

HB6078



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6078

Introduced 2/11/2010, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Funeral or Burial Funds Act and the Illinois Pre-Need Cemetery Sales Act to transfer all authority given to the Comptroller under the Acts to the Department of Financial and Professional Regulation. Replaces all references to "Comptroller" with "Department". Effective immediately.

LRB096 20610 ASK 36318 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Funeral or Burial Funds Act is
5 amended by changing Sections 1a, 1a-1, 1a-2, 2, 3, 3a, 3a-5,
6 3b, 3c, 3d, 3e, 3f, 4a, 7.2, 7.3, 8, and 8.1 as follows:

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

8 Sec. 1a. For the purposes of this Act, the following terms
9 shall have the meanings specified, unless the context clearly
10 requires another meaning:

11 "Beneficiary" means the person specified in the pre-need
12 contract upon whose death funeral services or merchandise shall
13 be provided or delivered.

14 "Department" means the Department of Financial and
15 Professional Regulation.

16 "Licensee" means a seller of a pre-need contract who has
17 been licensed by the Department ~~Comptroller~~ under this Act.

18 "Outer burial container" means any container made of
19 concrete, steel, wood, fiberglass or similar material, used
20 solely at the interment site, and designed and used exclusively
21 to surround or enclose a separate casket and to support the
22 earth above such casket, commonly known as a burial vault,
23 grave box or grave liner, but not including a lawn crypt as

1 defined in the Illinois Pre-need Cemetery Sales Act.

2 "Parent company" means a corporation owning more than 12
3 cemeteries or funeral homes in more than one state.

4 "Person" means any person, partnership, association,
5 corporation, or other entity.

6 "Pre-need contract" means any agreement or contract, or any
7 series or combination of agreements or contracts, whether
8 funded by trust deposits or life insurance policies or
9 annuities, which has for a purpose the furnishing or
10 performance of funeral services or the furnishing or delivery
11 of any personal property, merchandise, or services of any
12 nature in connection with the final disposition of a dead human
13 body. Nothing in this Act is intended to regulate the content
14 of a life insurance policy or a tax-deferred annuity.

15 "Provider" means a person who is obligated for furnishing
16 or performing funeral services or the furnishing or delivery of
17 any personal property, merchandise, or services of any nature
18 in connection with the final disposition of a dead human body.

19 "Purchaser" means the person who originally paid the money
20 under or in connection with a pre-need contract.

21 "Sales proceeds" means the entire amount paid to a seller,
22 exclusive of sales taxes paid by the seller, finance charges
23 paid by the purchaser, and credit life, accident or disability
24 insurance premiums, upon any agreement or contract, or series
25 or combination of agreements or contracts, for the purpose of
26 performing funeral services or furnishing personal property,

1 merchandise, or services of any nature in connection with the
2 final disposition of a dead human body, including, but not
3 limited to, the retail price paid for such services and
4 personal property and merchandise.

5 "Purchase price" means sales proceeds less finance charges
6 on retail installment contracts.

7 "Seller" means the person who sells or offers to sell the
8 pre-need contract to a purchaser, whether funded by a trust
9 agreement, life insurance policy, or tax-deferred annuity.

10 "Trustee" means a person authorized to hold funds under
11 this Act.

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

13 (225 ILCS 45/1a-1)

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

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

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

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

1 (1.7) If funded by life insurance, it clearly
2 identifies the life insurance provider and the primary
3 regulator of the life insurance provider.

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

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

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

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

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

25 (B) Except as provided in subparagraph (C) of this
26 paragraph (3), each non-guaranteed price contract

1 shall contain the following statement in 12 point bold
2 type:

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

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

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

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

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

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

1 (B) The nature of the relationship among the person
2 funding the pre-need contract, the provider, and the
3 seller; and

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

17 (D) The method of changing the provider.

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

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

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

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

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

25 (f) All sales proceeds received in connection with a
26 pre-need contract shall be deposited into a trust account as

1 provided in Section 1b and Section 2 of this Act, or shall be
2 used to purchase a life insurance policy or tax-deferred
3 annuity as provided in Section 2a of this Act.

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

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

14 (225 ILCS 45/1a-2)

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

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

25 (b) In the event that the purchaser is unable to receive

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

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

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

26 (e) Notwithstanding any other provision of this Section,

1 the payment of restitution from the Fund shall be a matter of
2 grace and not of right and no purchaser shall have any vested
3 right in the Fund as a beneficiary or otherwise.

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

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

7 (225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

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

11 (b) A trust established under this Act must be maintained
12 with a corporate fiduciary as defined in Section 1-5.05 of the
13 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 Department 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
24 Act. In addition, multiple trust funds maintained under this
25 Act may be commingled or commingled with other funeral or

1 burial related trust funds if all record keeping requirements
2 imposed by law are met.

3 (f) (Blank).

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

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

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

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

18 Sec. 3. Licensing.

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

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

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

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

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

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

1 entered against him based upon fraud; and any other
2 information requested by the Department ~~Comptroller~~
3 relating to past business practices of the individual.
4 Since the information required by this item (5) may be
5 confidential or contain proprietary information, this
6 information shall not be available to other licensees or
7 the general public and shall be used only for the lawful
8 purposes of the Department ~~Comptroller~~ in enforcing this
9 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 Department
15 ~~Comptroller~~ may reasonably require in order to determine
16 the qualification of the applicant to be licensed under
17 this Act.

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

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

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

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

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

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

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

1 Less than \$10,000..... no charge;
 2 \$10,000 or more but less than \$50,000..... \$10;
 3 \$50,000 or more but less than \$100,000 \$40;
 4 \$100,000 or more but less than \$250,000..... \$80;
 5 \$250,000 or more \$100.

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

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

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

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

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

25 The licensee shall bear the full cost of that examination
 26 or audit, up to a maximum of \$20,000. The Department

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

12 For pre-need contracts funded by life insurance or a
13 tax-deferred annuity, the cost of an examination shall be borne
14 by the licensee. The fee schedule for such examination shall be
15 established in rules promulgated by the Department
16 ~~Comptroller~~. In the event such investigation or other
17 information received by the Department ~~Comptroller~~ discloses a
18 substantial violation of the requirements of this Act, the
19 Department ~~Comptroller~~ shall revoke the license of such person
20 upon a hearing as provided in this Act. Such licensee may
21 terminate all further responsibility for compliance with the
22 requirements of this Act by voluntarily surrendering the
23 license to the Department ~~Comptroller~~, or in the event of its
24 loss, furnishing the Department ~~Comptroller~~ with a sworn
25 statement to that effect, which states the licensee's intention
26 to discontinue acceptance of funds received under pre-need

1 contracts. Such license or statement must be accompanied by an
2 affidavit that said licensee has lawfully expended or refunded
3 all funds received under pre-need contracts, and that the
4 licensee will accept no additional sales proceeds. The
5 Department ~~Comptroller~~ shall immediately cancel or revoke said
6 license.

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

8 (225 ILCS 45/3a) (from Ch. 111 1/2, par. 73.103a)

9 Sec. 3a. Denial, suspension, or revocation of license.

10 (a) The Department ~~Comptroller~~ may refuse to issue or may
11 suspend or revoke a license on any of the following grounds:

12 (1) The applicant or licensee has made any
13 misrepresentations or false statements or concealed any
14 material fact.

15 (2) The applicant or licensee is insolvent.

16 (3) The applicant or licensee has been engaged in
17 business practices that work a fraud.

18 (4) The applicant or licensee has refused to give
19 pertinent data to the Department ~~Comptroller~~.

20 (5) The applicant or licensee has failed to satisfy any
21 enforceable judgment or decree rendered by any court of
22 competent jurisdiction against the applicant.

23 (6) The applicant or licensee has conducted or is about
24 to conduct business in a fraudulent manner.

25 (7) The trust agreement is not in compliance with State

1 or federal law.

2 (8) The fidelity bond is not satisfactory to the
3 Department ~~Comptroller~~.

4 (9) As to any individual required to be listed in the
5 license application, the individual has conducted or is
6 about to conduct any business on behalf of the applicant in
7 a fraudulent manner; has been convicted of any felony or
8 misdemeanor, an essential element of which is fraud; has
9 had a judgment rendered against him or her based on fraud
10 in any civil litigation; has failed to satisfy any
11 enforceable judgment or decree rendered against him or her
12 by any court of competent jurisdiction; or has been
13 convicted of any felony or any theft-related offense.

14 (10) The applicant or licensee, including any member,
15 officer, or director thereof if the applicant or licensee
16 is a firm, partnership, association or corporation and any
17 shareholder holding more than 10% of the corporate stock,
18 has violated any provision of this Act or any regulation,
19 decision, order, or finding made by the Department
20 ~~Comptroller~~ under this Act.

21 (11) The Department ~~Comptroller~~ finds any fact or
22 condition existing which, if it had existed at the time of
23 the original application for such license, would have
24 warranted the Department ~~Comptroller~~ in refusing the
25 issuance of the license.

26 (b) Before refusal to issue or renew and before suspension

1 or revocation of a license, the Department ~~Comptroller~~ shall
2 hold a hearing to determine whether the applicant or licensee,
3 hereinafter referred to as the respondent, is entitled to hold
4 such a license. At least 10 days prior to the date set for such
5 hearing, the Department ~~Comptroller~~ shall notify the
6 respondent in writing that on the date designated a hearing
7 will be held to determine his eligibility for a license and
8 that he may appear in person or by counsel. Such written notice
9 may be served on the respondent personally, or by registered or
10 certified mail sent to the respondent's business address as
11 shown in his latest notification to the Department ~~Comptroller~~.
12 At the hearing, both the respondent and the complainant shall
13 be accorded ample opportunity to present in person or by
14 counsel such statements, testimony, evidence and argument as
15 may be pertinent to the charges or to any defense thereto. The
16 Department ~~Comptroller~~ may reasonably continue such hearing
17 from time to time.

18 The Department ~~Comptroller~~ may subpoena any person or
19 persons in this State and take testimony orally, by deposition
20 or by exhibit, in the same manner and with the same fees and
21 mileage allowances as prescribed in judicial proceedings in
22 civil cases.

23 Any authorized agent of the Department ~~Comptroller~~ may
24 administer oaths to witnesses at any hearing which the
25 Department ~~Comptroller~~ is authorized to conduct.

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

1 (225 ILCS 45/3a-5)

2 Sec. 3a-5. License requirements.

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

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

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

24 (d) Any person not selling on behalf of a licensee shall
25 obtain its own license.

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

7 (f) Every license issued hereunder shall remain in force
8 until it has been suspended, surrendered, or revoked in
9 accordance with this Act. The Department ~~Comptroller~~, upon the
10 request of an interested person or on his own motion, may issue
11 new licenses to a licensee whose license or licenses have been
12 revoked, if no factor or condition then exists which would have
13 warranted the Department ~~Comptroller~~ to originally refuse the
14 issuance of such license.

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

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

17 Sec. 3b. The Department ~~Comptroller~~, at his expense, shall
18 provide a certified shorthand reporter to take down the
19 testimony and preserve a record of all proceedings at the
20 hearing of any case involving the refusal to issue or renew a
21 license, the suspension or revocation of a license, the
22 imposition of a monetary penalty, or the referral of a case for
23 criminal prosecution. The record of any such proceeding shall
24 consist of the notice of hearing, complaint, all other
25 documents in the nature of pleadings and written motions filed

1 in the proceedings, the transcript of testimony and the report
2 and orders of the Department ~~Comptroller~~. Copies of the
3 transcript of such record may be purchased from the certified
4 shorthand reporter who prepared the record.

5 (Source: P.A. 84-839.)

6 (225 ILCS 45/3c) (from Ch. 111 1/2, par. 73.103c)

7 Sec. 3c. Any circuit court may, upon application of the
8 Department ~~Comptroller~~ or of the applicant or licensee against
9 whom proceedings under Section 3a are pending, enter an order
10 requiring witnesses to attend and testify, and requiring the
11 production of documents, papers, files, books and records in
12 connection with any hearing in any proceedings under that
13 Section. Failure to obey such court order may result in the
14 institution of contempt proceedings.

15 (Source: P.A. 84-839.)

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

17 Sec. 3d. Any person affected by a final administrative
18 decision of the Department ~~Comptroller~~ may have such decision
19 reviewed judicially by the circuit court of the county where
20 such person resides, or in the case of a corporation, where the
21 registered office is located. If the plaintiff in the review
22 proceeding is not a resident of this State, venue shall be in
23 Sangamon County. The provisions of the Administrative Review
24 Law, as now or hereafter amended, and any rules adopted

1 thereunder shall govern all proceedings for the judicial review
2 of final administrative decisions of the Department
3 ~~Comptroller~~. The term "administrative decision" is defined as
4 in the Administrative Review Law.

5 The Department ~~Comptroller~~ is not required to certify the
6 record of the proceeding unless the plaintiff in the review
7 proceedings has purchased a copy of the transcript from the
8 certified shorthand reporter who prepared the record. Exhibits
9 shall be certified without cost.

10 (Source: P.A. 84-839.)

11 (225 ILCS 45/3e) (from Ch. 111 1/2, par. 73.103e)

12 Sec. 3e. Upon the revocation of, suspension of, or refusal
13 to renew any license, the licensee shall immediately surrender
14 the license or licenses to the Department ~~Comptroller~~. If the
15 licensee fails to do so, the Department ~~Comptroller~~ shall have
16 the right to seize the same.

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

18 (225 ILCS 45/3f)

19 Sec. 3f. Revocation of license.

20 (a) The Department ~~Comptroller~~, upon determination that
21 grounds exist for the revocation or suspension of a license
22 issued under this Act, may revoke or suspend, if appropriate,
23 the license issued to a licensee or to a particular branch
24 office location with respect to which the grounds for

1 revocation or suspension may occur or exist.

2 (b) Whenever a license is revoked by the Department
3 ~~Comptroller~~, he or she shall apply to the Circuit Court of the
4 county wherein the licensee is located for a receiver to
5 administer the trust funds of the licensee or to maintain the
6 life insurance policies and tax-deferred annuities held by the
7 licensee under a pre-need contract.

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

9 (225 ILCS 45/4a)

10 Sec. 4a. Investment of funds.

11 (a) A trustee has a duty to invest and manage the trust
12 assets pursuant to the Prudent Investor Rule under the Trusts
13 and Trustees Act.

14 (b) The trust shall be a single-purpose trust fund. In the
15 event of the seller's bankruptcy, insolvency or assignment for
16 the benefit of creditors, or an adverse judgment, the trust
17 funds shall not be available to any creditor as assets of the
18 seller or to pay any expenses of any bankruptcy or similar
19 proceeding, but shall be distributed to the purchasers or
20 managed for their benefit by the trustee holding the funds.
21 Except in an action by the Department ~~Comptroller~~ to revoke a
22 license issued pursuant to this Act and for creation of a
23 receivership as provided in this Act, the trust shall not be
24 subject to judgment, execution, garnishment, attachment, or
25 other seizure by process in bankruptcy or otherwise, nor to

1 sale, pledge, mortgage, or other alienation, and shall not be
2 assignable except as approved by the Department ~~Comptroller~~.
3 The changes made by Public Act 91-7 are intended to clarify
4 existing law regarding the inability of licensees to pledge the
5 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 (225 ILCS 45/7.2)

3 Sec. 7.2. Investigation of unlawful practices. If it
4 appears to the Department ~~Comptroller~~ that a person has engaged
5 in, is engaging in, or is about to engage in any practice in
6 violation of this Act, the Department ~~Comptroller~~ may:

7 (1) require that person to file on such terms as the
8 Department ~~Comptroller~~ prescribes a statement or report in
9 writing, under oath or otherwise, containing all
10 information the Department ~~Comptroller~~ may consider
11 necessary to ascertain whether a licensee is in compliance
12 with this Act, or whether an unlicensed person is engaging
13 in activities for which a license is required;

14 (2) examine under oath any person in connection with
15 the books and records pertaining to or having an impact
16 upon trust funds, insurance policies, or tax deferred
17 annuities required or allowed to be maintained pursuant to
18 this Act;

19 (3) examine any books and records of the licensee,
20 trustee, or investment advisor that the Department
21 ~~Comptroller~~ may consider necessary to ascertain compliance
22 with this Act; and

23 (4) require the production of a copy of any record,
24 book, document, account, or paper that is produced in
25 accordance with this Act and retain it in his or her

1 possession until the completion of all proceedings in
2 connection with which it is produced.

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

4 (225 ILCS 45/7.3)

5 Sec. 7.3. Service. Service by the Department ~~Comptroller~~ of
6 any notice requiring a person to file a statement or report
7 shall be made:

8 (1) personally by delivery of a duly executed copy
9 thereof to the person to be served or, if that person is
10 not a natural person, in the manner provided in the Civil
11 Practice Law when a complaint is filed; or

12 (2) by mailing by certified mail a duly executed copy
13 thereof to the person to be served at his or her last known
14 abode or principal place of business within this State.

15 (Source: P.A. 89-615, eff. 8-9-96.)

16 (225 ILCS 45/8) (from Ch. 111 1/2, par. 73.108)

17 Sec. 8. Any person who intentionally fails to deposit the
18 required sales proceeds into a trust required under this Act,
19 intentionally and improperly withdraws or uses trust funds for
20 his or her own benefit, or otherwise intentionally violates any
21 provision of this Act is guilty of a Class 4 felony.

22 If any person intentionally violates this Act or fails or
23 refuses to comply with any order of the Department ~~Comptroller~~
24 or any part of an order that has become final to the person and

1 is still in effect, the Department ~~Comptroller~~ may, after
2 notice and hearing at which it is determined that a violation
3 of this Act or the order has been committed, further order that
4 the person shall forfeit and pay to the State of Illinois a sum
5 not to exceed \$5,000 for each violation. This liability shall
6 be enforced in an action brought in any court of competent
7 jurisdiction by the Department ~~Comptroller~~ in the name of the
8 People of the State of Illinois.

9 In addition to the other penalties and remedies provided in
10 this Act, the Department ~~Comptroller~~ may bring a civil action
11 in the county of residence of the licensee or any person
12 accepting trust funds to enjoin any violation or threatened
13 violation of this Act.

14 The powers vested in the Department ~~Comptroller~~ by this
15 Section are in addition to any and all other powers and
16 remedies vested in the Department ~~Comptroller~~ by law.

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

18 (225 ILCS 45/8.1)

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

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

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

1 (i) the Department Comptroller has completed the audit
2 of the licensee's books and records;

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

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

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

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

18 Section 10. The Illinois Pre-Need Cemetery Sales Act is
19 amended by changing Sections 4, 5, 6, 7, 8, 8a, 8b, 9, 10, 11,
20 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 27, and 27.1 as
21 follows:

22 (815 ILCS 390/4) (from Ch. 21, par. 204)

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

1 (A) "Pre-need sales contract" or "Pre-need sales" means any
2 agreement or contract or series or combination of agreements or
3 contracts which have for a purpose the sale of cemetery
4 merchandise, cemetery services or undeveloped interment,
5 entombment or inurnment spaces where the terms of such sale
6 require payment or payments to be made at a currently
7 determinable time and where the merchandise, services or
8 completed spaces are to be provided more than 120 days
9 following the initial payment on the account. An agreement or
10 contract for a memorial, marker, or monument shall not be
11 deemed a "pre-need sales contract" or a "pre-need sale" if the
12 memorial, marker, or monument is delivered within 180 days
13 following initial payment on the account and work thereon
14 commences a reasonably short time after initial payment on the
15 account.

16 (B) "Delivery" occurs when:

17 (1) Physical possession of the merchandise is
18 transferred or the easement for burial rights in a
19 completed space is executed, delivered and transferred to
20 the buyer; or

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

26 (3) Following authorization by a purchaser under a

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

14 All warehouse facilities to which sellers deliver
15 merchandise pursuant to this Act shall:

16 (i) be either located in the State of Illinois or
17 qualify as a foreign warehouse facility as defined
18 herein;

19 (ii) submit to the Department ~~Comptroller~~ not less
20 than annually, by March 1 of each year, a report of all
21 cemetery merchandise stored by each licensee under
22 this Act which is in storage on the date of the report;

23 (iii) permit the Department ~~Comptroller~~ or his
24 designee at any time to examine stored merchandise and
25 to examine any documents pertaining thereto;

26 (iv) submit evidence satisfactory to the

1 Department Comptroller that all merchandise stored by
2 said warehouse for licensees under this Act is insured
3 for casualty or other loss normally assumed by a bailee
4 for hire;

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

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

- 15 (1) memorials,
16 (2) markers,
17 (3) monuments,
18 (4) foundations, and
19 (5) outer burial containers.

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

- 25 (1) lawn crypt,
26 (2) mausoleum,

- 1 (3) garden crypt,
2 (4) columbarium, or
3 (5) cemetery section.

4 (E) "Cemetery services" means those services customarily
5 performed by cemetery or crematory personnel in connection with
6 the interment, entombment, inurnment or cremation of a dead
7 human body.

8 (F) "Cemetery section" means a grouping of spaces intended
9 to be developed simultaneously for the purpose of interring
10 human remains.

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

17 (G-5) "Department" means the Department of Financial and
18 Professional Regulation.

19 (H) "Lawn crypt" means a permanent underground crypt
20 usually constructed of reinforced concrete or similar material
21 installed in multiple units for the entombment of human
22 remains.

23 (I) "Mausoleum" or "garden crypt" means a grouping of
24 spaces constructed of reinforced concrete or similar material
25 constructed or assembled above the ground for entombing human
26 remains.

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

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

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

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

14 (N) "Religious cemetery" means a cemetery owned, operated,
15 controlled or managed by any recognized church, religious
16 society, association or denomination or by any cemetery
17 authority or any corporation administering, or through which is
18 administered, the temporalities of any recognized church,
19 religious society, association or denomination.

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

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

7 (P) "Sales price" means the gross amount paid by a
8 purchaser on a pre-need sales contract for cemetery
9 merchandise, cemetery services or undeveloped interment,
10 entombment or inurnment spaces, excluding sales taxes, credit
11 life insurance premiums, finance charges and Cemetery Care Act
12 contributions.

13 (Q) (Blank).

14 (R) "Provider" means a person who is responsible for
15 performing cemetery services or furnishing cemetery
16 merchandise, interment spaces, entombment spaces, or inurnment
17 spaces under a pre-need sales contract.

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

21 (T) "Parent company" means a corporation owning more than
22 12 cemeteries or funeral homes in more than one state.

23 (U) "Foreign warehouse facility" means a warehouse
24 facility now or hereafter located in any state or territory of
25 the United States, including the District of Columbia, other
26 than the State of Illinois.

1 A foreign warehouse facility shall be deemed to have
2 appointed the Department ~~Comptroller~~ to be its true and lawful
3 attorney upon whom may be served all legal process in any
4 action or proceeding against it relating to or growing out of
5 this Act, and the acceptance of the delivery of stored
6 merchandise under this Act shall be signification of its
7 agreement that any such process against it which is so served,
8 shall be of the same legal force and validity as though served
9 upon it personally.

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

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

23 (815 ILCS 390/5) (from Ch. 21, par. 205)

24 Sec. 5. It is unlawful for any seller directly or
25 indirectly doing business within this State to engage in

1 pre-need sales without a license issued by the Department
2 ~~Comptroller~~.

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

4 (815 ILCS 390/6) (from Ch. 21, par. 206)

5 Sec. 6. License application.

6 (a) An application for a license shall be made in writing
7 to the Department ~~Comptroller~~ on forms prescribed by him or
8 her, signed by the applicant under oath verified by a notary
9 public, and accompanied by a non-returnable \$25 application
10 fee. The Department ~~Comptroller~~ may prescribe abbreviated
11 application forms for persons holding a license under the
12 Cemetery Care Act. Applications (except abbreviated
13 applications) must include at least the following information:

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

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

23 (2.1) The name and address of the applicant's principal
24 place of business at which the books, accounts, and records
25 are available for examination by the Department

1 ~~Comptroller~~ as required by this Act;

2 (2.2) The name and address of the applicant's branch
3 locations at which pre-need sales will be conducted and
4 which will operate under the same license number as the
5 applicant's principal place of business;

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

25 (4) The name of the trustee and, if applicable, the
26 names of the advisors to the trustee, including a copy of

1 the proposed trust agreement under which the trust funds
2 are to be held as required by this Act;

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

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

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

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

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

2 (815 ILCS 390/7) (from Ch. 21, par. 207)

3 Sec. 7. The Department ~~Comptroller~~ may refuse to issue or
4 may suspend or revoke a license on any of the following
5 grounds:

6 (a) The applicant or licensee has made any
7 misrepresentations or false statements or concealed any
8 material fact;

9 (b) The applicant or licensee is insolvent;

10 (c) The applicant or licensee has been engaged in business
11 practices that work a fraud;

12 (d) The applicant or licensee has refused to give pertinent
13 data to the Department ~~Comptroller~~;

14 (e) The applicant or licensee has failed to satisfy any
15 enforceable judgment or decree rendered by any court of
16 competent jurisdiction against the applicant;

17 (f) The applicant or licensee has conducted or is about to
18 conduct business in a fraudulent manner;

19 (g) The trust agreement is not in compliance with State or
20 federal law;

21 (h) The pre-construction performance bond, if applicable,
22 is not satisfactory to the Department ~~Comptroller~~;

23 (i) The fidelity bond is not satisfactory to the Department
24 ~~Comptroller~~;

25 (j) As to any individual listed in the license application

1 as required pursuant to Section 6, that individual has
2 conducted or is about to conduct any business on behalf of the
3 applicant in a fraudulent manner, has been convicted of any
4 felony or misdemeanor an essential element of which is fraud,
5 has had a judgment rendered against him or her based on fraud
6 in any civil litigation, has failed to satisfy any enforceable
7 judgment or decree rendered against him by any court of
8 competent jurisdiction, or has been convicted of any felony or
9 any theft-related offense;

10 (k) The applicant or licensee has failed to make the annual
11 report required by this Act or to comply with a final order,
12 decision, or finding of the Department ~~Comptroller~~ made
13 pursuant to this Act;

14 (l) The applicant or licensee, including any member,
15 officer, or director thereof if the applicant or licensee is a
16 firm, partnership, association, or corporation and any
17 shareholder holding more than 10% of the corporate stock, has
18 violated any provision of this Act or any regulation or order
19 made by the Department ~~Comptroller~~ under this Act; or

20 (m) The Department ~~Comptroller~~ finds any fact or condition
21 existing which, if it had existed at the time of the original
22 application for such license would have warranted the
23 Department ~~Comptroller~~ in refusing the issuance of the license.

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

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

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

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

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

23 (e) Any person engaged in pre-need sales, as defined
24 herein, prior to the effective date of this Act may continue
25 operations until the application for license under this Act is
26 denied; provided that such person shall make application for a

1 license within 60 days of the date that application forms are
2 made available by the Department ~~Comptroller~~.

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

9 (g) Every license issued hereunder shall remain in force
10 until the same has been suspended, surrendered or revoked in
11 accordance with this Act, but the Department ~~Comptroller~~, upon
12 the request of an interested person or on his own motion, may
13 issue new licenses to a licensee whose license or licenses have
14 been revoked, if no factor or condition then exists which would
15 have warranted the Department ~~Comptroller~~ in refusing
16 originally the issuance of such license.

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

18 (815 ILCS 390/8a)

19 Sec. 8a. Investigation of unlawful practices. If it appears
20 to the Department ~~Comptroller~~ that a person has engaged in, is
21 engaging in, or is about to engage in any practice in violation
22 of this Act, the Department ~~Comptroller~~ may:

23 (1) require that person to file on such terms as the
24 Department ~~Comptroller~~ prescribes a statement or report in
25 writing, under oath or otherwise, containing all

1 information the Department ~~Comptroller~~ may consider
2 necessary to ascertain whether a licensee is in compliance
3 with this Act, or whether an unlicensed person is engaging
4 in activities for which a license is required;

5 (2) examine under oath any person in connection with
6 the books and records pertaining to or having an impact
7 upon the trust funds required to be maintained pursuant to
8 this Act;

9 (3) examine any books and records of the licensee,
10 trustee, or investment advisor that the Department
11 ~~Comptroller~~ may consider necessary to ascertain compliance
12 with this Act; and

13 (4) require the production of a copy of any record,
14 book, document, account, or paper that is produced in
15 accordance with this Act and retain it in his or her
16 possession until the completion of all proceedings in
17 connection with which it is produced.

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

19 (815 ILCS 390/8b)

20 Sec. 8b. Service. Service by the Department ~~Comptroller~~ of
21 any notice requiring a person to file a statement or report
22 shall be made:

23 (1) personally by delivery of a duly executed copy
24 thereof to the person to be served or, if that person is
25 not a natural person, in the manner provided in the Civil

1 Practice Law when a complaint is filed; or

2 (2) by mailing by certified mail a duly executed copy
3 thereof to the person to be served at his or her last known
4 abode or principal place of business within this State.

5 (Source: P.A. 89-615, eff. 8-9-96.)

6 (815 ILCS 390/9) (from Ch. 21, par. 209)

7 Sec. 9. The Department ~~Comptroller~~ may upon his own motion
8 investigate the actions of any person providing, selling, or
9 offering pre-need sales contracts or of any applicant or any
10 person or persons holding or claiming to hold a license under
11 this Act. The Department ~~Comptroller~~ shall make such an
12 investigation on receipt of the verified written complaint of
13 any person setting forth facts which, if proved, would
14 constitute grounds for refusal, suspension, or revocation of a
15 license. Before refusing to issue, and before suspension or
16 revocation of a license, the Department ~~Comptroller~~ shall hold
17 a hearing to determine whether the applicant or licensee,
18 hereafter called the respondent, is entitled to hold such a
19 license. At least 10 days prior to the date set for such
20 hearing, the Department ~~Comptroller~~ shall notify the
21 respondent in writing that on the date designated a hearing
22 will be held to determine his eligibility for a license and
23 that he may appear in person or by counsel. Such written notice
24 may be served on the respondent personally, or by registered or
25 certified mail sent to the respondent's business address as

1 shown in his latest notification to the Department ~~Comptroller~~
2 and shall include sufficient information to inform the
3 respondent of the general nature of the charge. At the hearing,
4 both the respondent and the complainant shall be accorded ample
5 opportunity to present in person or by counsel such statements,
6 testimony, evidence and argument as may be pertinent to the
7 charges or to any defense thereto. The Department ~~Comptroller~~
8 may reasonably continue such hearing from time to time.

9 The Department ~~Comptroller~~ may subpoena any person or
10 persons in this State and take testimony orally, by deposition
11 or by exhibit, in the same manner and with the same fees and
12 mileage as prescribed in judicial proceedings in civil cases.

13 Any authorized agent of the Department ~~Comptroller~~ may
14 administer oaths to witnesses at any hearing which the
15 Department ~~Comptroller~~ is authorized to conduct.

16 The Department ~~Comptroller~~, at his expense, shall provide a
17 certified shorthand reporter to take down the testimony and
18 preserve a record of all proceedings at the hearing of any case
19 involving the refusal to issue a license, the suspension or
20 revocation of a license, the imposition of a monetary penalty,
21 or the referral of a case for criminal prosecution. The record
22 of any such proceeding shall consist of the notice of hearing,
23 complaint, all other documents in the nature of pleadings and
24 written motions filed in the proceedings, the transcript of
25 testimony and the report and orders of the Department
26 ~~Comptroller~~. Copies of the transcript of such record may be

1 purchased from the certified shorthand reporter who prepared
2 the record or from the Department ~~Comptroller~~.

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

4 (815 ILCS 390/10) (from Ch. 21, par. 210)

5 Sec. 10. Any circuit court may, upon application of the
6 Department ~~Comptroller~~ or of the applicant or licensee against
7 whom proceedings under Section 9 are pending, enter an order
8 requiring witnesses to attend and testify, and requiring the
9 production of documents, papers, files, books and records in
10 connection with any hearing in any proceedings under that
11 Section. Failure to obey such court order may result in
12 contempt proceedings.

13 (Source: P.A. 84-239.)

14 (815 ILCS 390/11) (from Ch. 21, par. 211)

15 Sec. 11. Any person affected by a final administrative
16 decision of the Department ~~Comptroller~~ may have such decision
17 reviewed judicially by the circuit court of the county where
18 such person resides, or in the case of a corporation, where the
19 registered office is located. If the plaintiff in the review
20 proceeding is not a resident of this State, venue shall be in
21 Sangamon County. The provisions of the "Administrative Review
22 Law", approved August 19, 1981, all amendments and
23 modifications thereto, and any rules adopted under it govern
24 all proceedings for the judicial review of final administrative

1 decisions of the Department ~~Comptroller~~. The term
2 "administrative decision" is defined as in the "Administrative
3 Review Law".

4 The Department ~~Comptroller~~ is not required to certify the
5 record of the proceeding unless the plaintiff in the review
6 proceedings has purchased a copy of the transcript from the
7 certified shorthand reporter who prepared the record or from
8 the Department ~~Comptroller~~. Exhibits shall be certified
9 without cost.

10 (Source: P.A. 84-239.)

11 (815 ILCS 390/12) (from Ch. 21, par. 212)

12 Sec. 12. License revocation or suspension.

13 (a) The Department ~~Comptroller~~ may, upon determination
14 that grounds exist for the revocation or suspension of a
15 license issued under this Act, revoke or suspend, if
16 appropriate, the license issued to a licensee or to a
17 particular branch office location with respect to which the
18 grounds for revocation or suspension may occur or exist.

19 (b) Upon the revocation or suspension of any license, the
20 licensee shall immediately surrender the license or licenses to
21 the Department ~~Comptroller~~. If the licensee fails to do so, the
22 Department ~~Comptroller~~ has the right to seize the license or
23 licenses.

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

1 (815 ILCS 390/13) (from Ch. 21, par. 213)

2 Sec. 13. A licensee may surrender any license by delivering
3 to the Department ~~Comptroller~~ written notice that he thereby
4 surrenders such license but such surrender shall not affect
5 such licensee's civil or criminal liability for acts committed
6 prior to such surrender, or affect his bond. The Department
7 ~~Comptroller~~ shall not permit a license to be surrendered by
8 licensee unless and until the trust funds of such licensee have
9 been transferred to a successor licensee who shall be licensed
10 by the Department ~~Comptroller~~ in conformity with the provisions
11 of this Act. Any purported transfer of trust funds without
12 compliance with this Section is void and the Department
13 ~~Comptroller~~ shall have the right to petition for the
14 appointment of a receiver to administer the business of the
15 licensee.

16 (Source: P.A. 84-239.)

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

18 Sec. 14. Contract required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (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 Department ~~Comptroller~~ a performance
9 bond in an amount at least equal to 50% of the sales price of
10 the 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 Department ~~Comptroller~~, for each corporate
23 surety company such seller utilizes, a statement of assets and
24 liabilities of the corporate surety company sworn to by the
25 president and secretary of the corporation by January 1 of each
26 year.

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

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

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

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

1 gross sales price to items which require a trust deposit or a
2 performance bond.

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

4 (815 ILCS 390/16) (from Ch. 21, par. 216)

5 Sec. 16. Trust funds; disbursements.

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

8 (b) A trustee has a duty to invest and manage the trust
9 assets pursuant to the Prudent Investor Rule under the Trusts
10 and Trustees Act. Whenever the seller changes trustees pursuant
11 to this Act, the trustee must provide written notice of the
12 change in trustees to the Department Comptroller no less than
13 28 days prior to the effective date of such a change in
14 trustee. The trustee has an ongoing duty to provide the
15 Department Comptroller with a current and true copy of the
16 trust agreement under which the trust funds are held pursuant
17 to this Act.

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

21 (d) A trustee shall be allowed to withdraw from the trust
22 funds maintained pursuant to this Act a reasonable fee pursuant
23 to the Trusts and Trustees Act.

24 (e) The trust shall be a single-purpose trust fund. In the
25 event of the seller's bankruptcy, insolvency or assignment for

1 the benefit of creditors, or an adverse judgment, the trust
2 funds shall not be available to any creditor as assets of the
3 seller or to pay any expenses of any bankruptcy or similar
4 proceeding, but shall be distributed to the purchasers or
5 managed for their benefit by the trustee holding the funds.
6 Except in an action by the Department ~~Comptroller~~ to revoke a
7 license issued pursuant to this Act and for creation of a
8 receivership as provided in this Act, the trust shall not be
9 subject to judgment, execution, garnishment, attachment, or
10 other seizure by process in bankruptcy or otherwise, nor to
11 sale, pledge, mortgage, or other alienation, and shall not be
12 assignable except as approved by the Department ~~Comptroller~~.
13 The changes made by this amendatory Act of the 91st General
14 Assembly are intended to clarify existing law regarding the
15 inability of licensees to pledge the trust.

16 (f) Because it is not known at the time of deposit or at
17 the time that income is earned on the trust account to whom the
18 principal and the accumulated earnings will be distributed, for
19 purposes of determining the Illinois Income Tax due on these
20 trust funds, the principal and any accrued earnings or losses
21 relating to each individual account shall be held in suspense
22 until the final determination is made as to whom the account
23 shall be paid.

24 (g) A trustee shall at least annually furnish to each
25 purchaser a statement identifying: (1) the receipts,
26 disbursements, and inventory of the trust, including an

1 explanation of any fees or expenses charged by the trustee
2 under paragraph (d) of this Section or otherwise, (2) an
3 explanation of the purchaser's right to a refund, if any, under
4 this Act, and (3) the primary regulator of the trust as a
5 corporate fiduciary under state or federal law.

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

7 (815 ILCS 390/18) (from Ch. 21, par. 218)

8 Sec. 18. (a) If for any reason a seller who has engaged in
9 pre-need sales has refused, cannot or does not comply with the
10 terms of the pre-need sales contract within a reasonable time
11 after he is required to do so, the purchaser or his heirs or
12 assigns or duly authorized representative shall have the right
13 to a refund of an amount equal to the sales price paid for
14 undelivered merchandise, services or spaces plus undistributed
15 interest amounts held in trust attributable to such contract,
16 within 30 days of the filing of a sworn affidavit with the
17 trustee setting forth the existence of the contract and the
18 fact of breach. A copy of this affidavit shall be filed with
19 the Department ~~Comptroller~~ and the seller. In the event a
20 seller is prevented from performing by strike, shortage of
21 materials, civil disorder, natural disaster or any like
22 occurrence beyond the control of the seller, the seller's time
23 for performance shall be extended by the length of such delay.
24 Nothing in this Section shall relieve the seller from any
25 liability for non-performance of his obligations under the

1 pre-need sales contract.

2 (b) If the purchaser defaults in making payments, the
3 seller shall have the right to cancel the contract and withdraw
4 from the trust fund the entire balance to the credit of the
5 defaulting purchaser's account as liquidating damages. In such
6 event, the trustee shall deliver said balance to the seller
7 upon its certification, and upon receiving said certification
8 the trustee may rely thereon and shall not be liable to anyone
9 for such reliance.

10 (c) After final payment on a pre-need contract, any
11 beneficiary may upon written demand of a seller, demand that
12 the pre-need contract with such seller be terminated. The
13 seller shall, within 30 days, initiate a refund to such
14 purchaser or beneficiary of the entire amount held in trust
15 attributable to undelivered cemetery merchandise and
16 unperformed cemetery services, including undistributed
17 interest earned thereon. Where more than one beneficiary is
18 included in a pre-need contract, a seller need not honor a
19 demand for cancellation under this paragraph unless all
20 beneficiaries assent and their signatures are included in
21 written demand for refund.

22 (Source: P.A. 85-805.)

23 (815 ILCS 390/19) (from Ch. 21, par. 219)

24 Sec. 19. Construction or development of spaces.

25 (a) The construction or development of undeveloped

1 interment, entombment or inurnment spaces shall be commenced on
2 that phase, section or sections of undeveloped ground or
3 section of lawn crypts, mausoleums, garden crypts,
4 columbariums or cemetery spaces in which sales are made within
5 3 years of the date of the first such sale. The seller shall
6 give written notice to the Department ~~Comptroller~~ no later than
7 30 days after the first sale. Such notice shall include a
8 description of the project. Once commenced, construction or
9 development shall be pursued diligently to completion. The
10 construction must be completed within 6 years of the first
11 sale. If construction or development is not commenced or
12 completed within the times specified herein, any purchaser may
13 surrender and cancel the contract and upon cancellation shall
14 be entitled to a refund of the actual amounts paid toward the
15 purchase price plus interest attributable to such amount earned
16 while in trust; provided however that any delay caused by
17 strike, shortage of materials, civil disorder, natural
18 disaster or any like occurrence beyond the control of the
19 seller shall extend the time of such commencement and
20 completion by the length of such delay.

21 (b) At any time within 12 months of a purchaser's entering
22 into a pre-need contract for undeveloped interment, entombment
23 or inurnment spaces, a purchaser may surrender and cancel his
24 or her contract and upon cancellation shall be entitled to a
25 refund of the actual amounts paid toward the purchase price
26 plus interest attributable to such amount earned while in

1 trust. Notwithstanding the foregoing, the cancellation and
2 refund rights specified in this paragraph shall terminate as of
3 the date the seller commences construction or development of
4 the phase, section or sections of undeveloped spaces in which
5 sales are made. After the rights of cancellation and refund
6 specified herein have terminated, if a purchaser defaults in
7 making payments under the pre-need contract, the seller shall
8 have the right to cancel the contract and withdraw from the
9 trust fund the entire balance to the credit of the defaulting
10 purchaser's account as liquidated damages. In such event, the
11 trustee shall deliver said balance to the seller upon its
12 certification, and upon receiving said certification the
13 trustee may rely thereon and shall not be liable to anyone for
14 such reliance.

15 (c) During the construction or development of interment,
16 entombment or inurnment spaces, upon the sworn certification by
17 the seller and the contractor to the trustee the trustee shall
18 disburse from the trust fund the amount equivalent to the cost
19 of performed labor or delivered materials as certified. Said
20 certification shall be substantially in the following form:

21 We, the undersigned, being respectively the Seller and
22 Contractor, do hereby certify that the Contractor has performed
23 labor or delivered materials or both to (address of property)
24, in connection with a contract to, and
25 that as of this date the value of the labor performed and
26 materials delivered is \$.....

1 We do further certify that in connection with such contract
2 there remains labor to be performed, and materials to be
3 delivered, of the value of \$.....

4 This Certificate is signed (insert date).

5

6 Seller Contractor

7 A person who executes and delivers a completion certificate
8 with actual knowledge of a falsity contained therein shall be
9 considered in violation of this Act and subject to the
10 penalties contained herein.

11 (d) Except as otherwise authorized by this Section, every
12 seller of undeveloped spaces shall provide facilities for
13 temporary interment, entombment or inurnment for purchasers or
14 beneficiaries of contracts who die prior to completion of the
15 space. Such temporary facilities shall be constructed of
16 permanent materials, and, insofar as practical, be landscaped
17 and groomed to the extent customary in the cemetery industry in
18 that community. The heirs, assigns, or personal representative
19 of a purchaser or beneficiary shall not be required to accept
20 temporary underground interment spaces where the undeveloped
21 space contracted for was an above ground entombment or
22 inurnment space. In the event that temporary facilities as
23 described in this paragraph are not made available, upon the
24 death of a purchaser or beneficiary, the heirs, assigns, or
25 personal representative is entitled to a refund of the entire

1 sales price paid plus undistributed interest attributable to
2 such amount while in trust.

3 (e) If the seller delivers a completed space acceptable to
4 the heirs, assigns or personal representative of a purchaser or
5 beneficiary, other than the temporary facilities specified
6 herein, in lieu of the undeveloped space purchased, the seller
7 shall provide the trustee with a delivery certificate and all
8 sums deposited under the pre-need sales contract, including the
9 undistributed income, shall be paid to the seller.

10 (f) Upon completion of the phase, section or sections of
11 the project as certified to the trustee by the seller and the
12 contractor and delivery of the deed or certificate of ownership
13 to the completed interment, entombment, or inurnment space to
14 all of the purchasers entitled to receive those ownership
15 documents, the trust fund requirements set forth herein shall
16 terminate and all funds held in the preconstruction trust fund
17 attributable to the completed phase, section or sections,
18 including interest accrued thereon, shall be returned to the
19 seller.

20 (g) This Section shall not apply to the sale of undeveloped
21 spaces if there has been any such sale in the same phase,
22 section or sections of the project prior to the effective date
23 of this Act.

24 (Source: P.A. 91-357, eff. 7-29-99; 92-419, eff. 1-1-02.)

25 (815 ILCS 390/20) (from Ch. 21, par. 220)

1 Sec. 20. Records.

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

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

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

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

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

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

5 (d) The annual report shall be filed by the licensee with
6 the Department ~~Comptroller~~ within 75 days after the end of the
7 licensee's fiscal year. An extension of up to 60 days may be
8 granted by the Department ~~Comptroller~~, upon a showing of need
9 by the licensee. Any other reports shall be in the form
10 furnished or specified by the Department ~~Comptroller~~. If a
11 licensee fails to submit an annual report to the Department
12 ~~Comptroller~~ within the time specified in this Section, the
13 Department ~~Comptroller~~ shall impose upon the licensee a penalty
14 of \$5 for each and every day the licensee remains delinquent in
15 submitting the annual report. The Department ~~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: the Illinois Department of
19 Financial and Professional Regulation ~~Comptroller, State of~~
20 ~~Illinois~~.

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

1 long as the information is reported under this Act.

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

3 (815 ILCS 390/21) (from Ch. 21, par. 221)

4 Sec. 21. Audits.

5 (a) The Department ~~Comptroller~~ may audit the records of any
6 licensee with respect to the trust funds created or
7 pre-construction performance bonds obtained pursuant to this
8 Act as they pertain to the deposits to and withdrawals from the
9 trust fund and the maintenance of the required bond, at
10 reasonable times no more than annually unless there is
11 reasonable cause to suspect a deficiency. For that purpose, the
12 Department ~~Comptroller~~ shall have free access to the office and
13 places of business of all licensees and all trustees or
14 depositories as it relates to the deposit, withdrawal and
15 investment of funds. The fee for an initial audit shall be
16 borne by the licensee if it has \$10,000 or more in trust funds;
17 otherwise, by the Department ~~Comptroller~~. The fee charged by
18 the Department ~~Comptroller~~ for such audit shall be paid by the
19 licensee and shall be based upon the total amount of pre-need
20 sales made by the licensee pursuant to this Act as of the end
21 of the calendar or fiscal year for which an annual report is
22 required and shall be in accordance with the following
23 schedule:

24	less than \$10,000	no charge
25	\$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 (b) The Department ~~Comptroller~~ may order additional audits
5 or 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 Department ~~Comptroller~~ in the written order. The grounds
10 for ordering these additional audits or examinations may
11 include, but shall not be limited to:

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

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 in violation of this Act; or

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

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

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

14 (Source: P.A. 88-477; 89-615, eff. 8-9-96.)

15 (815 ILCS 390/23) (from Ch. 21, par. 223)

16 Sec. 23. (a) Any person who fails to deposit the required
17 amount into a trust provided for in this Act, improperly
18 withdraws or uses trust funds for his or her own benefit, or
19 otherwise violates any provision of this Act is guilty of a
20 Class 4 felony.

21 (b) If any person violates this Act or fails or refuses to
22 comply with any order of the Department ~~Comptroller~~ or any part
23 thereof which to such person has become final and is still in
24 effect, the Department ~~Comptroller~~ may, after notice and
25 hearing at which it is determined that a violation of this Act

1 or such order has been committed, further order that such
2 person shall forfeit and pay to the State of Illinois a sum not
3 to exceed \$5,000 for each violation. Such liability shall be
4 enforced in an action brought in any court of competent
5 jurisdiction by the Department ~~Comptroller~~ in the name of the
6 people of the State of Illinois.

7 (c) Whenever a license is revoked by the Department
8 ~~Comptroller~~, or the Department ~~Comptroller~~ determines that any
9 person is engaged in pre-need sales without a license, he shall
10 apply to the circuit court of the county where such person is
11 located for a receiver to administer the business of such
12 person.

13 (d) Whenever a licensee fails or refuses to make a required
14 report or whenever it appears to the Department ~~Comptroller~~
15 from any report or examination that such licensee has committed
16 a violation of law or that the trust funds have not been
17 administered properly or that it is unsafe or inexpedient for
18 such licensee or the trustee of the trust funds of such
19 licensee to continue to administer such funds or that any
20 officer of such licensee or of the trustee of the trust funds
21 of such licensee has abused his trust or has been guilty of
22 misconduct or breach of trust in his official position
23 injurious to such licensee or that such licensee has suffered
24 as to its trust funds a serious loss by larceny, embezzlement,
25 burglary, repudiation or otherwise, the Department ~~Comptroller~~
26 shall, by order, direct the discontinuance of such illegal,

1 unsafe or unauthorized practices and shall direct strict
2 conformity with the requirements of the law and safety and
3 security in its transactions and may apply to the circuit court
4 of the county where such licensee is located to prevent any
5 disbursements or expenditures by such licensee until the trust
6 funds are in such condition that it would not be jeopardized
7 thereby and the Department ~~Comptroller~~ shall communicate the
8 facts to the Attorney General of the State of Illinois who
9 shall thereupon institute such proceedings against the
10 licensee or its trustee or the officers of either or both as
11 the nature of the case may require.

12 (e) In addition to the other penalties and remedies
13 provided in this Act, the Department ~~Comptroller~~ may bring a
14 civil action in the county of residence of the licensee or any
15 person engaging in pre-need sales, to enjoin any violation or
16 threatened violation of this Act.

17 (f) The powers vested in the Department ~~Comptroller~~ by this
18 Section are additional to any and all other powers and remedies
19 vested in the Department ~~Comptroller~~ by law, and nothing herein
20 contained shall be construed as requiring that the Department
21 ~~Comptroller~~ shall employ the powers conferred herein instead of
22 or as a condition precedent to the exercise of any other power
23 or remedy vested in the Department ~~Comptroller~~.

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

25 (815 ILCS 390/24) (from Ch. 21, par. 224)

1 Sec. 24. The Department Comptroller may adopt, amend or
2 repeal such rules, not inconsistent with the law, as may be
3 necessary to enable him to administer and enforce the
4 provisions of this Act. All such action shall be taken
5 according to the provisions of "The Illinois Administrative
6 Procedure Act", approved September 22, 1975, as amended.

7 (Source: P.A. 84-239.)

8 (815 ILCS 390/27) (from Ch. 21, par. 227)

9 Sec. 27. (a) The provisions of this Act shall not apply to
10 any pre-need sale that was executed prior to the effective date
11 of this Act. Any seller, with the written approval of the
12 purchaser, shall have the option to become subject to this Act
13 on any pre-need sales made prior to the effective date of this
14 Act by giving written notice to its purchasers and to the
15 Department Comptroller.

16 (b) The provisions of this Act shall not apply to the
17 isolated or occasional sale by a consumer to another consumer
18 of cemetery merchandise, cemetery services or undeveloped
19 spaces by an individual who does not hold himself out as being
20 engaged in, or who does not engage in, making pre-need sales.

21 (Source: P.A. 85-805.)

22 (815 ILCS 390/27.1)

23 Sec. 27.1. Sales; liability of purchaser for shortage. In
24 the event of a sale or transfer of all or substantially all of

1 the assets of the licensee, the sale or transfer of the
2 controlling interest of the corporate stock of the licensee if
3 the licensee is a corporation, the sale or transfer of the
4 controlling interest of the partnership if the licensee is a
5 partnership, or sale pursuant to foreclosure proceedings, the
6 purchaser is liable for any shortages existing before or after
7 the sale in the trust funds required to be maintained in a
8 trust under this Act and shall honor all pre-need contracts and
9 trusts entered into by the licensee. Any shortages existing in
10 the trust funds constitute a prior lien in favor of the trust
11 for the total value of the shortages, and notice of that lien
12 must be provided in all sales instruments.

13 In the event of a sale or transfer of all or substantially
14 all of the assets of the licensee, the sale or transfer of the
15 controlling interest of the corporate stock of the licensee if
16 the licensee is a corporation, or the sale or transfer of the
17 controlling interest of the partnership if the licensee is a
18 partnership, the licensee shall, at least 21 days prior to the
19 sale or transfer, notify the Department ~~Comptroller~~, in
20 writing, of the pending date of sale or transfer so as to
21 permit the Department ~~Comptroller~~ to audit the books and
22 records of the licensee. The audit must be commenced within 10
23 business days after the receipt of the notification and
24 completed within the 21-day notification period unless the
25 Department ~~Comptroller~~ notifies the licensee during that
26 period that there is a basis for determining a deficiency which

1 will require additional time to finalize. The sale or transfer
2 may not be completed by the licensee unless and until:

3 (i) the Department ~~Comptroller~~ has completed the audit
4 of the licensee's books and records;

5 (ii) any delinquency existing in the trust funds has
6 been paid by the licensee, or arrangements satisfactory to
7 the Department ~~Comptroller~~ have been made by the licensee
8 on the sale or transfer for the payment of any delinquency;

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

14 For purposes of this Section, a person, firm, corporation,
15 partnership, or institution that acquires the licensee through
16 a real estate foreclosure is subject to the provisions of this
17 Section.

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

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

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2

Statutes amended in order of appearance

3	225 ILCS 45/1a	from Ch. 111 1/2, par. 73.101a
4	225 ILCS 45/1a-1	
5	225 ILCS 45/1a-2	
6	225 ILCS 45/2	from Ch. 111 1/2, par. 73.102
7	225 ILCS 45/3	from Ch. 111 1/2, par. 73.103
8	225 ILCS 45/3a	from Ch. 111 1/2, par. 73.103a
9	225 ILCS 45/3a-5	
10	225 ILCS 45/3b	from Ch. 111 1/2, par. 73.103b
11	225 ILCS 45/3c	from Ch. 111 1/2, par. 73.103c
12	225 ILCS 45/3d	from Ch. 111 1/2, par. 73.103d
13	225 ILCS 45/3e	from Ch. 111 1/2, par. 73.103e
14	225 ILCS 45/3f	
15	225 ILCS 45/4a	
16	225 ILCS 45/7.2	
17	225 ILCS 45/7.3	
18	225 ILCS 45/8	from Ch. 111 1/2, par. 73.108
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20	815 ILCS 390/4	from Ch. 21, par. 204
21	815 ILCS 390/5	from Ch. 21, par. 205
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5	815 ILCS 390/12	from Ch. 21, par. 212
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