

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Funeral or Burial Funds Act is
5 amended by changing Sections 1, 1a-1, 1b, 2, 3, 4, 4a, 5, and
6 8.1 and by adding Section 1a-2 as follows:

7 (225 ILCS 45/1) (from Ch. 111 1/2, par. 73.101)

8 Sec. 1. Payment under pre-need contract. Except as
9 otherwise provided in this Section, all sales proceeds paid to
10 any person, partnership, association or corporation with
11 respect to merchandise or services covered by this Act, upon
12 any agreement or contract, or any series or combination of
13 agreements or contracts, which has for a purpose the furnishing
14 or performance of funeral services, or the furnishing or
15 delivery of any personal property, merchandise, or services of
16 any nature in connection with the final disposition of a dead
17 human body, including, but not limited to, outer burial
18 containers, urns, combination casket-vault units, caskets and
19 clothing, for future use at a time determinable by the death of
20 the person or persons whose body or bodies are to be so
21 disposed of, shall be held to be trust funds, and shall be
22 placed in trust in accordance with Sections 1b and 2, or shall
23 be used to purchase life insurance or annuities in accordance

1 with Section 2a. The person, partnership, association or
2 corporation receiving said payments under a pre-need contract
3 is hereby declared to be a trustee thereof until deposits of
4 funds are made in accordance with Section 1b or 2a of this Act.
5 ~~Persons holding less than \$500,000 in trust funds may continue~~
6 ~~to act as the trustee after the funds are deposited in~~
7 ~~accordance with subsection (d) of Section 1b.~~

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

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

12 (225 ILCS 45/1a-1)

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

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

19 (1) It states the name and address of the principal
20 office of the seller and the parent company of the seller,
21 if any.

22 (1.5) If funded by a trust, it clearly identifies the
23 trustee's name and address and the primary state or federal
24 regulator of the trustee as a corporate fiduciary.

25 (1.7) If funded by life insurance, it clearly

1 identifies the life insurance provider and the primary
2 regulator of the life insurance provider.

3 (2) It clearly identifies the provider's name and
4 address, the purchaser, and the beneficiary, if other than
5 the purchaser.

6 (2.5) If the provider has branch locations, the
7 contract gives the purchaser the opportunity to identify
8 the branch at which the funeral will be provided.

9 (3) It contains a complete description of the funeral
10 merchandise and services to be provided and the price of
11 the merchandise and services, and it clearly discloses
12 whether the price of the merchandise and services is
13 guaranteed or not guaranteed as to price.

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

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

24 (B) Except as provided in subparagraph (C) of this
25 paragraph (3), each non-guaranteed price contract
26 shall contain the following statement in 12 point bold

1 type:

2 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE
3 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR
4 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A
5 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE
6 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES
7 MAY BE REQUIRED.

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

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

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

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

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

26 (B) The nature of the relationship among the person

1 funding the pre-need contract, the provider, and the
2 seller; and

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

16 (D) The method of changing the provider.

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

20 (c) No pre-need contract shall be sold in this State unless
21 there is a provider for the services and personal property
22 being sold. If the seller is not a provider, then the seller
23 must have a binding agreement with a provider, and the identity
24 of the provider and the nature of the agreement between the
25 seller and the provider shall be disclosed in the pre-need
26 contract at the time of the sale and before the receipt of any

1 sales proceeds. The failure to disclose the identity of the
2 provider, the nature of the agreement between the seller and
3 the provider, or any changes thereto to the purchaser and
4 beneficiary, or the failure to make the disclosures required in
5 subdivision (a)(1), constitutes an intentional violation of
6 this Act.

7 (d) All pre-need contracts must be in writing in at least
8 11 point type, numbered, and executed in duplicate. A signed
9 copy of the pre-need contract must be provided to the purchaser
10 at the time of entry into the pre-need contract. The
11 Comptroller may by rule develop a model pre-need contract form
12 that ~~which~~ meets the requirements of this Act.

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

24 (f) All sales proceeds received in connection with a
25 pre-need contract shall be deposited into a trust account as
26 provided in Section 1b and Section 2 of this Act, or shall be

1 used to purchase a life insurance policy or tax-deferred
2 annuity as provided in Section 2a of this Act.

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

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

13 (225 ILCS 45/1a-2 new)

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

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

24 (b) In the event that the purchaser is unable to receive
25 the benefits of his or her pre-need contract or to receive the

1 funds due by reason of cancellation of the contract, the
2 purchaser may apply to the Comptroller on a form prescribed by
3 the Comptroller for restitution from the Pre-need Funeral
4 Consumer Protection Fund. Upon a finding by the Comptroller
5 that the benefits or return of payment is not available to the
6 purchaser, the Comptroller may cause restitution to be paid to
7 the purchaser from the Pre-need Funeral Consumer Protection
8 Fund.

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

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

24 (e) Notwithstanding any other provision of this Section,
25 the payment of restitution from the Fund shall be a matter of
26 grace and not of right and no purchaser shall have any vested

1 right in the Fund as a beneficiary or otherwise.

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

4 (225 ILCS 45/1b) (from Ch. 111 1/2, par. 73.101b)

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

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

24 (c) In the event that the deposits into a trust required by
25 this Section do not, after final payment by the consumer,

1 result in the trust containing at least 95% of the purchase
2 ~~sales~~ price of all services, personal property or merchandise,
3 except for outer burial containers and 85% of the purchase
4 price of outer burial containers, the seller shall make an
5 additional deposit into the trust in an amount sufficient to
6 meet these percentages.

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

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

20 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

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

24 (b) A trust established under this Act must be maintained
25 with a corporate fiduciary as defined in Section 1-5.05 of the

1 Corporate Fiduciary Act.†

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

6 ~~(2) in a trust company authorized to do business in~~
7 ~~Illinois.~~

8 (c) Trust agreements and amendments to the trust agreements
9 used to fund a pre-need contract shall be filed with the
10 Comptroller.

11 (d) (Blank).

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

23 (f) (Blank). ~~Trust funds may be maintained in a financial~~
24 ~~institution described in subsection (b) which is located in a~~
25 ~~state adjoining this State where: (1) the financial institution~~
26 ~~is located within 50 miles of the border of this State, (2) its~~

1 ~~accounts are federally insured, and (3) it has registered with~~
2 ~~the Illinois Secretary of State for purposes of service of~~
3 ~~process.~~

4 (g) Upon no less than 30 days prior notice to the
5 Comptroller, the seller may change the trustee of the fund.
6 Failure to provide the Comptroller with timely prior notice is
7 an intentional violation of this Act.

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

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

17 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

18 Sec. 3. Licensing.

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

25 (1) The full name and address (both residence and place

1 of business) of the applicant, and every member, officer
2 and director thereof if the applicant is a firm,
3 partnership, association, or corporation, and of every
4 shareholder holding more than 10% of the corporate stock if
5 the applicant is a corporation;

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

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

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

16 (5) For each individual listed under item (1) above, a
17 detailed statement of the individual's business experience
18 for the 10 years immediately preceding the application; any
19 present or prior connection between the individual and any
20 other person engaged in pre-need sales; any felony or
21 misdemeanor convictions for which fraud was an essential
22 element; any charges or complaints lodged against the
23 individual for which fraud was an essential element and
24 which resulted in civil or criminal litigation; any failure
25 of the individual to satisfy an enforceable judgment
26 entered against him based upon fraud; and any other

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

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

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

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

1 require an additional bond or letter of credit from the
2 licensee from time to time in amounts equal to one-tenth of
3 such trust funds, which bond or letter of credit shall run to
4 the Comptroller for the use and benefit of the beneficiaries of
5 such trust funds.

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

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

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

1 payable to: Comptroller, State of Illinois.

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

- 23 Less than \$10,000..... no charge;
- 24 \$10,000 or more but less than \$50,000..... \$10;
- 25 \$50,000 or more but less than \$100,000 \$40;
- 26 \$100,000 or more but less than \$250,000..... \$80;

1 \$250,000 or more \$100.

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

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

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

14 (3) any withdrawals or attempted withdrawals from the
15 trusts, insurance policies, or annuity contracts in
16 violation of this Act; or

17 (4) failure to maintain or produce documentation
18 required by this Act for deposits into trust accounts,
19 trust investment activities, or life insurance or annuity
20 policies.

21 ~~The~~ ~~Prior to ordering an additional audit or examination,~~
22 ~~the Comptroller shall request the licensee to respond and~~
23 ~~comment upon the factors identified by the Comptroller as~~
24 ~~warranting the subsequent examination or audit. The licensee~~
25 ~~shall have 30 days to provide a response to the Comptroller. If~~
26 ~~the Comptroller decides to proceed with the additional~~

1 ~~examination or audit,~~ the licensee shall bear the full cost of
2 that examination or audit, up to a maximum of \$20,000 ~~\$7,500~~.
3 The Comptroller may elect to pay for the examination or audit
4 and receive reimbursement from the licensee. Payment of the
5 costs of the examination or audit by a licensee shall be a
6 condition of receiving, maintaining, or renewing a license
7 under this Act. All moneys received by the Comptroller for
8 examination or audit fees shall be maintained in a separate
9 account to be known as the Comptroller's Administrative Fund.
10 This Fund, subject to appropriation by the General Assembly,
11 may be utilized by the Comptroller for enforcing this Act and
12 other purposes that may be authorized by law.

13 For pre-need contracts funded by life insurance or a
14 tax-deferred annuity, the cost of an examination shall be borne
15 by the licensee ~~if it has received \$10,000 or more in premiums~~
16 ~~during the preceding calendar year~~. The fee schedule for such
17 examination shall be established in rules promulgated by the
18 Comptroller. In the event such investigation or other
19 information received by the Comptroller discloses a
20 substantial violation of the requirements of this Act, the
21 Comptroller shall revoke the license of such person upon a
22 hearing as provided in this Act. Such licensee may terminate
23 all further responsibility for compliance with the
24 requirements of this Act by voluntarily surrendering the
25 license to the Comptroller, or in the event of its loss,
26 furnishing the Comptroller with a sworn statement to that

1 effect, which states the licensee's intention to discontinue
2 acceptance of funds received under pre-need contracts. Such
3 license or statement must be accompanied by an affidavit that
4 said licensee has lawfully expended or refunded all funds
5 received under pre-need contracts, and that the licensee will
6 accept no additional sales proceeds. The Comptroller shall
7 immediately cancel or revoke said license.

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

9 (225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

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

11 (a) Except as otherwise provided in this Act, monies in a
12 trust established under Section 2 ~~The amount or amounts so~~
13 ~~deposited into trust, with interest thereon, if any,~~ shall not
14 be withdrawn until after the death of the beneficiary ~~person or~~
15 ~~persons for whose funeral or burial such funds were paid,~~
16 unless sooner withdrawn and refunded to the purchaser as
17 provided in this Section ~~repaid to the person who originally~~
18 ~~paid the money under or in connection with the pre need~~
19 ~~contract or to his or her legal representative.~~ The life
20 insurance policies or tax-deferred annuities shall not be
21 surrendered until the death of the beneficiary ~~person or~~
22 ~~persons for whose funeral or burial the policies or annuities~~
23 ~~were purchased,~~ unless sooner surrendered and repaid to the
24 owner of the policy purchased under or in connection with the
25 pre-need contract or to his or her legal representative. If,

1 however, the agreement or series of agreements provides for
2 forfeiture and retention of any or all payments as and for
3 liquidated damages as provided in Section 6, then the trustee
4 may withdraw the deposits. In addition, nothing in this Section
5 (i) prohibits the change of depositary by the trustee and the
6 transfer of trust funds from one depositary to another or (ii)
7 prohibits a contract purchaser who is or may become eligible
8 for public assistance under any applicable federal or State law
9 or local ordinance including, but not limited to, eligibility
10 under 24 C.F.R., Part 913 relating to family insurance under
11 federal Housing and Urban Development Policy from irrevocably
12 waiving, in writing, and renouncing the right to cancel a
13 pre-need contract for funeral services in an amount prescribed
14 by rule of the Department of Healthcare and Family Services. No
15 guaranteed price pre-need funeral contract may prohibit a
16 purchaser from making a contract irrevocable to the extent that
17 federal law or regulations require that such a contract be
18 irrevocable for purposes of the purchaser's eligibility for
19 Supplemental Security Income benefits, Medicaid, or another
20 public assistance program, as permitted under federal law.

21 (b) If for any reason a seller or provider who has engaged
22 in pre-need sales has refused, cannot, or does not comply with
23 the terms of the pre-need contract within a reasonable time
24 after he or she is required to do so, the purchaser or his or
25 her heirs or assigns or duly authorized representative shall
26 have the right to a refund of an amount equal to the sales

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

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

24 (c-5) If, after the death of the beneficiary, no funeral
25 merchandise or services are provided or if the funeral is
26 conducted by another provider person, the seller may keep no

1 more than 10% of the payments made under the pre-need contract
2 or \$300, whichever sum is less. The remainder of the trust
3 funds or insurance or annuity proceeds shall be forwarded to
4 the legal heirs of the deceased beneficiary or as determined by
5 probate action.

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

1 constitute actual delivery and shall not eliminate any
2 requirement under this Act to place or retain in trust any
3 funds received for the sale of such merchandise.

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

5 (225 ILCS 45/4a)

6 Sec. 4a. Investment of funds.

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

16 (b) The trust shall be a single-purpose trust fund. In the
17 event of the seller's bankruptcy, insolvency or assignment for
18 the benefit of creditors, or an adverse judgment, the trust
19 funds shall not be available to any creditor as assets of the
20 seller or to pay any expenses of any bankruptcy or similar
21 proceeding, but shall be distributed to the purchasers or
22 managed for their benefit by the trustee holding the funds.
23 Except in an action by the Comptroller to revoke a license
24 issued pursuant to this Act and for creation of a receivership
25 as provided in this Act, the trust shall not be subject to

1 judgment, execution, garnishment, attachment, or other seizure
2 by process in bankruptcy or otherwise, nor to sale, pledge,
3 mortgage, or other alienation, and shall not be assignable
4 except as approved by the Comptroller. The changes made by
5 Public ~~this amendatory Act 91-7 of the 91st General Assembly~~
6 are intended to clarify existing law regarding the inability of
7 licensees to pledge the trust.

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

19 If a pre-need contract is not a guaranteed price contract,
20 then to the extent the proceeds of a non-guaranteed price
21 pre-need contract cover the funeral and burial expenses for the
22 beneficiary, no claim may be made against the estate of the
23 beneficiary. A claim may be made against the beneficiary's
24 estate if the charges for the funeral services and merchandise
25 at the time of use exceed the amount of the amount in trust
26 plus the percentage of the sale proceeds initially retained by

1 the seller or the face value of the life insurance policy or
2 tax-deferred annuity.

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

6 ~~(1) The company issuing the life insurance policies or~~
7 ~~tax-deferred annuities is licensed by the Illinois~~
8 ~~Department of Insurance and the insurance producer or~~
9 ~~annuity seller is licensed to do business in the State of~~
10 ~~Illinois;~~

11 ~~(2) Prior to the investment, the purchaser approves, in~~
12 ~~writing, the investment in life insurance policies or~~
13 ~~tax-deferred annuities;~~

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

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

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

26 ~~(6) Notice must be given in writing that the cash~~

1 ~~surrender value of a life insurance policy may be less than~~
2 ~~the amount provided for by the refund provisions of the~~
3 ~~trust account.~~

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

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

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

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

16 (225 ILCS 45/8.1)

17 Sec. 8.1. Sales; liability of purchaser for shortage. In
18 the event of a sale or transfer of all or substantially all of
19 the assets of the licensee, the sale or transfer of the
20 controlling interest of the corporate stock of the licensee if
21 the licensee is a corporation, the sale or transfer of the
22 controlling interest of the partnership if the licensee is a
23 partnership, or the sale of the licensee pursuant to
24 foreclosure proceedings, the purchaser is liable for any

1 shortages existing before or after the sale in the trust funds
2 required to be maintained in a trust pursuant to this Act and
3 shall honor all pre-need contracts and trusts entered into by
4 the licensee. Any shortages existing in the trust funds
5 constitute a prior lien in favor of the trust for the total
6 value of the shortages, and notice of that lien shall be
7 provided in all sales instruments.

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

26 (i) the Comptroller has completed the audit of the

1 licensee's books and records;

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

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

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

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

16 Section 10. The Illinois Pre-Need Cemetery Sales Act is
17 amended by changing Sections 4, 14, 15, and 16 as follows:

18 (815 ILCS 390/4) (from Ch. 21, par. 204)

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

21 (A) "Pre-need sales contract" or "Pre-need sales" means any
22 agreement or contract or series or combination of agreements or
23 contracts which have for a purpose the sale of cemetery
24 merchandise, cemetery services or undeveloped interment,

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

12 (B) "Delivery" occurs when:

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

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

22 (3) Following authorization by a purchaser under a
23 pre-need sales contract, the merchandise has been
24 permanently identified with the name of the buyer or the
25 beneficiary and delivered to a licensed and bonded
26 warehouse and both title to the merchandise and a warehouse

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

10 All warehouse facilities to which sellers deliver
11 merchandise pursuant to this Act shall:

12 (i) be either located in the State of Illinois or
13 qualify as a foreign warehouse facility as defined
14 herein;

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

19 (iii) permit the Comptroller or his designee at any
20 time to examine stored merchandise and to examine any
21 documents pertaining thereto;

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

1 (v) demonstrate to the Comptroller that the
2 warehouse has procured and is maintaining a
3 performance bond in the form, content and amount
4 sufficient to unconditionally guarantee to the
5 purchaser or beneficiary the prompt shipment of the
6 cemetery merchandise.

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

- 11 (1) memorials,
- 12 (2) markers,
- 13 (3) monuments,
- 14 (4) foundations, and
- 15 (5) outer burial containers.

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

- 21 (1) lawn crypt,
- 22 (2) mausoleum,
- 23 (3) garden crypt,
- 24 (4) columbarium, or
- 25 (5) cemetery section.

26 (E) "Cemetery services" means those services customarily

1 performed by cemetery or crematory personnel in connection with
2 the interment, entombment, inurnment or cremation of a dead
3 human body.

4 (F) "Cemetery section" means a grouping of spaces intended
5 to be developed simultaneously for the purpose of interring
6 human remains.

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

13 (H) "Lawn crypt" means a permanent underground crypt
14 usually constructed of reinforced concrete or similar material
15 installed in multiple units for the entombment of human
16 remains.

17 (I) "Mausoleum" or "garden crypt" means a grouping of
18 spaces constructed of reinforced concrete or similar material
19 constructed or assembled above the ground for entombing human
20 remains.

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

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

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

4 (M) "Seller" means any person selling or offering for sale
5 cemetery merchandise, cemetery services or undeveloped
6 interment, entombment, or inurnment spaces in accordance with a
7 pre-need sales contract.

8 (N) "Religious cemetery" means a cemetery owned, operated,
9 controlled or managed by any recognized church, religious
10 society, association or denomination or by any cemetery
11 authority or any corporation administering, or through which is
12 administered, the temporalities of any recognized church,
13 religious society, association or denomination.

14 (O) "Municipal cemetery" means a cemetery owned, operated,
15 controlled or managed by any city, village, incorporated town,
16 township, county or other municipal corporation, political
17 subdivision, or instrumentality thereof authorized by law to
18 own, operate or manage a cemetery. "Municipal cemetery" also
19 includes a cemetery placed in receivership pursuant to this Act
20 while such cemetery is in receivership.

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

1 (P) "Sales price" means the gross amount paid by a
2 purchaser on a pre-need sales contract for cemetery
3 merchandise, cemetery services or undeveloped interment,
4 entombment or inurnment spaces, excluding sales taxes, credit
5 life insurance premiums, finance charges and Cemetery Care Act
6 contributions.

7 (Q) (Blank).

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

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

15 (T) "Parent company" means a corporation owning more than
16 12 cemeteries or funeral homes in more than one state.

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

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

1 process against it which is so served, shall be of the same
2 legal force and validity as though served upon it personally.

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

15 (Source: P.A. 91-7, eff. 1-1-00; 91-357, eff. 7-29-99; 92-16,
16 eff. 6-28-01; 92-419, eff. 1-1-02.)

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

18 Sec. 14. Contract required.

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

24 (1) A written sales contract shall be executed in at
25 least 11 point type in duplicate for each pre-need sale

1 made by a licensee, and a signed copy given to the
2 purchaser. Each completed contract shall be numbered and
3 shall contain: (i) the name and address of the purchaser,
4 the principal office of the licensee, and the parent
5 company of the licensee; (ii) the name of the person, if
6 known, who is to receive the cemetery merchandise, cemetery
7 services or the completed interment, entombment or
8 inurnment spaces under the contract; and (iii) specific
9 identification of such merchandise, services or spaces to
10 be provided, if a specific space or spaces are contracted
11 for, and the price of the merchandise, services, or space
12 or spaces.

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

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

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

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

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

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

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

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

23 (8) Each pre-need contract that authorizes the
24 delivery of cemetery merchandise to a licensed and bonded
25 warehouse shall provide that prior to or upon delivery of
26 the merchandise to the warehouse the title to the

1 merchandise and a warehouse receipt shall be delivered to
2 the purchaser or beneficiary. The pre-need contract shall
3 contain the following statement in 12 point bold type:

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

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

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

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

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

25 (10) Each pre-need contract that is funded by a trust
26 shall clearly identify the trustee's name and address and

1 the primary state or federal regulator of the trustee as a
2 corporate fiduciary.

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

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

10 (d) No pre-need sales contract may be entered into in this
11 State unless there is a provider for the cemetery merchandise,
12 cemetery services, and undeveloped interment, inurnment, and
13 entombment spaces being sold. If the seller is not the
14 provider, then the seller must have a binding agreement with a
15 provider, and the identity of the provider and the nature of
16 the agreement between the seller and the provider must be
17 disclosed in the pre-need sales contract at the time of sale
18 and before the receipt of any sale proceeds. The failure to
19 disclose the identity of the provider, the nature of the
20 agreement between the seller and the provider, or any changes
21 thereto to the purchaser and beneficiary, or the failure to
22 make the disclosures required by this Section constitutes an
23 intentional violation of this Act.

24 (e) No pre-need contract may be entered into in this State
25 unless it is accompanied by a funding mechanism permitted under
26 this Act and unless the seller is licensed by the Comptroller

1 as provided in this Act. Nothing in this Act is intended to
2 relieve providers or sellers of pre-need contracts from being
3 licensed under any other Act required for their profession or
4 business or from being subject to the rules promulgated to
5 regulate their profession or business, including rules on
6 solicitation and advertisement.

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

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

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

21 (815 ILCS 390/15) (from Ch. 21, par. 215)

22 Sec. 15. (a) Whenever a seller receives anything of value
23 under a pre-need sales contract, the person receiving such
24 value shall deposit 50% of all proceeds received into one or
25 more trust funds maintained pursuant to this Section, except

1 that, in the case of proceeds received for the purchase of
2 outer burial containers, 85% of the proceeds shall be deposited
3 into one or more trust funds. Such deposits shall be made until
4 the amount deposited in trust equals 50% of the sales price of
5 the cemetery merchandise, cemetery services and undeveloped
6 spaces included in such contract, except that, in the case of
7 deposits for outer burial containers, deposits shall be made
8 until the amount deposited in trust equals 85% of the sales
9 price. In the event an installment contract is factored,
10 discounted or sold to a third party, the seller shall deposit
11 an amount equal to 50% of the sales price of the installment
12 contract, except that, for the portion of the contract
13 attributable to the sale of outer burial containers, the seller
14 shall deposit an amount equal to 85% of the sales price.
15 Proceeds required to be deposited in trust which are
16 attributable to cemetery merchandise and cemetery services
17 shall be held in a "Cemetery Merchandise Trust Fund". Proceeds
18 required to be deposited in trust which are attributable to the
19 sale of undeveloped interment, entombment or inurnment spaces
20 shall be held in a "Pre-construction Trust Fund". If
21 merchandise is delivered for storage in a bonded warehouse, as
22 authorized herein, and payment of transportation or other
23 charges totaling more than \$20 will be required in order to
24 secure delivery to the site of ultimate use, upon such delivery
25 to the warehouse the seller shall deposit to the trust fund the
26 full amount of the actual or estimated transportation charge.

1 Transportation charges which have been prepaid by the seller
2 shall not be deposited to trust funds maintained pursuant to
3 this Section. As used in this Section, "all proceeds" means the
4 entire amount paid by a purchaser in connection with a pre-need
5 sales contract, including finance charges and Cemetery Care Act
6 contributions, but excluding sales taxes and credit life
7 insurance premiums.

8 (b) The seller shall act as trustee of all amounts received
9 for cemetery merchandise, services, or undeveloped spaces
10 until those amounts have been deposited into the trust fund.

11 All trust deposits required by this Act shall be made within 30
12 days following the end of the month of receipt. The seller must
13 retain a corporate fiduciary as an independent trustee for any
14 amount of trust funds. Upon 30 days' prior written notice from
15 the seller to the Comptroller, the seller may change the
16 trustee of the trust fund. Failure to provide the Comptroller
17 with timely prior notice is an intentional violation of this
18 Act.

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

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

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

1 ~~Illinois; or~~
2 ~~(3) in an investment company authorized to do business~~
3 ~~in Illinois insured by the Securities Brokers Insurance~~
4 ~~Corporation.~~

5 (d) Funds deposited in the trust account shall be
6 identified in the records of the seller by the name of the
7 purchaser. Nothing shall prevent the trustee from commingling
8 the deposits in any such trust fund for purposes of the
9 management thereof and the investment of funds therein as
10 provided in the "Common Trust Fund Act", approved June 24,
11 1949, as amended. In addition, multiple trust funds maintained
12 pursuant to this Act may be commingled or commingled with other
13 funeral or burial related trust funds, provided that all record
14 keeping requirements imposed by or pursuant to law are met.

15 (e) In lieu of a pre-construction trust fund, a seller of
16 undeveloped interment, entombment or inurnment spaces may
17 obtain and file with the Comptroller a performance bond in an
18 amount at least equal to 50% of the sales price of the
19 undeveloped spaces or the estimated cost of completing
20 construction, whichever is greater. The bond shall be
21 conditioned on the satisfactory construction and completion of
22 the undeveloped spaces as required in Section 19 of this Act.

23 Each bond obtained under this Section shall have as surety
24 thereon a corporate surety company incorporated under the laws
25 of the United States, or a State, the District of Columbia or a
26 territory or possession of the United States. Each such

1 corporate surety company must be authorized to provide
2 performance bonds as required by this Section, have paid-up
3 capital of at least \$250,000 in cash or its equivalent and be
4 able to carry out its contracts. Each pre-need seller must
5 provide to the Comptroller, for each corporate surety company
6 such seller utilizes, a statement of assets and liabilities of
7 the corporate surety company sworn to by the president and
8 secretary of the corporation by January 1 of each year.

9 The Comptroller shall prohibit pre-need sellers from doing
10 new business with a corporate surety company if the company is
11 insolvent or is in violation of this Section. In addition the
12 Comptroller may direct a pre-need seller to reinstate a
13 pre-construction trust fund upon the Comptroller's
14 determination that the corporate surety company no longer is
15 sufficient security.

16 All performance bonds issued pursuant to this Section must
17 be irrevocable during the statutory term for completing
18 construction specified in Section 19 of this Act, unless
19 terminated sooner by the completion of construction.

20 (f) Whenever any pre-need contract shall be entered into
21 and include 1) items of cemetery merchandise and cemetery
22 services, and 2) rights to interment, inurnment or entombment
23 in completed spaces without allocation of the gross sale price
24 among the items sold, the application of payments received
25 under the contract shall be allocated, first to the right to
26 interment, inurnment or entombment, second to items of cemetery

1 merchandise and cemetery services, unless some other
2 allocation is clearly provided in the contract.

3 (g) Any person engaging in pre-need sales who enters into a
4 combination sale which involves the sale of items covered by a
5 trust or performance bond requirement and any item not covered
6 by any entrustment or bond requirement, shall be prohibited
7 from increasing the gross sales price of those items not
8 requiring entrustment with the purpose of allocating a lesser
9 gross sales price to items which require a trust deposit or a
10 performance bond.

11 (Source: P.A. 91-7; eff. 1-1-2000.)

12 (815 ILCS 390/16) (from Ch. 21, par. 216)

13 Sec. 16. Trust funds; disbursements.

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

16 (b) A trustee has a duty to invest and manage the trust
17 assets pursuant to the Prudent Investor Rule under the Trusts
18 and Trustees Act. Whenever the seller changes trustees pursuant
19 to this Act, the trustee must provide written notice of the
20 change in trustees to the Comptroller no less than 28 days
21 prior to the effective date of such a change in trustee. The
22 trustee has an ongoing duty to provide the Comptroller with a
23 current and true copy of the trust agreement under which the
24 trust funds are held pursuant to this Act. ~~shall, with respect~~
25 ~~to the investment of such trust funds, exercise the judgment~~

1 ~~and care under the circumstances then prevailing which persons~~
2 ~~of prudence, discretion and intelligence exercise in the~~
3 ~~management of their own affairs, not in regard to speculation,~~
4 ~~but in regard to the permanent disposition of their funds,~~
5 ~~considering the probable income as well as the probable safety~~
6 ~~of their capital.~~

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

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

23 (d) A trustee shall be allowed to withdraw from the trust
24 funds maintained pursuant to this Act, ~~payable solely from the~~
25 ~~income earned on such trust funds,~~ a reasonable fee pursuant to
26 the Trusts and Trustees Act ~~for all usual and customary~~

1 ~~services for the operation of the trust fund, including, but~~
2 ~~not limited to trustee fees, investment advisor fees,~~
3 ~~allocation fees, annual audit fees and other similar fees. The~~
4 ~~maximum amount allowed to be withdrawn for these fees each year~~
5 ~~shall be the lesser of 3% of the balance of the trust~~
6 ~~calculated on an annual basis or the amount of annual income~~
7 ~~generated therefrom.~~

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

25 (f) Because it is not known at the time of deposit or at
26 the time that income is earned on the trust account to whom the

1 principal and the accumulated earnings will be distributed, for
2 purposes of determining the Illinois Income Tax due on these
3 trust funds, the principal and any accrued earnings or losses
4 relating to each individual account shall be held in suspense
5 until the final determination is made as to whom the account
6 shall be paid.

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

15 (Source: P.A. 91-7, eff. 6-1-99; 92-419, eff. 1-1-02.)

16 Section 90. The State Finance Act is amended by adding
17 Section 5.719 as follows:

18 (30 ILCS 105/5.719 new)

19 Sec. 5.719. The Pre-need Funeral Consumer Protection Fund.