (i) any
24 changes in the funding arrangement including but not
25 limited to changes in the assignment, beneficiary
26 designation, or use of the funds; (ii) any specific

1 penalties to be incurred by the contract purchaser as a
2 result of failure to make payments; (iii) penalties to
3 be incurred or moneys or refunds to be received as a
4 result of cancellations; and (iv) all relevant
5 information concerning what occurs and whether any
6 entitlements or obligations arise if there is a
7 difference between the proceeds of the particular
8 funding arrangement and the amount actually needed to
9 pay for the funeral at-need.

10 (D) The method of changing the provider.

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

14 (c) No pre-need contract shall be sold in this State unless
15 there is a provider for the services and personal property
16 being sold. If the seller is not a provider, then the seller
17 must have a binding agreement with a provider, and the identity
18 of the provider and the nature of the agreement between the
19 seller and the provider shall be disclosed in the pre-need
20 contract at the time of the sale and before the receipt of any
21 sales proceeds. The failure to disclose the identity of the
22 provider, the nature of the agreement between the seller and
23 the provider, or any changes thereto to the purchaser and
24 beneficiary, or the failure to make the disclosures required in
25 subdivision (a)(1), constitutes an intentional violation of
26 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 that ~~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

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

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

7 (225 ILCS 45/1a-2 new)

8 Sec. 1a-2. Pre-Need Funeral Consumer Protection Fund.

9 (a) Each licensee shall pay a fee of \$5 out of the funds
10 received for each pre-need contract sold and shall forward this
11 sum to the Comptroller semi-annually within 30 days of the end
12 of June and December. Fees collected under this Section shall
13 be deposited into the Pre-need Funeral Consumer Protection
14 Fund, which is hereby created as a special fund in the State
15 treasury. Moneys in the Fund may be expended for the purposes
16 specified in subsection (b) and to purchase insurance to cover
17 losses guaranteed by the Fund.

18 (b) In the event that the purchaser is unable to receive
19 the benefits of his or her pre-need contract or to receive the
20 funds due by reason of cancellation of the contract, the
21 purchaser may apply to the Comptroller on a form prescribed by
22 the Comptroller for restitution from the Pre-need Funeral
23 Consumer Protection Fund. Upon a finding by the Comptroller
24 that the benefits or return of payment is not available to the
25 purchaser, the Comptroller may cause restitution to be paid to

1 the purchaser from the Pre-need Funeral Consumer Protection
2 Fund.

3 (c) In all such cases where a purchaser is paid restitution
4 from the Fund, the Comptroller shall be subrogated to that
5 purchaser's claims against the licensee for all amounts paid
6 from the Fund. If the licensee's liability for default is
7 subsequently proven, any award made by a court of law shall be
8 made payable to the Pre-need Funeral Consumer Protection Fund
9 up to the amount paid to the purchaser from the Fund and the
10 Comptroller shall request that the Attorney General engage in
11 all reasonable post-judgment collection steps to collect such
12 claims from the judgment debtor and reimburse the Fund.

13 (d) The Fund shall not be applied toward any restitution
14 for losses in any lawsuit initiated by the Attorney General or
15 Comptroller or with respect to any claim made on a pre-need
16 contract that occurred prior to the effective date of this
17 amendatory Act of the 96th General Assembly.

18 (e) Notwithstanding any other provision of this Section,
19 the payment of restitution from the Fund shall be a matter of
20 grace and not of right and no purchaser shall have any vested
21 right in the Fund as a beneficiary or otherwise.

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

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

25 Sec. 1b. (a) Whenever a seller receives sales proceeds

1 under a pre-need contract that the purchaser elects to fund by
2 a trust agreement, the seller may retain an initial amount
3 equal to 5% of the purchase price of the services, personal
4 property or merchandise, or 15% of the purchase price of outer
5 burial containers. Thereafter, a seller shall deposit into
6 trust the amounts specified in this Section so that no later
7 than upon the final payment on the contract, the trust shall
8 equal or exceed 95% of the purchase price of all services,
9 personal property, or merchandise, except for outer burial
10 containers, and 85% of the purchase price of outer burial
11 containers.

12 (b) In the event that sales proceeds to be deposited into a
13 trust are received pursuant to a cash sale or an ~~a retail~~
14 installment contract, the seller may retain the initial
15 percentage authorized by subsection (a) of this Section ~~and any~~
16 ~~finance charge paid by the purchaser~~, and thereafter shall
17 deposit into the trust the entire balance of sales proceeds
18 received.

19 (c) In the event that the deposits into a trust required by
20 this Section do not, after final payment by the consumer,
21 result in the trust containing at least 95% of the purchase
22 ~~sales~~ price of all services, personal property or merchandise,
23 except for outer burial containers and 85% of the purchase
24 price of outer burial containers, the seller shall make an
25 additional deposit into the trust in an amount sufficient to
26 meet these percentages.

1 (d) The trustee may not be the seller or provider of
2 funeral services or merchandise ~~unless the seller holds sales~~
3 ~~of less than \$500,000 in trust, and deposits funds for which~~
4 ~~the seller is acting as trustee in (1) withdrawable accounts of~~
5 ~~State chartered or federally chartered savings and loan~~
6 ~~associations insured by the Federal Deposit Insurance~~
7 ~~Corporation; (2) deposits or certificates of deposits in State~~
8 ~~or federal banks insured by the Federal Deposit Insurance~~
9 ~~Corporation; or (3) share accounts or share certificate~~
10 ~~accounts in a State or federal credit union, the accounts of~~
11 ~~which are insured as required by the Illinois Credit Union Act~~
12 ~~or the Federal Credit Union Act, as applicable.~~

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

14 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

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

18 (b) A trust established under this Act must be maintained
19 with a corporate fiduciary as defined in Section 1-5.05 of the
20 Corporate Fiduciary Act.÷

21 ~~(1) in a trust account established in a bank, savings~~
22 ~~and loan association, savings bank, or credit union~~
23 ~~authorized to do business in Illinois in which accounts are~~
24 ~~insured by an agency of the federal government; or~~

25 ~~(2) in a trust company authorized to do business in~~

1 ~~Illinois.~~

2 (c) Trust agreements and amendments to the trust agreements
3 used to fund a pre-need contract shall be filed with the
4 Comptroller.

5 (d) (Blank).

6 (e) A seller or provider shall furnish to the trustee and
7 depositary the name of each payor and the amount of payment on
8 each such account for which deposit is being so made. Nothing
9 shall prevent the trustee ~~or a seller or provider acting as a~~
10 ~~trustee in accordance with this Act~~ from commingling the
11 deposits in any such trust fund for purposes of its management
12 and the investment of its funds as provided in the Common Trust
13 Fund Act. In addition, multiple trust funds maintained under
14 this Act may be commingled or commingled with other funeral or
15 burial related trust funds if all record keeping requirements
16 imposed by law are met.

17 (f) (Blank). ~~Trust funds may be maintained in a financial~~
18 ~~institution described in subsection (b) which is located in a~~
19 ~~state adjoining this State where: (1) the financial institution~~
20 ~~is located within 50 miles of the border of this State, (2) its~~
21 ~~accounts are federally insured, and (3) it has registered with~~
22 ~~the Illinois Secretary of State for purposes of service of~~
23 ~~process.~~

24 (g) Upon no less than 30 days prior notice to the
25 Comptroller, the seller may change the trustee of the fund.
26 Failure to provide the Comptroller with timely prior notice is

1 an intentional violation of this Act.

2 (h) A trustee shall at least annually furnish to each
3 purchaser a statement containing: (1) the receipts,
4 disbursements, and inventory of the trust, including an
5 explanation of any fees or expenses charged by the trustee
6 under Section 5 of this Act or otherwise, (2) an explanation of
7 the purchaser's right to a refund, if any, under this Act, and
8 (3) identifying the primary regulator of the trust as a
9 corporate fiduciary under state or federal law.

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

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

12 Sec. 3. Licensing.

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

19 (1) The full name and address (both residence and place
20 of business) of the applicant, and every member, officer
21 and director thereof if the applicant is a firm,
22 partnership, association, or corporation, and of every
23 shareholder holding more than 10% of the corporate stock if
24 the applicant is a corporation;

25 (2) A statement of the applicant's assets and

1 liabilities;

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

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

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

1 Comptroller in enforcing this Act;

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

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

9 (b) Applications for license shall be accompanied by a
10 fidelity bond executed by the applicant and a surety company
11 authorized to do business in this State or an irrevocable,
12 unconditional letter of credit issued by a bank, credit union,
13 or trust company authorized to do business in the State of
14 Illinois, as approved by the State Comptroller, in such amount
15 not exceeding \$10,000 as the Comptroller may require. If, after
16 notice and an opportunity to be heard, it has been determined
17 that a licensee has violated this Act within the past 5
18 calendar years, ~~or if a licensee does not retain a corporate~~
19 ~~fiduciary, as defined in the Corporate Fiduciary Act, to manage~~
20 ~~the funds in trust pursuant to this Act,~~ the Comptroller may
21 require an additional bond or letter of credit from the
22 licensee from time to time in amounts equal to one-tenth of
23 such trust funds, which bond or letter of credit shall run to
24 the Comptroller for the use and benefit of the beneficiaries of
25 such trust funds.

26 The licensee shall keep accurate accounts, books and

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

1 licensee shall notify the insurance company of the name of each
2 pre-need contract purchaser and the amount of each payment when
3 the pre-need contract, insurance policy or annuity is
4 purchased.

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

22 The licensee shall make all required books and records
23 pertaining to trust funds, insurance policies, or tax-deferred
24 annuities available to the Comptroller for examination. The
25 Comptroller, or a person designated by the Comptroller who is
26 trained to perform such examinations, may at any time

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

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

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

1 by the Comptroller in the written order. The grounds for
2 ordering these additional audits or examinations may include,
3 but shall not be limited to:

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

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

8 (3) any withdrawals or attempted withdrawals from the
9 trusts, insurance policies, or annuity contracts in
10 violation of this Act; or

11 (4) failure to maintain or produce documentation
12 required by this Act for deposits into trust accounts,
13 trust investment activities, or life insurance or annuity
14 policies.

15 ~~The~~ Prior to ordering an additional audit or examination,
16 the Comptroller shall request the licensee to respond and
17 comment upon the factors identified by the Comptroller as
18 warranting the subsequent examination or audit. The licensee
19 shall have 30 days to provide a response to the Comptroller. If
20 the Comptroller decides to proceed with the additional
21 examination or audit, the licensee shall bear the full cost of
22 that examination or audit, up to a maximum of \$20,000 ~~\$7,500~~.
23 The Comptroller may elect to pay for the examination or audit
24 and receive reimbursement from the licensee. Payment of the
25 costs of the examination or audit by a licensee shall be a
26 condition of receiving, maintaining, or renewing a license

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

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

1 immediately cancel or revoke said license.

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

3 (225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

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

5 (a) Except as otherwise provided in this Act, monies in a
6 trust established under Section 2 ~~The amount or amounts so~~
7 ~~deposited into trust, with interest thereon, if any,~~ shall not
8 be withdrawn until after the death of the beneficiary ~~person or~~
9 ~~persons for whose funeral or burial such funds were paid,~~
10 unless sooner withdrawn and refunded to the purchaser as
11 provided in this Section ~~repaid to the person who originally~~
12 ~~paid the money under or in connection with the pre-need~~
13 ~~contract or to his or her legal representative.~~ The life
14 insurance policies or tax-deferred annuities shall not be
15 surrendered until the death of the beneficiary ~~person or~~
16 ~~persons for whose funeral or burial the policies or annuities~~
17 ~~were purchased,~~ unless sooner surrendered and repaid to the
18 owner of the policy purchased under or in connection with the
19 pre-need contract or to his or her legal representative. If,
20 however, the agreement or series of agreements provides for
21 forfeiture and retention of any or all payments as and for
22 liquidated damages as provided in Section 6, then the trustee
23 may withdraw the deposits. In addition, nothing in this Section
24 (i) prohibits the change of depositary by the trustee and the
25 transfer of trust funds from one depositary to another or (ii)

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

15 (b) If for any reason a seller or provider who has engaged
16 in pre-need sales has refused, cannot, or does not comply with
17 the terms of the pre-need contract within a reasonable time
18 after he or she is required to do so, the purchaser or his or
19 her heirs or assigns or duly authorized representative shall
20 have the right to a refund of an amount equal to the sales
21 price paid for undelivered merchandise or services plus any
22 ~~otherwise earned undistributed interest~~ amounts held in trust
23 attributable to the contract, within 30 days of the filing of a
24 sworn affidavit with the trustee setting forth the existence of
25 the contract and the fact of breach. A copy of this affidavit
26 shall be filed with the Comptroller and the seller. In the

1 event a seller is prevented from performing by strike, shortage
2 of materials, civil disorder, natural disaster, or any like
3 occurrence beyond the control of the seller or provider, the
4 seller or provider's time for performance shall be extended by
5 the length of the delay. Nothing in this Section shall relieve
6 the seller or provider from any liability for non-performance
7 of his or her obligations under the pre-need contract.

8 (c) After final payment on a pre-need contract, any
9 purchaser may, prior to the death of the beneficiary and upon
10 written demand to a seller, demand that the pre-need contract
11 with the seller be terminated. The seller shall, within 30
12 days, initiate a refund to the purchaser of the entire amount
13 held in trust attributable to undelivered merchandise and
14 unperformed services plus any amounts held in trust
15 attributable to the contract, ~~including otherwise earned~~
16 ~~undistributed interest earned thereon~~ or the cash surrender
17 value of a life insurance policy or tax-deferred annuity.

18 (c-5) If, after the death of the beneficiary, no funeral
19 merchandise or services are provided or if the funeral is
20 conducted by another provider ~~person~~, the seller may keep no
21 more than 10% of the payments made under the pre-need contract
22 or \$300, whichever sum is less. The remainder of the trust
23 funds or insurance or annuity proceeds shall be forwarded to
24 the legal heirs of the deceased beneficiary or as determined by
25 probate action.

26 (d) The placement and retention of all or a portion of a

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

24 (Source: P.A. 95-331, eff. 8-21-07.)

1 Sec. 4a. Investment of funds.

2 (a) A trustee has a duty to invest and manage the trust
3 assets pursuant to the Prudent Investor Rule under the Trusts
4 and Trustees Act shall, ~~with respect to the investment of trust~~
5 ~~funds, exercise the judgment and care under the circumstances~~
6 ~~then prevailing that persons of prudence, discretion, and~~
7 ~~intelligence exercise in the management of their own affairs,~~
8 ~~not in regard to speculation, but in regard to the permanent~~
9 ~~disposition of their funds, considering the probable income as~~
10 ~~well as the probable safety of their capital.~~

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

1 licensees to pledge the trust.

2 (c) Because it is not known at the time of deposit or at
3 the time that income is earned on the trust account to whom the
4 principal and the accumulated earnings will be distributed for
5 the purpose of determining the Illinois income tax due on these
6 trust funds, the principal and any accrued earnings or losses
7 related to each individual account shall be held in suspense
8 until the final determination is made as to whom the account
9 shall be paid. The beneficiary's estate shall not be
10 responsible for any funeral and burial purchases listed in a
11 pre-need contract if the pre-need contract is entered into on a
12 guaranteed price basis.

13 If a pre-need contract is not a guaranteed price contract,
14 then to the extent the proceeds of a non-guaranteed price
15 pre-need contract cover the funeral and burial expenses for the
16 beneficiary, no claim may be made against the estate of the
17 beneficiary. A claim may be made against the beneficiary's
18 estate if the charges for the funeral services and merchandise
19 at the time of use exceed the amount of the amount in trust
20 plus the percentage of the sale proceeds initially retained by
21 the seller or the face value of the life insurance policy or
22 tax-deferred annuity.

23 ~~(d) Trust funds shall not be invested by the trustee in~~
24 ~~life insurance policies or tax-deferred annuities unless the~~
25 ~~following requirements are met:~~

26 ~~(1) The company issuing the life insurance policies or~~

1 ~~tax-deferred annuities is licensed by the Illinois~~
2 ~~Department of Insurance and the insurance producer or~~
3 ~~annuity seller is licensed to do business in the State of~~
4 ~~Illinois;~~

5 ~~(2) Prior to the investment, the purchaser approves, in~~
6 ~~writing, the investment in life insurance policies or~~
7 ~~tax-deferred annuities;~~

8 ~~(3) Prior to the investment, the purchaser is notified~~
9 ~~by the seller in writing about the disclosures required for~~
10 ~~all pre-need contracts under Section 1a-1 of this Act, and~~
11 ~~the purchase of life insurance or a tax-deferred annuity is~~
12 ~~subject to the requirements of Section 2a of this Act;~~

13 ~~(4) Prior to the investment, the trustee informs the~~
14 ~~Comptroller that trust funds shall be removed from the~~
15 ~~trust account to purchase life insurance or a tax-deferred~~
16 ~~annuity upon the written consent of the purchaser;~~

17 ~~(5) The purchaser retains the right to refund provided~~
18 ~~for in this Act, unless the pre-need contract is sold on an~~
19 ~~irrevocable basis as provided in Section 4 of this Act; and~~

20 ~~(6) Notice must be given in writing that the cash~~
21 ~~surrender value of a life insurance policy may be less than~~
22 ~~the amount provided for by the refund provisions of the~~
23 ~~trust account.~~

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

25 (225 ILCS 45/5) (from Ch. 111 1/2, par. 73.105)

1 Sec. 5. This Act shall not be construed to prohibit the
2 trustee and trustee's depository from being reimbursed and
3 receiving from such funds their reasonable compensation and
4 expenses in the custody and administration of such funds
5 pursuant to the Trusts and Trustees Act ~~provided that the~~
6 ~~combined expenses and compensation shall not exceed 25% of the~~
7 ~~earnings of the fund so deposited under each of the agreements~~
8 ~~or series of agreements calculated on an annual basis and paid~~
9 ~~at any time during that year.~~

10 (Source: P.A. 86-509.)

11 (225 ILCS 45/8.1)

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

1 provided in all sales instruments.

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

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

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

26 (iii) the Comptroller issues a license upon

1 application of the new owner, which license must be applied
2 for within 21 ~~30~~ days of the anticipated date of the sale
3 or transfer, subject to the payment of any delinquencies,
4 if any, as stated in item (ii).

5 For purposes of this Section, a person, firm, corporation,
6 partnership, or institution that acquires the licensee through
7 a real estate foreclosure shall be subject to the provisions of
8 this Section.

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

10 Section 90-25. The Crematory Regulation Act is amended by
11 changing Sections 5, 10, 11, 11.5, 13, 20, 22, 25, 40, 55, 60,
12 62, 62.5, 62.10, 62.15, 62.20, 65, 80, and 100 and by adding
13 Sections 7, 85, 87, 88, 89, 90, 91, 92, 93, 94, 95, 105, 115,
14 120, 125, 130, 140, 150, 160, and 170, and by repealing Section
15 12 as follows:

16 (410 ILCS 18/5)

17 Sec. 5. Definitions. As used in this Act:

18 "Address of record" means the designated address recorded
19 by the Department in the applicant's or licensee's application
20 file or license file. It is the duty of the applicant or
21 licensee to inform the Department of any change of address
22 within 14 days, and such changes must be made either through
23 the Department's website or by contacting the Department's
24 licensure maintenance unit. The address of record shall be the

1 permanent street address of the crematory.

2 "Alternative container" means a receptacle, other than a
3 casket, in which human remains are transported to the crematory
4 and placed in the cremation chamber for cremation. An
5 alternative container shall be (i) composed of readily
6 combustible materials suitable for cremation, (ii) able to be
7 closed in order to provide a complete covering for the human
8 remains, (iii) resistant to leakage or spillage, (iv) rigid
9 enough for handling with ease, and (v) able to provide
10 protection for the health, safety, and personal integrity of
11 crematory personnel.

12 "Authorizing agent" means a person legally entitled to
13 order the cremation and final disposition of specific human
14 remains.

15 "Body parts" means limbs or other portions of the anatomy
16 that are removed from a person or human remains for medical
17 purposes during treatment, surgery, biopsy, autopsy, or
18 medical research; or human bodies or any portion of bodies that
19 have been donated to science for medical research purposes.

20 "Burial transit permit" means a permit for disposition of a
21 dead human body as required by Illinois law.

22 "Casket" means a rigid container that is designed for the
23 encasement of human remains, is usually constructed of wood,
24 metal, or like material and ornamented and lined with fabric,
25 and may or may not be combustible.

26 ~~"Change of ownership" means a transfer of more than 50% of~~

1 ~~the stock or assets of a crematory authority.~~

2 "Comptroller" means the Comptroller of the State of
3 Illinois.

4 "Cremated remains" means all human remains recovered after
5 the completion of the cremation, which may possibly include the
6 residue of any foreign matter including casket material,
7 bridgework, or eyeglasses, that was cremated with the human
8 remains.

9 "Cremation" means the technical process, using heat and
10 flame, that reduces human remains to bone fragments. The
11 reduction takes place through heat and evaporation. Cremation
12 shall include the processing, and may include the
13 pulverization, of the bone fragments.

14 "Cremation chamber" means the enclosed space within which
15 the cremation takes place.

16 "Cremation interment container" means a rigid outer
17 container that, subject to a cemetery's rules and regulations,
18 is composed of concrete, steel, fiberglass, or some similar
19 material in which an urn is placed prior to being interred in
20 the ground, and which is designed to withstand prolonged
21 exposure to the elements and to support the earth above the
22 urn.

23 "Cremation room" means the room in which the cremation
24 chamber is located.

25 "Crematory" means the building or portion of a building
26 that houses the cremation room and the holding facility.

1 "Crematory authority" means the legal entity which is
2 licensed by the Department ~~Comptroller~~ to operate a crematory
3 and to perform cremations.

4 "Department" means the Illinois Department of Financial
5 and Professional Regulation ~~Illinois Department of Public~~
6 ~~Health~~.

7 "Final disposition" means the burial, cremation, or other
8 disposition of a dead human body or parts of a dead human body.

9 "Funeral director" means a person known by the title of
10 "funeral director", "funeral director and embalmer", or other
11 similar words or titles, licensed by the State to practice
12 funeral directing or funeral directing and embalming.

13 "Funeral establishment" means a building or separate
14 portion of a building having a specific street address and
15 location and devoted to activities relating to the shelter,
16 care, custody, and preparation of a deceased human body and may
17 contain facilities for funeral or wake services.

18 "Holding facility" means an area that (i) is designated for
19 the retention of human remains prior to cremation, (ii)
20 complies with all applicable public health law, (iii) preserves
21 the health and safety of the crematory authority personnel, and
22 (iv) is secure from access by anyone other than authorized
23 persons. A holding facility may be located in a cremation room.

24 "Human remains" means the body of a deceased person,
25 including any form of body prosthesis that has been permanently
26 attached or implanted in the body.

1 "Licensee" means an entity licensed under this Act. An
2 entity that holds itself as a licensee or that is accused of
3 unlicensed practice is considered a licensee for purposes of
4 enforcement, investigation, hearings, and the Illinois
5 Administrative Procedure Act.

6 "Niche" means a compartment or cubicle for the
7 memorialization and permanent placement of an urn containing
8 cremated remains.

9 "Person" means any person, partnership, association,
10 corporation, limited liability company, or other entity, and in
11 the case of any such business organization, its officers,
12 partners, members, or shareholders possessing 25% or more of
13 ownership of the entity.

14 "Processing" means the reduction of identifiable bone
15 fragments after the completion of the cremation process to
16 unidentifiable bone fragments by manual or mechanical means.

17 "Pulverization" means the reduction of identifiable bone
18 fragments after the completion of the cremation process to
19 granulated particles by manual or mechanical means.

20 "Scattering area" means an area which may be designated by
21 a cemetery and located on dedicated cemetery property where
22 cremated remains, which have been removed from their container,
23 can be mixed with, or placed on top of, the soil or ground
24 cover.

25 "Secretary" means the Secretary of Financial and
26 Professional Regulation.

1 "Temporary container" means a receptacle for cremated
2 remains, usually composed of cardboard, plastic or similar
3 material, that can be closed in a manner that prevents the
4 leakage or spillage of the cremated remains or the entrance of
5 foreign material, and is a single container of sufficient size
6 to hold the cremated remains until an urn is acquired or the
7 cremated remains are scattered.

8 "Urn" means a receptacle designed to encase the cremated
9 remains.

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

11 (410 ILCS 18/7 new)

12 Sec. 7. Powers and duties of the Department. Subject to the
13 provisions of this Act, the Department may exercise any of the
14 following powers and duties:

15 (1) Authorize standards to ascertain the
16 qualifications and fitness of applicants for licensing as
17 licensed crematory authorities and pass upon the
18 qualifications of applicants for licensure.

19 (2) Examine and audit a licensed crematory authority's
20 records, crematory, or any other aspects of crematory
21 operation as the Department deems appropriate.

22 (3) Investigate any and all unlicensed activity.

23 (4) Conduct hearings on proceedings to refuse to issue
24 or renew licenses, or, to revoke, suspend, place on
25 probation, reprimand, or otherwise discipline licensees,

1 and to refuse to issue or renew licenses or to revoke,
2 suspend, place on probation, reprimand or otherwise
3 discipline licensees.

4 (5) Formulate rules required for the administration of
5 this Act.

6 (6) Maintain rosters of the names and addresses of all
7 licensees, and all entities whose licenses have been
8 suspended, revoked, denied renewal, or otherwise
9 disciplined. These rosters shall be available upon written
10 request and payment of the required fee as established by
11 rule.

12 (410 ILCS 18/10)

13 Sec. 10. Establishment of crematory and licensing of
14 crematory authority.

15 (a) Any person doing business in this State, or any
16 cemetery, funeral establishment, corporation, partnership,
17 joint venture, voluntary organization or any other entity, may
18 erect, maintain, and operate a crematory in this State and
19 provide the necessary appliances and facilities for the
20 cremation of human remains in accordance with this Act.

21 (b) A crematory shall be subject to all local, State, and
22 federal health and environmental protection requirements and
23 shall obtain all necessary licenses and permits from the
24 Department of Financial and Professional Regulation, the
25 Department of Public Health, the federal Department of Health

1 and Human Services, and the Illinois and federal Environmental
2 Protection Agencies, or such other appropriate local, State, or
3 federal agencies.

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

7 (d) An application for licensure as a crematory authority
8 shall be in writing on forms furnished by the Department
9 ~~Comptroller~~. Applications shall be accompanied by a reasonable
10 fee determined by rule ~~of \$50~~ and shall contain all of the
11 following:

12 (1) The full name and address, both residence and
13 business, of the applicant if the applicant is an
14 individual; the full name and address of every member if
15 the applicant is a partnership; the full name and address
16 of every member of the board of directors if the applicant
17 is an association; and the name and address of every
18 officer, director, and shareholder holding more than 25% of
19 the corporate stock if the applicant is a corporation.

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

21 (3) A description of the type of structure and
22 equipment to be used in the operation of the crematory,
23 including the operating permit number issued to the
24 cremation device by the Illinois Environmental Protection
25 Agency.

26 ~~(3.5) Attestation by the owner that cremation services~~

1 ~~shall be by a person trained in accordance with the~~
2 ~~requirements of Section 22 of this Act.~~

3 ~~(3.10) A copy of the certification or certifications~~
4 ~~issued by the certification program to the person or~~
5 ~~persons who will operate the cremation device.~~

6 (4) Any further information that the Department
7 ~~Comptroller~~ reasonably may require as established by rule.

8 (e) Each crematory authority shall file an annual report
9 with the Department Comptroller, accompanied with a reasonable
10 ~~\$25~~ fee determined by rule, providing (i) an affidavit signed
11 by the owner of the crematory authority that at the time of the
12 report the cremation device was in proper operating condition,
13 (ii) the total number of all cremations performed at the
14 crematory during the past year, (iii) attestation by the
15 licensee that all applicable permits and certifications are
16 valid, ~~and~~ (iv) either (A) any changes required in the
17 information provided under subsection (d) or (B) an indication
18 that no changes have occurred, and (v) any other information
19 that the Department may require as established by rule. The
20 annual report shall be filed by a crematory authority on or
21 before March 15 of each calendar year, ~~in the Office of the~~
22 ~~Comptroller. If the fiscal year of a crematory authority is~~
23 ~~other than on a calendar year basis, then the crematory~~
24 ~~authority shall file the report required by this Section within~~
25 ~~75 days after the end of its fiscal year. The Comptroller~~
26 ~~shall, for good cause shown, grant an extension for the filing~~

1 ~~of the annual report upon the written request of the crematory~~
2 ~~authority. An extension shall not exceed 60 days. If the fiscal~~
3 ~~year of a crematory authority is other than on a calendar year~~
4 ~~basis, then the crematory authority shall file the report~~
5 ~~required by this Section within 75 days after the end of its~~
6 ~~fiscal year.~~ If a crematory authority fails to submit an annual
7 report to the Department ~~Comptroller~~ within the time specified
8 in this Section, the Department ~~Comptroller~~ shall impose upon
9 the crematory authority a penalty as provided for by rule ~~of \$5~~
10 for each and every day the crematory authority remains
11 delinquent in submitting the annual report. The Department
12 ~~Comptroller~~ may abate all or part of the ~~\$5 daily~~ penalty for
13 good cause shown.

14 (f) All records required to be maintained under this Act,
15 including but not limited to those relating to the license and
16 annual report of the crematory authority required to be filed
17 under this Section, shall be subject to inspection by the
18 Comptroller upon reasonable notice.

19 (g) The Department ~~Comptroller~~ may inspect crematory
20 records at the crematory authority's place of business to
21 review the licensee's compliance with this Act. The inspection
22 must include verification that:

23 (1) the crematory authority has complied with
24 record-keeping requirements of this Act;

25 (2) a crematory device operator's certification of
26 training is conspicuously displayed at the crematory;

1 (3) the cremation device has a current operating permit
2 issued by the Illinois Environmental Protection Agency and
3 the permit is conspicuously displayed in the crematory;

4 (4) the crematory authority is in compliance with local
5 zoning requirements; and

6 (5) the crematory authority license issued by the
7 Department Comptroller is conspicuously displayed at the
8 crematory.

9 (6) other details as determined by rule.

10 (h) The Department Comptroller shall issue licenses under
11 this Act to the crematories that are registered with the
12 Comptroller as of March 15, 2010 ~~July 1, 2003~~ without requiring
13 the previously registered crematories to complete license
14 applications.

15 (Source: P.A. 92-419, eff. 1-1-02; 92-675, eff. 7-1-03.)

16 (410 ILCS 18/11)

17 Sec. 11. Grounds for denial or discipline ~~refusal of~~
18 ~~license or suspension or revocation of license.~~

19 (a) In this Section, "applicant" means a person who has
20 applied for a license under this Act including those persons
21 whose names are listed on a license application in Section 10
22 of this Act.

23 (b) The Department Comptroller may refuse to issue or renew
24 a license, place on probation, reprimand, or take other
25 disciplinary action that the Department may deem appropriate,

1 including imposing fines not to exceed \$10,000 for each
2 violation, with regard to any a license under this Act, or may
3 suspend or revoke a license issued under this Act, on any of
4 the following grounds:

5 (1) The applicant or licensee has made any
6 misrepresentation or false statement or concealed any
7 material fact in furnishing information to the Department
8 ~~connection with a license application or licensure under~~
9 ~~this Act.~~

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

12 (3) The applicant or licensee has refused to give
13 information required under this Act to be disclosed to the
14 Department or failing, within 30 days, to provide
15 information in response to a written request made by the
16 Department ~~Comptroller.~~

17 (4) Engaging in dishonorable, unethical, or
18 unprofessional conduct of a character likely to deceive,
19 defraud, or harm the public. ~~The applicant or licensee has~~
20 ~~conducted or is about to conduct cremation business in a~~
21 ~~fraudulent manner.~~

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

1 element of which is fraud.

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

6 (7) The applicant or licensee, including any member,
7 officer, or director of the applicant or licensee if the
8 applicant or licensee is a firm, partnership, association,
9 or corporation and including any shareholder holding more
10 than 25% of the corporate stock of the applicant or
11 licensee, has violated any provision of this Act or any
12 regulation or order made by the Department ~~Comptroller~~
13 under this Act.

14 (8) The Department ~~Comptroller~~ finds any fact or
15 condition existing that, if it had existed at the time of
16 the original application for a license under this Act,
17 would have warranted the Comptroller in refusing the
18 issuance of the license.

19 (9) Any violation of this Act or of the rules adopted
20 under this Act.

21 (10) Incompetence.

22 (11) Gross malpractice.

23 (12) Discipline by another state, District of
24 Columbia, territory, or foreign nation, if at least one of
25 the grounds for the discipline is the same or substantially
26 equivalent to those set forth in this Section.

1 (13) Directly or indirectly giving to or receiving from
2 any person, firm, corporation, partnership, or association
3 any fee, commission, rebate, or other form of compensation
4 for professional services not actually or personally
5 rendered.

6 (14) A finding by the Department that the licensee,
7 after having its license placed on probationary status, has
8 violated the terms of probation.

9 (15) Willfully making or filing false records or
10 reports, including, but not limited to, false records filed
11 with State agencies or departments.

12 (16) Gross, willful, or continued overcharging for
13 professional services, including filing false statements
14 for collection of fees for which services are not rendered.

15 (17) Practicing under a false or, except as provided by
16 law, an assumed name.

17 (18) Cheating on or attempting to subvert this Act's
18 licensing application process.

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

20 (410 ILCS 18/11.5)

21 Sec. 11.5. License revocation or suspension; surrender of
22 license.

23 (a) (Blank). ~~Upon determining that grounds exist for the~~
24 ~~revocation or suspension of a license issued under this Act,~~
25 ~~the Comptroller, if appropriate, may revoke or suspend the~~

1 ~~license issued to the licensee.~~

2 (b) Upon the revocation or suspension of a license issued
3 under this Act, the licensee must immediately surrender the
4 license to the Department Comptroller. If the licensee fails to
5 do so, the Department Comptroller may seize the license.

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

7 (410 ILCS 18/13)

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

9 (a) Every license issued under this Act must state the
10 number of the license, the business name and address of the
11 licensee's principal place of business, and the licensee's
12 parent company, if any. The license must be conspicuously
13 posted in the place of business operating under the license.

14 (b) After initial licensure, if any person comes to obtain
15 at least 25% of the ownership over the licensed crematory
16 authority, then the crematory authority shall have to apply for
17 a new license and receive licensure in the required time as set
18 out by rule. ~~No license is transferable or assignable without~~
19 ~~the express written consent of the Comptroller. A transfer of~~
20 ~~more than 50% of the ownership of any business licensed under~~
21 ~~this Act shall be deemed to be an attempted assignment of the~~
22 ~~license originally issued to the licensee for whom consent of~~
23 ~~the Comptroller is required.~~

24 (c) Every license issued under this Act shall remain in
25 force until it has been surrendered, suspended, or revoked in

1 accordance with this Act. Upon the request of an interested
2 person or on the Department's ~~Comptroller's~~ own motion, the
3 Department ~~Comptroller~~ may issue a new license to a licensee
4 whose license has been revoked under this Act if no factor or
5 condition then exists which would have warranted the Department
6 ~~Comptroller~~ in originally refusing the issuance of the license.
7 (Source: P.A. 92-675, eff. 7-1-03.)

8 (410 ILCS 18/20)

9 Sec. 20. Authorization to cremate.

10 (a) A crematory authority shall not cremate human remains
11 until it has received all of the following:

12 (1) A cremation authorization form signed by an
13 authorizing agent. The cremation authorization form shall
14 be provided by the crematory authority and shall contain,
15 at a minimum, the following information:

16 (A) The identity of the human remains and the time
17 and date of death.

18 (B) The name of the funeral director and ~~or~~ funeral
19 establishment, if applicable, that obtained the
20 cremation authorization.

21 (C) Notification as to whether the death occurred
22 from a disease declared by the Department of Health to
23 be infectious, contagious, communicable, or dangerous
24 to the public health.

25 (D) The name of the authorizing agent and the

1 relationship between the authorizing agent and the
2 decedent.

3 (E) A representation that the authorizing agent
4 does in fact have the right to authorize the cremation
5 of the decedent, and that the authorizing agent is not
6 aware of any living person who has a superior priority
7 right to that of the authorizing agent, as set forth in
8 Section 15. In the event there is another living person
9 who has a superior priority right to that of the
10 authorizing agent, the form shall contain a
11 representation that the authorizing agent has made all
12 reasonable efforts to contact that person, has been
13 unable to do so, and has no reason to believe that the
14 person would object to the cremation of the decedent.

15 (F) Authorization for the crematory authority to
16 cremate the human remains.

17 (G) A representation that the human remains do not
18 contain a pacemaker or any other material or implant
19 that may be potentially hazardous or cause damage to
20 the cremation chamber or the person performing the
21 cremation.

22 (H) The name of the person authorized to receive
23 the cremated remains from the crematory authority.

24 (I) The manner in which final disposition of the
25 cremated remains is to take place, if known. If the
26 cremation authorization form does not specify final

1 disposition in a grave, crypt, niche, or scattering
2 area, then the form may indicate that the cremated
3 remains will be held by the crematory authority for 30
4 days before they are released, unless they are picked
5 up from the crematory authority prior to that time, in
6 person, by the authorizing agent. At the end of the 30
7 days the crematory authority may return the cremated
8 remains to the authorizing agent if no final
9 disposition arrangements are made; or at the end of 60
10 days the crematory authority may dispose of the
11 cremated remains in accordance with subsection (d) of
12 Section 40.

13 (J) A listing of any items of value to be delivered
14 to the crematory authority along with the human
15 remains, and instructions as to how the items should be
16 handled.

17 (K) A specific statement as to whether the
18 authorizing agent has made arrangements for any type of
19 viewing of the decedent before cremation, or for a
20 service with the decedent present before cremation in
21 connection with the cremation, and if so, the date and
22 time of the viewing or service and whether the
23 crematory authority is authorized to proceed with the
24 cremation upon receipt of the human remains.

25 (L) The signature of the authorizing agent,
26 attesting to the accuracy of all representations

1 contained on the cremation authorization form, except
2 as set forth in paragraph (M) of this subsection.

3 (M) If a cremation authorization form is being
4 executed on a pre-need basis, the cremation
5 authorization form shall contain the disclosure
6 required by subsection (b) of Section 140 ~~65~~.

7 (N) The cremation authorization form, other than
8 pre-need cremation forms, shall also be signed by a
9 funeral director or other representative of the
10 funeral establishment that obtained the cremation
11 authorization. That individual shall merely execute
12 the cremation authorization form as a witness and shall
13 not be responsible for any of the representations made
14 by the authorizing agent, unless the individual has
15 actual knowledge to the contrary. The information
16 requested by items (A), (B), (C) and (G) of this
17 subsection, however, shall be considered to be
18 representations of the authorizing agent. In addition,
19 the funeral director or funeral establishment shall
20 warrant to the crematory that the human remains
21 delivered to the crematory authority are the human
22 remains identified on the cremation authorization
23 form.

24 (2) A completed and executed burial transit permit
25 indicating that the human remains are to be cremated.

26 (3) Any other documentation required by this State.

1 (b) If an authorizing agent is not available to execute a
2 cremation authorization form in person, that person may
3 delegate that authority to another person in writing, or by
4 sending the crematory authority a facsimile transmission that
5 contains the name, address, and relationship of the sender to
6 the decedent and the name and address of the individual to whom
7 authority is delegated. Upon receipt of the written document,
8 or facsimile transmission, telegram, or other electronic
9 telecommunications transmission which specifies the individual
10 to whom authority has been delegated, the crematory authority
11 shall allow this individual to serve as the authorizing agent
12 and to execute the cremation authorization form. The crematory
13 authority shall be entitled to rely upon the cremation
14 authorization form without liability.

15 (c) An authorizing agent who signs a cremation
16 authorization form shall be deemed to warrant the truthfulness
17 of any facts set forth on the cremation authorization form,
18 including that person's authority to order the cremation;
19 except for the information required by items (C) and (G) of
20 paragraph (1) of subsection (a) of this Section, unless the
21 authorizing agent has actual knowledge to the contrary. An
22 authorizing agent signing a cremation authorization form shall
23 be personally and individually liable for all damages
24 occasioned by and resulting from authorizing the cremation.

25 (d) A crematory authority shall have authority to cremate
26 human remains upon the receipt of a cremation authorization

1 form signed by an authorizing agent. There shall be no
2 liability for a crematory authority that cremates human remains
3 according to an authorization, or that releases or disposes of
4 the cremated remains according to an authorization, except for
5 a crematory authority's gross negligence, provided that the
6 crematory authority performs its functions in compliance with
7 this Act.

8 (e) After an authorizing agent has executed a cremation
9 authorization form, the authorizing agent may revoke the
10 authorization and instruct the crematory authority to cancel
11 the cremation and to release or deliver the human remains to
12 another crematory authority or funeral establishment. The
13 instructions shall be provided to the crematory authority in
14 writing. A crematory authority shall honor any instructions
15 given to it by an authorizing agent under this Section if it
16 receives the instructions prior to beginning the cremation of
17 the human remains.

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

19 (410 ILCS 18/22)

20 Sec. 22. Performance of cremation service; training. A
21 person may not perform a cremation service in this State unless
22 he or she has completed training in performing cremation
23 services and received certification by a program recognized by
24 the Department ~~Comptroller~~. The crematory authority must
25 conspicuously display the certification at the crematory

1 authority's place of business. Any new employee shall have a
2 reasonable time period, as determined by rule ~~not to exceed one~~
3 ~~year~~, to attend a recognized training program. In the interim,
4 the new employee may perform a cremation service if he or she
5 has received training from another person who has received
6 certification by a program recognized by the Department and is
7 under the supervision of the trained person ~~Comptroller~~. For
8 purposes of this Act, the Department may ~~Comptroller shall~~
9 recognize any training program that provides training in the
10 operation of a cremation device, in the maintenance of a clean
11 facility, and in the proper handling of human remains. The
12 Department may ~~Comptroller shall~~ recognize any course that is
13 conducted by a death care trade association in Illinois or the
14 United States or by a manufacturer of a cremation unit that is
15 consistent with the standards provided in this Act or as
16 otherwise determined by rule.

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

18 (410 ILCS 18/25)

19 Sec. 25. Recordkeeping.

20 (a) The crematory authority shall furnish to the person who
21 delivers human remains to the crematory authority a receipt
22 signed at the time of delivery by both the crematory authority
23 and the person who delivers the human remains, showing the date
24 and time of the delivery, the type of casket or alternative
25 container that was delivered, the name of the person from whom

1 the human remains were received and the name of the funeral
2 establishment or other entity with whom the person is
3 affiliated, the name of the person who received the human
4 remains on behalf of the crematory authority, and the name of
5 the decedent. The crematory shall retain a copy of this receipt
6 in its permanent records.

7 (b) Upon its release of cremated remains, the crematory
8 authority shall furnish to the person who receives the cremated
9 remains from the crematory authority a receipt signed by both
10 the crematory authority and the person who receives the
11 cremated remains, showing the date and time of the release, the
12 name of the person to whom the cremated remains were released
13 and the name of the funeral establishment, cemetery, or other
14 entity with whom the person is affiliated, the name of the
15 person who released the cremated remains on behalf of the
16 crematory authority, and the name of the decedent. The
17 crematory shall retain a copy of this receipt in its permanent
18 records.

19 (c) A crematory authority shall maintain at its place of
20 business a permanent record of each cremation that took place
21 at its facility which shall contain the name of the decedent,
22 the date of the cremation, and the final disposition of the
23 cremated remains.

24 (d) The crematory authority shall maintain a record of all
25 cremated remains disposed of by the crematory authority in
26 accordance with subsection (d) of Section 40.

1 (e) Upon completion of the cremation, the crematory
2 authority shall file the burial transit permit as required by
3 the Illinois Vital Records Act and rules adopted under that Act
4 and the Illinois Counties Code law, and transmit a photocopy of
5 the burial transit permit along with the cremated remains to
6 whoever receives the cremated remains from the authorizing
7 agent unless the cremated remains are to be interred, entombed,
8 inurned, or placed in a scattering area, in which case the
9 crematory authority shall retain a copy of the burial transit
10 permit and shall send the permit, along with the cremated
11 remains, to the cemetery, which shall file the permit with the
12 designated agency after the interment, entombment, inurnment,
13 or scattering has taken place.

14 (f) All cemeteries shall maintain a record of all cremated
15 remains that are disposed of on their property, provided that
16 the cremated remains were properly transferred to the cemetery
17 and the cemetery issued a receipt acknowledging the transfer of
18 the cremated remains.

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

20 (410 ILCS 18/40)

21 Sec. 40. Disposition of cremated remains.

22 (a) The authorizing agent shall be responsible for the
23 final disposition of the cremated remains.

24 (b) Cremated remains may be disposed of by placing them in
25 a grave, crypt, or niche, by scattering them in a scattering

1 area as defined in this Act, or in any manner whatever on the
2 private property of a consenting owner.

3 (c) Upon the completion of the cremation process, and
4 except as provided for in item (I) ~~(J)~~ of paragraph (1) of
5 subsection (a) of Section 20, if the crematory authority has
6 not been instructed to arrange for the interment, entombment,
7 inurnment, or scattering of the cremated remains, the crematory
8 authority shall deliver the cremated remains to the individual
9 specified on the cremation authorization form, or if no
10 individual is specified then to the authorizing agent. The
11 delivery may be made in person or by registered mail. Upon
12 receipt of the cremated remains, the individual receiving them
13 may transport them in any manner in this State without a
14 permit, and may dispose of them in accordance with this
15 Section. After delivery, the crematory authority shall be
16 discharged from any legal obligation or liability concerning
17 the cremated remains.

18 (d) If, after a period of 60 days from the date of the
19 cremation, the authorizing agent or the agent's designee has
20 not instructed the crematory authority to arrange for the final
21 disposition of the cremated remains or claimed the cremated
22 remains, the crematory authority may dispose of the cremated
23 remains in any manner permitted by this Section. The crematory
24 authority, however, shall keep a permanent record identifying
25 the site of final disposition. The authorizing agent shall be
26 responsible for reimbursing the crematory authority for all

1 reasonable expenses incurred in disposing of the cremated
2 remains. Upon disposing of the cremated remains, the crematory
3 authority shall be discharged from any legal obligation or
4 liability concerning the cremated remains. Any person who was
5 in possession of cremated remains prior to the effective date
6 of this Act may dispose of them in accordance with this
7 Section.

8 (e) Except with the express written permission of the
9 authorizing agent, no person shall:

10 (1) Dispose of cremated remains in a manner or in a
11 location so that the cremated remains are commingled with
12 those of another person. This prohibition shall not apply
13 to the scattering of cremated remains at sea, by air, or in
14 an area located in a dedicated cemetery and used
15 exclusively for those purposes.

16 (2) Place cremated remains of more than one person in
17 the same temporary container or urn.

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

19 (410 ILCS 18/55)

20 Sec. 55. Penalties. Violations of this Act shall be
21 punishable as follows:

22 (1) Performing a cremation without receipt of a
23 cremation authorization form signed by an authorizing
24 agent shall be a Class 4 felony.

25 (2) Signing a cremation authorization form with the

1 actual knowledge that the form contains false or incorrect
2 information shall be a Class 4 felony.

3 (3) A Violation of any cremation procedure set forth in
4 Section 35 shall be a Class 4 felony.

5 (4) Holding oneself out to the public as a crematory
6 authority, or the operation of a building or structure
7 within this State as a crematory, without being licensed
8 under this Act, shall be a Class A misdemeanor.

9 (4.5) Performance of a cremation service by a person
10 who has not completed a training program as defined in
11 Section 22 of this Act shall be a Class A misdemeanor.

12 (4.10) Any person who intentionally violates a
13 provision of this Act or a final order of the Department
14 ~~Comptroller~~ is liable for a civil penalty not to exceed
15 \$5,000 per violation.

16 (4.15) Any person who knowingly acts without proper
17 legal authority and who willfully and knowingly destroys or
18 damages the remains of a deceased human being or who
19 desecrates human remains is guilty of a Class 3 felony.

20 (5) A violation of any other provision of this Act
21 shall be a Class B misdemeanor.

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

23 (410 ILCS 18/60)

24 Sec. 60. Failure to file annual report. Whenever a
25 crematory authority refuses or neglects to file its annual

1 report in violation of Section 10 of this Act, or fails to
2 otherwise comply with the requirements of this Act, the
3 Department shall impose a penalty as provided for by rule for
4 each and every day the licensee remains delinquent in
5 submitting the annual report. Such report shall be made under
6 oath and shall be in a form determined by the Department.
7 ~~Comptroller may commence an administrative proceeding as~~
8 ~~authorized by this Act or may communicate the facts to the~~
9 ~~Attorney General of the State of Illinois who shall thereupon~~
10 ~~institute such proceedings against the crematory authority or~~
11 ~~its officers as the nature of the case may require.~~

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

13 (410 ILCS 18/62)

14 Sec. 62. Injunctive action; cease and desist order
15 ~~Investigation of unlawful practices.~~

16 (a) If any person violates the provisions of this Act, the
17 Secretary, in the name of the People of the State of Illinois,
18 through the Attorney General or the State's Attorney of the
19 county in which the violation is alleged to have occurred, may
20 petition for an order enjoining the violation or for an order
21 enforcing compliance with this Act. Upon the filing of a
22 verified petition, the court with appropriate jurisdiction may
23 issue a temporary restraining order, without notice or bond,
24 and may preliminarily and permanently enjoin the violation. If
25 it is established that the person has violated or is violating

1 the injunction, the court may punish the offender for contempt
2 of court. Proceedings under this Section are in addition to,
3 and not in lieu of, all other remedies and penalties provided
4 by this Act.

5 (b) Whenever, in the opinion of the Department, a person
6 violates any provision of this Act, the Department may issue a
7 rule to show cause why an order to cease and desist should not
8 be entered against that person. The rule shall clearly set
9 forth the grounds relied upon by the Department and shall allow
10 at least 7 days from the date of the rule to file an answer
11 satisfactory to the Department. Failure to answer to the
12 satisfaction of the Department shall cause an order to cease
13 and desist to be issued.

14 ~~If the Comptroller has good cause to believe that a person has~~
15 ~~engaged in, is engaging in, or is about to engage in any~~
16 ~~practice in violation of this Act, the Comptroller may do any~~
17 ~~one or more of the following:~~

18 ~~(1) Require that person to file, on terms the~~
19 ~~Comptroller prescribes, a statement or report in writing,~~
20 ~~under oath or otherwise, containing all information that~~
21 ~~the Comptroller considers necessary to ascertain whether a~~
22 ~~licensee is in compliance with this Act, or whether an~~
23 ~~unlicensed person is engaging in activities for which a~~
24 ~~license is required under this Act.~~

25 ~~(2) Examine under oath any person in connection with~~
26 ~~the books and records required to be maintained under this~~

1 ~~Act.~~

2 ~~(3) Examine any books and records of a licensee that~~
3 ~~the Comptroller considers necessary to ascertain~~
4 ~~compliance with this Act.~~

5 ~~(4) Require the production of a copy of any record,~~
6 ~~book, document, account, or paper that is produced in~~
7 ~~accordance with this Act and retain it in the Comptroller's~~
8 ~~possession until the completion of all proceedings in~~
9 ~~connection with which it is produced.~~

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

11 (410 ILCS 18/62.5)

12 Sec. 62.5. Service of notice. Service by the Department
13 ~~Comptroller~~ of any notice requiring a person to file a
14 statement or report under this Act shall be made: (1)
15 personally by delivery of a duly executed copy of the notice to
16 the person to be served or, if that person is not a natural
17 person, in the manner provided in the Civil Practice Law when a
18 complaint is filed; or (2) by mailing by certified mail a duly
19 executed copy of the notice to the person at his or her address
20 of record ~~to be served at his or her last known abode or~~
21 ~~principal place of business within this State.~~

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

23 (410 ILCS 18/62.10)

24 Sec. 62.10. Investigations; notice and hearing

1 ~~Investigation of actions; hearing.~~ The Department may at any
2 time investigate the actions of any applicant or of any person,
3 persons, or entity rendering or offering to render cremation
4 services or any person or entity holding or claiming to hold a
5 license as a licensed crematory. The Department shall, before
6 revoking, suspending, placing on probation, reprimanding, or
7 taking any other disciplinary action under Section 11 of this
8 Act, at least 30 days before the date set for the hearing, (i)
9 notify the accused in writing of the charges made and the time
10 and place for the hearing on the charges, (ii) direct the
11 accused applicant or licensee to file a written answer to the
12 charges with the Department under oath within 20 days after the
13 service on him or her of the notice, and (iii) inform the
14 accused that, if he or she fails to answer, default will be
15 taken against him or her or that his or her license may be
16 suspended, revoked, placed on probationary status, or other
17 disciplinary action taken with regard to the license, including
18 limiting the scope, nature, or extent of his or her practice,
19 as the Department may consider proper.

20 At the time and place fixed in the notice, the Department
21 shall proceed to hear the charges and the parties or their
22 counsel shall be accorded ample opportunity to present any
23 pertinent statements, testimony, evidence, and arguments. The
24 Secretary shall have the authority to appoint an attorney duly
25 licensed to practice law in the State of Illinois to serve as
26 the hearing officer in any disciplinary action with regard to a

1 license. The hearing officer shall have full authority to
2 conduct the hearing. The Department may continue the hearing
3 from time to time. In case the person, after receiving the
4 notice, fails to file an answer, his or her license may, in the
5 discretion of the Department, be suspended, revoked, placed on
6 probationary status, or the Department may take whatever
7 disciplinary action considered proper, including limiting the
8 scope, nature, or extent of the person's practice or the
9 imposition of a fine, without a hearing, if the act or acts
10 charged constitute sufficient grounds for that action under
11 this Act. The written notice may be served by personal delivery
12 or by certified mail to the address specified by the accused in
13 his or her last notification with the Department.

14 ~~(a) The Comptroller shall make an investigation upon~~
15 ~~discovering facts that, if proved, would constitute grounds for~~
16 ~~refusal, suspension, or revocation of a license under this Act.~~

17 ~~(b) Before refusing to issue, and before suspending or~~
18 ~~revoking, a license under this Act, the Comptroller shall hold~~
19 ~~a hearing to determine whether the applicant for a license or~~
20 ~~the licensee ("the respondent") is entitled to hold such a~~
21 ~~license. At least 10 days before the date set for the hearing,~~
22 ~~the Comptroller shall notify the respondent in writing that (i)~~
23 ~~on the designated date a hearing will be held to determine the~~
24 ~~respondent's eligibility for a license and (ii) the respondent~~
25 ~~may appear in person or by counsel. The written notice may be~~
26 ~~served on the respondent personally, or by registered or~~

1 ~~certified mail sent to the respondent's business address as~~
2 ~~shown in the respondent's latest notification to the~~
3 ~~Comptroller. The notice must include sufficient information to~~
4 ~~inform the respondent of the general nature of the reason for~~
5 ~~the Comptroller's action.~~

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

18 ~~(d) The Comptroller, at the Comptroller's expense, shall~~
19 ~~provide a certified shorthand reporter to take down the~~
20 ~~testimony and preserve a record of every proceeding at the~~
21 ~~hearing of any case involving the refusal to issue a license~~
22 ~~under this Act, the suspension or revocation of such a license,~~
23 ~~the imposition of a monetary penalty, or the referral of a case~~
24 ~~for criminal prosecution. The record of any such proceeding~~
25 ~~shall consist of the notice of hearing, the complaint, all~~
26 ~~other documents in the nature of pleadings and written motions~~

1 ~~filed in the proceeding, the transcript of testimony, and the~~
2 ~~report and orders of the Comptroller. Copies of the transcript~~
3 ~~of the record may be purchased from the certified shorthand~~
4 ~~reporter who prepared the record or from the Comptroller.~~

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

6 (410 ILCS 18/62.15)

7 Sec. 62.15. Compelling testimony Court order. Any circuit
8 court, upon application of the Department or designated hearing
9 officer may enter an order requiring the attendance of
10 witnesses and their testimony, and the production of documents,
11 papers, files, books, and records in connection with any
12 hearing or investigation. The court may compel obedience to its
13 order by proceedings for contempt. ~~Upon the application of the~~
14 ~~Comptroller or of the applicant or licensee against whom~~
15 ~~proceedings under Section 62.10 are pending, any circuit court~~
16 ~~may enter an order requiring witnesses to attend and testify~~
17 ~~and requiring the production of documents, papers, files,~~
18 ~~books, and records in connection with any hearing in any~~
19 ~~proceeding under that Section. Failure to obey such a court~~
20 ~~order may result in contempt proceedings.~~

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

22 (410 ILCS 18/62.20)

23 Sec. 62.20. Administrative review; venue; certification of
24 record; costs ~~Judicial review.~~

1 (a) All final administrative decisions of the Department
2 are subject to judicial review under the Administrative Review
3 Law and its rules. The term "administrative decision" is
4 defined as in Section 3-101 of the Code of Civil Procedure.

5 (b) Proceedings for judicial review shall be commenced in
6 the circuit court of the county in which the party applying for
7 review resides, but if the party is not a resident of Illinois,
8 the venue shall be in Sangamon County.

9 (c) The Department shall not be required to certify any
10 record of the court, file an answer in court, or to otherwise
11 appear in any court in a judicial review proceeding unless and
12 until the Department has received from the plaintiff payment of
13 the costs of furnishing and certifying the record, which costs
14 shall be determined by the Department. Failure on the part of
15 the plaintiff to make such payment to the Department is grounds
16 for dismissal of the action. Any person affected by a final
17 administrative decision of the Comptroller under this Act may
18 have the decision reviewed judicially by the circuit court of
19 the county where the person resides or, in the case of a
20 corporation, where the corporation's registered office is
21 located. If the plaintiff in the judicial review proceeding is
22 not a resident of this State, venue shall be in Sangamon
23 County. The provisions of the Administrative Review Law and any
24 rules adopted under it govern all proceedings for the judicial
25 review of final administrative decisions of the Comptroller
26 under this Act. The term "administrative decision" is defined

1 ~~as in the Administrative Review Law.~~

2 ~~(b) The Comptroller is not required to certify the record~~
3 ~~of the proceeding unless the plaintiff in the review proceeding~~
4 ~~has purchased a copy of the transcript from the certified~~
5 ~~shorthand reporter who prepared the record or from the~~
6 ~~Comptroller. Exhibits shall be certified without cost.~~

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

8 (410 ILCS 18/65)

9 Sec. 65. Pre-need cremation arrangements.

10 (a) Any person, or anyone who has legal authority to act on
11 behalf of a person, on a pre-need basis, may authorize his or
12 her own cremation and the final disposition of his or her
13 cremated remains by executing, as the authorizing agent, a
14 cremation authorization form on a pre-need basis. A copy of
15 this form shall be provided to the person. Any person shall
16 have the right to transfer or cancel this authorization at any
17 time prior to death by destroying the executed cremation
18 authorization form and providing written notice to the
19 crematory authority.

20 (b) Any cremation authorization form that is being executed
21 by an individual as his or her own authorizing agent on a
22 pre-need basis shall contain the following disclosure, which
23 shall be completed by the authorizing agent:

24 "() I do not wish to allow any of my survivors the option
25 of cancelling my cremation and selecting alternative

1 arrangements, regardless of whether my survivors deem
2 a change to be appropriate.

3 () I wish to allow only the survivors whom I have
4 designated below the option of cancelling my cremation
5 and selecting alternative arrangements, if they deem a
6 change to be appropriate:....."

7 (c) Except as provided in subsection (b) of this Section,
8 at the time of the death of a person who has executed, as the
9 authorizing agent, a cremation authorization form on a pre-need
10 basis, any person in possession of an executed form and any
11 person charged with making arrangements for the final
12 disposition of the decedent who has knowledge of the existence
13 of an executed form, shall use their best efforts to ensure
14 that the decedent is cremated and that the final disposition of
15 the cremated remains is in accordance with the instructions
16 contained on the cremation authorization form. If a crematory
17 authority (i) is in possession of a completed cremation
18 authorization form that was executed on a pre-need basis, (ii)
19 is in possession of the designated human remains, and (iii) has
20 received payment for the cremation of the human remains and the
21 final disposition of the cremated remains or is otherwise
22 assured of payment, then the crematory authority shall be
23 required to cremate the human remains and dispose of the
24 cremated remains according to the instructions contained on the
25 cremation authorization form, and may do so without any
26 liability.

1 (d) ~~(e)~~ Any pre-need contract sold by, or pre-need
2 arrangements made with, a cemetery, funeral establishment,
3 crematory authority, or any other party that includes a
4 cremation shall specify the final disposition of the cremated
5 remains, in accordance with Section 40. In the event that no
6 different or inconsistent instructions are provided to the
7 crematory authority by the authorizing agent at the time of
8 death, the crematory authority shall be authorized to release
9 or dispose of the cremated remains as indicated in the pre-need
10 agreement. Upon compliance with the terms of the pre-need
11 agreement, the crematory authority shall be discharged from any
12 legal obligation concerning the cremated remains. The pre-need
13 agreement shall be kept as a permanent record by the crematory
14 authority.

15 (e) ~~(f)~~ This Section shall not apply to any cremation
16 authorization form or pre-need contract executed prior to the
17 effective date of this Act. Any cemetery, funeral
18 establishment, crematory authority, or other party, however,
19 with the written approval of the authorizing agent or person
20 who executed the pre-need contract, may designate that the
21 cremation authorization form or pre-need contract shall be
22 subject to this Act.

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

24 (410 ILCS 18/80)

25 Sec. 80. Record of proceedings; transcript ~~Home Rule.~~ The

1 Department, at its expense, shall preserve a record of all
2 proceedings at the formal hearing of any case. Any notice of
3 hearing, complaint, all other documents in the nature of
4 pleadings, written motions filed in the proceedings, the
5 transcripts of testimony, the report of the hearing officer,
6 and orders of the Department shall be in the record of the
7 proceeding. The Department shall furnish a transcript of such
8 record to any person interested in such hearing upon payment of
9 the fee required under Section 2105-115 of the Department of
10 Professional Regulation Law. ~~The regulation of crematories and~~
11 ~~crematory authorities as set forth in this Act is an exclusive~~
12 ~~power and function of the State. A home rule unit may not~~
13 ~~regulate crematories or crematory authorities. This Section is~~
14 ~~a denial and limitation of home rule powers and functions under~~
15 ~~subsection (h) of Section 6 of Article VII of the Illinois~~
16 ~~Constitution.~~

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

18 (410 ILCS 18/85 new)

19 Sec. 85. Subpoenas; depositions; oaths. The Department has
20 the power to subpoena documents, books, records or other
21 materials and to bring before it any person and to take
22 testimony either orally or by deposition, or both, with the
23 same fees and mileage and in the same manner as prescribed in
24 civil cases in the courts of this State. The Secretary, the
25 designated hearing officer, or any qualified person the

1 Department may designate has the power to administer oaths to
2 witnesses at any hearing that the Department is authorized to
3 conduct, and any other oaths authorized in any Act administered
4 by the Department.

5 Every person having taken an oath or affirmation in any
6 proceeding or matter wherein an oath is required by this Act,
7 who shall swear willfully, corruptly and falsely in a matter
8 material to the issue or point in question, or shall suborn any
9 other person to swear as aforesaid, shall be guilty of perjury
10 or subornation of perjury, as the case may be and shall be
11 punished as provided by State law relative to perjury and
12 subornation of perjury.

13 (410 ILCS 18/87 new)

14 Sec. 87. Findings and recommendations. At the conclusion of
15 the hearing, the hearing officer shall present to the Secretary
16 a written report of its findings of fact, conclusions of law,
17 and recommendations. The report shall contain a finding whether
18 or not the accused person violated this Act or its rules or
19 failed to comply with the conditions required in this Act or
20 its rules. The hearing officer shall specify the nature of any
21 violations or failure to comply and shall make recommendations
22 to the Secretary. In making recommendations for any
23 disciplinary actions, the hearing officer may take into
24 consideration all facts and circumstances bearing upon the
25 reasonableness of the conduct of the accused and the potential

1 for future harm to the public, including but not limited to,
2 previous discipline of the accused by the Department, intent,
3 degree of harm to the public and likelihood of harm in the
4 future, any restitution made by the accused, and whether the
5 incident or incidents contained in the complaint appear to be
6 isolated or represent a continuing pattern of conduct. In
7 making its recommendations for discipline, the hearing officer
8 shall endeavor to ensure that the severity of the discipline
9 recommended is reasonably related to the severity of the
10 violation. The report of findings of fact, conclusions of law,
11 and recommendation of the hearing officer shall be the basis
12 for the Department's order refusing to issue, restore, renew,
13 place on probation, fine, suspend, revoke a license, or
14 otherwise disciplining a licensee. If the Secretary disagrees
15 with the recommendations of the hearing officer, the Secretary
16 may issue an order in contravention of the hearing officer's
17 recommendations. The finding is not admissible in evidence
18 against the person in a criminal prosecution brought for a
19 violation of this Act, but the hearing and finding are not a
20 bar to a criminal prosecution brought for a violation of this
21 Act.

22 (410 ILCS 18/88 new)

23 Sec. 88. Rehearing. At the conclusion of the hearing, a
24 copy of the hearing officer's report shall be served upon the
25 applicant or licensee by the Department, either personally or

1 as provided in this Act. Within 20 days after service, the
2 applicant or licensee may present to the Department a motion in
3 writing for a rehearing, which shall specify the particular
4 grounds for rehearing. The Department may respond to the motion
5 for rehearing within 20 days after its service on the
6 Department. If no motion for rehearing is filed, then upon the
7 expiration of the time specified for filing such a motion, or
8 if a motion for rehearing is denied, then upon denial, the
9 Secretary may enter an order in accordance with recommendations
10 of the hearing officer except as provided in Section 89 of this
11 Act.

12 If the applicant or licensee orders from the reporting
13 service and pays for a transcript of the record within the time
14 for filing a motion for rehearing, the 20-day period within
15 which a motion may be filed shall commence upon the delivery of
16 the transcript to the applicant or licensee.

17 (410 ILCS 18/89 new)

18 Sec. 89. Secretary; rehearing. Whenever the Secretary
19 believes that substantial justice has not been done in the
20 revocation, suspension, or refusal to issue, restore, or renew
21 a license, or other discipline of an applicant or licensee, he
22 or she may order a rehearing by the same or other hearing
23 officers.

24 (410 ILCS 18/90 new)

1 Sec. 90. Order or certified copy; prima facie proof. An
2 order or certified copy thereof, over the seal of the
3 Department and purporting to be signed by the Secretary, is
4 prima facie proof that:

5 (a) the signature is the genuine signature of the
6 Secretary;

7 (b) the Secretary is duly appointed and qualified; and

8 (c) the hearing officer is qualified to act.

9 (410 ILCS 18/91 new)

10 Sec. 91. Civil action and civil penalties. In addition to
11 the other penalties and remedies provided in this Act, the
12 Department may bring a civil action in the county of residence
13 of the licensee or any other person to enjoin any violation or
14 threatened violation of this Act. In addition to any other
15 penalty provided by law, any person who violates this Act shall
16 forfeit and pay a civil penalty to the Department in an amount
17 not to exceed \$10,000 for each violation as determined by the
18 Department. The civil penalty shall be assessed by the
19 Department in accordance with the provisions of this Act.

20 Any civil penalty shall be paid within 60 days after the
21 effective date of the order imposing the civil penalty. The
22 order shall constitute a judgment and may be filed and
23 execution had thereon in the same manner as any judgment from
24 any court of record. All moneys collected under this Section
25 shall be deposited into the Cemetery Oversight Licensing and

1 Disciplinary Fund.

2 (410 ILCS 18/92 new)

3 Sec. 92. Consent order. At any point in any investigation
4 or disciplinary proceedings as provided in this Act, both
5 parties may agree to a negotiated consent order. The consent
6 order shall be final upon signature of the Secretary.

7 (410 ILCS 18/93 new)

8 Sec. 93. Illinois Administrative Procedure Act;
9 application. The Illinois Administrative Procedure Act is
10 expressly adopted and incorporated in this Act as if all of the
11 provisions of that Act were included in this Act, except that
12 the provision of paragraph (d) of Section 10-65 of the Illinois
13 Administrative Procedure Act, which provides that at hearings
14 the licensee has the right to show compliance with all lawful
15 requirements for retention or continuation or renewal of the
16 license, is specifically excluded. For the purpose of this Act,
17 the notice required under Section 10-25 of the Illinois
18 Administrative Procedure Act is considered sufficient when
19 mailed to the address of record.

20 (410 ILCS 18/94 new)

21 Sec. 94. Summary suspension of a license. The Secretary may
22 summarily suspend a license of a licensed crematory without a
23 hearing, simultaneously with the institution of proceedings

1 for a hearing provided for in this Act, if the Secretary finds
2 that evidence in the Secretary's possession indicates that the
3 licensee's continued practice would constitute an imminent
4 danger to the public. In the event that the Secretary summarily
5 suspends the license of a licensed crematory without a hearing,
6 a hearing must be commenced within 30 days after the suspension
7 has occurred and concluded as expeditiously as practical. In
8 the event of a summary suspension, the county coroner or
9 medical examiner responsible for the area where the crematory
10 is located shall make arrangements to dispose of any bodies in
11 the suspended licensee's possession after consulting with the
12 authorizing agents for those bodies.

13 (410 ILCS 18/95 new)

14 Sec. 95. Home Rule. The regulation of crematories and
15 crematory authorities as set forth in this Act is an exclusive
16 power and function of the State. A home rule unit may not
17 regulate crematories or crematory authorities. This Section is
18 a denial and limitation of home rule powers and functions under
19 subsection (h) of Section 6 of Article VII of the Illinois
20 Constitution.

21 Section 90-30. The Vital Records Act is amended by changing
22 Sections 11 and 18.5 as follows:

23 (410 ILCS 535/11) (from Ch. 111 1/2, par. 73-11)

1 Sec. 11. Information required on forms.

2 (a) The form of certificates, reports, and other returns
3 required by this Act or by regulations adopted under this Act
4 shall include as a minimum the items recommended by the federal
5 agency responsible for national vital statistics, subject to
6 approval of and modification by the Department. All forms shall
7 be prescribed and furnished by the State Registrar of Vital
8 Records.

9 (b) On and after the effective date of this amendatory Act
10 of 1983, all forms used to collect information under this Act
11 which request information concerning the race or ethnicity of
12 an individual by providing spaces for the designation of that
13 individual as "white" or "black", or the semantic equivalent
14 thereof, shall provide an additional space for a designation as
15 "Hispanic".

16 (c) Effective November 1, 1990, the social security numbers
17 of the mother and father shall be collected at the time of the
18 birth of the child. These numbers shall not be recorded on the
19 certificate of live birth. The numbers may be used only for
20 those purposes allowed by Federal law.

21 (d) The social security number of a person who has died
22 shall be entered on the death certificate; however, failure to
23 enter the social security number of the person who has died on
24 the death certificate does not invalidate the death
25 certificate.

26 (e) If the place of disposition of a dead human body or

1 cremated remains is in a cemetery, the burial permit shall
2 include the place of disposition. The place of disposition
3 shall include the lot, block, section, and plot or niche where
4 the dead human body or cremated remains are located. This
5 subsection does not apply to cremated remains scattered in a
6 cemetery.

7 (Source: P.A. 90-18, eff. 7-1-97.)

8 (410 ILCS 535/18.5)

9 Sec. 18.5. Electronic reporting system for death
10 registrations. The State Registrar shall ~~may~~ facilitate death
11 registration by implementing an electronic reporting system.
12 The system may be used to transfer information to individuals
13 and institutions responsible for completing and filing
14 certificates and related reports for deaths that occur in the
15 State. The system shall be capable of storing and retrieving
16 accurate and timely data and statistics for those persons and
17 agencies responsible for vital records registration and
18 administration. Upon establishment of such an electronic
19 reporting system, but not later than January 1, 2011, the
20 county clerk in the county in which a death occurred or the
21 county clerk of the county where a decedent last resided, as
22 indicated on the decedent's death certificate, shall be
23 authorized to issue certifications of death records from such
24 system, and the State Registrar shall cause the electronic
25 reporting system to provide for such capability. The Department

1 of Financial and Professional Regulation shall have access to
2 the system to enhance its enforcement of the Cemetery Oversight
3 Act.

4 (Source: P.A. 96-327, eff. 8-11-09.)

5 Section 90-33. The Eminent Domain Act is amended by
6 changing Section 15-5-40 as follows:

7 (735 ILCS 30/15-5-40)

8 Sec. 15-5-40. Eminent domain powers in ILCS Chapters 705
9 through 820. The following provisions of law may include
10 express grants of the power to acquire property by condemnation
11 or eminent domain:

12 (765 ILCS 230/2); Coast and Geodetic Survey Act; United States
13 of America; for carrying out coast and geodetic surveys.

14 (765 ILCS 505/1); Mining Act of 1874; mine owners and
15 operators; for roads, railroads, and ditches.

16 (805 ILCS 25/2); Corporation Canal Construction Act; general
17 corporations; for levees, canals, or tunnels for
18 agricultural, mining, or sanitary purposes.

19 (805 ILCS 30/7); Gas Company Property Act; consolidating gas
20 companies; for acquisition of stock of dissenting
21 stockholder.

22 (805 ILCS 120/9); Merger of Not For Profit Corporations Act;
23 merging or consolidating corporations; for acquisition of

1 interest of objecting member or owner.
2 ~~(805 ILCS 320/16 through 320/20); Cemetery Association Act;~~
3 ~~cemetery associations; for cemetery purposes.~~
4 (Source: P.A. 94-1055, eff. 1-1-07.)

5 Section 90-35. The Crime Victims Compensation Act is
6 amended by changing Section 2 as follows:

7 (740 ILCS 45/2) (from Ch. 70, par. 72)

8 Sec. 2. Definitions. As used in this Act, unless the
9 context otherwise requires:

10 (a) "Applicant" means any person who applies for
11 compensation under this Act or any person the Court of Claims
12 finds is entitled to compensation, including the guardian of a
13 minor or of a person under legal disability. It includes any
14 person who was a dependent of a deceased victim of a crime of
15 violence for his or her support at the time of the death of
16 that victim.

17 (b) "Court of Claims" means the Court of Claims created by
18 the Court of Claims Act.

19 (c) "Crime of violence" means and includes any offense
20 defined in Sections 9-1, 9-2, 9-3, 10-1, 10-2, 11-11, 11-19.2,
21 11-20.1, 12-1, 12-2, 12-3, 12-3.2, 12-3.3, 12-4, 12-4.1,
22 12-4.2, 12-4.3, 12-5, 12-7.1, 12-7.3, 12-7.4, 12-13, 12-14,
23 12-14.1, 12-15, 12-16, 12-20.5, 12-30, 20-1 or 20-1.1 of the
24 Criminal Code of 1961, Sections 1(a) and 1(a-5) of the Cemetery

1 Protection Act, driving under the influence of intoxicating
2 liquor or narcotic drugs as defined in Section 11-501 of the
3 Illinois Vehicle Code, and a violation of Section 11-401 of the
4 Illinois Vehicle Code, provided the victim was a pedestrian or
5 was operating a vehicle moved solely by human power or a
6 mobility device at the time of contact; so long as the offense
7 did not occur during a civil riot, insurrection or rebellion.
8 "Crime of violence" does not include any other offense or
9 accident involving a motor vehicle except those vehicle
10 offenses specifically provided for in this paragraph. "Crime of
11 violence" does include all of the offenses specifically
12 provided for in this paragraph that occur within this State but
13 are subject to federal jurisdiction and crimes involving
14 terrorism as defined in 18 U.S.C. 2331.

15 (d) "Victim" means (1) a person killed or injured in this
16 State as a result of a crime of violence perpetrated or
17 attempted against him or her, (2) the parent of a person killed
18 or injured in this State as a result of a crime of violence
19 perpetrated or attempted against the person, (3) a person
20 killed or injured in this State while attempting to assist a
21 person against whom a crime of violence is being perpetrated or
22 attempted, if that attempt of assistance would be expected of a
23 reasonable person ~~man~~ under the circumstances, (4) a person
24 killed or injured in this State while assisting a law
25 enforcement official apprehend a person who has perpetrated a
26 crime of violence or prevent the perpetration of any such crime

1 if that assistance was in response to the express request of
2 the law enforcement official, (5) a person who personally
3 witnessed a violent crime, (5.1) solely for the purpose of
4 compensating for pecuniary loss incurred for psychological
5 treatment of a mental or emotional condition caused or
6 aggravated by the crime, any other person under the age of 18
7 who is the brother, sister, half brother, half sister, child,
8 or stepchild of a person killed or injured in this State as a
9 result of a crime of violence, ~~or~~ (6) an Illinois resident who
10 is a victim of a "crime of violence" as defined in this Act
11 except, if the crime occurred outside this State, the resident
12 has the same rights under this Act as if the crime had occurred
13 in this State upon a showing that the state, territory,
14 country, or political subdivision of a country in which the
15 crime occurred does not have a compensation of victims of
16 crimes law for which that Illinois resident is eligible, (7) a
17 deceased person whose body is dismembered as the result of a
18 crime of violence, or (8) solely for the purpose of
19 compensating for pecuniary loss incurred for psychological
20 treatment of a mental or emotional condition caused or
21 aggravated by the crime, any parent, spouse, or child under the
22 age of 18 of a deceased person whose body is dismembered or
23 whose remains are desecrated as the result of a crime of
24 violence.

25 (e) "Dependent" means a relative of a deceased victim who
26 was wholly or partially dependent upon the victim's income at

1 the time of his or her death and shall include the child of a
2 victim born after his or her death.

3 (f) "Relative" means a spouse, parent, grandparent,
4 stepfather, stepmother, child, grandchild, brother,
5 brother-in-law, sister, sister-in-law, half brother, half
6 sister, spouse's parent, nephew, niece, uncle or aunt.

7 (g) "Child" means an unmarried son or daughter who is under
8 18 years of age and includes a stepchild, an adopted child or a
9 child born out of wedlock.

10 (h) "Pecuniary loss" means, in the case of injury,
11 appropriate medical expenses and hospital expenses including
12 expenses of medical examinations, rehabilitation, medically
13 required nursing care expenses, appropriate psychiatric care
14 or psychiatric counseling expenses, expenses for care or
15 counseling by a licensed clinical psychologist, licensed
16 clinical social worker, or licensed clinical professional
17 counselor and expenses for treatment by Christian Science
18 practitioners and nursing care appropriate thereto;
19 transportation expenses to and from medical and treatment
20 facilities; prosthetic appliances, eyeglasses, and hearing
21 aids necessary or damaged as a result of the crime; replacement
22 costs for clothing and bedding used as evidence; costs
23 associated with temporary lodging or relocation necessary as a
24 result of the crime, including, but not limited to, the first
25 month's rent and security deposit of the dwelling that the
26 claimant relocated to and other reasonable relocation expenses

1 incurred as a result of the violent crime; locks or windows
2 necessary or damaged as a result of the crime; the purchase,
3 lease, or rental of equipment necessary to create usability of
4 and accessibility to the victim's real and personal property,
5 or the real and personal property which is used by the victim,
6 necessary as a result of the crime; the costs of appropriate
7 crime scene clean-up; replacement services loss, to a maximum
8 of \$1000 per month; dependents replacement services loss, to a
9 maximum of \$1000 per month; loss of tuition paid to attend
10 grammar school or high school when the victim had been enrolled
11 as a student prior to the injury, or college or graduate school
12 when the victim had been enrolled as a day or night student
13 prior to the injury when the victim becomes unable to continue
14 attendance at school as a result of the crime of violence
15 perpetrated against him or her; loss of earnings, loss of
16 future earnings because of disability resulting from the
17 injury, and, in addition, in the case of death, expenses for
18 funeral, burial, and travel and transport for survivors of
19 homicide victims to secure bodies of deceased victims and to
20 transport bodies for burial all of which may not exceed a
21 maximum of \$5,000 and loss of support of the dependents of the
22 victim; in the case of dismemberment or desecration of a body,
23 expenses for funeral and burial, all of which may not exceed a
24 maximum of \$5,000. Loss of future earnings shall be reduced by
25 any income from substitute work actually performed by the
26 victim or by income he or she would have earned in available

1 appropriate substitute work he or she was capable of performing
2 but unreasonably failed to undertake. Loss of earnings, loss of
3 future earnings and loss of support shall be determined on the
4 basis of the victim's average net monthly earnings for the 6
5 months immediately preceding the date of the injury or on \$1000
6 per month, whichever is less. If a divorced or legally
7 separated applicant is claiming loss of support for a minor
8 child of the deceased, the amount of support for each child
9 shall be based either on the amount of support pursuant to the
10 judgment prior to the date of the deceased victim's injury or
11 death, or, if the subject of pending litigation filed by or on
12 behalf of the divorced or legally separated applicant prior to
13 the injury or death, on the result of that litigation. Real and
14 personal property includes, but is not limited to, vehicles,
15 houses, apartments, town houses, or condominiums. Pecuniary
16 loss does not include pain and suffering or property loss or
17 damage.

18 (i) "Replacement services loss" means expenses reasonably
19 incurred in obtaining ordinary and necessary services in lieu
20 of those the injured person would have performed, not for
21 income, but for the benefit of himself or herself or his or her
22 family, if he or she had not been injured.

23 (j) "Dependents replacement services loss" means loss
24 reasonably incurred by dependents or private legal guardians of
25 minor dependents after a victim's death in obtaining ordinary
26 and necessary services in lieu of those the victim would have

1 performed, not for income, but for their benefit, if he or she
2 had not been fatally injured.

3 (k) "Survivor" means immediate family including a parent,
4 step-father, step-mother, child, brother, sister, or spouse.

5 (Source: P.A. 96-267, eff. 8-11-09.)

6 Section 90-40. The Burial Lot Perpetual Trust Act is
7 amended by changing Section 2 as follows:

8 (760 ILCS 90/2) (from Ch. 21, par. 32)

9 Sec. 2. Every company or association incorporated for
10 cemetery purposes under any general or special law of the State
11 of Illinois may receive, by gift, legacy, or otherwise, moneys
12 or real or personal property, or the income or avails of such
13 moneys or property, in trust, in perpetuity, for the
14 improvement, maintenance, ornamentation, repair, care and
15 preservation of any burial lot or grave, vault, tomb, or other
16 such structures, in any cemetery owned or controlled by such
17 cemetery company or association, upon such terms and in such
18 manner as may be provided by the terms of such gift, legacy or
19 other conveyance of such moneys or property in trust and
20 assented to by such company or association, and subject to the
21 rules and regulations of such company or association, and every
22 such company or association owning or controlling any such
23 cemetery may make contracts with the owner or owners or legal
24 representatives of any lot, grave, vault, tomb, or other such

1 structure in such cemetery, for the improvement, maintenance,
2 ornamentation, care, preservation and repair of any such lot,
3 grave, vault, tomb, or other such structure in such cemetery
4 owned or controlled by such cemetery company or association. If
5 the cemetery is a privately owned cemetery, as defined in
6 Section 2 of the Cemetery Care Act, or a licensed cemetery
7 authority under the Cemetery Oversight Act, or if the burial
8 lot or grave, vault, tomb, or other such structures are in a
9 privately owned cemetery, as defined in Section 2 of the
10 Cemetery Care Act, or a licensed cemetery authority under the
11 Cemetery Oversight Act, then such company or association shall
12 also comply with the provisions of the Cemetery Care Act or
13 Cemetery Oversight Act, whichever is applicable. ~~Where the~~
14 ~~cemetery is a privately operated cemetery, as defined in~~
15 ~~section 2 of the Cemetery Care Act, approved July 21, 1947, as~~
16 ~~amended, or where the burial lot or grave, vault, tomb, or~~
17 ~~other such structures are in a privately operated cemetery, as~~
18 ~~defined in section 2 of that Act, then such company or~~
19 ~~association shall also comply with the provisions of the~~
20 ~~Cemetery Care Act.~~

21 (Source: P.A. 83-388.)

22 Section 90-45. The Cemetery Perpetual Trust Authorization
23 Act is amended by changing Section 2 as follows:

24 (760 ILCS 95/2) (from Ch. 21, par. 64)

1 Sec. 2. Any incorporated cemetery association incorporated
2 not for pecuniary profit, may if it elects to do so, receive
3 and hold money, funds and property in perpetual trust pursuant
4 to the provisions of this act. Such election shall be evidenced
5 by a by-law or resolution adopted by the board of directors, or
6 board of trustees of the incorporated cemetery association. Any
7 person is authorized to give, donate or bequeath any sum of
8 money or any funds, securities, or property of any kind to the
9 cemetery association, in perpetual trust, for the maintenance,
10 care, repair, upkeep or ornamentation of the cemetery, or any
11 lot or lots, or grave or graves in the cemetery, specified in
12 the instrument making the gift, donation or legacy. The
13 cemetery association may receive and hold in perpetual trust,
14 any such money, funds, securities and property so given,
15 donated or bequeathed to it, and may convert the property,
16 funds and securities into money and shall invest and keep
17 invested the proceeds thereof and the money so given, donated
18 and bequeathed, in safe and secure income bearing investments,
19 including investments in income producing real estate,
20 provided the purchase price of the real estate shall not exceed
21 the fair market value thereof on the date of its purchase as
22 such value is determined by the board of directors or board of
23 trustees of the association. The principal of the trust fund
24 shall be kept intact and the income arising therefrom shall be
25 perpetually applied for the uses and purposes specified in the
26 instrument making the gift, donation or legacy and for no other

1 purpose.

2 The by-laws of the cemetery association shall provide for a
3 permanent committee to manage and control the trust funds so
4 given, donated and bequeathed to it. The members of the
5 committee shall be appointed by the board of directors, or
6 board of trustees of the cemetery association from among the
7 members of the board of directors or board of trustees. The
8 committee shall choose a chairman, a secretary and a treasurer
9 from among the members, and shall have the management and
10 control of the trust funds of the cemetery association so
11 given, donated and bequeathed in trust, under the supervision
12 of the board of directors or board of trustees. The treasurer
13 of the committee shall execute a bond to the People of the
14 State of Illinois for the use of the cemetery association, in a
15 penal sum of not less than double the amount of the trust funds
16 coming into his possession as treasurer, conditioned for the
17 faithful performance of his duties and the faithful accounting
18 for all money or funds which by virtue of his treasurership
19 come into his possession, and be in such form and with such
20 securities as may be prescribed and approved by the board of
21 directors, or board of trustees, and shall be approved by such
22 board of directors, or board of trustees, and filed with the
23 secretary of the cemetery association.

24 The treasurer of the committee shall have the custody of
25 all money, funds and property received in trust by the cemetery
26 association and shall invest the same in accordance with the

1 directions of the committee as approved by the board of
2 directors or board of trustees of the cemetery association, and
3 shall receive and have the custody of all of the income arising
4 from such investments and as the income is received by him, he
5 shall pay it to the treasurer of the cemetery association, and
6 he shall keep permanent books of record of all such trust funds
7 and of all receipts arising therefrom and disbursements
8 thereof, and shall annually make a written report to the board
9 of directors or board of trustees of the cemetery association,
10 under oath, showing receipts and disbursements, including a
11 statement showing the amount and principal of trust funds on
12 hand and how invested, which report shall be audited by the
13 board of directors, or board of trustees, and if found correct,
14 shall be approved, and filed with the secretary of the cemetery
15 association.

16 The secretary of the committee shall keep, in a book
17 provided for such purpose, a permanent record of the
18 proceedings of the committee, signed by the president and
19 attested by the secretary, and shall also keep a permanent
20 record of the several trust funds, the amounts thereof, and for
21 what uses and purposes, respectively, and he shall annually, at
22 the time the treasurer makes his report, make a written report
23 under oath, to the board of directors or board of trustees,
24 stating therein substantially the same matter required to be
25 reported by the treasurer of the committee, which report, if
26 found to be correct, shall be approved, and filed with the

1 secretary of the association.

2 The treasurer shall execute a bond to the People of the
3 State of Illinois, in a penal sum of not less than double the
4 amount of money or funds coming into his possession as such
5 treasurer, conditioned for the faithful performance of his
6 duties and the faithful accounting of all money or funds which
7 by virtue of his office come into his possession and be in such
8 form and with such securities as may be prescribed and approved
9 by the board of directors, or board of trustees, and shall be
10 approved by such board of directors or board of trustees and
11 filed with the secretary of the cemetery association.

12 The trust funds, gifts and legacies mentioned in this
13 section and the income arising therefrom shall be exempt from
14 taxation and from the operation of all laws of mortmain, and
15 the laws against perpetuities and accumulations.

16 No loan; investment; purchase of insurance on the life of
17 any trustee or employee; purchase of any real estate; or any
18 other transaction using care funds by any trustee, director, or
19 committee member shall be made to or for the benefit of any
20 person, officer, trustee, or party having any interest, or to
21 any firm, corporation, trade association, or partnership in
22 which any officer, director, trustee, or party has any
23 interest, is a member of, or serves as an officer or director.
24 A violation of this Section shall constitute the intentional
25 and improper withdrawal of trust funds.

26 No loan or investment in any unproductive real estate or

1 real estate outside of this State or in permanent improvements
2 of the cemetery or any of its facilities shall be made, unless
3 specifically authorized by the instrument whereby the
4 principal fund was created. No commission or brokerage fee for
5 the purchase or sale of any property shall be paid in excess of
6 that usual and customary at the time and in the locality where
7 such purchase or sale is made, and all such commissions and
8 brokerage fees shall be fully reported in the next annual
9 report filed by such cemetery association or trustee.

10 If the cemetery is a privately owned cemetery, as defined
11 in Section 2 of the Cemetery Care Act, or a licensed cemetery
12 authority under the Cemetery Oversight Act, or if the burial
13 lot or grave, vault, tomb, or other such structures are in a
14 privately owned cemetery, as defined in Section 2 of the
15 Cemetery Care Act, or a licensed cemetery authority under the
16 Cemetery Oversight Act, then such company or association shall
17 also comply with the provisions of the Cemetery Care Act or
18 Cemetery Oversight Act, whichever is applicable. ~~Where the~~
19 ~~cemetery is a privately operated cemetery, as defined in~~
20 ~~section 2 of the Cemetery Care Act, approved July 21, 1947, as~~
21 ~~amended, or where the lot or lots or grave or graves are in a~~
22 ~~privately operated cemetery, as defined in section 2 of that~~
23 ~~Act, then such cemetery association or such committee, shall~~
24 ~~also comply with the provisions of the Cemetery Care Act.~~

25 (Source: P.A. 95-331, eff. 8-21-07.)

1 Section 90-50. The Cemetery Protection Act is amended by
2 changing Sections .01, 1 and 8 as follows:

3 (765 ILCS 835/.01) (from Ch. 21, par. 14.01)

4 Sec. .01. For the purposes of this Act, the term:

5 "Cemetery manager" means an individual who is engaged in,
6 or holding himself or herself out as engaged in, those
7 activities involved in or incidental to supervising the
8 following: the maintenance, operation, development, or
9 improvement of a cemetery licensed under this Act; the
10 interment of human remains; or the care, preservation, and
11 embellishment of cemetery property. This definition also
12 includes, without limitation, an individual that is an
13 independent contractor or individuals employed or contracted
14 by an independent contractor who is engaged in, or holding
15 himself or herself out as engaged in, those activities involved
16 in or incidental to supervising the following: the maintenance,
17 operation, development, or improvement of a cemetery licensed
18 under this Act; the interment of human remains; or the care,
19 preservation, and embellishment of cemetery property.

20 ~~"Cemetery authority" is defined as in Section 2 of the~~
21 ~~"Cemetery Care Act", approved July 21, 1947, as now and~~
22 ~~hereafter amended.~~

23 "Community mausoleum" means a mausoleum owned and operated
24 by a cemetery authority that contains multiple entombment
25 rights sold to the public.

1 (Source: P.A. 94-44, eff. 6-17-05.)

2 (765 ILCS 835/1) (from Ch. 21, par. 15)

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

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

13 (b) Any person who acts without proper legal authority and
14 who willfully and knowingly:

15 (1) obliterates, vandalizes, or desecrates a burial
16 ground where skeletal remains are buried or a grave, crypt,
17 vault, mausoleum, or other repository of human remains;

18 (2) obliterates, vandalizes, or desecrates a park or
19 other area clearly designated to preserve and perpetuate
20 the memory of a deceased person or group of persons;

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

25 (4) obliterates, vandalizes, or desecrates a fence,

1 rail, curb, or other structure of a similar nature intended
2 for the protection or for the ornamentation of any tomb,
3 monument, gravestone, or other structure of like
4 character;

5 is guilty of a Class A misdemeanor if the amount of the damage
6 is less than \$500, a Class 4 felony if the amount of the damage
7 is at least \$500 and less than \$10,000, a Class 3 felony if the
8 amount of the damage is at least \$10,000 and less than
9 \$100,000, or a Class 2 felony if the damage is \$100,000 or more
10 and shall provide restitution to the cemetery authority or
11 property owner for the amount of any damage caused.

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

23 (b-7) Any person who acts without proper legal authority
24 and who willfully and knowingly removes with the intent to
25 resell a gravestone or other memorial, monument, or marker
26 commemorating a deceased person or group of persons, whether

1 located within or outside a recognized cemetery, memorial park,
2 or battlefield, is guilty of a Class 2 felony.

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

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

18 (d-5) Any person who commits any of the following:

19 (1) any unauthorized, non-related third party or
20 person who enters any sheds, crematories, or employee
21 areas;

22 (2) any non-cemetery personnel who solicits cemetery
23 mourners or funeral directors on the grounds or in the
24 offices or chapels of a cemetery before, during, or after a
25 burial;

26 (3) any person who harasses or threatens any employee

1 of a cemetery on cemetery grounds; or

2 (4) any unauthorized person who removes, destroys, or
3 disturbs any cemetery devices or property placed for safety
4 of visitors and cemetery employees;

5 is guilty of a Class A misdemeanor for the first offense and of
6 a Class 4 felony for a second or subsequent offense.

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

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

18 (g) All fines when recovered, shall be paid over by the
19 court or officer receiving the same to the cemetery authority
20 and be applied, as far as possible in repairing the injury, if
21 any, caused by such offense. Provided, nothing contained in
22 this Act shall deprive such cemetery authority or the owner of
23 any interment, entombment, or inurnment ~~inurement~~ right or
24 monument from maintaining an action for the recovery of damages
25 caused by any injury caused by a violation of the provisions of
26 this Act, or of the rules established by the board of directors

1 of such cemetery authority. Nothing in this Section shall be
2 construed to prohibit the discharge of firearms loaded with
3 blank ammunition as part of any funeral, any memorial
4 observance or any other patriotic or military ceremony.

5 (Source: P.A. 94-44, eff. 6-17-05; 94-608, eff. 8-16-05;
6 95-331, eff. 8-21-07.)

7 (765 ILCS 835/8) (from Ch. 21, par. 21.1)

8 Sec. 8. If the cemetery is a privately owned cemetery, as
9 defined in Section 2 of the Cemetery Care Act, or a licensed
10 cemetery authority under the Cemetery Oversight Act, or if the
11 burial lot or grave, vault, tomb, or other such structures are
12 in a privately owned cemetery, as defined in Section 2 of the
13 Cemetery Care Act, or a licensed cemetery authority under the
14 Cemetery Oversight Act, then such company or association shall
15 also comply with the provisions of the Cemetery Care Act or
16 Cemetery Oversight Act, whichever is applicable. Furthermore,
17 no cemetery authority company or other legal entity may deny
18 burial space to any person because of race, creed, marital
19 status, sex, national origin, sexual orientation, or color. A
20 cemetery company or other entity operating any cemetery may
21 designate parts of cemeteries or burial grounds for the
22 specific use of persons whose religious code requires
23 isolation. Religious institution cemeteries may limit burials
24 to members of the religious institution and their families.
25 ~~Where the cemetery is a privately operated cemetery, as defined~~

1 ~~in Section 2 of the Cemetery Care Act, enacted by the~~
2 ~~Sixty-fifth General Assembly or where the interment,~~
3 ~~entombment rights in a community mausoleum or lawn crypt~~
4 ~~section, or inurnment rights in a community columbarium, vault~~
5 ~~or vaults, tomb or tombs, or other such structures in the~~
6 ~~cemetery or graveyard are in a privately operated cemetery, as~~
7 ~~defined in Section 2 of that Act, then such board of directors~~
8 ~~or managing officers of such cemetery, society or cemetery~~
9 ~~authority, or the trustees of any public graveyard or the~~
10 ~~cemetery society or cemetery association, shall also comply~~
11 ~~with the provisions of the Cemetery Care Act, enacted by the~~
12 ~~Sixty-fifth General Assembly.~~

13 (Source: P.A. 94-44, eff. 6-17-05.)

14 Section 90-55. The Illinois Pre-Need Cemetery Sales Act is
15 amended by changing Sections 4, 6, 14, 15, and 16 as follows:

16 (815 ILCS 390/4) (from Ch. 21, par. 204)

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

19 (A) "Pre-need sales contract" or "Pre-need sales" means any
20 agreement or contract or series or combination of agreements or
21 contracts which have for a purpose the sale of cemetery
22 merchandise, cemetery services or undeveloped interment,
23 entombment or inurnment spaces where the terms of such sale
24 require payment or payments to be made at a currently

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

10 (B) "Delivery" occurs when:

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

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

20 (3) Following authorization by a purchaser under a
21 pre-need sales contract, the merchandise has been
22 permanently identified with the name of the buyer or the
23 beneficiary and delivered to a licensed and bonded
24 warehouse and both title to the merchandise and a warehouse
25 receipt have been delivered to the purchaser or beneficiary
26 and a copy of the warehouse receipt has been delivered to

1 the licensee for retention in its files; except that in the
2 case of outer burial containers, the use of a licensed and
3 bonded warehouse as set forth in this paragraph shall not
4 constitute delivery for purposes of this Act. Nothing
5 herein shall prevent a seller from perfecting a security
6 interest in accordance with the Uniform Commercial Code on
7 any merchandise covered under this Act.

8 All warehouse facilities to which sellers deliver
9 merchandise pursuant to this Act shall:

10 (i) be either located in the State of Illinois or
11 qualify as a foreign warehouse facility as defined
12 herein;

13 (ii) submit to the Comptroller not less than
14 annually, by March 1 of each year, a report of all
15 cemetery merchandise stored by each licensee under
16 this Act which is in storage on the date of the report;

17 (iii) permit the Comptroller or his designee at any
18 time to examine stored merchandise and to examine any
19 documents pertaining thereto;

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

25 (v) demonstrate to the Comptroller that the
26 warehouse has procured and is maintaining a

1 performance bond in the form, content and amount
2 sufficient to unconditionally guarantee to the
3 purchaser or beneficiary the prompt shipment of the
4 cemetery merchandise.

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

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

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

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

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

1 human body.

2 (F) "Cemetery section" means a grouping of spaces intended
3 to be developed simultaneously for the purpose of interring
4 human remains.

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

11 (H) "Lawn crypt" means a permanent underground crypt
12 usually constructed of reinforced concrete or similar material
13 installed in multiple units for the entombment of human
14 remains.

15 (I) "Mausoleum" or "garden crypt" means a grouping of
16 spaces constructed of reinforced concrete or similar material
17 constructed or assembled above the ground for entombing human
18 remains.

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

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

25 (L) "Person" means an individual, corporation,
26 partnership, joint venture, business trust, voluntary

1 organization or any other form of entity.

2 (M) "Seller" means any person selling or offering for sale
3 cemetery merchandise, cemetery services or undeveloped
4 interment, entombment, or inurnment spaces in accordance with a
5 pre-need sales contract.

6 (N) "Religious cemetery" means a cemetery owned, operated,
7 controlled or managed by any recognized church, religious
8 society, association or denomination or by any cemetery
9 authority or any corporation administering, or through which is
10 administered, the temporalities of any recognized church,
11 religious society, association or denomination.

12 (O) "Municipal cemetery" means a cemetery owned, operated,
13 controlled or managed by any city, village, incorporated town,
14 township, county or other municipal corporation, political
15 subdivision, or instrumentality thereof authorized by law to
16 own, operate or manage a cemetery. "Municipal cemetery" also
17 includes a cemetery placed in receivership pursuant to this Act
18 while such cemetery is in receivership.

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

25 (P) "Sales price" means the gross amount paid by a
26 purchaser on a pre-need sales contract for cemetery

1 merchandise, cemetery services or undeveloped interment,
2 entombment or inurnment spaces, excluding sales taxes, credit
3 life insurance premiums, finance charges and Cemetery Care Act
4 contributions.

5 (Q) (Blank).

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

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

13 (T) "Parent company" means a corporation owning more than
14 12 cemeteries or funeral homes in more than one state.

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

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

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

13 (Source: P.A. 91-7, eff. 1-1-00; 91-357, eff. 7-29-99; 92-16,
14 eff. 6-28-01; 92-419, eff. 1-1-02.)

15 (815 ILCS 390/6) (from Ch. 21, par. 206)

16 Sec. 6. License application.

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

25 (1) The full name and address, both residence and

1 business, of the applicant if the applicant is an
2 individual; of every member if applicant is a partnership;
3 of every member of the Board of Directors if applicant is
4 an association; and of every officer, director and
5 shareholder holding more than 10% of the corporate stock if
6 applicant is a corporation;

7 (2) A detailed statement of applicant's assets and
8 liabilities;

9 (2.1) The name and address of the applicant's principal
10 place of business at which the books, accounts, and records
11 are available for examination by the Comptroller as
12 required by this Act;

13 (2.2) The name and address of the applicant's branch
14 locations at which pre-need sales will be conducted and
15 which will operate under the same license number as the
16 applicant's principal place of business;

17 (3) For each individual listed under (1) above, a
18 detailed statement of the individual's business experience
19 for the 10 years immediately preceding the application; any
20 present or prior connection between the individual and any
21 other person engaged in pre-need sales; any felony or
22 misdemeanor convictions for which fraud was an essential
23 element; any charges or complaints lodged against the
24 individual for which fraud was an essential element and
25 which resulted in civil or criminal litigation; any failure
26 of the individual to satisfy an enforceable judgment

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

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

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

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

20 (b) Applications for license shall be accompanied by a
21 fidelity bond executed by the applicant and a security company
22 authorized to do business in this State in such amount, not
23 exceeding \$10,000, as the Comptroller may require. The
24 Comptroller may require additional bond from time to time in
25 amounts equal to one-tenth of such trust funds but not to
26 exceed \$100,000, which bond shall run to the Comptroller for

1 the use and benefit of the beneficiaries of such trust funds.
2 Such licensee may by written permit of the Comptroller be
3 authorized to operate without additional bond, except such
4 fidelity bond as may be required by the Comptroller for the
5 protection of the licensee against loss by default by any of
6 its employees engaged in the handling of trust funds.

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

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

10 (815 ILCS 390/14) (from Ch. 21, par. 214)

11 Sec. 14. Contract required.

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

17 (1) A written sales contract shall be executed in at
18 least 11 point type in duplicate for each pre-need sale
19 made by a licensee, and a signed copy given to the
20 purchaser. Each completed contract shall be numbered and
21 shall contain: (i) the name and address of the purchaser,
22 the principal office of the licensee, and the parent
23 company of the licensee; (ii) the name of the person, if
24 known, who is to receive the cemetery merchandise, cemetery
25 services or the completed interment, entombment or

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

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

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

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

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

23 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE SPECIFIC
24 GOODS, SERVICES, INTERMENT SPACES, ENTOMBMENT SPACES, AND
25 INURNMENT SPACES CONTRACTED FOR. NO ADDITIONAL CHARGES MAY
26 BE REQUIRED FOR DESIGNATED GOODS, SERVICES, AND SPACES.

1 ADDITIONAL CHARGES MAY BE INCURRED FOR UNEXPECTED
2 EXPENSES."

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

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

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

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

23 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO A
24 LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE
25 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE
26 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER MAY

1 PRECLUDE REFUND OF SALE PROCEEDS THAT ARE ATTRIBUTABLE TO
2 THE DELIVERED MERCHANDISE."

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

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

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

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

18 (10) Each pre-need contract that is funded by a trust
19 shall clearly identify the trustee's name and address and
20 the primary state or federal regulator of the trustee as a
21 corporate fiduciary.

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

25 (c) To the extent the Rule is applicable, every pre-need
26 sales contract is subject to the Federal Trade Commission Rule

1 concerning the Cooling-Off Period for Door-to-Door Sales (16
2 CFR Part 429).

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

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

26 (f) No pre-need contract may be entered into in this State

1 unless the seller explains to the purchaser the terms of the
2 pre-need contract prior to the purchaser signing and the
3 purchaser initials a statement in the contract confirming that
4 the seller has explained the terms of the contract prior to the
5 purchaser signing.

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

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

14 (815 ILCS 390/15) (from Ch. 21, par. 215)

15 Sec. 15. (a) Whenever a seller receives anything of value
16 under a pre-need sales contract, the person receiving such
17 value shall deposit 50% of all proceeds received into one or
18 more trust funds maintained pursuant to this Section, except
19 that, in the case of proceeds received for the purchase of
20 outer burial containers, 85% of the proceeds shall be deposited
21 into one or more trust funds. Such deposits shall be made until
22 the amount deposited in trust equals 50% of the sales price of
23 the cemetery merchandise, cemetery services and undeveloped
24 spaces included in such contract, except that, in the case of
25 deposits for outer burial containers, deposits shall be made

1 until the amount deposited in trust equals 85% of the sales
2 price. In the event an installment contract is factored,
3 discounted or sold to a third party, the seller shall deposit
4 an amount equal to 50% of the sales price of the installment
5 contract, except that, for the portion of the contract
6 attributable to the sale of outer burial containers, the seller
7 shall deposit an amount equal to 85% of the sales price.
8 Proceeds required to be deposited in trust which are
9 attributable to cemetery merchandise and cemetery services
10 shall be held in a "Cemetery Merchandise Trust Fund". Proceeds
11 required to be deposited in trust which are attributable to the
12 sale of undeveloped interment, entombment or inurnment spaces
13 shall be held in a "Pre-construction Trust Fund". If
14 merchandise is delivered for storage in a bonded warehouse, as
15 authorized herein, and payment of transportation or other
16 charges totaling more than \$20 will be required in order to
17 secure delivery to the site of ultimate use, upon such delivery
18 to the warehouse the seller shall deposit to the trust fund the
19 full amount of the actual or estimated transportation charge.
20 Transportation charges which have been prepaid by the seller
21 shall not be deposited to trust funds maintained pursuant to
22 this Section. As used in this Section, "all proceeds" means the
23 entire amount paid by a purchaser in connection with a pre-need
24 sales contract, including finance charges and Cemetery Care Act
25 contributions, but excluding sales taxes and credit life
26 insurance premiums.

1 (b) The seller shall act as trustee of all amounts received
2 for cemetery merchandise, services, or undeveloped spaces
3 until those amounts have been deposited into the trust fund.

4 All trust deposits required by this Act shall be made within 30
5 days following the end of the month of receipt. The seller must
6 retain a corporate fiduciary as an independent trustee for any
7 amount of trust funds. Upon 30 days' prior written notice from
8 the seller to the Comptroller, the seller may change the
9 trustee of the trust fund. Failure to provide the Comptroller
10 with timely prior notice is an intentional violation of this
11 Act.

12 (c) A trust established under this Act must be maintained
13 with a corporate fiduciary as defined in Section 1-5.05 of the
14 Corporate Fiduciary Act.†

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

19 ~~(2) in a trust company authorized to do business in~~
20 ~~Illinois; or~~

21 ~~(3) in an investment company authorized to do business~~
22 ~~in Illinois insured by the Securities Brokers Insurance~~
23 ~~Corporation.~~

24 (d) Funds deposited in the trust account shall be
25 identified in the records of the seller by the name of the
26 purchaser. Nothing shall prevent the trustee from commingling

1 the deposits in any such trust fund for purposes of the
2 management thereof and the investment of funds therein as
3 provided in the "Common Trust Fund Act", approved June 24,
4 1949, as amended. In addition, multiple trust funds maintained
5 pursuant to this Act may be commingled or commingled with other
6 funeral or burial related trust funds, provided that all record
7 keeping requirements imposed by or pursuant to law are met.

8 (e) In lieu of a pre-construction trust fund, a seller of
9 undeveloped interment, entombment or inurnment spaces may
10 obtain and file with the Comptroller a performance bond in an
11 amount at least equal to 50% of the sales price of the
12 undeveloped spaces or the estimated cost of completing
13 construction, whichever is greater. The bond shall be
14 conditioned on the satisfactory construction and completion of
15 the undeveloped spaces as required in Section 19 of this Act.

16 Each bond obtained under this Section shall have as surety
17 thereon a corporate surety company incorporated under the laws
18 of the United States, or a State, the District of Columbia or a
19 territory or possession of the United States. Each such
20 corporate surety company must be authorized to provide
21 performance bonds as required by this Section, have paid-up
22 capital of at least \$250,000 in cash or its equivalent and be
23 able to carry out its contracts. Each pre-need seller must
24 provide to the Comptroller, for each corporate surety company
25 such seller utilizes, a statement of assets and liabilities of
26 the corporate surety company sworn to by the president and

1 secretary of the corporation by January 1 of each year.

2 The Comptroller shall prohibit pre-need sellers from doing
3 new business with a corporate surety company if the company is
4 insolvent or is in violation of this Section. In addition the
5 Comptroller may direct a pre-need seller to reinstate a
6 pre-construction trust fund upon the Comptroller's
7 determination that the corporate surety company no longer is
8 sufficient security.

9 All performance bonds issued pursuant to this Section must
10 be irrevocable during the statutory term for completing
11 construction specified in Section 19 of this Act, unless
12 terminated sooner by the completion of construction.

13 (f) Whenever any pre-need contract shall be entered into
14 and include 1) items of cemetery merchandise and cemetery
15 services, and 2) rights to interment, inurnment or entombment
16 in completed spaces without allocation of the gross sale price
17 among the items sold, the application of payments received
18 under the contract shall be allocated, first to the right to
19 interment, inurnment or entombment, second to items of cemetery
20 merchandise and cemetery services, unless some other
21 allocation is clearly provided in the contract.

22 (g) Any person engaging in pre-need sales who enters into a
23 combination sale which involves the sale of items covered by a
24 trust or performance bond requirement and any item not covered
25 by any entrustment or bond requirement, shall be prohibited
26 from increasing the gross sales price of those items not

1 requiring entrustment with the purpose of allocating a lesser
2 gross sales price to items which require a trust deposit or a
3 performance bond.

4 (Source: P.A. 91-7; eff. 1-1-2000.)

5 (815 ILCS 390/16) (from Ch. 21, par. 216)

6 Sec. 16. Trust funds; disbursements.

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

9 (b) A trustee has a duty to invest and manage the trust
10 assets pursuant to the Prudent Investor Rule under the Trusts
11 and Trustees Act. Whenever the seller changes trustees pursuant
12 to this Act, the trustee must provide written notice of the
13 change in trustees to the Comptroller no less than 28 days
14 prior to the effective date of such a change in trustee. The
15 trustee has an ongoing duty to provide the Comptroller with a
16 current and true copy of the trust agreement under which the
17 trust funds are held pursuant to this Act. ~~shall, with respect~~
18 ~~to the investment of such trust funds, exercise the judgment~~
19 ~~and care under the circumstances then prevailing which persons~~
20 ~~of prudence, discretion and intelligence exercise in the~~
21 ~~management of their own affairs, not in regard to speculation,~~
22 ~~but in regard to the permanent disposition of their funds,~~
23 ~~considering the probable income as well as the probable safety~~
24 ~~of their capital.~~

25 ~~The seller shall act as trustee of all amounts received for~~

1 ~~cemetery merchandise, services, or undeveloped spaces until~~
2 ~~those amounts have been deposited into the trust fund. The~~
3 ~~seller may continue to be the trustee of up to \$500,000 that~~
4 ~~has been deposited into the trust fund, but the seller must~~
5 ~~retain an independent trustee for any amount of trust funds in~~
6 ~~excess of \$500,000. A seller holding trust funds in excess of~~
7 ~~\$500,000 must retain an independent trustee for its trust funds~~
8 ~~in excess of \$500,000 as soon as may be practical. The~~
9 ~~Comptroller shall have the right to disqualify the trustee upon~~
10 ~~the same grounds as for refusing to grant or revoking a license~~
11 ~~hereunder. Upon notice to the Comptroller, the seller may~~
12 ~~change the trustee of the trust fund.~~

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

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

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

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

26 (g) A trustee shall at least annually furnish to each

1 purchaser a statement identifying: (1) the receipts,
2 disbursements, and inventory of the trust, including an
3 explanation of any fees or expenses charged by the trustee
4 under paragraph (d) of this Section or otherwise, (2) an
5 explanation of the purchaser's right to a refund, if any, under
6 this Act, and (3) the primary regulator of the trust as a
7 corporate fiduciary under state or federal law.

8 (Source: P.A. 91-7, eff. 6-1-99; 92-419, eff. 1-1-02.)

9 Section 90-57. The Consumer Fraud and Deceptive Business
10 Practices Act is amended by changing Section 2Z as follows:

11 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

12 Sec. 2Z. Violations of other Acts. Any person who knowingly
13 violates the Automotive Repair Act, the Automotive Collision
14 Repair Act, the Home Repair and Remodeling Act, the Dance
15 Studio Act, the Physical Fitness Services Act, the Hearing
16 Instrument Consumer Protection Act, the Illinois Union Label
17 Act, the Job Referral and Job Listing Services Consumer
18 Protection Act, the Travel Promotion Consumer Protection Act,
19 the Credit Services Organizations Act, the Automatic Telephone
20 Dialers Act, the Pay-Per-Call Services Consumer Protection
21 Act, the Telephone Solicitations Act, the Illinois Funeral or
22 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
23 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
24 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,

1 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
2 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act,
3 subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax
4 Act, the Electronic Mail Act, the Internet Caller
5 Identification Act, paragraph (6) of subsection (k) of Section
6 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120,
7 18d-125, 18d-135, or 18d-150 of the Illinois Vehicle Code,
8 Article 3 of the Residential Real Property Disclosure Act, the
9 Automatic Contract Renewal Act, or the Personal Information
10 Protection Act commits an unlawful practice within the meaning
11 of this Act.

12 (Source: P.A. 94-13, eff. 12-6-05; 94-36, eff. 1-1-06; 94-280,
13 eff. 1-1-06; 94-292, eff. 1-1-06; 94-822, eff. 1-1-07; 95-413,
14 eff. 1-1-08; 95-562, eff. 7-1-08; 95-876, eff. 8-21-08.)

15 Section 90-60. The Burial Rights Act is amended by changing
16 Sections 1 and 2.3 as follows:

17 (820 ILCS 135/1) (from Ch. 21, par. 101)

18 Sec. 1. (a) Every contract, agreement or understanding
19 between a cemetery authority and a cemetery workers'
20 association which totally prohibits burials of human remains on
21 Sundays or legal holidays shall be deemed to be void as against
22 public policy and wholly unenforceable.

23 (b) Nothing in this Section shall prohibit a cemetery
24 authority and a cemetery workers' association from entering

1 into a contract, agreement or understanding which limits Sunday
2 or holiday burials of human remains to decedents who were
3 members of religious sects whose tenets or beliefs require
4 burials within a specified period of time and whose deaths
5 occurred at such times as to necessitate Sunday or holiday
6 burials. Such contract, agreement or understanding may provide
7 that a funeral director notify the cemetery authority within a
8 reasonable time when a Sunday or holiday burial is necessitated
9 by reason of the decedent's religious tenets or beliefs.

10 (c) It shall be unlawful for any person to restrain,
11 prohibit or interfere with the burial of a decedent whose time
12 of death and religious tenets or beliefs necessitate burial on
13 a Sunday or legal holiday.

14 (d) A violation of this Section is a Class A misdemeanor.

15 (e) For the purposes of this Act, "cemetery authority"
16 shall have the meaning ascribed to it in ~~Section 2~~ of the
17 Cemetery Oversight ~~Care~~ Act; and "cemetery workers'
18 association" means an organization of workers who are employed
19 by cemetery authorities to perform the task of burying human
20 remains or transporting remains to cemeteries or other places
21 of interment, and who join together for collective bargaining
22 purposes or to negotiate terms and conditions of employment.

23 (Source: P.A. 83-384.)

24 (820 ILCS 135/2.3)

25 Sec. 2.3. Sections of cemeteries. No provision of any law

1 of this State may be construed to prohibit a cemetery authority
2 from reserving, in a cemetery not owned by a religious
3 organization or institution, a section of interment rights,
4 entombment rights, or inurnment rights for sale exclusively to
5 persons of a particular religion, unless membership in the
6 religion is restricted on account of race, color, or national
7 origin. As used in this Section, "interment rights",
8 "entombment rights", and "inurnment rights" have the meanings
9 ascribed to those terms in the Cemetery Oversight ~~Care~~ Act.

10 (Source: P.A. 88-659.)

11 (760 ILCS 100/Act rep.)

12 Section 90-90. The Cemetery Care Act is repealed.

13 (805 ILCS 320/16 rep.)

14 (805 ILCS 320/16.5 rep.)

15 (805 ILCS 320/17 rep.)

16 (805 ILCS 320/18 rep.)

17 (805 ILCS 320/19 rep.)

18 (805 ILCS 320/20 rep.)

19 Section 90-92. The Cemetery Association Act is amended by
20 repealing Sections 16, 16.5, 17, 18, 19, and 20.

21 (805 ILCS 320/Act rep.)

22 Section 90-95. The Cemetery Association Act is repealed.

1 Article 91.

2 Additional Amendatory Provisions

3 Section 91-5. The Funeral Directors and Embalmers
4 Licensing Code is amended by changing Sections 1-10, 15-50,
5 15-60, and 15-75 and adding Article 12 as follows:

6 (225 ILCS 41/1-10)

7 (Section scheduled to be repealed on January 1, 2013)

8 Sec. 1-10. Definitions. As used in this Code:

9 "Applicant" means any person making application for a
10 license or certificate of registration.

11 "Board" means the Funeral Directors and Embalmers
12 Licensing and disciplinary Board.

13 "Customer service employee" means a funeral home employee
14 who has direct contact with consumers and explains merchandise
15 or services or negotiates, develops, or finalizes contracts
16 with consumers. This definition includes, without limitation,
17 an individual that is an independent contractor or an
18 individual employed or contracted by an independent contractor
19 who has direct contact with consumers and explains merchandise
20 or services or negotiates, develops, or finalizes contracts
21 with consumers.

22 "Department" means the Department of Professional
23 Regulation.

24 "Director" means the Director of Professional Regulation.

1 "Funeral director and embalmer" means a person who is
2 licensed and qualified to practice funeral directing and to
3 prepare, disinfect and preserve dead human bodies by the
4 injection or external application of antiseptics,
5 disinfectants or preservative fluids and materials and to use
6 derma surgery or plastic art for the restoring of mutilated
7 features. It further means a person who restores the remains of
8 a person for the purpose of funeralization whose organs or bone
9 or tissue has been donated for anatomical purposes.

10 "Funeral director and embalmer intern" means a person
11 licensed by the State who is qualified to render assistance to
12 a funeral director and embalmer in carrying out the practice of
13 funeral directing and embalming under the supervision of the
14 funeral director and embalmer.

15 "Embalming" means the process of sanitizing and chemically
16 treating a deceased human body in order to reduce the presence
17 and growth of microorganisms, to retard organic decomposition,
18 to render the remains safe to handle while retaining
19 naturalness of tissue, and to restore an acceptable physical
20 appearance for funeral viewing purposes.

21 "Funeral director" means a person, known by the title of
22 "funeral director" or other similar words or titles, licensed
23 by the State who practices funeral directing.

24 "Funeral establishment", "funeral chapel", "funeral home",
25 or "mortuary" means a building or separate portion of a
26 building having a specific street address or location and

1 devoted to activities relating to the shelter, care, custody
2 and preparation of a deceased human body and which may contain
3 facilities for funeral or wake services.

4 "Owner" means the individual, partnership, corporation,
5 association, trust, estate, or agent thereof, or other person
6 or combination of persons who owns a funeral establishment or
7 funeral business.

8 "Person" means any individual, partnership, association,
9 firm, corporation, trust or estate, or other entity.

10 (Source: P.A. 93-268, eff. 1-1-04.)

11 (225 ILCS 41/Art. 12 heading new)

12 ARTICLE 12. CUSTOMER SERVICE EMPLOYEES

13 (225 ILCS 41/12-5 new)

14 Sec. 12-5. License requirement. Customer service employees
15 employed by a funeral establishment, funeral chapel, funeral
16 home, or mortuary must apply for licensure as a customer
17 service employee on forms prescribed by the Department and pay
18 the fee established by rule. It is unlawful for any person to
19 act as a customer service employee without a customer service
20 employee license issued by the Department.

21 A person acting as a customer service employee who, prior
22 to the effective date of this amendatory Act of the 96th
23 General Assembly, was not required to obtain licensure need not
24 comply with the licensure requirement in this Article until the

1 Department takes action on the person's application for a
2 license. The application for a customer service employee
3 license must be submitted to the Department within 6 months
4 after the effective date of this amendatory Act of the 96th
5 General Assembly. If the person fails to submit the application
6 within 6 months after the effective date of this amendatory Act
7 of the 96th General Assembly, then the person shall be
8 considered to be engaged in unlicensed practice and shall be
9 subject to discipline under this Act.

10 (225 ILCS 41/12-10 new)

11 Sec. 12-10. Qualifications for licensure.

12 (a) A person is qualified for licensure as a customer
13 service employee if he or she meets all of the following
14 requirements:

15 (1) Is at least 18 years of age.

16 (2) Is of good moral character, including compliance
17 with the Code of Professional Conduct and Ethics as
18 provided for by rule. Good moral character is a continuing
19 requirement of licensure. In determining good moral
20 character, the Department may take into consideration
21 conviction of any crime under the laws of any jurisdiction.

22 (3) Submits proof of successful completion of a high
23 school education or its equivalent as established by rule.

24 (4) Submits his or her fingerprints in accordance with
25 subsection (b) of this Section.

1 (5) Has not committed a violation of this Act or any
2 rules adopted under this Act that, in the opinion of the
3 Department, renders the applicant unqualified to be a
4 customer service employee.

5 (6) Successfully passes the examination authorized by
6 the Department for customer service employees.

7 (7) Has complied with all other requirements of this
8 Act and rules established for the implementation of this
9 Act.

10 (8) Can be reasonably expected to treat consumers
11 professionally, fairly, and ethically.

12 (b) Each applicant for a customer service employee license
13 shall have his or her fingerprints submitted to the Department
14 of State Police in an electronic format that complies with the
15 form and manner for requesting and furnishing criminal history
16 record information that is prescribed by the Department of
17 State Police. These fingerprints shall be checked against the
18 Department of State Police and Federal Bureau of Investigation
19 criminal history record databases. The Department of State
20 Police shall charge applicants a fee for conducting the
21 criminal history records check, which shall be deposited in the
22 State Police Services Fund and shall not exceed the actual cost
23 of the records check. The Department of State Police shall
24 furnish, pursuant to positive identification, records of
25 Illinois convictions to the Department. The Department may
26 require applicants to pay a separate fingerprinting fee, either

1 to the Department or directly to a designated fingerprint
2 vendor. The Department, in its discretion, may allow an
3 applicant who does not have reasonable access to a designated
4 fingerprint vendor to provide his or her fingerprints in an
5 alternative manner. The Department, in its discretion, may also
6 use other procedures in performing or obtaining criminal
7 background checks of applicants. Instead of submitting his or
8 her fingerprints, an individual may submit proof that is
9 satisfactory to the Department that an equivalent security
10 clearance has been conducted.

11 (225 ILCS 41/12-15 new)

12 Sec. 12-15. Examination; failure or refusal to take the
13 examination.

14 (a) The Department shall authorize examinations of
15 customer service employee applicants at such times and places
16 as it may determine. The examinations shall fairly test an
17 applicant's qualifications to practice as customer service
18 employee and knowledge of the theory and practice of funeral
19 home customer service. The examination shall further test the
20 extent to which the applicant understands and appreciates that
21 the final disposal of a deceased human body should be attended
22 with appropriate observance and understanding, having due
23 regard and respect for the reverent care of the human body and
24 for those bereaved and for the overall spiritual dignity of an
25 individual.

1 (b) Applicants for examinations shall pay, either to the
2 Department or to the designated testing service, a fee covering
3 the cost of providing the examination. Failure to appear for
4 the examination on the scheduled date at the time and place
5 specified after the application for examination has been
6 received and acknowledged by the Department or the designated
7 testing service shall result in forfeiture of the examination
8 fee.

9 (c) If the applicant neglects, fails, or refuses to take an
10 examination or fails to pass an examination for a license under
11 this Act within one year after filing an application, then the
12 application shall be denied. However, the applicant may
13 thereafter submit a new application accompanied by the required
14 fee. The applicant shall meet the requirements in force at the
15 time of making the new application.

16 (d) The Department may employ consultants for the purpose
17 of preparing and conducting examinations.

18 (e) The Department shall have the authority to adopt or
19 recognize, in part or in whole, examinations prepared,
20 administered, or graded by other organizations in the cemetery
21 industry that are determined appropriate to measure the
22 qualifications of an applicant for licensure.

23 (225 ILCS 41/12-20 new)

24 Sec. 12-20. Continuing education. The Department shall
25 promulgate rules of continuing education for cemetery managers

1 and customer service employees. The requirements of this
2 Section apply to any person seeking renewal or restoration
3 under this Code.

4 (225 ILCS 41/15-50)

5 (Section scheduled to be repealed on January 1, 2013)

6 Sec. 15-50. Practice by corporation, partnership, or
7 association. No corporation, partnership or association of
8 individuals, as such, shall be issued a license as a licensed
9 funeral director and embalmer or licensed funeral director, nor
10 shall any corporation, partnership, firm or association of
11 individuals, or any individual connected therewith, publicly
12 advertise any corporation, partnership or association of
13 individuals as being licensed funeral directors and embalmers
14 or licensed funeral directors. Nevertheless, nothing in this
15 Act shall restrict funeral director licensees or funeral
16 director and embalmer licensees from forming professional
17 service corporations under the Professional Service
18 Corporation Act or from having these corporations registered
19 for the practice of funeral directing.

20 No funeral director licensee or funeral director and
21 embalmer licensee, and no partnership or association of those
22 licensees, formed since July 1, 1935, shall engage in the
23 practice of funeral directing and embalming or funeral
24 directing under a trade name or partnership or firm name unless
25 in the use and advertising of the trade name, partnership or

1 firm name there is published in connection with the advertising
2 the name of the owner or owners as the owner or owners.

3 (Source: P.A. 87-966.)

4 (225 ILCS 41/15-60)

5 (Section scheduled to be repealed on January 1, 2013)

6 Sec. 15-60. Determination of life. Every funeral director
7 licensee or funeral director and embalmer licensee under this
8 Code before proceeding to prepare or embalm a human body to
9 cremate or bury shall determine that life is extinct by
10 ascertaining that:

11 (a) pulsation has entirely ceased in the radial or other
12 arteries; and

13 (b) heart or respiratory sounds are not audible with the
14 use of a stethoscope or with the ear applied directly over the
15 heart.

16 (Source: P.A. 87-966.)

17 (225 ILCS 41/15-75)

18 (Section scheduled to be repealed on January 1, 2013)

19 Sec. 15-75. Violations; grounds for discipline; penalties.

20 (a) Each of the following acts is a Class A misdemeanor for
21 the first offense, and a Class 4 felony for each subsequent
22 offense. These penalties shall also apply to unlicensed owners
23 of funeral homes.

24 (1) Practicing the profession of funeral directing and

1 embalming or funeral directing, or attempting to practice
2 the profession of funeral directing and embalming or
3 funeral directing without a license as a licensed funeral
4 director and embalmer or funeral director or acting as a
5 customer service employee without a license as a customer
6 service employee issued by the Department.

7 (2) Serving as an intern under a licensed funeral
8 director and embalmer or attempting to serve as an intern
9 under a licensed funeral director and embalmer without a
10 license as a licensed funeral director and embalmer intern.

11 (3) Obtaining or attempting to obtain a license,
12 practice or business, or any other thing of value, by fraud
13 or misrepresentation.

14 (4) Permitting any person in one's employ, under one's
15 control or in or under one's service to serve as a funeral
16 director and embalmer, funeral director, or funeral
17 director and embalmer intern when the person does not have
18 the appropriate license.

19 (5) Failing to display a license as required by this
20 Code.

21 (6) Giving false information or making a false oath or
22 affidavit required by this Code.

23 (b) Each of the following acts or actions is a violation of
24 this Code for which the Department may refuse to issue or
25 renew, or may suspend or revoke any license or may take any
26 disciplinary action as the Department may deem proper including

1 fines not to exceed \$1,000 for each violation.

2 (1) Obtaining or attempting to obtain a license by
3 fraud or misrepresentation.

4 (2) Conviction in this State or another state of any
5 crime that is a felony or misdemeanor under the laws of
6 this State or conviction of a felony or misdemeanor in a
7 federal court.

8 (3) Violation of the laws of this State relating to the
9 funeral, burial or disposal of deceased human bodies or of
10 the rules and regulations of the Department, or the
11 Department of Public Health.

12 (4) Directly or indirectly paying or causing to be paid
13 any sum of money or other valuable consideration for the
14 securing of business or for obtaining authority to dispose
15 of any deceased human body.

16 (5) Incompetence or untrustworthiness in the practice
17 of funeral directing and embalming or funeral directing.

18 (6) False or misleading advertising as a funeral
19 director and embalmer or funeral director, or advertising
20 or using the name of a person other than the holder of a
21 license in connection with any service being rendered in
22 the practice of funeral directing and embalming or funeral
23 directing. Nothing in this paragraph shall prevent
24 including the name of any owner, officer or corporate
25 director of a funeral business who is not a licensee in any
26 advertisement used by a funeral home with which the

1 individual is affiliated if the advertisement specifies
2 the individual's affiliation with the funeral home.

3 (7) Engaging in, promoting, selling, or issuing burial
4 contracts, burial certificates, or burial insurance
5 policies in connection with the profession as a funeral
6 director and embalmer, funeral director, or funeral
7 director and embalmer intern in violation of any laws of
8 the State of Illinois.

9 (8) Refusing, without cause, to surrender the custody
10 of a deceased human body upon the proper request of the
11 person or persons lawfully entitled to the custody of the
12 body.

13 (9) Taking undue advantage of a client or clients as to
14 amount to the perpetration of fraud.

15 (10) Engaging in funeral directing and embalming or
16 funeral directing without a license.

17 (11) Encouraging, requesting, or suggesting by a
18 licensee or some person working on his behalf and with his
19 consent for compensation that a person utilize the services
20 of a certain funeral director and embalmer, funeral
21 director, or funeral establishment unless that information
22 has been expressly requested by the person. This does not
23 prohibit general advertising or pre-need solicitation.

24 (12) Making or causing to be made any false or
25 misleading statements about the laws concerning the
26 disposal of human remains, including, but not limited to,

1 the need to embalm, the need for a casket for cremation or
2 the need for an outer burial container.

3 (13) Continued practice by a person having an
4 infectious or contagious disease.

5 (14) Embalming or attempting to embalm a deceased human
6 body without express prior authorization of the person
7 responsible for making the funeral arrangements for the
8 body. This does not apply to cases where embalming is
9 directed by local authorities who have jurisdiction or when
10 embalming is required by State or local law.

11 (15) Making a false statement on a Certificate of Death
12 where the person making the statement knew or should have
13 known that the statement was false.

14 (16) Soliciting human bodies after death or while death
15 is imminent.

16 (17) Performing any act or practice that is a violation
17 of this Code, the rules for the administration of this
18 Code, or any federal, State or local laws, rules, or
19 regulations governing the practice of funeral directing or
20 embalming.

21 (18) Performing any act or practice that is a violation
22 of Section 2 of the Consumer Fraud and Deceptive Business
23 Practices Act.

24 (19) Engaging in unethical or unprofessional conduct
25 of a character likely to deceive, defraud or harm the
26 public.

1 (20) Taking possession of a dead human body without
2 having first obtained express permission from next of kin
3 or a public agency legally authorized to direct, control or
4 permit the removal of deceased human bodies.

5 (21) Advertising in a false or misleading manner or
6 advertising using the name of an unlicensed person in
7 connection with any service being rendered in the practice
8 of funeral directing or funeral directing and embalming.
9 The use of any name of an unlicensed or unregistered person
10 in an advertisement so as to imply that the person will
11 perform services is considered misleading advertising.
12 Nothing in this paragraph shall prevent including the name
13 of any owner, officer or corporate director of a funeral
14 home, who is not a licensee, in any advertisement used by a
15 funeral home with which the individual is affiliated, if
16 the advertisement specifies the individual's affiliation
17 with the funeral home.

18 (22) Directly or indirectly receiving compensation for
19 any professional services not actually performed.

20 (23) Failing to account for or remit any monies,
21 documents, or personal property that belongs to others that
22 comes into a licensee's possession.

23 (24) Treating any person differently to his detriment
24 because of race, color, creed, gender, religion, or
25 national origin.

26 (25) Knowingly making any false statements, oral or

1 otherwise, of a character likely to influence, persuade or
2 induce others in the course of performing professional
3 services or activities.

4 (26) Knowingly making or filing false records or
5 reports in the practice of funeral directing and embalming.

6 (27) Failing to acquire continuing education required
7 under this Code.

8 (28) Failing to comply with any of the following
9 required activities:

10 (A) When reasonably possible, a funeral director
11 licensee or funeral director and embalmer licensee or
12 anyone acting on his or her behalf shall obtain the
13 express authorization of the person or persons
14 responsible for making the funeral arrangements for a
15 deceased human body prior to removing a body from the
16 place of death or any place it may be or embalming or
17 attempting to embalm a deceased human body, unless
18 required by State or local law. This requirement is
19 waived whenever removal or embalming is directed by
20 local authorities who have jurisdiction. If the
21 responsibility for the handling of the remains
22 lawfully falls under the jurisdiction of a public
23 agency, then the regulations of the public agency shall
24 prevail.

25 (B) A licensee shall clearly mark the price of any
26 casket offered for sale or the price of any service

1 using the casket on or in the casket if the casket is
2 displayed at the funeral establishment. If the casket
3 is displayed at any other location, regardless of
4 whether the licensee is in control of that location,
5 the casket shall be clearly marked and the registrant
6 shall use books, catalogues, brochures, or other
7 printed display aids to show the price of each casket
8 or service.

9 (C) At the time funeral arrangements are made and
10 prior to rendering the funeral services, a licensee
11 shall furnish a written statement to be retained by the
12 person or persons making the funeral arrangements,
13 signed by both parties, that shall contain: (i) the
14 name, address and telephone number of the funeral
15 establishment and the date on which the arrangements
16 were made; (ii) the price of the service selected and
17 the services and merchandise included for that price;
18 (iii) a clear disclosure that the person or persons
19 making the arrangement may decline and receive credit
20 for any service or merchandise not desired and not
21 required by law or the funeral director or the funeral
22 director and embalmer; (iv) the supplemental items of
23 service and merchandise requested and the price of each
24 item; (v) the terms or method of payment agreed upon;
25 and (vi) a statement as to any monetary advances made
26 by the registrant on behalf of the family.

