

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 2, 3, and 3a-5 as follows:

6 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

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

10 (b) A trust established under this Act must be maintained  
11 with a corporate fiduciary as defined in Section 1-5.05 of the  
12 Corporate Fiduciary Act or with a foreign corporate fiduciary  
13 recognized by Article IV of the Corporate Fiduciary Act.

14 (c) Trust agreements and amendments to the trust agreements  
15 used to fund a pre-need contract shall be filed with the  
16 Comptroller.

17 (d) (Blank).

18 (e) A seller or provider shall furnish to the trustee and  
19 depository the name of each payor and the amount of payment on  
20 each such account for which deposit is being so made. Nothing  
21 shall prevent the trustee from commingling the deposits in any  
22 such trust fund for purposes of its management and the  
23 investment of its funds as provided in the Common Trust Fund

1 Act. In addition, multiple trust funds maintained under this  
2 Act may be commingled or commingled with other funeral or  
3 burial related trust funds if all record keeping requirements  
4 imposed by law are met.

5 (f) (Blank).

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

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

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

19 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

20 Sec. 3. Licensing.

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

1 application shall contain at least the following:

2 (1) The full name and address (both residence and place  
3 of business) of the applicant, and every member, officer  
4 and director thereof if the applicant is a firm,  
5 partnership, association, or corporation, and of every  
6 shareholder holding more than 10% of the corporate stock if  
7 the applicant is a corporation;

8 (2) A statement of the applicant's assets and  
9 liabilities;

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

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

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

1 of the individual to satisfy an enforceable judgment  
2 entered against him based upon fraud; and any other  
3 information requested by the Comptroller relating to past  
4 business practices of the individual. Since the  
5 information required by this item (5) may be confidential  
6 or contain proprietary information, this information shall  
7 not be available to other licensees or the general public  
8 and shall be used only for the lawful purposes of the  
9 Comptroller in enforcing this Act;

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

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

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

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

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

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

10 The licensee shall make reports to the Comptroller annually  
11 or at such other time as the Comptroller may require, on forms  
12 furnished by the Comptroller. The licensee shall file the  
13 annual report with the Comptroller within 75 days after the end  
14 of the licensee's fiscal year. The Comptroller shall for good  
15 cause shown grant an extension for the filing of the annual  
16 report upon the written request of the licensee. Such extension  
17 shall not exceed 60 days. If a licensee fails to submit an  
18 annual report to the Comptroller within the time specified in  
19 this Section, the Comptroller shall impose upon the licensee a  
20 penalty of \$5 per day for the first 15 days past due, \$10 per  
21 day for 16 through 30 days past due, \$15 per day for 31 through  
22 45 days past due, and \$20 per day for the 46th day and every day  
23 thereafter ~~for each and every day~~ the licensee remains  
24 delinquent in submitting the annual report. The Comptroller may  
25 abate all or part of the ~~\$5~~ daily penalty for good cause shown.  
26 Every application shall be accompanied by a check or money

1 order in the amount of \$25 and every report shall be  
 2 accompanied by a check or money order in the amount of \$10  
 3 payable to: Comptroller, State of Illinois.

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

- 25 Less than \$10,000..... no charge;
- 26 \$10,000 or more but less than \$50,000..... \$10;

1 \$50,000 or more but less than \$100,000 ..... \$40;  
 2 \$100,000 or more but less than \$250,000..... \$80;  
 3 \$250,000 or more ..... \$100.

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

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

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

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

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

23 The licensee shall bear the full cost of that examination  
 24 or audit, up to a maximum of \$20,000. The Comptroller may elect  
 25 to pay for the examination or audit and receive reimbursement  
 26 from the licensee. Payment of the costs of the examination or



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

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

1 Comptroller shall immediately cancel or revoke said license.

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

3 (225 ILCS 45/3a-5)

4 Sec. 3a-5. License requirements.

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

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

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

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

1 obtain its own license.

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

8 (f) Every license issued hereunder shall be renewed every 5  
9 years for a renewal fee of \$100. The renewal fee shall be  
10 deposited into the Comptroller's Administrative Fund ~~remain in~~  
11 ~~force until it has been suspended, surrendered, or revoked in~~  
12 ~~accordance with this Act.~~ The Comptroller, upon the request of  
13 an interested person or on his own motion, may issue new  
14 licenses to a licensee whose license or licenses have been  
15 revoked, if no factor or condition then exists which would have  
16 warranted the Comptroller to originally refuse the issuance of  
17 such license.

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

19 Section 10. The Cemetery Oversight Act is amended by  
20 changing Sections 15-15, 15-40, and 75-55 as follows:

21 (225 ILCS 411/15-15)

22 (Section scheduled to be repealed on January 1, 2021)

23 Sec. 15-15. Care funds; deposits; investments.

24 (a) Whenever a cemetery authority accepts care funds,

1 either in connection with the sale or giving away at an imputed  
2 value of an interment right, entombment right, or inurnment  
3 right, or in pursuance of a contract, or whenever, as a  
4 condition precedent to the purchase or acceptance of an  
5 interment right, entombment right, or inurnment right, such  
6 cemetery authority shall establish a care fund or deposit the  
7 funds in an already existing care fund.

8 (b) The cemetery authority shall execute and deliver to the  
9 person from whom it received the care funds an instrument in  
10 writing that shall specifically state: (i) the nature and  
11 extent of the care to be furnished and (ii) that such care  
12 shall be furnished only in so far as net income derived from  
13 the amount deposited in trust will permit (the income from the  
14 amount so deposited, less necessary expenditures of  
15 administering the trust, shall be deemed the net income).

16 (c) The setting-aside and deposit of care funds shall be  
17 made by such cemetery authority no later than 30 days after the  
18 close of the month in which the cemetery authority gave away  
19 for an imputed value or received the final payment on the  
20 purchase price of interment rights, entombment rights, or  
21 inurnment rights, or received the final payment for the general  
22 or special care of a lot, grave, crypt, or niche or of a family  
23 mausoleum, memorial, marker, or monument, and such amounts  
24 shall be held by the trustee of the care funds of such cemetery  
25 authority in trust and in perpetuity for the specific purposes  
26 stated in the written instrument described in subsection (b).

1 For all care funds received by a cemetery authority, except for  
2 care funds received by a cemetery authority pursuant to a  
3 specific gift, grant, contribution, payment, legacy, or  
4 contract that are subject to investment restrictions more  
5 restrictive than the investment provisions set forth in this  
6 Act, and except for care funds otherwise subject to a trust  
7 agreement executed by a person or persons responsible for  
8 transferring the specific gift, grant, contribution, payment,  
9 or legacy to the cemetery authority that contains investment  
10 restrictions more restrictive than the investment provisions  
11 set forth in this Act, the cemetery authority may, without the  
12 necessity of having to obtain prior approval from any court in  
13 this State, designate a new trustee in accordance with this Act  
14 and invest the care funds in accordance with this Section,  
15 notwithstanding any contrary limitation contained in the trust  
16 agreement.

17 (d) Any cemetery authority engaged in selling or giving  
18 away at an imputed value interment rights, entombment rights,  
19 or inurnment rights, in conjunction with the selling or giving  
20 away at an imputed value any other merchandise or services not  
21 covered by this Act, shall be prohibited from increasing the  
22 sales price or imputed value of those items not requiring a  
23 care fund deposit under this Act with the purpose of allocating  
24 a lesser sales price or imputed value to items that require a  
25 care fund deposit.

26 (e) If any sale that requires a deposit to a cemetery

1 authority's care fund is made by a cemetery authority on an  
2 installment basis, and the installment contract is factored,  
3 discounted, or sold to a third party, then the cemetery  
4 authority shall deposit the amount due to the care fund within  
5 30 days after the close of the month in which the installment  
6 contract was factored, discounted, or sold. If, subsequent to  
7 such deposit, the purchaser defaults on the contract such that  
8 no care fund deposit on that contract would have been required,  
9 then the cemetery authority may apply the amount deposited as a  
10 credit against future required deposits.

11 (f) The trust authorized by this Section shall be a single  
12 purpose trust fund. In the event of the cemetery authority's  
13 bankruptcy, insolvency, or assignment for the benefit of  
14 creditors, or an adverse judgment, the trust funds shall not be  
15 available to any creditor as assets of the cemetery authority  
16 or to pay any expenses of any bankruptcy or similar proceeding,  
17 but shall be retained intact to provide for the future  
18 maintenance of the cemetery. Except in an action by the  
19 Department to revoke a license issued pursuant to this Act and  
20 for creation of a receivership as provided in this Act, the  
21 trust shall not be subject to judgment, execution, garnishment,  
22 attachment, or other seizure by process in bankruptcy or  
23 otherwise, nor to sale, pledge, mortgage, or other alienation,  
24 and shall not be assignable except as approved by the  
25 Comptroller ~~Department~~.

26 (Source: P.A. 96-863, eff. 3-1-10.)

1 (225 ILCS 411/15-40)

2 (Section scheduled to be repealed on January 1, 2021)

3 Sec. 15-40. Trust examinations and audits.

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

20 (b) The Comptroller ~~Department~~ may order additional audits  
21 or examinations as it may deem necessary or advisable to ensure  
22 the safety and stability of the trust funds and to ensure  
23 compliance with this Act. These additional audits or  
24 examinations shall only be made after good cause is established  
25 by the Comptroller ~~Department~~ in the written order. The grounds

1 for ordering these additional audits or examinations may  
2 include, but shall not be limited to:

3 (1) material and unverified changes or fluctuations in  
4 trust balances;

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

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

9 (4) failure to maintain or produce documentation  
10 required by this Act.

11 (Source: P.A. 96-863, eff. 3-1-10.)

12 (225 ILCS 411/75-55)

13 (Section scheduled to be repealed on January 1, 2021)

14 Sec. 75-55. Transition.

15 (a) Within 60 days after the effective date of this Act,  
16 the Comptroller shall provide the Department copies of records  
17 in the Comptroller's possession pertaining to the Cemetery Care  
18 Act and the Crematory Regulation Act that are necessary for the  
19 Department's immediate responsibilities under this Act. All  
20 other records pertaining to the Cemetery Care Act with the  
21 exception of records pertaining to care funds ~~and the Crematory~~  
22 ~~Regulation Act shall be transferred to the Department by March~~  
23 ~~1, 2012. In the case of records that pertain both to the~~  
24 ~~administration of the Cemetery Care Act or the Crematory~~  
25 ~~Regulation Act and to a function retained by the Comptroller,~~



1 ~~the Comptroller, in consultation with the Department, shall~~  
2 ~~determine, within 60 days after the repeal of the Cemetery Care~~  
3 ~~Act, whether the records shall be transferred, copied, or left~~  
4 ~~with the Comptroller; until this determination has been made~~  
5 ~~the transfer shall not occur.~~

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

14 (c) To support the costs that may be associated with  
15 implementing and maintaining a licensure and regulatory  
16 process for the licensure and regulation of cemetery  
17 authorities, cemetery managers, customer service employees,  
18 and cemetery workers, all cemetery authorities not maintaining  
19 a full exemption or partial exemption shall pay a one-time fee  
20 of \$20 to the Department plus an additional charge of \$1 per  
21 burial unit per year within the cemetery. The Department may  
22 establish forms for the collection of the fee established under  
23 this subsection and shall deposit such fee into the Cemetery  
24 Oversight Licensing and Disciplinary Fund. The Department may  
25 begin to collect the aforementioned fee after the effective  
26 date of this Act. In addition, the Department may establish

1 rules for the collection process, which may include, but shall  
2 not be limited to, dates, forms, enforcement, or other  
3 procedures necessary for the effective collection, deposit,  
4 and overall process regarding this Section.

5 (d) Any cemetery authority that fails to pay to the  
6 Department the required fee or submits the incorrect amount  
7 shall be subject to the penalties provided for in Section  
8 25-110 of this Act.

9 (e) Except as otherwise specifically provided, all fees,  
10 fines, penalties, or other moneys received or collected  
11 pursuant to this Act shall be deposited in the Cemetery  
12 Oversight Licensing and Disciplinary Fund.

13 (f) (Blank). ~~All proportionate funds held in the~~  
14 ~~Comptroller's Administrative Fund related to unexpended moneys~~  
15 ~~collected under the Cemetery Care Act and the Crematory~~  
16 ~~Regulation Act shall be transferred to the Cemetery Oversight~~  
17 ~~Licensing and Disciplinary Fund within 60 days after the~~  
18 ~~effective date of the repeal of the Cemetery Care Act.~~

19 (g) (Blank). ~~Personnel employed by the Comptroller on~~  
20 ~~February 29, 2012, to perform the duties pertaining to the~~  
21 ~~administration of the Cemetery Care Act and the Crematory~~  
22 ~~Regulation Act, are transferred to the Department on March 1,~~  
23 ~~2012.~~

24 ~~The rights of State employees, the State, and its agencies~~  
25 ~~under the Comptroller Merit Employment Code and applicable~~  
26 ~~collective bargaining agreements and retirement plans are not~~

1 ~~affected under this Act, except that all positions transferred~~  
2 ~~to the Department shall be subject to the Personnel Code~~  
3 ~~effective March 1, 2012.~~

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

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

19 (Source: P.A. 96-863, eff. 3-1-10.)

20 Section 15. The Illinois Pre-Need Cemetery Sales Act is  
21 amended by changing Sections 6, 8, 15, and 20 as follows:

22 (815 ILCS 390/6) (from Ch. 21, par. 206)

23 Sec. 6. License application.

24 (a) An application for a license shall be made in writing

1 to the Comptroller on forms prescribed by him or her, signed by  
2 the applicant under oath verified by a notary public, and  
3 accompanied by a non-returnable \$125 ~~\$25~~ application fee, \$100  
4 of which shall be deposited into the Comptroller's  
5 Administrative Fund. The Comptroller may prescribe abbreviated  
6 application forms for persons holding a license under the  
7 Cemetery Care Act. Applications (except abbreviated  
8 applications) must include at least the following information:

9 (1) The full name and address, both residence and  
10 business, of the applicant if the applicant is an  
11 individual; of every member if applicant is a partnership;  
12 of every member of the Board of Directors if applicant is  
13 an association; and of every officer, director and  
14 shareholder holding more than 10% of the corporate stock if  
15 applicant is a corporation;

16 (2) A detailed statement of applicant's assets and  
17 liabilities;

18 (2.1) The name and address of the applicant's principal  
19 place of business at which the books, accounts, and records  
20 are available for examination by the Comptroller as  
21 required by this Act;

22 (2.2) The name and address of the applicant's branch  
23 locations at which pre-need sales will be conducted and  
24 which will operate under the same license number as the  
25 applicant's principal place of business;

26 (3) For each individual listed under (1) above, a

1 detailed statement of the individual's business experience  
2 for the 10 years immediately preceding the application; any  
3 present or prior connection between the individual and any  
4 other person engaged in pre-need sales; any felony or  
5 misdemeanor convictions for which fraud was an essential  
6 element; any charges or complaints lodged against the  
7 individual for which fraud was an essential element and  
8 which resulted in civil or criminal litigation; any failure  
9 of the individual to satisfy an enforceable judgment  
10 entered against him or her based upon fraud; and any other  
11 information requested by the Comptroller relating to the  
12 past business practices of the individual. Since the  
13 information required by this paragraph may be confidential  
14 or contain proprietary information, this information shall  
15 not be available to other licensees or the general public  
16 and shall be used only for the lawful purposes of the  
17 Comptroller in enforcing this Act;

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

22 (5) Where applicable, the name of the corporate surety  
23 company providing the performance bond for the  
24 construction of undeveloped spaces and a copy of the bond;  
25 and

26 (6) Such other information as the Comptroller may

1           reasonably require in order to determine the qualification  
2           of the applicant to be licensed under this Act.

3           (b) Applications for license shall be accompanied by a  
4           fidelity bond executed by the applicant and a security company  
5           authorized to do business in this State in such amount, not  
6           exceeding \$10,000, as the Comptroller may require. The  
7           Comptroller may require additional bond from time to time in  
8           amounts equal to one-tenth of such trust funds but not to  
9           exceed \$100,000, which bond shall run to the Comptroller for  
10          the use and benefit of the beneficiaries of such trust funds.  
11          Such licensee may by written permit of the Comptroller be  
12          authorized to operate without additional bond, except such  
13          fidelity bond as may be required by the Comptroller for the  
14          protection of the licensee against loss by default by any of  
15          its employees engaged in the handling of trust funds.

16          (c) Any application not acted upon within 90 days may be  
17          deemed denied.

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

19                 (815 ILCS 390/8) (from Ch. 21, par. 208)

20          Sec. 8. (a) Every license issued by the Comptroller shall  
21          state the number of the license, the business name and address  
22          of the licensee's principal place of business, each branch  
23          location also operating under the license, and the licensee's  
24          parent company, if any. The license shall be conspicuously  
25          posted in each place of business operating under the license.

1 The Comptroller may issue additional licenses as may be  
2 necessary for license branch locations upon compliance with the  
3 provisions of this Act governing an original issuance of a  
4 license for each new license.

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

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

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

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

23 (f) No license shall be transferable or assignable without  
24 the express written consent of the Comptroller. A transfer of  
25 more than 50% of the ownership of any business licensed  
26 hereunder shall be deemed to be an attempted assignment of the

1 license originally issued to the licensee for which consent of  
2 the Comptroller shall be required.

3 (g) Every license issued hereunder shall be renewed every 5  
4 years for a fee of \$100. The renewal fee shall be deposited  
5 into the Comptroller's Administrative Fund. The ~~remain in force~~  
6 ~~until the same has been suspended, surrendered or revoked in~~  
7 ~~accordance with this Act, but the~~ Comptroller, upon the request  
8 of an interested person or on his own motion, may issue new  
9 licenses to a licensee whose license or licenses have been  
10 revoked, if no factor or condition then exists which would have  
11 warranted the Comptroller in refusing originally the issuance  
12 of such license.

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

14 (815 ILCS 390/15) (from Ch. 21, par. 215)

15 Sec. 15. (a) Whenever a seller receives anything of value  
16 under a pre-need sales contract, the person receiving such  
17 value shall deposit 50% of all proceeds received into one or  
18 more trust funds maintained pursuant to this Section, except  
19 that, in the case of proceeds received for the purchase of  
20 outer burial containers, 85% of the proceeds shall be deposited  
21 into one or more trust funds. Such deposits shall be made until  
22 the amount deposited in trust equals 50% of the sales price of  
23 the cemetery merchandise, cemetery services and undeveloped  
24 spaces included in such contract, except that, in the case of  
25 deposits for outer burial containers, deposits shall be made



1 until the amount deposited in trust equals 85% of the sales  
2 price. In the event an installment contract is factored,  
3 discounted or sold to a third party, the seller shall deposit  
4 an amount equal to 50% of the sales price of the installment  
5 contract, except that, for the portion of the contract  
6 attributable to the sale of outer burial containers, the seller  
7 shall deposit an amount equal to 85% of the sales price.  
8 Proceeds required to be deposited in trust which are  
9 attributable to cemetery merchandise and cemetery services  
10 shall be held in a "Cemetery Merchandise Trust Fund". Proceeds  
11 required to be deposited in trust which are attributable to the  
12 sale of undeveloped interment, entombment or inurnment spaces  
13 shall be held in a "Pre-construction Trust Fund". If  
14 merchandise is delivered for storage in a bonded warehouse, as  
15 authorized herein, and payment of transportation or other  
16 charges totaling more than \$20 will be required in order to  
17 secure delivery to the site of ultimate use, upon such delivery  
18 to the warehouse the seller shall deposit to the trust fund the  
19 full amount of the actual or estimated transportation charge.  
20 Transportation charges which have been prepaid by the seller  
21 shall not be deposited to trust funds maintained pursuant to  
22 this Section. As used in this Section, "all proceeds" means the  
23 entire amount paid by a purchaser in connection with a pre-need  
24 sales contract, including finance charges and Cemetery Care Act  
25 contributions, but excluding sales taxes and credit life  
26 insurance premiums.

1           (b) The seller shall act as trustee of all amounts received  
2 for cemetery merchandise, services, or undeveloped spaces  
3 until those amounts have been deposited into the trust fund.  
4 All trust deposits required by this Act shall be made within 30  
5 days following the end of the month of receipt. The seller must  
6 retain a corporate fiduciary as an independent trustee for any  
7 amount of trust funds. Upon 30 days' prior written notice from  
8 the seller to the Comptroller, the seller may change the  
9 trustee of the trust fund. Failure to provide the Comptroller  
10 with timely prior notice is an intentional violation of this  
11 Act.

12           (c) A trust established under this Act must be maintained  
13 with a corporate fiduciary as defined in Section 1-5.05 of the  
14 Corporate Fiduciary Act or with a foreign corporate fiduciary  
15 recognized by Article IV of the Corporate Fiduciary Act.

16           (d) Funds deposited in the trust account shall be  
17 identified in the records of the seller by the name of the  
18 purchaser. Nothing shall prevent the trustee from commingling  
19 the deposits in any such trust fund for purposes of the  
20 management thereof and the investment of funds therein as  
21 provided in the "Common Trust Fund Act", approved June 24,  
22 1949, as amended. In addition, multiple trust funds maintained  
23 pursuant to this Act may be commingled or commingled with other  
24 funeral or burial related trust funds, provided that all record  
25 keeping requirements imposed by or pursuant to law are met.

26           (e) In lieu of a pre-construction trust fund, a seller of

1 undeveloped interment, entombment or inurnment spaces may  
2 obtain and file with the Comptroller a performance bond in an  
3 amount at least equal to 50% of the sales price of the  
4 undeveloped spaces or the estimated cost of completing  
5 construction, whichever is greater. The bond shall be  
6 conditioned on the satisfactory construction and completion of  
7 the undeveloped spaces as required in Section 19 of this Act.

8 Each bond obtained under this Section shall have as surety  
9 thereon a corporate surety company incorporated under the laws  
10 of the United States, or a State, the District of Columbia or a  
11 territory or possession of the United States. Each such  
12 corporate surety company must be authorized to provide  
13 performance bonds as required by this Section, have paid-up  
14 capital of at least \$250,000 in cash or its equivalent and be  
15 able to carry out its contracts. Each pre-need seller must  
16 provide to the Comptroller, for each corporate surety company  
17 such seller utilizes, a statement of assets and liabilities of  
18 the corporate surety company sworn to by the president and  
19 secretary of the corporation by January 1 of each year.

20 The Comptroller shall prohibit pre-need sellers from doing  
21 new business with a corporate surety company if the company is  
22 insolvent or is in violation of this Section. In addition the  
23 Comptroller may direct a pre-need seller to reinstate a  
24 pre-construction trust fund upon the Comptroller's  
25 determination that the corporate surety company no longer is  
26 sufficient security.

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

5 (f) Whenever any pre-need contract shall be entered into  
6 and include 1) items of cemetery merchandise and cemetery  
7 services, and 2) rights to interment, inurnment or entombment  
8 in completed spaces without allocation of the gross sale price  
9 among the items sold, the application of payments received  
10 under the contract shall be allocated, first to the right to  
11 interment, inurnment or entombment, second to items of cemetery  
12 merchandise and cemetery services, unless some other  
13 allocation is clearly provided in the contract.

14 (g) Any person engaging in pre-need sales who enters into a  
15 combination sale which involves the sale of items covered by a  
16 trust or performance bond requirement and any item not covered  
17 by any entrustment or bond requirement, shall be prohibited  
18 from increasing the gross sales price of those items not  
19 requiring entrustment with the purpose of allocating a lesser  
20 gross sales price to items which require a trust deposit or a  
21 performance bond.

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

23 (815 ILCS 390/20) (from Ch. 21, par. 220)

24 Sec. 20. Records.

25 (a) Each licensee must keep accurate accounts, books and

1 records in this State at the principal place of business  
2 identified in the licensee's license application or as  
3 otherwise approved by the Comptroller in writing of all  
4 transactions, copies of agreements, dates and amounts of  
5 payments made or received, the names and addresses of the  
6 contracting parties, the names and addresses of persons for  
7 whose benefit funds are received, if known, and the names of  
8 the trust depositories. Additionally, for a period not to  
9 exceed 6 months after the performance of all terms in a  
10 pre-need sales contract, the licensee shall maintain copies of  
11 each pre-need contract at the licensee branch location where  
12 the contract was entered or at some other location agreed to by  
13 the Comptroller in writing.

14 (b) Each licensee must maintain such records for a period  
15 of 3 years after the licensee shall have fulfilled his or her  
16 obligation under the pre-need contract or 3 years after any  
17 stored merchandise shall have been provided to the purchaser or  
18 beneficiary, whichever is later.

19 (c) Each licensee shall submit reports to the Comptroller  
20 annually, under oath, on forms furnished by the Comptroller.  
21 The annual report shall contain, but shall not be limited to,  
22 the following:

23 (1) An accounting of the principal deposit and  
24 additions of principal during the fiscal year.

25 (2) An accounting of any withdrawal of principal or  
26 earnings.

1           (3) An accounting at the end of each fiscal year, of  
2           the total amount of principal and earnings held.

3           (d) The annual report shall be filed by the licensee with  
4           the Comptroller within 75 days after the end of the licensee's  
5           fiscal year. An extension of up to 60 days may be granted by  
6           the Comptroller, upon a showing of need by the licensee. Any  
7           other reports shall be in the form furnished or specified by  
8           the Comptroller. If a licensee fails to submit an annual report  
9           to the Comptroller within the time specified in this Section,  
10          the Comptroller shall impose upon the licensee a penalty of \$5  
11          per day for the first 15 days past due, \$10 per day for 16  
12          through 30 days past due, \$15 per day for 31 through 45 days  
13          past due, and \$20 per day for the 46th day and every day  
14          thereafter ~~for each and every day~~ the licensee remains  
15          delinquent in submitting the annual report. The Comptroller may  
16          abate all or part of the \$5 daily penalty for good cause shown.  
17          Each report shall be accompanied by a check or money order in  
18          the amount of \$10 payable to: Comptroller, State of Illinois.

19          (e) On and after the effective date of this amendatory Act  
20          of the 91st General Assembly, a licensee may report all  
21          required information concerning the sale of outer burial  
22          containers on the licensee's annual report required to be filed  
23          under this Act and shall not be required to report that  
24          information under the Illinois Funeral or Burial Funds Act, as  
25          long as the information is reported under this Act.

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

1           Section 99. Effective date. This Act takes effect upon  
2           becoming law.