PROFESSIONS AND OCCUPATIONS
(225 ILCS 45/) Illinois Funeral or Burial Funds Act.

(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) (from Ch. 111 1/2, par. 73.101a)

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

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

"Licensee" means a seller of a pre–need contract who has been licensed by the Comptroller under this Act.

"Outer burial container" means any 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 as defined in the Illinois Pre–need Cemetery Sales Act.

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

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

"Pre–need contract" means any agreement or contract, or any series or combination of agreements or contracts, whether

funded by trust deposits or life insurance policies or annuities, 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. Nothing in this Act is intended to regulate the content of a life insurance policy or a tax-deferred annuity.

"Provider" means a person who is obligated for furnishing or performing 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.

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

"Sales proceeds" means the entire amount paid to a seller, exclusive of sales taxes paid by the seller, finance charges paid by the purchaser, and credit life, accident or disability insurance premiums, upon any agreement or contract, or series or combination of agreements or contracts, for the purpose of performing funeral services or furnishing personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, including, but not limited to, the retail price paid for such services and personal property and merchandise.

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

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

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

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

(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.

(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 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 45/1b) (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 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 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:

(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 depositary 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) 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 notice to the Comptroller, the seller may change the trustee of the fund.

(Source: P.A. 92–419, eff. 1–1–02.)

(225 ILCS 45/2a)

Sec. 2a. Purchase of insurance or annuity.

(a) If a purchaser selects the purchase of a life insurance policy or tax–deferred annuity contract to fund the pre–need contract, the application and collected premium shall be mailed within 30 days of signing the pre–need contract.

(b) If life insurance or an annuity is used to fund a pre–need contract, the seller or provider shall not be named as the owner or beneficiary of the policy or annuity. No person whose only insurable interest in the insured is the receipt of proceeds from the policy or in naming who shall receive the proceeds nor any trust acting on behalf of such person or seller or provider shall be named as owner or beneficiary of the policy or annuity.

(c) Nothing shall prohibit the purchaser from irrevocably assigning ownership of the policy or annuity used to fund a guaranteed price pre–need contract to a person or trust for the purpose of obtaining favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program, as permitted under federal law. The seller or contract provider may be named a nominal owner of the life insurance policy only for such time as it takes to immediately transfer the policy into a trust. Except for this purpose, neither the seller nor the contract provider shall be named the owner or the beneficiary of the policy or annuity.

(d) If a life insurance policy or annuity contract is used to fund a pre–need contract, except for guaranteed price contracts permitted in Section 4(a) of this Act, the pre–need contract must be revocable, and any assignment provision in the pre–need contract must contain the following disclosure in 12 point bold type:

THIS ASSIGNMENT MAY BE REVOKED BY THE ASSIGNOR OR ASSIGNOR'S SUCCESSOR OR, IF THE ASSIGNOR IS ALSO THE INSURED AND DECEASED, BY THE REPRESENTATIVE OF THE INSURED'S ESTATE BEFORE THE RENDERING TO THE CEMETERY SERVICES OR GOODS OR FUNERAL SERVICES OR GOODS. IF THE ASSIGNMENT IS REVOKED, THE DEATH BENEFIT UNDER THE LIFE INSURANCE POLICY OR ANNUITY CONTRACT SHALL BE PAID IN ACCORDANCE WITH THE BENEFICIARY DESIGNATION UNDER THE INSURANCE POLICY OR ANNUITY CONTRACT.

(e) Sales proceeds shall not be used to purchase life insurance policies or tax–deferred annuities unless the company issuing the life insurance policies or tax–deferred annuities is licensed with the Illinois Department of

Insurance, and the insurance producer or annuity seller is licensed to do business in the State of Illinois.

(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.

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 $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 45/3a) (from Ch. 111 1/2, par. 73.103a)

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

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

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

(2) The applicant or licensee is insolvent.

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

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

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

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

(7) The trust agreement is not in compliance with State or federal law.

(8) The fidelity bond is not satisfactory to the Comptroller.

(9) As to any individual required to be listed in the license application, the individual has conducted or is about to conduct any business on behalf of the applicant in a fraudulent manner; has been convicted of any felony or misdemeanor, an essential element of which

is fraud; has had a judgment rendered against him or her based on fraud in any civil litigation; has failed to satisfy any enforceable judgment or decree rendered against him or her by any court of competent jurisdiction; or has been convicted of any felony or any theft–related offense.

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

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

(b) Before refusal to issue or renew and before suspension or revocation of a license, the Comptroller shall hold a hearing to determine whether the applicant or licensee, hereinafter referred to as the respondent, is entitled to hold such a license. At least 10 days prior to the date set for such hearing, the Comptroller shall notify the respondent in writing that on the date designated a hearing will be held to determine his eligibility for a license and that he may appear in person or by counsel. Such written notice may be served on the respondent personally, or by registered or certified mail sent to the respondent's business address as shown in his latest notification to the Comptroller. At the hearing, both the respondent and the complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. The Comptroller may reasonably continue such hearing from time to time.

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

Any authorized agent of the Comptroller may administer oaths to witnesses at any hearing which the Comptroller is authorized to conduct.

(Source: P.A. 92–419, eff. 1–1–02.)

(225 ILCS 45/3a–5)

Sec. 3a–5. License requirements.

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

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

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

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

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

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

(Source: P.A. 92–419, eff. 1–1–02.)

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

Sec. 3b. The Comptroller, at his expense, shall provide a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing of any case involving the refusal to issue or renew a license, the suspension or revocation of a license, the imposition of a monetary penalty, or the referral of a case for criminal prosecution. The record of any such proceeding shall consist of the notice of hearing, complaint, all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony and the report and orders of the Comptroller. Copies of the transcript of such record may be purchased from the certified shorthand reporter who prepared the record.

(Source: P.A. 84–839.)

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

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

(Source: P.A. 84–839.)

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

Sec. 3d. Any person affected by a final administrative decision of the Comptroller may have such decision reviewed

judicially by the circuit court of the county where such person resides, or in the case of a corporation, where the registered office is located. If the plaintiff in the review proceeding is not a resident of this State, venue shall be in Sangamon County. The provisions of the Administrative Review Law, as now or hereafter amended, and any rules adopted thereunder shall govern all proceedings for the judicial review of final administrative decisions of the Comptroller. The term "administrative decision" is defined as in the Administrative Review Law.

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

(Source: P.A. 84–839.)

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

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

(Source: P.A. 92–419, eff. 1–1–02.)

(225 ILCS 45/3f)

Sec. 3f. Revocation of license.

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

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

(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) The amount or amounts so deposited into trust, with interest thereon, if any, shall not be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless sooner withdrawn and 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 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 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, 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, including otherwise earned undistributed interest earned thereon or the cash surrender value of a life insurance policy or tax–deferred annuity.

(c–5) If no funeral merchandise or services are provided or if the funeral is conducted by another 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 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 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 this amendatory Act 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 45/4b)

Sec. 4b. Licensee bankruptcy. In the event of a licensee's bankruptcy, insolvency, or assignment for the benefit of creditors, or in the event of the bankruptcy, insolvency, or assignment for the benefit of creditors of any person, partnership, association, corporation, or other entity that possesses a controlling interest in a licensee, the licensee shall provide notice in writing of that event to each purchaser of a pre–need sales contract or a pre–need contract within 30 days after the event of bankruptcy, insolvency, or

assignment for the benefit of creditors. At a minimum, the notice must contain the following:

(1) The name and address of the licensee.

(2) If different from the licensee, the name and address of the party that is the subject of the bankruptcy, insolvency, or assignment for the benefit of creditors.

(3) A brief description of the event of bankruptcy, insolvency, or assignment for the benefit of creditors.

(4) The case name or other identifying title of any matter pending in any court, federal or State, pertaining to the bankruptcy, insolvency, or assignment for the benefit of creditors.

(5) The name and address of the court in which the bankruptcy, insolvency, or assignment for the benefit of creditors is pending.

(6) A description of any action the purchaser must undertake to file a claim or to protect the purchaser's interests, including the purchaser's right to a refund under this Act.

(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 depositary from being reimbursed and receiving from such funds their reasonable compensation and expenses in the custody and administration of such funds 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 45/6) (from Ch. 111 1/2, par. 73.106)

Sec. 6. It is unlawful for any such agreement or agreements to provide for forfeiture and retention of payments upon any such agreement or series of agreements as and for liquidated damages therein in excess of 25% of the payments made or $300.00, whichever sum is less.

(Source: P.A. 85–805.)

(225 ILCS 45/7) (from Ch. 111 1/2, par. 73.107)

Sec. 7. The invalidity of any section or part or portion of this Act shall not affect the validity of the remaining sections or part thereof.

(Source: Laws 1955, p. 2020.)

(225 ILCS 45/7.1)

Sec. 7.1. Effect of Public Act 88–477. Public Act 88–477 shall not be construed to invalidate any contract or agreement entered into under this Act or any other statute or law before January 1, 1994 if, when the contract or agreement was entered into, it was not invalid under this Act or any other statute or law.

(Source: P.A. 88–659.)

(225 ILCS 45/7.2)

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

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

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

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

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

(Source: P.A. 92–419, eff. 1–1–02.)

(225 ILCS 45/7.3)

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

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

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

(Source: P.A. 89–615, eff. 8–9–96.)

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

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

If any person intentionally violates this Act or fails or refuses to comply with any order of the Comptroller or any part of an order that has become final to the person and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or the order has been committed, further order that the person shall forfeit and pay to the State of Illinois a sum not to exceed $5,000 for each violation. This liability shall be enforced in an action brought in any court of competent jurisdiction by the Comptroller in the name of the People of the State of Illinois.

In addition to the other penalties and remedies provided

in this Act, the Comptroller may bring a civil action in the county of residence of the licensee or any person accepting trust funds to enjoin any violation or threatened violation of this Act.

The powers vested in the Comptroller by this Section are in addition to any and all other powers and remedies vested in the Comptroller by law.

(Source: P.A. 92–419, eff. 1–1–02.)

(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. 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 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.)

(225 ILCS 45/9) (from Ch. 111 1/2, par. 73.109)

Sec. 9. This Act shall be known and may be cited as the "Illinois Funeral or Burial Funds Act".

(Source: P.A. 83–464.)

(225 ILCS 45/10) (from Ch. 111 1/2, par. 73.110)

Sec. 10. Nothing in this Act shall be deemed to apply to pre–need cemetery sales under the "Illinois Pre–Need Cemetery Sales Act", enacted by the 84th General Assembly.

(Source: P.A. 85–293.)