

AN ACT concerning regulation.

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

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

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

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

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

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

(d) (Blank).

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

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

(f) (Blank).

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

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

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

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

Sec. 3. Licensing.

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

application shall contain at least the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) material and unverified changes or fluctuations in trust balances or insurance or annuity policy amounts;
- (2) the licensee changing trustees more than twice in any 12-month period;
- (3) any withdrawals or attempted withdrawals from the trusts, insurance policies, or annuity contracts in violation of this Act; or
- (4) failure to maintain or produce documentation required by this Act for deposits into trust accounts, trust investment activities, or life insurance or annuity policies.

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

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

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

Comptroller shall immediately cancel or revoke said license.

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

(225 ILCS 45/3a-5)

Sec. 3a-5. License requirements.

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

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

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

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

obtain its own license.

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

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

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

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

(225 ILCS 411/15-15)

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

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

(a) Whenever a cemetery authority accepts care funds,

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

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

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

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

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

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

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

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

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

(225 ILCS 411/15-40)

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

Sec. 15-40. Trust examinations and audits.

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

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

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

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

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

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

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

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

(225 ILCS 411/75-55)

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

Sec. 75-55. Transition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. License application.

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

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

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

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

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

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

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

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

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

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

(6) Such other information as the Comptroller may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20. Records.

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

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

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

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

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

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

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

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

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

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

Public Act 097-0593

SB0675 Enrolled

LRB097 04438 RPM 44477 b

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