



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3171

Introduced 2/1/2012, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Funeral or Burial Funds Act. Restores a provision that allows persons holding less than \$500,000 in trust funds to continue to act as the trustee after the funds are deposited. Provides that a pre-need contract must, if funded by a trust, clearly identify the trustee's name and address and the primary state or federal regulator of the trustee. Provides that a trustee may be the seller or provider of funeral services or merchandise if the seller holds sales of less than \$500,000 in trust and deposits funds for which the seller is acting as trustee according in a certain manner. Provides that if a purchaser selects a trust arrangement to fund the pre-need contract, the trust must be maintained: (1) in a deposit account maintained by the seller as trustee in a bank, savings and loan association, savings bank, or credit union authorized to do business in Illinois in which accounts are insured by an agency of the federal government, (2) in a trust company authorized to do business in Illinois, or (3) with a corporate fiduciary as defined in the Corporate Fiduciary Act. Restores a provision that allows trust funds to be maintained in a financial institution located in a state adjoining Illinois if certain conditions are met. Provides that a trustee has a duty to manage the trust and, with respect to the investment of trust funds, shall exercise certain judgment and care. Provides that the trustee has a duty to manage and invest the assets pursuant to the Prudent Investor Rule under the Trusts and Trustees Act if the amount of funds to be entrusted exceeds \$1,000,000. Amends the Illinois Pre-Need Cemetery Sales Act. Removes language that provides that the seller must retain a corporate fiduciary as an independent trustee for any amount of trust funds. Provides that a trust established under the Act must be maintained: (1) in a deposit account maintained by the seller as trustee in a bank, savings and loan association, or credit union authorized to do business in Illinois in which accounts are insured by an agency of the federal government, (2) in a trust company authorized to do business in Illinois, or (3) in an investment company authorized to do business in Illinois insured by the Securities Brokers Insurance Corporation.

LRB097 18829 CEL 64066 b

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 1, 1a-1, 1b, 2, and 4a as follows:

6 (225 ILCS 45/1) (from Ch. 111 1/2, par. 73.101)

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

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

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

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

11 (225 ILCS 45/1a-1)

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

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

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

21 (1.5) If funded by a trust, it clearly identifies the
22 trustee's name and address and the primary state or federal
23 regulator of the trustee ~~as a corporate fiduciary.~~

24 (1.7) If funded by life insurance, it clearly
25 identifies the life insurance provider and the primary

1 regulator of the life insurance provider.

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

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

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

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

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

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

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

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

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

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

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

25 (B) The nature of the relationship among the person
26 funding the pre-need contract, the provider, and the

1 seller; and

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

15 (D) The method of changing the provider.

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

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

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

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

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

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

1 annuity as provided in Section 2a of this Act.

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

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

12 (225 ILCS 45/1b) (from Ch. 111 1/2, par. 73.101b)

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

25 (b) In the event that sales proceeds to be deposited into a

1 trust are received pursuant to a cash sale or an installment
2 contract, the seller may retain the initial percentage
3 authorized by subsection (a) of this Section, and thereafter
4 shall deposit into the trust the entire balance of sales
5 proceeds received.

6 (c) In the event that the deposits into a trust required by
7 this Section do not, after final payment by the consumer,
8 result in the trust containing at least 95% of the purchase
9 price of all services, personal property or merchandise, except
10 for outer burial containers and 85% of the purchase price of
11 outer burial containers, the seller shall make an additional
12 deposit into the trust in an amount sufficient to meet these
13 percentages.

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

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

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

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

5 (b) A trust established under this Act must be maintained:

6 (1) in a deposit account maintained by the seller as
7 trustee in a bank, savings and loan association, savings
8 bank, or credit union authorized to do business in Illinois
9 in which accounts are insured by an agency of the federal
10 government;

11 (2) in a trust company authorized to do business in
12 Illinois; or

13 (3) with a corporate fiduciary as defined in Section
14 1-5.05 of the Corporate Fiduciary Act or with a foreign
15 corporate fiduciary recognized by Article IV of the
16 Corporate Fiduciary Act.

17 (c) Trust agreements and amendments to the trust agreements
18 used to fund a pre-need contract shall be filed with the
19 Comptroller.

20 (d) (Blank).

21 (e) A seller or provider shall furnish to the trustee and
22 depositary the name of each payor and the amount of payment on
23 each such account for which deposit is being so made. Nothing
24 shall prevent the trustee or a seller or provider acting as a
25 trustee in accordance with this Act from commingling the

1 deposits in any such trust fund for purposes of its management
2 and the investment of its funds as provided in the Common Trust
3 Fund Act. In addition, multiple trust funds maintained under
4 this Act may be commingled or commingled with other funeral or
5 burial related trust funds if all record keeping requirements
6 imposed by law are met.

7 (f) Trust funds may be maintained in a financial
8 institution described in subsection (b) that is located in a
9 state adjoining this State where: (1) the financial institution
10 is located within 50 miles of the border of this State, (2) its
11 accounts are federally insured, and (3) it has registered with
12 the Illinois Secretary of State for purposes of service of
13 process. ~~(Blank).~~

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

18 (h) A trustee shall at least annually furnish to each
19 purchaser a statement (1) containing the account value of the
20 trust as of the date of the statement ~~:(1) the receipts,~~
21 ~~disbursements, and inventory of the trust, including an~~
22 ~~explanation of any fees or expenses charged by the trustee~~
23 ~~under Section 5 of this Act or otherwise, (2) an explanation of~~
24 ~~the purchaser's right to a refund, if any, under this Act, and~~
25 (2) (3) identifying the primary regulator of the trust as a
26 ~~corporate fiduciary under state or federal law.~~

1 (Source: P.A. 96-879, eff. 2-2-10; 97-593, eff. 8-26-11.)

2 (225 ILCS 45/4a)

3 Sec. 4a. Investment of funds.

4 (a) A trustee has a duty to ~~invest and~~ manage the trust
5 and, with respect to the investment of trust funds, shall
6 exercise the judgment and care under the circumstances then
7 prevailing that persons of prudence, discretion, and
8 intelligence exercise in the management of their own affairs,
9 not in regard to speculation, but in regard to the permanent
10 disposition of their funds, considering the probable income as
11 well as the probable safety of their capital. If the amount of
12 the funds to be entrusted exceeds \$1,000,000, then the trustee
13 has the duty to manage and invest the assets pursuant to the
14 Prudent Investor Rule under the Trusts and Trustees Act.

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

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

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

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

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

2 Section 10. The Illinois Pre-Need Cemetery Sales Act is
3 amended by changing Sections 14 and 15 as follows:

4 (815 ILCS 390/14) (from Ch. 21, par. 214)

5 Sec. 14. Contract required.

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

11 (1) A written sales contract shall be executed in at
12 least 11 point type in duplicate for each pre-need sale
13 made by a licensee, and a signed copy given to the
14 purchaser. Each completed contract shall be numbered and
15 shall contain: (i) the name and address of the purchaser,
16 the principal office of the licensee, and the parent
17 company of the licensee; (ii) the name of the person, if
18 known, who is to receive the cemetery merchandise, cemetery
19 services or the completed interment, entombment or
20 inurnment spaces under the contract; and (iii) specific
21 identification of such merchandise, services or spaces to
22 be provided, if a specific space or spaces are contracted
23 for, and the price of the merchandise, services, or space
24 or spaces.

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

3 "Notwithstanding anything in this contract to the
4 contrary, you are afforded certain specific rights of
5 cancellation and refund under the Illinois Pre-Need
6 Cemetery Sales Act, enacted by the 84th General Assembly of
7 the State of Illinois".

8 (3) All pre-need sales contracts shall be sold on a
9 guaranteed price basis. At the time of performance of the
10 service or delivery of the merchandise, the seller shall be
11 prohibited from assessing the purchaser or his heirs or
12 assigns or duly authorized representative any additional
13 charges for the specific merchandise and services listed on
14 the pre-need sales contract.

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

18 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE SPECIFIC
19 GOODS, SERVICES, INTERMENT SPACES, ENTOMBMENT SPACES, AND
20 INURNMENT SPACES CONTRACTED FOR. NO ADDITIONAL CHARGES MAY
21 BE REQUIRED FOR DESIGNATED GOODS, SERVICES, AND SPACES.
22 ADDITIONAL CHARGES MAY BE INCURRED FOR UNEXPECTED
23 EXPENSES."

24 (5) The pre-need sales contract shall provide that if
25 the particular cemetery services, cemetery merchandise, or
26 spaces specified in the pre-need contract are unavailable

1 at the time of delivery, the seller shall be required to
2 furnish services, merchandise, and spaces similar in style
3 and at least equal in quality of material and workmanship.

4 (6) The pre-need contract shall also disclose any
5 specific penalties to be incurred by the purchaser as a
6 result of failure to make payments; and penalties to be
7 incurred or moneys or refunds to be received as a result of
8 cancellation of the contract.

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

11 (8) Each pre-need contract that authorizes the
12 delivery of cemetery merchandise to a licensed and bonded
13 warehouse shall provide that prior to or upon delivery of
14 the merchandise to the warehouse the title to the
15 merchandise and a warehouse receipt shall be delivered to
16 the purchaser or beneficiary. The pre-need contract shall
17 contain the following statement in 12 point bold type:

18 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO A
19 LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE
20 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE
21 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER MAY
22 PRECLUDE REFUND OF SALE PROCEEDS THAT ARE ATTRIBUTABLE TO
23 THE DELIVERED MERCHANDISE."

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

26 (9) Each pre-need contract that authorizes the

1 placement of cemetery merchandise at the site of its
2 ultimate use prior to the time that the merchandise is
3 needed by the beneficiary shall contain the following
4 statement in 12 point bold type:

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

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

13 (10) Each pre-need contract that is funded by a trust
14 shall clearly identify the trustee's name and address and
15 the primary state or federal regulator of the trustee ~~as a~~
16 ~~corporate fiduciary.~~

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

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

24 (d) No pre-need sales contract may be entered into in this
25 State unless there is a provider for the cemetery merchandise,
26 cemetery services, and undeveloped interment, inurnment, and

1 entombment spaces being sold. If the seller is not the
2 provider, then the seller must have a binding agreement with a
3 provider, and the identity of the provider and the nature of
4 the agreement between the seller and the provider must be
5 disclosed in the pre-need sales contract at the time of sale
6 and before the receipt of any sale proceeds. The failure to
7 disclose the identity of the provider, the nature of the
8 agreement between the seller and the provider, or any changes
9 thereto to the purchaser and beneficiary, or the failure to
10 make the disclosures required by this Section constitutes an
11 intentional violation of this Act.

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

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

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

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

9 (815 ILCS 390/15) (from Ch. 21, par. 215)

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

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

22 (b) The seller shall act as trustee of all amounts received
23 for cemetery merchandise, services, or undeveloped spaces
24 until those amounts have been deposited into the trust fund.
25 All trust deposits required by this Act shall be made within 30
26 days following the end of the month of receipt. ~~The seller must~~

1 ~~retain a corporate fiduciary as an independent trustee for any~~
2 ~~amount of trust funds.~~ Upon 30 days' prior written notice from
3 the seller to the Comptroller, the seller may change the
4 trustee of the trust fund. Failure to provide the Comptroller
5 with timely prior notice is an intentional violation of this
6 Act.

7 (c) A trust established under this Act must be maintained:

8 (1) in a deposit account maintained by the seller as
9 trustee in a bank, savings and loan association, or credit
10 union authorized to do business in Illinois where such
11 accounts are insured by an agency of the federal
12 government;

13 (2) in a trust company authorized to do business in
14 Illinois;

15 (3) in an investment company authorized to do business
16 in Illinois insured by the Securities Brokers Insurance
17 Corporation; or

18 (4) with a corporate fiduciary as defined in Section
19 1-5.05 of the Corporate Fiduciary Act or with a foreign
20 corporate fiduciary recognized by Article IV of the
21 Corporate Fiduciary Act.

22 (d) Funds deposited in the trust account shall be
23 identified in the records of the seller by the name of the
24 purchaser. Nothing shall prevent the trustee from commingling
25 the deposits in any such trust fund for purposes of the
26 management thereof and the investment of funds therein as

1 provided in the "Common Trust Fund Act", approved June 24,
2 1949, as amended. In addition, multiple trust funds maintained
3 pursuant to this Act may be commingled or commingled with other
4 funeral or burial related trust funds, provided that all record
5 keeping requirements imposed by or pursuant to law are met.

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

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

26 The Comptroller shall prohibit pre-need sellers from doing

1 new business with a corporate surety company if the company is
2 insolvent or is in violation of this Section. In addition the
3 Comptroller may direct a pre-need seller to reinstate a
4 pre-construction trust fund upon the Comptroller's
5 determination that the corporate surety company no longer is
6 sufficient security.

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

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

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

1 performance bond.

2 (Source: P.A. 96-879, eff. 2-2-10; 97-593, eff. 8-26-11.)

1 INDEX

2 Statutes amended in order of appearance

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

4 225 ILCS 45/1a-1

5 225 ILCS 45/1b from Ch. 111 1/2, par. 73.101b

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

7 225 ILCS 45/4a

8 815 ILCS 390/14 from Ch. 21, par. 214

9 815 ILCS 390/15 from Ch. 21, par. 215