

AN ACT concerning State government.

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

Section 5. The Illinois Funeral or Burial Funds Act is amended by changing Sections 1, 1a-1, 1b, 2, 3, 4, 4a, 5, and 8.1 and by adding Section 1a-2 as follows:

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

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

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

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

(Source: P.A. 91-7, eff. 1-1-2000.)

(225 ILCS 45/1a-1)

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

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

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

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

(1.7) If funded by life insurance, it clearly

identifies the life insurance provider and the primary regulator of the life insurance provider.

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

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

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

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

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

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

type:

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

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

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

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

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

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

(B) The nature of the relationship among the person

funding the pre-need contract, the provider, and the seller; and

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

(D) The method of changing the provider.

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

(c) No pre-need contract shall be sold in this State unless there is a provider for the services and personal property being sold. If the seller is not a provider, then the seller must have a binding agreement with a provider, and the identity of the provider and the nature of the agreement between the seller and the provider shall be disclosed in the pre-need contract at the time of the sale and before the receipt of any

sales proceeds. The failure to disclose the identity of the provider, the nature of the agreement between the seller and the provider, or any changes thereto to the purchaser and beneficiary, or the failure to make the disclosures required in subdivision (a)(1), constitutes an intentional violation of this Act.

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

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

(f) All sales proceeds received in connection with a pre-need contract shall be deposited into a trust account as provided in Section 1b and Section 2 of this Act, or shall be

used to purchase a life insurance policy or tax-deferred annuity as provided in Section 2a of this Act.

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

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

(225 ILCS 45/1a-2 new)

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

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

(b) In the event that the purchaser is unable to receive the benefits of his or her pre-need contract or to receive the

funds due by reason of cancellation of the contract, the purchaser may apply to the Comptroller on a form prescribed by the Comptroller for restitution from the Pre-need Funeral Consumer Protection Fund. Upon a finding by the Comptroller that the benefits or return of payment is not available to the purchaser, the Comptroller may cause restitution to be paid to the purchaser from the Pre-need Funeral Consumer Protection Fund.

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

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

(e) Notwithstanding any other provision of this Section, the payment of restitution from the Fund shall be a matter of grace and not of right and no purchaser shall have any vested



right in the Fund as a beneficiary or otherwise.

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

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

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

(b) In the event that sales proceeds to be deposited into a trust are received pursuant to a cash sale or an ~~a retail~~ installment contract, the seller may retain the initial percentage authorized by subsection (a) of this Section ~~and any~~ ~~finance charge paid by the purchaser~~, and thereafter shall deposit into the trust the entire balance of sales proceeds received.

(c) In the event that the deposits into a trust required by this Section do not, after final payment by the consumer,

result in the trust containing at least 95% of the purchase ~~sales~~ price of all services, personal property or merchandise, except for outer burial containers and 85% of the purchase price of outer burial containers, the seller shall make an additional deposit into the trust in an amount sufficient to meet these percentages.

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

(Source: P.A. 88-477.)

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

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

(b) A trust established under this Act must be maintained with a corporate fiduciary as defined in Section 1-5.05 of the

Corporate Fiduciary Act.†

~~(1) in a trust account established in a bank, savings and loan association, savings bank, or credit union authorized to do business in Illinois in which accounts are insured by an agency of the federal government; or~~

~~(2) in a trust company authorized to do business in Illinois.~~

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

(d) (Blank).

(e) A seller or provider shall furnish to the trustee and depository the name of each payor and the amount of payment on each such account for which deposit is being so made. Nothing shall prevent the trustee ~~or a seller or provider acting as a trustee in accordance with this Act~~ from commingling the deposits in any such trust fund for purposes of its management and the investment of its funds as provided in the Common Trust Fund Act. In addition, multiple trust funds maintained under this Act may be commingled or commingled with other funeral or burial related trust funds if all record keeping requirements imposed by law are met.

(f) (Blank). ~~Trust funds may be maintained in a financial institution described in subsection (b) which is located in a state adjoining this State where: (1) the financial institution is located within 50 miles of the border of this State, (2) its~~

~~accounts are federally insured, and (3) it has registered with the Illinois Secretary of State for purposes of service of process.~~

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

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

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

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

Sec. 3. Licensing.

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

(1) The full name and address (both residence and place

of business) of the applicant, and every member, officer and director thereof if the applicant is a firm, partnership, association, or corporation, and of every shareholder holding more than 10% of the corporate stock if the applicant is a corporation;

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

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

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

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

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

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

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

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

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

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

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

The licensee shall make reports to the Comptroller annually or at such other time as the Comptroller may require, on forms furnished by the Comptroller. The licensee shall file the annual report with the Comptroller within 75 days after the end of the licensee's fiscal year. The Comptroller shall for good cause shown grant an extension for the filing of the annual report upon the written request of the licensee. Such extension shall not exceed 60 days. If a licensee fails to submit an annual report to the Comptroller within the time specified in this Section, the Comptroller shall impose upon the licensee a penalty of \$5 for each and every day the licensee remains delinquent in submitting the annual report. The Comptroller may abate all or part of the \$5 daily penalty for good cause shown. Every application shall be accompanied by a check or money order in the amount of \$25 and every report shall be accompanied by a check or money order in the amount of \$10



payable to: Comptroller, State of Illinois.

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

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

\$250,000 or more ..... \$100.

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

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

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

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

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

~~The~~ Prior ~~to ordering an additional audit or examination,~~  
~~the Comptroller shall request the licensee to respond and~~  
~~comment upon the factors identified by the Comptroller as~~  
~~warranting the subsequent examination or audit. The licensee~~  
~~shall have 30 days to provide a response to the Comptroller. If~~  
~~the Comptroller decides to proceed with the additional~~

~~examination or audit,~~ the licensee shall bear the full cost of that examination or audit, up to a maximum of \$20,000 ~~\$7,500~~. The Comptroller may elect to pay for the examination or audit and receive reimbursement from the licensee. Payment of the costs of the examination or audit by a licensee shall be a condition of receiving, maintaining, or renewing a license under this Act. All moneys received by the Comptroller for examination or audit fees shall be maintained in a separate account to be known as the Comptroller's Administrative Fund. This Fund, subject to appropriation by the General Assembly, may be utilized by the Comptroller for enforcing this Act and other purposes that may be authorized by law.

For pre-need contracts funded by life insurance or a tax-deferred annuity, the cost of an examination shall be borne by the licensee ~~if it has received \$10,000 or more in premiums during the preceding calendar year~~. The fee schedule for such examination shall be established in rules promulgated by the Comptroller. In the event such investigation or other information received by the Comptroller discloses a substantial violation of the requirements of this Act, the Comptroller shall revoke the license of such person upon a hearing as provided in this Act. Such licensee may terminate all further responsibility for compliance with the requirements of this Act by voluntarily surrendering the license to the Comptroller, or in the event of its loss, furnishing the Comptroller with a sworn statement to that

effect, which states the licensee's intention to discontinue acceptance of funds received under pre-need contracts. Such license or statement must be accompanied by an affidavit that said licensee has lawfully expended or refunded all funds received under pre-need contracts, and that the licensee will accept no additional sales proceeds. The Comptroller shall immediately cancel or revoke said license.

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

(225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

Sec. 4. Withdrawal of funds; revocability of contract.

(a) Except as otherwise provided in this Act, monies in a trust established under Section 2 ~~The amount or amounts so deposited into trust, with interest thereon, if any,~~ shall not be withdrawn until after the death of the beneficiary ~~person or persons for whose funeral or burial such funds were paid,~~ unless sooner withdrawn and refunded to the purchaser as provided in this Section ~~repaid to the person who originally paid the money under or in connection with the pre need contract or to his or her legal representative.~~ The life insurance policies or tax-deferred annuities shall not be surrendered until the death of the beneficiary ~~person or persons for whose funeral or burial the policies or annuities were purchased,~~ unless sooner surrendered and repaid to the owner of the policy purchased under or in connection with the pre-need contract or to his or her legal representative. If,

however, the agreement or series of agreements provides for forfeiture and retention of any or all payments as and for liquidated damages as provided in Section 6, then the trustee may withdraw the deposits. In addition, nothing in this Section (i) prohibits the change of depositary by the trustee and the transfer of trust funds from one depositary to another or (ii) prohibits a contract purchaser who is or may become eligible for public assistance under any applicable federal or State law or local ordinance including, but not limited to, eligibility under 24 C.F.R., Part 913 relating to family insurance under federal Housing and Urban Development Policy from irrevocably waiving, in writing, and renouncing the right to cancel a pre-need contract for funeral services in an amount prescribed by rule of the Department of Healthcare and Family Services. No guaranteed price pre-need funeral contract may prohibit a purchaser from making a contract irrevocable to the extent that federal law or regulations require that such a contract be irrevocable for purposes of the purchaser's eligibility for Supplemental Security Income benefits, Medicaid, or another public assistance program, as permitted under federal law.

(b) If for any reason a seller or provider who has engaged in pre-need sales has refused, cannot, or does not comply with the terms of the pre-need contract within a reasonable time after he or she is required to do so, the purchaser or his or her heirs or assigns or duly authorized representative shall have the right to a refund of an amount equal to the sales

price paid for undelivered merchandise or services plus any ~~otherwise earned undistributed interest~~ amounts held in trust attributable to the contract, within 30 days of the filing of a sworn affidavit with the trustee setting forth the existence of the contract and the fact of breach. A copy of this affidavit shall be filed with the Comptroller and the seller. In the event a seller is prevented from performing by strike, shortage of materials, civil disorder, natural disaster, or any like occurrence beyond the control of the seller or provider, the seller or provider's time for performance shall be extended by the length of the delay. Nothing in this Section shall relieve the seller or provider from any liability for non-performance of his or her obligations under the pre-need contract.

(c) After final payment on a pre-need contract, any purchaser may, prior to the death of the beneficiary and upon written demand to a seller, demand that the pre-need contract with the seller be terminated. The seller shall, within 30 days, initiate a refund to the purchaser of the entire amount held in trust attributable to undelivered merchandise and unperformed services plus any amounts held in trust attributable to the contract, ~~including otherwise earned undistributed interest earned thereon~~ or the cash surrender value of a life insurance policy or tax-deferred annuity.

(c-5) If, after the death of the beneficiary, no funeral merchandise or services are provided or if the funeral is conducted by another provider ~~person~~, the seller may keep no

more than 10% of the payments made under the pre-need contract or \$300, whichever sum is less. The remainder of the trust funds or insurance or annuity proceeds shall be forwarded to the legal heirs of the deceased beneficiary or as determined by probate action.

(d) The placement and retention of all or a portion of a casket, combination casket-vault, urn, or outer burial container comprised of materials which are designed to withstand prolonged storage in the manner set forth in this paragraph without adversely affecting the structural integrity or aesthetic characteristics of such merchandise in a specific burial space in which the person or persons for whose funeral or burial the merchandise was intended has a right of interment, or the placement of the merchandise in a specific mausoleum crypt or lawn crypt in which such person has a right of entombment, or the placement of the merchandise in a specific niche in which such person has a right of inurnment, or delivery to such person and retention by such person until the time of need shall constitute actual delivery to the person who originally paid the money under or in connection with said agreement or series of agreements. Actual delivery shall eliminate, from and after the date of actual delivery, any requirement under this Act to place or retain in trust any funds received for the sale of such merchandise. The delivery, prior to the time of need, of any funeral or burial merchandise in any manner other than authorized by this Section shall not

constitute actual delivery and shall not eliminate any requirement under this Act to place or retain in trust any funds received for the sale of such merchandise.

(Source: P.A. 95-331, eff. 8-21-07.)

(225 ILCS 45/4a)

Sec. 4a. Investment of funds.

(a) A trustee has a duty to invest and manage the trust assets pursuant to the Prudent Investor Rule under the Trusts and Trustees Act ~~shall, with respect to the investment of trust funds, exercise the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.~~

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



judgment, execution, garnishment, attachment, or other seizure by process in bankruptcy or otherwise, nor to sale, pledge, mortgage, or other alienation, and shall not be assignable except as approved by the Comptroller. The changes made by Public ~~this amendatory Act 91-7 of the 91st General Assembly~~ are intended to clarify existing law regarding the inability of licensees to pledge the trust.

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

If a pre-need contract is not a guaranteed price contract, then to the extent the proceeds of a non-guaranteed price pre-need contract cover the funeral and burial expenses for the beneficiary, no claim may be made against the estate of the beneficiary. A claim may be made against the beneficiary's estate if the charges for the funeral services and merchandise at the time of use exceed the amount of the amount in trust plus the percentage of the sale proceeds initially retained by

the seller or the face value of the life insurance policy or tax-deferred annuity.

~~(d) Trust funds shall not be invested by the trustee in life insurance policies or tax-deferred annuities unless the following requirements are met:~~

~~(1) The company issuing the life insurance policies or tax-deferred annuities is licensed by the Illinois Department of Insurance and the insurance producer or annuity seller is licensed to do business in the State of Illinois;~~

~~(2) Prior to the investment, the purchaser approves, in writing, the investment in life insurance policies or tax-deferred annuities;~~

~~(3) Prior to the investment, the purchaser is notified by the seller in writing about the disclosures required for all pre-need contracts under Section 1a-1 of this Act, and the purchase of life insurance or a tax-deferred annuity is subject to the requirements of Section 2a of this Act;~~

~~(4) Prior to the investment, the trustee informs the Comptroller that trust funds shall be removed from the trust account to purchase life insurance or a tax-deferred annuity upon the written consent of the purchaser;~~

~~(5) The purchaser retains the right to refund provided for in this Act, unless the pre-need contract is sold on an irrevocable basis as provided in Section 4 of this Act; and~~

~~(6) Notice must be given in writing that the cash~~

~~surrender value of a life insurance policy may be less than the amount provided for by the refund provisions of the trust account.~~

(Source: P.A. 91-7, eff. 6-1-99.)

(225 ILCS 45/5) (from Ch. 111 1/2, par. 73.105)

Sec. 5. This Act shall not be construed to prohibit the trustee and trustee's depository from being reimbursed and receiving from such funds their reasonable compensation and expenses in the custody and administration of such funds pursuant to the Trusts and Trustees Act ~~provided that the combined expenses and compensation shall not exceed 25% of the earnings of the fund so deposited under each of the agreements or series of agreements calculated on an annual basis and paid at any time during that year.~~

(Source: P.A. 86-509.)

(225 ILCS 45/8.1)

Sec. 8.1. Sales; liability of purchaser for shortage. In the event of a sale or transfer of all or substantially all of the assets of the licensee, the sale or transfer of the controlling interest of the corporate stock of the licensee if the licensee is a corporation, the sale or transfer of the controlling interest of the partnership if the licensee is a partnership, or the sale of the licensee pursuant to foreclosure proceedings, the purchaser is liable for any

shortages existing before or after the sale in the trust funds required to be maintained in a trust pursuant to this Act and shall honor all pre-need contracts and trusts entered into by the licensee. Any shortages existing in the trust funds constitute a prior lien in favor of the trust for the total value of the shortages, and notice of that lien shall be provided in all sales instruments.

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

- (i) the Comptroller has completed the audit of the

licensee's books and records;

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

(iii) the Comptroller issues a license upon application of the new owner, which license must be applied for within 21 ~~30~~ days of the anticipated date of the sale or transfer, subject to the payment of any delinquencies, if any, as stated in item (ii).

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

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

Section 10. The Illinois Pre-Need Cemetery Sales Act is amended by changing Sections 4, 14, 15, and 16 as follows:

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

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

(A) "Pre-need sales contract" or "Pre-need sales" means any agreement or contract or series or combination of agreements or contracts which have for a purpose the sale of cemetery merchandise, cemetery services or undeveloped interment,

entombment or inurnment spaces where the terms of such sale require payment or payments to be made at a currently determinable time and where the merchandise, services or completed spaces are to be provided more than 120 days following the initial payment on the account. An agreement or contract for a memorial, marker, or monument shall not be deemed a "pre-need sales contract" or a "pre-need sale" if the memorial, marker, or monument is delivered within 180 days following initial payment on the account and work thereon commences a reasonably short time after initial payment on the account.

(B) "Delivery" occurs when:

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

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

(3) Following authorization by a purchaser under a pre-need sales contract, the merchandise has been permanently identified with the name of the buyer or the beneficiary and delivered to a licensed and bonded warehouse and both title to the merchandise and a warehouse

receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the licensee for retention in its files; except that in the case of outer burial containers, the use of a licensed and bonded warehouse as set forth in this paragraph shall not constitute delivery for purposes of this Act. Nothing herein shall prevent a seller from perfecting a security interest in accordance with the Uniform Commercial Code on any merchandise covered under this Act.

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

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

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

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

(iv) submit evidence satisfactory to the Comptroller that all merchandise stored by said warehouse for licensees under this Act is insured for casualty or other loss normally assumed by a bailee for hire;

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

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

- (1) memorials,
- (2) markers,
- (3) monuments,
- (4) foundations, and
- (5) outer burial containers.

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

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

(E) "Cemetery services" means those services customarily



performed by cemetery or crematory personnel in connection with the interment, entombment, inurnment or cremation of a dead human body.

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

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

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

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

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

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

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

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

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

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

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

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

(Q) (Blank).

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

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

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

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

A foreign warehouse facility shall be deemed to have appointed the Comptroller to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it relating to or growing out of this Act, and the acceptance of the delivery of stored merchandise under this Act shall be signification of its agreement that any such

process against it which is so served, shall be of the same legal force and validity as though served upon it personally.

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

(Source: P.A. 91-7, eff. 1-1-00; 91-357, eff. 7-29-99; 92-16, eff. 6-28-01; 92-419, eff. 1-1-02.)

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

Sec. 14. Contract required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(b) The seller shall act as trustee of all amounts received for cemetery merchandise, services, or undeveloped spaces until those amounts have been deposited into the trust fund.

All trust deposits required by this Act shall be made within 30 days following the end of the month of receipt. The seller must retain a corporate fiduciary as an independent trustee for any amount of trust funds. Upon 30 days' prior written notice from the seller to the Comptroller, the seller may change the trustee of the trust fund. Failure to provide the Comptroller with timely prior notice is an intentional violation of this Act.

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

~~(1) in a trust account established in a bank, savings and loan association or credit union authorized to do business in Illinois where such accounts are insured by an agency of the federal government;~~

~~(2) in a trust company authorized to do business in~~

~~Illinois; or~~

~~(3) in an investment company authorized to do business in Illinois insured by the Securities Brokers Insurance Corporation.~~

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

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

Each bond obtained under this Section shall have as surety thereon a corporate surety company incorporated under the laws of the United States, or a State, the District of Columbia or a territory or possession of the United States. Each such

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

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

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

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

merchandise and cemetery services, unless some other allocation is clearly provided in the contract.

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

(Source: P.A. 91-7; eff. 1-1-2000.)

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

Sec. 16. Trust funds; disbursements.

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

(b) A trustee has a duty to invest and manage the trust assets pursuant to the Prudent Investor Rule under the Trusts and Trustees Act. Whenever the seller changes trustees pursuant to this Act, the trustee must provide written notice of the change in trustees to the Comptroller no less than 28 days prior to the effective date of such a change in trustee. The trustee has an ongoing duty to provide the Comptroller with a current and true copy of the trust agreement under which the trust funds are held pursuant to this Act. ~~shall, with respect to the investment of such trust funds, exercise the judgment~~

~~and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.~~

~~The seller shall act as trustee of all amounts received for cemetery merchandise, services, or undeveloped spaces until those amounts have been deposited into the trust fund. The seller may continue to be the trustee of up to \$500,000 that has been deposited into the trust fund, but the seller must retain an independent trustee for any amount of trust funds in excess of \$500,000. A seller holding trust funds in excess of \$500,000 must retain an independent trustee for its trust funds in excess of \$500,000 as soon as may be practical. The Comptroller shall have the right to disqualify the trustee upon the same grounds as for refusing to grant or revoking a license hereunder. Upon notice to the Comptroller, the seller may change the trustee of the trust fund.~~

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

(d) A trustee shall be allowed to withdraw from the trust funds maintained pursuant to this Act, ~~payable solely from the income earned on such trust funds,~~ a reasonable fee pursuant to the Trusts and Trustees Act ~~for all usual and customary~~

~~services for the operation of the trust fund, including, but not limited to trustee fees, investment advisor fees, allocation fees, annual audit fees and other similar fees. The maximum amount allowed to be withdrawn for these fees each year shall be the lesser of 3% of the balance of the trust calculated on an annual basis or the amount of annual income generated therefrom.~~

(e) The trust shall be a single-purpose trust fund. In the event of the seller's bankruptcy, insolvency or assignment for the benefit of creditors, or an adverse judgment, the trust funds shall not be available to any creditor as assets of the seller or to pay any expenses of any bankruptcy or similar proceeding, but shall be distributed to the purchasers or managed for their benefit by the trustee holding the funds. Except in an action by the Comptroller to revoke a license issued pursuant to this Act and for creation of a receivership as provided in this Act, the trust shall not be subject to judgment, execution, garnishment, attachment, or other seizure by process in bankruptcy or otherwise, nor to sale, pledge, mortgage, or other alienation, and shall not be assignable except as approved by the Comptroller. The changes made by this amendatory Act of the 91st General Assembly are intended to clarify existing law regarding the inability of licensees to pledge the trust.

(f) Because it is not known at the time of deposit or at the time that income is earned on the trust account to whom the



principal and the accumulated earnings will be distributed, for purposes of determining the Illinois Income Tax due on these trust funds, the principal and any accrued earnings or losses relating to each individual account shall be held in suspense until the final determination is made as to whom the account shall be paid.

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

(Source: P.A. 91-7, eff. 6-1-99; 92-419, eff. 1-1-02.)

Section 90. The State Finance Act is amended by adding Section 5.719 as follows:

(30 ILCS 105/5.719 new)

Sec. 5.719. The Pre-need Funeral Consumer Protection Fund.

Section 99. Effective date. This Act takes effect on January 31, 2010.