



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3227

Introduced 2/24/2011, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

225 ILCS 45/1a-1	
225 ILCS 45/1a-5 new	
225 ILCS 45/3	from Ch. 111 1/2, par. 73.103
815 ILCS 390/13.5 new	
815 ILCS 390/14	from Ch. 21, par. 214

Amends the Illinois Funeral or Burial Funds Act. Sets forth (i) additional disclosures and requirements for pre-need contracts, (ii) certain specified requirements for the solicitation of pre-need funeral consumers under the Act, and (iii) additional requirements concerning recordkeeping by the licensee. Makes other changes. Amends the Illinois Pre-Need Cemetery Sales Act. Sets forth (i) certain specified requirements for the solicitation of pre-need consumers under the Act and (ii) additional disclosures and requirements for pre-need contracts.

LRB097 10789 CEL 51225 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

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

7 (225 ILCS 45/1a-1)

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

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

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

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

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

23 (2) It clearly identifies the provider's name and

1 address, the purchaser, and the beneficiary, if other than
2 the purchaser.

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

6 (3) In an attached Statement of Funeral Goods and
7 Services Selected, it ~~is~~ contains a complete description of
8 the funeral merchandise and services to be provided and the
9 price of the merchandise and services, and it clearly
10 discloses whether the price of the merchandise and services
11 is guaranteed or not guaranteed as to price.

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

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

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

26 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE

1 BENEFCIARY WILL PAY FOR ANY SPECIFIC GOODS OR
2 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A
3 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE
4 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES
5 MAY BE REQUIRED. THE FINAL PRICE SHALL BE DETERMINED AT
6 THE TIME OF DEATH.

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

12 (3.5) Each non-guaranteed price contract that is
13 funded by a trust must disclose that (i) the estate of the
14 decedent or responsible party will be legally obligated to
15 pay any shortfall in the trust account and (ii) that the
16 estate would be entitled to receive any excess funds in the
17 trust account after payment of the at-need prices.

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

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

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

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

5 (B) The nature of the relationship among the person
6 funding the pre-need contract, the provider, and the
7 seller, including any commission or other remuneration
8 paid to the seller or seller's agent; and

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

22 (D) The method of changing the provider.

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

26 (c) No pre-need contract shall be sold in this State unless

1 there is a provider for the services and personal property
2 being sold. If the seller is not a provider, then the seller
3 must have a binding agreement with a provider, and the identity
4 of the provider and the nature of the agreement between the
5 seller and the provider shall be disclosed in the pre-need
6 contract at the time of the sale and before the receipt of any
7 sales proceeds. If the pre-need contract requires the
8 performance of funeral services and the seller is not the
9 provider of the funeral services, then the pre-need contract
10 must also be signed by the provider of the funeral services in
11 order to be valid. The failure to disclose the identity of the
12 provider, the nature of the agreement between the seller and
13 the provider, or any changes thereto to the purchaser and
14 beneficiary, or the failure to make the disclosures required in
15 subdivision (a)(1), constitutes an intentional violation of
16 this Act.

17 (d) All pre-need contracts must be in writing in at least
18 11 point type, numbered, and executed in duplicate. All
19 pre-need contracts must specify the date and location of
20 execution of the contract. A signed copy of the pre-need
21 contract must be provided to the purchaser at the time of entry
22 into the pre-need contract. The Comptroller may by rule develop
23 a model pre-need contract form that meets the requirements of
24 this Act.

25 (e) The State Comptroller shall by rule develop a booklet
26 for consumers in plain English describing the scope,

1 application, and consumer protections of this Act. After the
2 adoption of these rules, no pre-need contract shall be sold in
3 this State unless (i) the seller distributes to the purchaser
4 prior to the sale a booklet promulgated or approved for use by
5 the State Comptroller; (ii) the seller explains to the
6 purchaser the terms of the pre-need contract prior to the
7 purchaser signing; and (iii) the purchaser initials a statement
8 in the contract confirming that the seller has explained the
9 terms of the contract prior to the purchaser signing.

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

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

24 (Source: P.A. 96-879, eff. 2-2-10.)

1 Sec. 1a-5. Requirements for pre-need solicitation.

2 (a) All sellers of pre-need funeral goods and services,
3 their employees, agents, and anyone soliciting on their behalf,
4 shall comply with the following requirements when engaged in
5 the solicitation of pre-need funeral consumers:

6 (1) Upon initiating a solicitation by telephone, or
7 upon entering the residence of a solicitation prospect, the
8 solicitor must identify himself or herself, the pre-need
9 seller on whose behalf the solicitation is being made, and
10 a general description of the pre-need goods and services to
11 be offered for sale.

12 (2) When making a pre-need sale solicitation, the
13 solicitor must present to the consumer a copy of the
14 General Price List of the pre-need seller and any other
15 pre-need consumer disclosure information required by law.

16 (3) Pre-need sellers who solicit consumers by
17 telephone are required to maintain a "do-not-call" list and
18 to place on the list the household telephone number of any
19 consumer who requests to be put on the list.

20 (b) All sellers of pre-need funeral goods and services,
21 their employees, agents, and anyone soliciting on their behalf,
22 are prohibited from undertaking any of the following practices
23 when engaging in the solicitation of pre-need funeral
24 consumers:

25 (1) The making of any untrue statement of material fact
26 or omission of any material fact when engaged in pre-need

1 solicitation.

2 (2) The use of any advertisement or offer of pre-need
3 funeral goods or services that is false, misleading,
4 deceptive, unfair, coercive, or intimidating.

5 (3) The solicitation of potential pre-need consumers
6 by telephone any time between the hours of 9:00 p.m. and
7 8:00 a.m.

8 (4) The use of the term "trust" or "trust-funded" in
9 any pre-need advertisement or solicitation in any
10 misleading way.

11 (5) The direct or indirect solicitation of persons in
12 hospitals, rest homes, nursing homes, or similar health
13 care facilities by telephone or in person without having
14 been expressly requested to do so by that person or the
15 person's representative.

16 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

17 Sec. 3. Licensing.

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

24 (1) The full name and address (both residence and place
25 of business) of the applicant, and every member, officer

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

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

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

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

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

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

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

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

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

1 benefit of the beneficiaries of such trust funds.

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

1 as otherwise approved by the Comptroller in writing, of all
2 insurance policies and tax-deferred annuities used to fund the
3 pre-need contract, the name and address of insured, annuitant,
4 and initial beneficiary, and the name and address of the
5 insurance company issuing the policy or annuity. If a life
6 insurance policy or tax-deferred annuity is used to fund a
7 pre-need contract, the licensee shall notify the insurance
8 company of the name of each pre-need contract purchaser and the
9 amount of each payment when the pre-need contract, insurance
10 policy or annuity is 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 licensee shall bear the full cost of that examination
22 or audit, up to a maximum of \$20,000. The Comptroller may elect
23 to pay for the examination or audit and receive reimbursement
24 from the licensee. Payment of the costs of the examination or
25 audit by a licensee shall be a condition of receiving,
26 maintaining, or renewing a license under this Act. All moneys

1 received by the Comptroller for examination or audit fees shall
2 be maintained in a separate account to be known as the
3 Comptroller's Administrative Fund. This Fund, subject to
4 appropriation by the General Assembly, may be utilized by the
5 Comptroller for enforcing this Act and other purposes that may
6 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. The fee schedule for such examination shall be
10 established in rules promulgated by the Comptroller. In the
11 event such investigation or other information received by the
12 Comptroller discloses a substantial violation of the
13 requirements of this Act, the Comptroller shall revoke the
14 license of such person upon a hearing as provided in this Act.
15 Such licensee may terminate all further responsibility for
16 compliance with the requirements of this Act by voluntarily
17 surrendering the license to the Comptroller, or in the event of
18 its loss, furnishing the Comptroller with a sworn statement to
19 that effect, which states the licensee's intention to
20 discontinue acceptance of funds received under pre-need
21 contracts. Such license or statement must be accompanied by an
22 affidavit that said licensee has lawfully expended or refunded
23 all funds received under pre-need contracts, and that the
24 licensee will accept no additional sales proceeds. The
25 Comptroller shall immediately cancel or revoke said license.

26 (Source: P.A. 96-879, eff. 2-2-10.)

1 Section 10. The Illinois Pre-Need Cemetery Sales Act is
2 amended by changing Section 14 and by adding Section 13.5 as
3 follows:

4 (815 ILCS 390/13.5 new)

5 Sec. 13.5. Requirements for pre-need solicitation.

6 (a) All sellers of pre-need goods and services, their
7 employees, agents, and anyone soliciting on their behalf, shall
8 comply with the following requirements when engaged in the
9 solicitation of pre-need consumers:

10 (1) Upon initiating a solicitation by telephone, or
11 upon entering the residence of a solicitation prospect, the
12 solicitor must identify himself or herself, the pre-need
13 seller on whose behalf the solicitation is being made, and
14 a general description of the pre-need goods and services to
15 be offered for sale.

16 (2) When making a pre-need sale solicitation, the
17 solicitor must present to the consumer a copy of the
18 General Price List of the pre-need seller and any other
19 pre-need consumer disclosure information required by law.

20 (3) Pre-need sellers who solicit consumers by
21 telephone are required to maintain a "do-not-call" list and
22 to place on the list the household telephone number of any
23 consumer who requests to be put on the list.

24 (b) All sellers of pre-need goods and services, their

1 employees, agents, and anyone soliciting on their behalf, are
2 prohibited from undertaking any of the following practices when
3 engaging in the solicitation of pre-need consumers:

4 (1) The making of any untrue statement of material fact
5 or omission of any material fact when engaged in pre-need
6 solicitation.

7 (2) The use of any advertisement or offer of pre-need
8 goods or services that is false, misleading, deceptive,
9 unfair, coercive, or intimidating.

10 (3) The solicitation of potential pre-need consumers
11 by telephone any time between the hours of 9:00 p.m. and
12 8:00 a.m.

13 (4) The use of the term "trust" or "trust-funded" in
14 any pre-need advertisement or solicitation in any
15 misleading way.

16 (5) The direct or indirect solicitation of persons in
17 hospitals, rest homes, nursing homes, or similar health
18 care facilities by telephone or in-person without having
19 been expressly requested to do so by that person or the
20 person's representative.

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

22 Sec. 14. Contract required.

23 (a) It is unlawful for any person doing business within
24 this State to accept sales proceeds, either directly or
25 indirectly, by any means unless the seller enters into a

1 pre-need sales contract with the purchaser which meets the
2 following requirements:

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

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

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

25 (3) All pre-need sales contracts shall be sold on a
26 guaranteed price basis. At the time of performance of the

1 service or delivery of the merchandise, the seller shall be
2 prohibited from assessing the purchaser or his heirs or
3 assigns or duly authorized representative any additional
4 charges for the specific merchandise and services listed on
5 the pre-need sales contract.

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

9 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE SPECIFIC
10 GOODS, SERVICES, INTERMENT SPACES, ENTOMBMENT SPACES, AND
11 INURNMENT SPACES CONTRACTED FOR. NO ADDITIONAL CHARGES MAY
12 BE REQUIRED FOR DESIGNATED GOODS, SERVICES, AND SPACES.
13 ADDITIONAL CHARGES MAY BE INCURRED FOR UNEXPECTED
14 EXPENSES."

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

21 (6) The pre-need contract shall also disclose any
22 specific penalties to be incurred by the purchaser as a
23 result of failure to make payments; and penalties to be
24 incurred or moneys or refunds to be received as a result of
25 cancellation of the contract.

26 (7) The pre-need contract shall disclose the nature of

1 the relationship between the provider and the seller.

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

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

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

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

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

1 MERCHANDISE."

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

4 (10) Each pre-need contract that is funded by a trust
5 shall clearly identify the trustee's name and address and
6 the primary state or federal regulator of the trustee as a
7 corporate fiduciary.

8 (b) Every pre-need sales contract must be in writing and
9 must specify the date and location of execution of the
10 contract. A copy of the signed pre-need contract must be
11 provided to the purchaser at the time of entry into the
12 pre-need contract. The Comptroller may by rule develop a model
13 pre-need sales contract form that meets the requirements of
14 this Act.

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

19 (d) No pre-need sales contract may be entered into in this
20 State unless there is a provider for the cemetery merchandise,
21 cemetery services, and undeveloped interment, inurnment, and
22 entombment spaces being sold. If the seller is not the
23 provider, then the seller must have a binding agreement with a
24 provider, and the identity of the provider and the nature of
25 the agreement between the seller and the provider must be
26 disclosed in the pre-need sales contract at the time of sale

1 and before the receipt of any sale proceeds. If the pre-need
2 contract requires the performance of funeral services and the
3 seller is not the provider of the funeral services, then the
4 pre-need contract must also be signed by the provider of the
5 funeral services in order to be valid. The failure to disclose
6 the identity of the provider, the nature of the agreement
7 between the seller and the provider, or any changes thereto to
8 the purchaser and beneficiary, or the failure to make the
9 disclosures required by this Section constitutes an
10 intentional violation of this Act.

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

20 (f) No pre-need contract may be entered into in this State
21 unless the seller explains to the purchaser the terms of the
22 pre-need contract prior to the purchaser signing and the
23 purchaser initials a statement in the contract confirming that
24 the seller has explained the terms of the contract prior to the
25 purchaser signing.

26 (g) The State Comptroller shall develop a booklet for

1 consumers in plain English describing the scope, application,
2 and consumer protections of this Act. After the booklet is
3 developed, no pre-need contract may be sold in this State
4 unless the seller distributes to the purchaser prior to the
5 sale a booklet developed or approved for use by the State
6 Comptroller.

7 (Source: P.A. 96-879, eff. 2-2-10.)