



A Collection of Cemetery Statutes

**Compiled by the
Alliance of Illinois Cemeterians**

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Dear Reader:

The Alliance of Illinois Cemeterians has prepared this booklet of current Illinois laws relevant to the cemetery industry. It is designed to act as a convenient and useful reference to the statutes which provide guidance and oversight of our industry.

The statutes provided in this booklet are always subject to amendment by the Illinois Legislature. You can find the current versions of the statutes at the Illinois General Assembly website at www.ilga.gov

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Cemetery Care Act

760 ILCS 100

TRUSTS AND FIDUCIARIES
(760 ILCS 100/) Cemetery Care Act.

(760 ILCS 100/1) (from Ch. 21, par. 64.1)

Sec. 1. Short title. This Act may be cited as the Cemetery Care Act.
(Source: P.A. 90-47, eff. 1-1-98.)

(760 ILCS 100/2) (from Ch. 21, par. 64.2)

Sec. 2. Definitions. The following words, terms and phrases used in this Act, for the purpose of this Act, have the following meanings:

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

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

"Comptroller" means the Comptroller of the State of Illinois.

"Care" means the maintenance of a cemetery and of the lots, graves, crypts, niches, family mausoleums, memorials, and markers therein; including: (i) the cutting and trimming of lawn, shrubs, and trees at reasonable intervals; (ii) keeping in repair the drains, water lines, roads, buildings, fences, and other structures, in keeping with a well maintained cemetery; (iii) maintenance of machinery, tools, and equipment for such care; (iv) compensation of employees, payment of insurance premiums, and reasonable payments for employees pension and other benefits plans; and (v) **to the extent surplus income from the care fund is available**, the payment of overhead expenses necessary for such purposes and for maintaining necessary records of lot ownership, transfers, and burials.

"Care funds" as distinguished from receipts from annual charges or gifts for current or annual care, means any realty or personalty impressed with a trust by the terms of any gift, grant, contribution, payment, legacy, or pursuant to contract, accepted by any cemetery authority owning, operating, controlling or managing a privately operated cemetery, or by any trustee or licensee, agent or custodian for the same, under Section 3 of this Act, and the amounts set aside under Section 4 of this Act, and any income accumulated therefrom, where legally so directed by the terms of the transaction by which the principal was established.

"Cemetery" means any land or structure in this State dedicated to and used, or intended to be used, for the interment of human remains.

"Cemetery authority" means any person, firm, corporation, trustee, partnership, association or municipality owning, operating, controlling or managing a cemetery or holding lands for burial grounds or burial purposes in this State.

"Mausoleum crypt" means a space in a mausoleum used or intended to be used, above or under ground, to entomb human remains.

"Family burying ground" means a cemetery in which no lots are sold to the public and in which interments are restricted to a group of persons related to each other by blood or marriage.

"Fraternal cemetery" means a cemetery owned, operated, controlled, or managed by any fraternal organization or auxiliary organizations thereof, in which the sale of lots, graves, crypts or niches is restricted principally to its members.

"Grave" means a space of ground in a cemetery, used, or intended to be used, for burial.

"Investment Company Act of 1940" means Title 15, of the United States Code, Sections 80a-1 to 80a-51, inclusive, as amended.

"Investment Company" means any issuer (a) whose securities are purchasable only with care funds or trust funds, or both; and (b) which is an open and diversified management company as defined in and registered under the "Investment Company Act of 1940"; and (c) which has entered into an agreement with the Comptroller containing such provisions as the Comptroller by regulation reasonably requires for the proper administration of this Act.

"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.

"Niche" means a space in a columbarium used or intended to be used, for inurnment of cremated human remains.

"Privately operated cemetery" means any entity that offers interment rights, entombment rights, or inurnment rights, other than a fraternal, municipal, State, federal or religious cemetery or a family burying ground.

"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.

"State or federal cemetery" means a cemetery owned, operated, controlled, or managed by any State or the federal government or any political subdivision or instrumentality thereof.

"Entombment right" means the right to place individual human remains or individual cremated human remains in a specific mausoleum crypt or lawn crypt selected by the consumer for use as a final resting place.

"Interment right" means the right to place individual human remains or cremated human remains in a specific underground location selected by the consumer for use as a final resting place.

"Inurnment right" means the right to place individual cremated human remains in a specific niche selected by the consumer for use as a final resting place.

"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.

"Imputed value" means the retail price of comparable rights within the same or similar area of the cemetery.

(Source: P.A. 92-651, eff. 7-11-02.)

(760 ILCS 100/2a) (from Ch. 21, par. 64.2a)

Sec. 2a. Powers and duties of cemetery authorities; cemetery property maintained by cemetery care funds.

(a) With respect to cemetery property maintained by cemetery care funds, a cemetery authority shall be responsible for the performance of:

(1) the care and maintenance of the cemetery property it owns; and

(2) the opening and closing of all graves, crypts, or niches for human remains in any cemetery property it owns.

(b) A cemetery authority owning, operating, controlling or managing a privately operated cemetery shall make available for inspection, and upon reasonable request provide a copy of, its rules and regulations and its current prices of interment, inurnment, or entombment rights.

(c) A cemetery authority owning, operating, controlling or managing a privately operated cemetery may, from time to time as land in its cemetery may be required for burial purposes, survey and subdivide those lands and make and file in its office a map thereof delineating the lots or plots, avenues, paths, alleys, and walks and their respective designations. The cemetery authority shall open the map to public inspection. The cemetery authority may make available a copy of the overall map upon written request and payment of reasonable photocopy fees. Any unsold lots, plots or parts thereof, in which there are not human remains, may be resurveyed and altered in shape or size, and properly designated on such map. Nothing contained in this subsection, however, shall prevent the cemetery authority from enlarging an interment right by selling to the owner thereof the excess space next to such interment right and permitting interments therein, provided reasonable access to such interment right and to adjoining interment rights is not thereby eliminated. The Comptroller may waive any or all of the requirements of this subsection (c) for good cause shown.

(d) A cemetery authority owning, operating, controlling, or managing a privately operated cemetery shall keep a record of every interment, entombment, and inurnment in the cemetery. The record shall include the deceased's name, age, and date of burial, when these particulars can be conveniently obtained, and the lot, plot, or section where the human remains are interred, entombed, or inurned. The record shall be open to public inspection consistent with State and federal law. The cemetery authority shall make available, consistent with State and federal law, a true copy of the record upon written request and payment of reasonable copy costs.

(e) A cemetery authority owning, operating, controlling, or managing a privately operated cemetery shall provide access to the cemetery under the cemetery authority's reasonable rules and regulations.

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

(760 ILCS 100/3) (from Ch. 21, par. 64.3)

Sec. 3. Gifts and contributions - Trust funds. Any cemetery authority is hereby authorized and empowered to accept any gift, grant, contribution, payment, legacy, or pursuant to contract, any sum of money, funds, securities or property of any kind, or the income or avails thereof, and to establish a trust fund to hold the same in perpetuity for the care of its cemetery, or for the care of any lot, grave, crypt or niche in its cemetery; or for the special care of any lot, grave, crypt or niche or of any family mausoleum or memorial, marker, or monument in its cemetery.

The cemetery authority shall act as trustee of all amounts received for care until they have been deposited into the trust fund established under this Section. **The cemetery authority may continue to be the trustee of up to \$500,000 of care funds that have been deposited into the trust fund, but the cemetery authority must retain an independent trustee for any amount of care funds held in trust in excess of that \$500,000.** A cemetery authority holding care funds in excess of \$500,000 on the effective date of this amendatory Act of 1996 shall have 36 months to retain an independent trustee for the excess amounts held in trust; any other cemetery authority must retain an independent trustee for its care funds in excess of \$500,000 as soon as may be practical.

No gift, grant, legacy, payment or other contribution shall be invalid by reason of any indefiniteness or uncertainty as to the beneficiary designated in the instrument creating the gift, grant, legacy, payment or other contribution. If any gift, grant, legacy, payment or other

contribution consists of non-income producing property, the cemetery authority accepting it is authorized and empowered to sell such property and to invest the funds obtained in accordance with the provisions of the next succeeding paragraph.

The care funds authorized by this Section and provided for in Section 4 of this Act shall be held intact and, unless otherwise restricted by the terms of the gift, grant, legacy, contribution, payment, contract or other payment, as to investments made after June 11, 1951 the trustee of the care funds of the cemetery authority, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for any such trust, shall 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. Within the limitations of the foregoing standard, the trustee of the care funds of the cemetery authority is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, including specifically but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, preferred or common stocks and real estate mortgages, which persons of prudence, discretion and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. The care funds authorized by this Section may be commingled with other trust funds received by such cemetery authority for the care of its cemetery or for the care or special care of any lot, grave, crypt, niche, private mausoleum, memorial, marker, or monument in its cemetery, whether received by gift, grant, legacy, contribution, payment, contract or other conveyance heretofore or hereafter made to such cemetery authority. Such care funds may be invested with common trust funds as provided in The Common Trust Fund Act. The net income only from the investment of such care funds shall be allocated and used for the purposes specified in the transaction by which the principal was established in the proportion that each contribution bears to the entire sum invested.

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

(760 ILCS 100/3a) (from Ch. 21, par. 64.3a)

Sec. 3a. Loans to private cemeteries. Except upon written approval of the Comptroller, no loan or investment of any care funds by any cemetery authority owning, operating, controlling or managing a privately operated cemetery, or by any trustee or licensee under this Act shall be made:

(1) To any officer, director, trustee, or party owning 10% or more of such cemetery authority, or to any firm, corporation, association or partnership in which any officer, director, trustee, or party owning 10% or more of such cemetery authority or licensee has a controlling interest.

(2) On or in any real estate, or in any note, bond, mortgage or deed of trust in which any officer, director trustee, or party owning 10% or more of such cemetery authority or licensee has any financial interest.

(3) On or in any unproductive real estate or real estate outside of this state or in permanent improvements of the cemetery or any of its facilities, unless specifically authorized by the instrument whereby the principal fund was created. And no commission or brokerage fee for the

purchase or sale of any property shall be paid in excess of that usual and customary at the time and in the locality where such purchase or sale is made and all such commissions and brokerage fees shall be fully reported in the next annual statement of such cemetery authority, trustee or licensee.

Before a loan or investment request is submitted to the Comptroller for approval, the loan or investment request must be duly approved by resolution of the board of directors of the cemetery authority and by the trustee of the care fund.

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

(760 ILCS 100/4) (from Ch. 21, par. 64.4)

Sec. 4. Care funds; deposits; investments. Whenever a cemetery authority owning, operating, controlling or managing a privately operated cemetery accepts care funds, either in connection with the sale or giving away at an imputed value of an interment right, entombment right or inurnment right, or in pursuance of a contract, or whenever, as a condition precedent to the purchase or acceptance of an interment right, entombment right or inurnment right, such cemetery authority requires the establishment of a care fund or a deposit in an already existing care fund, then such cemetery authority shall execute and deliver to the person from whom received an instrument in writing which shall specifically state: (a) the nature and extent of the care to be furnished, and (b) that such care shall be furnished only in so far as the net income derived from the amount deposited in trust will permit (the income from the amount so deposited, less necessary expenditures of administering the trust, shall be deemed the net income), and (c) that not less than the following amounts will be set aside and deposited in trust:

1. For interment rights, \$1 per square foot of the space sold or 15% of the sales price or imputed value, whichever is the greater, with a minimum of \$25 for each individual interment right.

2. For entombment rights, not less than 10% of the sales price or imputed value with a minimum of \$25 for each individual entombment right.

3. For inurnment rights, not less than 10% of the sales price or imputed value with a minimum of \$15 for each individual inurnment right.

4. For any transfer of interment rights, entombment rights, or inurnment rights recorded in the records of the cemetery authority, excepting only transfers between members of the immediate family of the transferor, a minimum of \$25 for each such right transferred. For the purposes of this paragraph "immediate family of the transferor" means the spouse, parents, grandparents, children, grandchildren, and siblings of the transferor.

5. Upon an interment, entombment, or inurnment in a grave, crypt, or niche in which rights of interment, entombment, or inurnment were originally acquired from a cemetery authority prior to January 1, 1948, a minimum of \$25 for each such right exercised.

6. For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker, or monument, the full amount received.

Such setting aside and deposit shall be made by such cemetery authority not later than 30 days after the close of the month in which the cemetery authority gave away for an imputed value or received the final payment on the purchase price of interment rights, entombment rights, or inurnment rights, or received the final payment for the general or special care of a lot, grave, crypt or niche or of a family mausoleum, memorial, marker or monument; and such amounts shall be

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

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

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

The trust authorized by this Section 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 cemetery authority or to pay any expenses of any bankruptcy or similar proceeding, but shall be retained intact to provide for the future maintenance of the cemetery. Except in an action by the 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.

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

(760 ILCS 100/5) (from Ch. 21, par. 64.5)

Sec. 5. No cemetery authority, nor any agent, servant, or employee of it, nor any other person, shall advertise, represent, guarantee, promise, or contract that perpetual care, permanent care, perpetual or permanent maintenance, care forever, continuous care, eternal care, everlasting care, or any similar or equivalent care, or care for any number of years of any cemetery or of any lot,

grave, crypt or niche, or of any family mausoleum, memorial, marker, or monument, will be furnished: Provided, however, that any cemetery authority may advertise, represent, guarantee, promise or contract that care will be furnished from the net income only derived from funds held in trust as provided in Section 3 of this Act; and may advertise, represent, guarantee, promise or contract that care will be given any lot, grave, crypt, or niche, or any family mausoleum, memorial, marker, or monument for any definite number of years, such care to be furnished under a contract providing that the principal of the amount paid under the contract shall be used to furnish the care and further providing specifically the care to be given and the number of years for which it is to be given.

(Source: Laws 1947, p. 338.)

(760 ILCS 100/6) (from Ch. 21, par. 64.6)

Sec. 6. The trust funds authorized by Section 3 of this Act, and the income therefrom, and any funds received under a contract to furnish care of a burial space for a definite number of years, shall be held for the general benefit of the lot owners and are exempt from taxation. The trust funds authorized by the provisions of Section 3 of this Act, and the income therefrom, are exempt from the operation of all laws of mortmain and the laws against perpetuities and accumulations.

(Source: Laws 1967, p. 1188.)

(760 ILCS 100/7) (from Ch. 21, par. 64.7)

Sec. 7. License to hold care funds. No cemetery authority owning, operating, controlling or managing a privately operated cemetery may accept the care funds authorized by the provisions of Section 3 of this Act without securing from the Comptroller a license to hold the funds. The license shall be secured by the cemetery authority whether the cemetery authority is serving as trustee of the care funds or whether the care funds are held by an independent trustee.

All licenses issued under the provisions of this Act by the Department of Financial Institutions prior to the time the administration of this Act was transferred to the Comptroller shall remain valid for all purposes unless such license is terminated, surrendered or revoked as provided in this Act.

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

(760 ILCS 100/8) (from Ch. 21, par. 64.8)

Sec. 8. Every cemetery authority shall register with the Comptroller upon forms furnished by him or her. Such registration statement shall state whether the cemetery authority claims that the cemetery owned, operated, controlled, or managed by it is a fraternal cemetery, municipal, State, or federal cemetery, or religious cemetery, or a family burying ground, as the case may be, as defined in Section 2 of this Act, and shall state the date of incorporation if a corporation and whether incorporated under general or private act of the legislature. Such registration statement shall be accompanied by a fee of \$5. Such fee shall be paid to the Comptroller and no registration statement shall be accepted by him without the payment of such fee. Every cemetery authority that is not required to file an annual report under this Act shall bear the responsibility of informing the Comptroller whenever a change takes place regarding status of cemetery, name of contact person, and that person's address and telephone number.

Upon receipt of a registration statement, if a claim is made that a cemetery is a fraternal cemetery, municipal cemetery, or religious cemetery, or a family burying ground, as the case may be, as defined in Section 2 of this Act, and the Comptroller shall determine that such cemetery is not a fraternal cemetery, a municipal cemetery, or a religious cemetery, or a family burying ground, as the case may be, as defined in Section 2 of this Act, the Comptroller shall notify the cemetery authority making the claim of such determination; provided, however, that no such claim shall be denied until the cemetery authority making such claim has had at least 10 days' notice of a hearing thereon and an opportunity to be heard. When any such claim is denied, the Comptroller shall within 20 days thereafter prepare and keep on file in his office the transcript of the evidence taken and a written order or decision of denial of such claim and shall send by United States mail a copy of such order or decision of denial to the cemetery authority making such claim within 5 days after the filing in his office of such order, finding or decision. A review of any such order, finding or decision may be had as provided in the Administrative Review Law, as now or hereafter amended.

Where no claim is made that a cemetery is a fraternal cemetery, municipal cemetery or religious cemetery or family burying ground, as the case may be, as defined in Section 2 of this Act, the registration statement shall be accompanied by a fidelity bond in the amount required by Section 9 of this Act. Upon receipt of such application, statement and bond, the Comptroller shall issue a license to accept the care funds authorized by the provisions of Section 3 of this Act to each cemetery authority owning, operating, controlling or managing a privately operated cemetery. However, the Comptroller shall issue a license without the filing of a bond where the filing of a bond is excused by Section 18 of this Act.

The license issued by the Comptroller shall remain in full force and effect until it is surrendered by the licensee or revoked by the Comptroller as hereinafter provided.

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

(760 ILCS 100/8.1) (from Ch. 21, par. 64.8a)

Sec. 8.1. Any cemetery authority operating a fraternal cemetery, municipal cemetery, State or federal cemetery, religious cemetery or family burying ground which has been licensed under the provisions of this Act may have such license terminated and may cease to be governed by the licensing provisions of this Act if such cemetery authority:

(1) applies in writing to the Comptroller setting out facts to show the kind of cemetery operated;

(2) sets out facts in such written application identifying the license under which such authority is operating;

(3) requests that such license be relinquished and terminated by the Comptroller.

Upon receipt of such statement, the Comptroller shall determine whether to grant such request. If the Comptroller grants the request to terminate, the license shall be relinquished and such cemetery authority shall cease to be governed by the licensing provisions of this Act. The Comptroller shall not deny such request without first granting a hearing to the cemetery authority. The hearing and review provisions of Sections 8 and 20 of this Act shall apply to the hearing provided for in this Section.

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

(760 ILCS 100/9) (from Ch. 21, par. 64.9)

Sec. 9. Application for license.

(a) Prior to the acceptance of care funds authorized by Section 3 of this Act or the sale or transfer of the controlling interest of a licensed cemetery authority, a cemetery authority owning, operating, controlling, or managing a privately operated cemetery shall make application to the Comptroller for a license to hold the funds.

In the case of a sale or transfer of the controlling interest of the cemetery authority, the prior license shall remain in effect until the Comptroller issues a new license to the newly-controlled cemetery authority as provided in Section 15b. Upon issuance of the new license, the prior license shall be deemed surrendered if the licensee has agreed to the sale and transfer and has consented to the surrender of the license. A sale or transfer of the controlling interest of a cemetery authority to an immediate family member is not considered a transfer of the controlling interest for purposes of this Section.

(b) Applications for license shall be filed with the Comptroller. Applications shall be in writing under oath, signed by the applicant, and in the form furnished by the Comptroller. The form furnished by the Comptroller shall enable a cemetery authority to apply for license of multiple cemetery locations within a single license application. A check or money order in the amount of \$25 per license seeking to be issued under the application, payable to: Comptroller, State of Illinois, shall be included. Each application shall contain the following:

(1) the full name and address (both of residence and of place of business) of the applicant, if an individual; of every member, if the applicant is a partnership or association; of every officer or director, if the applicant is a corporation; and of any party owning 10% or more of the cemetery authority, and the full name and address of the parent company, if any;

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

(2.1) the name, address, and legal boundaries of each cemetery for which the care funds shall be entrusted and at which books, accounts, and records shall be available for examination by the Comptroller as required by Section 13 of this Act;

(3) as to the name of each individual person listed under (1) above, a detailed statement of each person's business experience for the 10 years immediately preceding the application; the present and previous connection, if any, of each person with any other cemetery or cemetery authority; whether each person has ever been convicted of any felony or has ever been convicted of any misdemeanor of which an essential element is fraud or has been involved in any civil litigation in which a judgment has been entered against him or her based on fraud; whether each person is currently a defendant in any lawsuit in which the complaint against the person is based upon fraud; whether such person has failed to satisfy any enforceable judgment entered by a court of competent jurisdiction in any civil proceedings against such individual;

(4) the total amount in trust and now available from sales of lots, graves, crypts or niches where part of the sale price has been placed in trust; the amount of money placed in the care funds of each applicant; the amount set aside in care funds from the sale of lots, graves, crypts and niches for the general care of the cemetery and the amount available for that purpose; the amount received in trust by special agreement for special care and the amount available for that purpose; the amount of principal applicable to trust funds received by the applicant; and

(5) any other information that the Comptroller may reasonably require in order to determine the qualifications of the applicant to be licensed under this Act.

Such information shall be furnished whether the care funds are held by the applicant as trustee or by an independent trustee. If the funds are not held by the applicant, the name of the independent trustee holding them is also to be furnished by the applicant.

(c) Applications for license shall also be accompanied by a fidelity bond issued by a bonding company or insurance company authorized to do business in this State or by an irrevocable, unconditional letter of credit issued by a bank or trust company authorized to do business in the State of Illinois, as approved by the State Comptroller, where such care funds exceed the sum of \$15,000. Such bond or letter of credit shall run to the Comptroller and his or her successor for the benefit of the care funds held by such cemetery authority or by the trustee of the care funds of such cemetery authority. Such bonds or letters of credit shall be in an amount equal to 1/10 of such care funds. However, such bond or letter of credit shall not be in an amount less than \$1,000; the first \$15,000 of such care funds shall not be considered in computing the amount of such bond or letter of credit. No application shall be accepted by the Comptroller unless accompanied by such bond or letter of credit.

Applications for license by newly organized cemetery authorities after January 1, 1960 shall also be accompanied by evidence of a minimum care fund deposit in an amount to be determined as follows: if the number of inhabitants, either in the county in which the cemetery is to be located or in the area included within a 10 mile radius from the cemetery if the number of inhabitants therein is greater, is 25,000 or less the deposit shall be \$7,500; if the number of inhabitants is 25,001 to 50,000, the deposit shall be \$10,000; if the number of inhabitants is 50,001 to 125,000, the deposit shall be \$15,000; if the number of inhabitants is over 125,000, the deposit shall be \$25,000.

After an amount equal to and in addition to the required minimum care fund deposit has been deposited in trust, the cemetery authority may withhold 50% of all future care funds until it has recovered the amount of the minimum care fund deposit.

(d) (Blank).

(e) All bonds and bonding deposits made by any cemetery authority may be returned to the cemetery authority or cancelled as to care funds invested with an investment company.

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

(760 ILCS 100/10) (from Ch. 21, par. 64.10)

Sec. 10. Upon receipt of such application for license, the Comptroller shall issue a license to the applicant unless the Comptroller determines that:

(a) The applicant has made any misrepresentations or false statements or has concealed any essential or material fact, or

(b) The applicant is insolvent; or

(c) The applicant is or has been using practices in the conducting of the cemetery business that work or tend to work a fraud; or

(d) The applicant has refused to furnish or give pertinent data to the Comptroller; or

(e) The applicant has failed to notify the Comptroller with respect to any material facts required in the application for license under the provisions of this Act; or

(f) The applicant has failed to satisfy any enforceable judgment entered by the circuit court in any civil proceedings against such applicant; or

(g) The applicant has conducted or is about to conduct its business in a fraudulent manner; or

(h) The applicant or any individual listed in the license application has conducted or is about to conduct any business on behalf of the applicant in a fraudulent manner; or has been convicted of a felony or any misdemeanor of which an essential element is fraud; or has been involved in any civil litigation in which a judgment has been entered against him or her based on fraud; or has failed to satisfy any enforceable judgment entered by the circuit court in any civil proceedings against such individual; or has been convicted of any felony of which fraud is an essential element; or has been convicted of any theft-related offense; or has failed to comply with the requirements of this Act; or has demonstrated a pattern of improperly failing to honor a contract with a consumer; or

(i) The applicant has ever had a license involving cemeteries or funeral homes revoked, suspended, or refused to be issued in Illinois or elsewhere.

If the Comptroller so determines, then he or she shall conduct a hearing to determine whether to deny the application. However, no application shall be denied unless the applicant has had at least 10 days' notice of a hearing on the application and an opportunity to be heard thereon. If the application is denied, the Comptroller shall within 20 days thereafter prepare and keep on file in his or her office the transcript of the evidence taken and a written order of denial thereof, which shall contain his or her findings with respect thereto and the reasons supporting the denial, and shall send by United States mail a copy of the written order of denial to the applicant at the address set forth in the application, within 5 days after the filing of such order. A review of such decision may be had as provided in Section 20 of this Act.

The license issued by the Comptroller shall remain in full force and effect until it is surrendered by the licensee or revoked by the Comptroller as hereinafter provided.

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

(760 ILCS 100/11) (from Ch. 21, par. 64.11)

Sec. 11. Issuance and display of license. A license issued under this Act authorizes the cemetery authority to accept care funds for the cemetery identified in the license. If a license application seeks licensure to accept care funds on behalf of more than one cemetery location, the Comptroller, upon approval of the license application, shall issue to the cemetery authority a separate license for each cemetery location indicated on the application. Each license issued by the Comptroller under this Act is independent of any other license that may be issued to a cemetery authority under a single license application.

Every license issued by the Comptroller shall state the number of the license and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

No more than one place of business shall be maintained under the same license, but the Comptroller may issue more than one license to the same licensee upon compliance with the provisions of this Act governing an original issuance of a license, for each new license.

Whenever a licensee shall wish to change the name as originally set forth in his license, he shall give written notice thereof to the Comptroller together with the reasons for the change and if the change is approved by the Comptroller he shall issue a new license.

A license issued by the Comptroller shall remain in full force and effect until it is surrendered by the licensee or suspended or revoked by the Comptroller as provided in this Act.

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

(760 ILCS 100/11.1)

Sec. 11.1. 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 declared to be unlawful by 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 the trust funds required 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. 89-615, eff. 8-9-96.)

(760 ILCS 100/11.2)

Sec. 11.2. 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.)

(760 ILCS 100/12) (from Ch. 21, par. 64.12)

Sec. 12. Annual reports. Every licensee shall prepare a written report as of the end of the preceding calendar year or fiscal year, as the case may be, showing:

(a) The amount of the principal of the care funds held in trust by the trustee of the care funds at the beginning of such year and in addition thereto all moneys or property received during such year (1) under and by virtue of the sale of a lot, grave, crypt or niche; (2) under or by virtue of the terms of the contract authorized by the provisions of Section 3 of this Act; (3) under or by virtue of any gift, grant, legacy, payment or other contribution made either prior to or subsequent to the

effective date of this Act, and (4) under or by virtue of any contract or conveyance made either prior to or subsequent to the effective date of this Act;

(b) The securities in which such care funds are invested and the cash on hand as of the date of the report;

(c) The income received from such care funds during the preceding calendar year, or fiscal year, as the case may be;

(d) The expenditures made from said income during the preceding calendar year, or fiscal year, as the case may be; and

(e) The number of interments made during the preceding calendar year, or fiscal year, as the case may be.

Where any of the care funds of a licensee are held by an independent trustee, the report filed by the licensee shall contain a certificate signed by the trustee of the care funds of such licensee certifying to the truthfulness of the statements in the report as to (1) the total amount of principal of the care funds held by the trustee, (2) the securities in which such care funds are invested and the cash on hand as of the date of the report and (3) the income received from such care funds during the preceding calendar year, or fiscal year, as the case may be.

Such report shall be filed by such licensee on or before March 15 of each calendar year, in the office of the Comptroller. If the fiscal year of such licensee is other than on a calendar year basis, then such licensee shall file the report required by this Section within 2 1/2 months of the end of its 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.

Such report shall be made under oath and shall be in the form furnished by the Comptroller. Each report shall be accompanied by a check or money order in the amount of \$10, payable to: Comptroller, State of Illinois.

If any annual report shows that the amount of the care funds held in trust at the end of the preceding calendar year or fiscal year, as the case may be, has increased in amount over that shown by the next preceding report, then the fidelity bond theretofore filed shall be increased to the amount required by Section 9 of this Act. Such increased fidelity bond shall accompany the report and no report shall be accepted by the Comptroller unless accompanied by such bond, except where the filing of a bond is excused by Section 18 of this Act.

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

(760 ILCS 100/13) (from Ch. 21, par. 64.13)

Sec. 13. Books, accounts, and records. Every licensee and the trustee of the care funds of every licensee shall be a resident of this State and shall keep in this State and use in its business such books, accounts and records as will enable the Comptroller to determine whether such licensee or trustee is complying with the provisions of this Act and with the rules, regulations and directions made by the Comptroller hereunder. The licensee shall keep the books, accounts, and records at the location identified in the license issued by the Comptroller or as otherwise agreed by the

Comptroller in writing. The books, accounts, and records shall be accessible for review upon demand of the Comptroller.

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

(760 ILCS 100/14) (from Ch. 21, par. 64.14)

Sec. 14. The Comptroller may at any time investigate the cemetery business of every licensee with respect to its care funds. The Comptroller shall examine at least annually every licensee who holds \$250,000 or more in its care funds. For that purpose, the Comptroller shall have free access to the office and places of business and to such records of all licensees and of all trustees of the care funds of all licensees as shall relate to the acceptance, use and investment of care funds. The Comptroller may require the attendance of and examine under oath all persons whose testimony he may require relative to such business and in such cases the Comptroller or any qualified representative of the Comptroller whom the Comptroller may designate, may administer oaths to all such persons called as witnesses, and the Comptroller, or any such qualified representative of the Comptroller, may conduct such examinations. The cost of an initial examination shall be borne by the cemetery authority if it has \$10,000 or more in such fund; otherwise, by the Comptroller. The charge made by the Comptroller for such examination shall be based upon the total amount of care funds held by the cemetery authority as of the end of the calendar or fiscal year for which a report is required by Section 12 of 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.

Any licensee which is not required to be examined annually shall submit an annual report to the Comptroller containing such information as the Comptroller reasonably may request.

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;
- (2) the licensee changing trustees more than twice in any 12-month period;
- (3) any withdrawals or attempted withdrawals from the trusts in violation of this Act; or
- (4) failure to maintain or produce documentation required by this Act for deposits into trust accounts or trust investment activities.

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 or maintaining 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.

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

(760 ILCS 100/15) (from Ch. 21, par. 64.15)

Sec. 15. The Comptroller may, upon 10 days' notice to the licensee, by United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and, in general, the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he finds that:

(a) The licensee has failed to make the annual report or to maintain in effect the required bond or to comply with an order, decision, or finding of the Comptroller made pursuant to this Act; or that

(b) The licensee has violated any provision of this Act or any regulation or direction made by the Comptroller under this Act; or that

(c) Any fact or condition exists which would constitute grounds for denying an application for a new license.

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

(760 ILCS 100/15.1) (from Ch. 21, par. 64.15-1)

Sec. 15.1. The Comptroller may, in accordance with Section 15, revoke only the particular license with respect to which grounds for revocation may occur or exist, or if he finds that such grounds for revocation are of general application to all offices or to more than one office operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which grounds apply, as the case may be.

Whenever a license is revoked by the Comptroller he shall apply to the Circuit Court of the county wherein such licensee is located for a receiver to administer the care funds of such licensee. (Source: P.A. 78-592.)

(760 ILCS 100/15.2) (from Ch. 21, par. 64.15-2)

Sec. 15.2. A licensee may surrender any license by delivering to the Comptroller written notice that he thereby surrenders such license but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect his bond. The Comptroller shall not permit a license to be surrendered by a licensee unless and until such licensee has furnished to the Comptroller satisfactory evidence of his release and discharge from all trust liabilities and obligations and unless and until the care funds of such licensee have been transferred

to a successor licensee who shall be licensed by the Comptroller in conformity with the provisions of this Act.

However, the Comptroller shall accept the surrender of a license held by a cemetery authority that is a cemetery association or corporation owning, operating or controlling a cemetery not for profit, whose cemetery has been conveyed to and accepted by any city, village, incorporated town, township or county, upon: (a) the licensee submitting to the Comptroller a copy of the act, resolution or ordinance under which the political subdivision accepted or is charged with the responsibility of operating and controlling the cemetery; (b) the making and filing with and approval by the Comptroller of a final account for care funds from the date of last report made by the licensee to the Comptroller to the date of transfer to the successor cemetery authority; (c) the furnishing of a copy of the instrument of appointment or certificate of election of trustees of the public graveyard or managers of the municipal cemetery authorized to hold care funds or trust funds for care, and the receipt of such trustees of the public graveyard or managers of the municipal cemetery for the care funds investments listed in the final account; and (d) the return of the Cemetery Authority License to the Comptroller for cancellation. Upon satisfactory performance of the foregoing by a licensee, the same shall be deemed satisfactory evidence of the licensee's release and discharge from all trust liabilities and obligations and transfer of the licensee's care funds to an authorized successor within the meaning and intent of this Act.

(Source: P.A. 78-592.)

(760 ILCS 100/15.3) (from Ch. 21, par. 64.15-3)

Sec. 15.3. Every license issued hereunder shall remain in force until the same has been surrendered or revoked in accordance with this Act, but the Comptroller may on his own motion, issue new licenses to a licensee whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the Comptroller in refusing originally the issuance of such license under this Act.

(Source: P.A. 78-592.)

(760 ILCS 100/15.4) (from Ch. 21, par. 64.15-4)

Sec. 15.4. No license shall be revoked until the licensee has had at least 10 days' notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Comptroller shall within 20 days thereafter, prepare and keep on file in his office the transcript of the evidence taken and a written order or decision of revocation, and shall send by United States mail a copy of such order or decision of revocation to the licensee at the address set forth in the license within 5 days after the filing in his office of such order, finding or decision. A review of any such order, finding or decision may be had as provided in Section 19 of this Act.

(Source: P.A. 83-333.)

(760 ILCS 100/15a) (from Ch. 21, par. 64.15a)

Sec. 15a. Where any cemetery authority owning, operating, controlling or managing a privately operated cemetery or any trustee for the same has accepted care funds within the meaning of this Act, and dissolution is sought by such cemetery authority in any manner, by resolution of such cemetery authority, or the trustees thereof, notice shall be given to the Comptroller of such

intention to dissolve, and proper disposition shall be made of the care funds so held for the general benefit of such lot owners by or for the benefit of such cemetery authority, as provided by law, or in accordance with the trust provisions of any gift, grant, contribution, payment, legacy or pursuant to any contract whereby such funds were created. The Comptroller represented by the Attorney General may apply to the circuit court for the appointment of a receiver, trustee, successor in trust, or for directions of such court as to the proper disposition to be made of such care funds, to the end that the uses and purposes for which such trust or care funds were created may be accomplished.

(Source: P.A. 87-747; 88-477.)

(760 ILCS 100/15b)

Sec. 15b. Sales; liability of purchaser for shortage.

In the case of a sale of any privately operated cemetery or any part thereof or of any related personal property by a cemetery authority to a purchaser or pursuant to foreclosure proceedings, except the sale of burial rights, services, or merchandise to a person for his or her personal or family burial or interment, the purchaser is liable for any shortages existing before or after the sale in the care funds required to be maintained in a trust pursuant to this Act and shall honor all instruments issued under Section 4 for that cemetery. Any shortages existing in the care funds constitute a prior lien in favor of the trust for the total value of the shortages, and notice of such 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 cemetery authority, the sale or transfer of the controlling interest of the corporate stock of the cemetery authority if the cemetery authority is a corporation, or the sale or transfer of the controlling of the partnership if the cemetery authority is a partnership, the cemetery authority 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 cemetery authority. 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 cemetery authority 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 cemetery authority unless and until:

- (a) The Comptroller has completed the audit of the cemetery authority's books and records;
- (b) Any delinquency existing in the care funds has been paid by the cemetery authority, or arrangements satisfactory to the Comptroller have been made by the cemetery authority on the sale or transfer for the payment of any delinquency;
- (c) The Comptroller issues a new cemetery care license upon application of the newly controlled corporation or partnership, 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 (b) above.

For purposes of this Section, a person, firm, corporation, partnership, or institution that acquires the cemetery through a real estate foreclosure shall be subject to the provisions of this Section. The sale or transfer of the controlling interest of a cemetery authority to an immediate family member is not subject to the license application process required in item (c) of this Section.

In the event of a sale or transfer of any cemetery land, including any portion of cemetery land in which no human remains have been interred, a licensee shall, at least 21 days prior to the sale or transfer, notify the Comptroller, in writing, of the pending sale or transfer.
(Source: P.A. 92-419, eff. 1-1-02.)

(760 ILCS 100/16) (from Ch. 21, par. 64.16)

Sec. 16. Whenever a licensee refuses or neglects to make a required report or whenever it appears to the Comptroller from any report or examination that such licensee has committed a violation of law or that the care funds have not been administered properly or that it is unsafe or inexpedient for such licensee or the trustee of the care funds of such cemetery authority to continue to administer such funds or that any officer of such licensee or of the trustee of the care funds of such licensee has abused his trust or has been guilty of misconduct or malversation in his official position injurious to such licensee or that such licensee has suffered as to its care funds a serious loss by larceny, embezzlement, burglary, repudiation or otherwise, the Comptroller shall by an order direct the discontinuance of such illegal, unsafe or unauthorized practices and shall direct strict conformity with the requirements of the law and safety and security in its transactions, shall order all funds returned, and may apply to the Circuit Court of the county wherein such licensee is located to prevent any disbursements or expenditures by such licensee until the care funds are in such condition that it would not be jeopardized thereby and the Comptroller shall communicate the facts to the Attorney General of the State of Illinois who shall thereupon institute such proceedings against the licensee or its trustee or the officers of either or both as the nature of the case may require.

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

(760 ILCS 100/17) (from Ch. 21, par. 64.17)

Sec. 17. If the Comptroller finds at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the Comptroller shall be filed by the licensee within 30 days after written demand therefor upon the licensee by the Comptroller.

(Source: P.A. 78-592.)

(760 ILCS 100/18) (from Ch. 21, par. 64.18)

Sec. 18. Application; when bond is unnecessary. The provisions of this Act as to the (a) registration, (b) application for license, (c) filing of a fidelity bond, (d) filing of an annual report, and (e) examination by the Comptroller, apply to a cemetery authority owning, operating, controlling or managing a privately operated cemetery whether the care funds are held by such cemetery authority as trustee or by any independent trustee for the same. However, no bond need be filed with the Comptroller as to care funds of such cemetery authority held as trustee by a bank or trust company authorized to do business in this State as a trust company in accordance with Section 2-10 of the Corporate Fiduciary Act or held by an investment company.

Upon application by such cemetery authority to the Comptroller, and upon a showing that all of the care funds of such cemetery authority are held by such bank or trust company as trustee for such cemetery authority pursuant to an agreement in writing approved from time to time by the Comptroller for the handling and management of all of the care funds of such cemetery authority,

or are held by an investment company, the Comptroller in writing may permit the licensee to operate without the filing of any bond as to such care funds except such fidelity bond as he or she may require for the protection of such cemetery authority against defaults by its employees engaged in the handling and collection of funds.

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

(760 ILCS 100/19) (from Ch. 21, par. 64.19)

Sec. 19. The Comptroller may make, amend, rescind and enforce such rules and regulations and amendments thereto, as may be necessary for the purpose of carrying out this Act. However, the Comptroller may not make or amend any rule or regulation without holding a hearing thereon and without first giving all cemetery authorities licensed to hold care funds at least 10 days' notice of such hearing, the notice to set forth the proposed rules, regulations or the proposed amendments thereof. Among other things, the Comptroller may, for the purposes of this Act, prescribe the form or forms in which required information shall be set forth, the items or details to be shown in any statement or report, and the methods to be followed in the preparation of accounts and in the appraisal or evaluation of assets and liabilities. When any regulations or amendments thereto are made after such hearing, a written order setting forth the regulations or amendments shall be prepared by the Comptroller and kept on file in his office and a copy of each such order shall be sent by the Comptroller by United States mail to all cemetery authorities within 5 days after the filing in his office of such order. No regulations or amendments shall become effective until 10 days after the mailing of such order. Copies of all other orders, decisions and findings shall be mailed to the cemetery authorities affected thereby by United States mail within 5 days of such filing. All regulations and all amendments thereto and all orders, decisions and findings shall be filed and entered by the Comptroller in an indexed permanent book or record, with the effective date thereof suitably indicated, and such book or record is a public document. A review of all orders, decisions and findings, including orders making regulations or amendments, may be had under the Administrative Review Law, as now or hereafter amended.

(Source: P.A. 82-783.)

(760 ILCS 100/21) (from Ch. 21, par. 64.21)

Sec. 21. Except as otherwise provided for in this Act, whenever the Comptroller is required to give notice to any applicant or licensee, such requirement shall be considered complied with if, within the time fixed herein, such notice is enclosed in an envelope plainly addressed to such applicant or licensee, as the case may be, United States postage fully prepaid, and deposited, registered, in the United States mail.

(Source: P.A. 78-592.)

(760 ILCS 100/22) (from Ch. 21, par. 64.22)

Sec. 22. Nothing in this Act shall be construed to impair the obligation of any existing contract.
(Source: Laws 1947, p. 338.)

(760 ILCS 100/23) (from Ch. 21, par. 64.23)

Sec. 23. Every person having taken an oath or affirmation in any proceeding or matter wherein an oath is required by this Act, who shall swear wilfully, corruptly and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear as aforesaid, shall be guilty of perjury or subornation of perjury, as the case may be and shall be punished as provided in the Statute relative to perjury and subornation of perjury.

(Source: Laws 1947, p. 338.)

(760 ILCS 100/24) (from Ch. 21, par. 64.24)

Sec. 24. Whoever intentionally fails to deposit the required amounts into a trust provided for in 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 (other than the provisions of Section 23 and subsections (b), (c), (d), and (e) of Section 2a) shall be guilty of a Class 4 felony, and each day such provisions are violated shall constitute a separate offense.

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 such 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 such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such 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 care funds to enjoin any violation or threatened violation of this Act.

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

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

(760 ILCS 100/25)

Sec. 25. Use of care funds. When a township or multi-township cemetery district takes over a cemetery or cemetery authority, the care fund and care fund expenditures continue to be subject to the provisions of this Act, and the township or multi-township cemetery district must continue to use the care fund exclusively for the care and maintenance of the cemetery in accordance with this Act.

(Source: P.A. 91-181, eff. 1-1-00.)

(760 ILCS 100/26)

Sec. 26. Abandoned or neglected cemeteries; clean-up. The Comptroller may administer a program for the purpose of cleaning up abandoned or neglected cemeteries located in Illinois. Administration of this program may include the Comptroller's issuance of grants for that purpose to units of local government, school districts, and not-for-profit associations.

If an abandoned or neglected cemetery has been dedicated as an Illinois nature preserve under the Illinois Natural Areas Preservation Act, any action to cause the clean up of the cemetery under

the provisions of this Section shall be consistent with the rules and master plan governing the dedicated nature preserve.

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

Cemetery Oversight Act

225 ILCS 411

PROFESSIONS, OCCUPATIONS, AND BUSINESS OPERATIONS
(225 ILCS 411/) Cemetery Oversight Act.

(225 ILCS 411/Art. 5 heading)

Article 5.

General Provisions

(Article scheduled to be repealed on January 1, 2027)

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

(225 ILCS 411/5-1)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-1. Short title. This Act may be cited as the Cemetery Oversight Act.

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

(225 ILCS 411/5-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-5. Findings and purpose. The citizens of Illinois have a compelling interest in the expectation that their loved ones will be treated with the same dignity and respect in death as they are entitled to be treated in life. The laws of the State should provide adequate protection in upholding the sanctity of the handling and disposition of human remains and the preservation of final resting places, but without unduly restricting family, ethnic, cultural, and religious traditions. The purpose of this Act is to ensure that the deceased be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

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

(225 ILCS 411/5-10)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-10. Declaration of public policy. The practice of cemetery operation in the State of Illinois is hereby declared to affect the public health, safety, and well-being of its citizens and to be subject to regulation and control in the public interest. It is further declared that cemetery operation, as defined in this Act, should merit the confidence of the public and that only qualified persons shall be authorized to own, operate, manage, or otherwise control a cemetery in the State of Illinois. This Act shall be liberally construed to best carry out this purpose.

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

(225 ILCS 411/5-15)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-15. Definitions. In this Act:

"Address of record" means the designated address recorded by the Department in the applicant's or licensee's application file or license file. The address of record for a cemetery authority shall be the permanent street address of the cemetery.

"Applicant" means a person applying for licensure under this Act as a cemetery authority, cemetery manager, or customer service employee. Any applicant or any person who holds himself

or herself out as an applicant is considered a licensee for purposes of enforcement, investigation, hearings, and the Illinois Administrative Procedure Act.

"Burial permit" means a permit provided by a licensed funeral director for the disposition of a dead human body.

"Care" means the maintenance of a cemetery and of the lots, graves, crypts, niches, family mausoleums, memorials, and markers therein, including: (i) the cutting and trimming of lawn, shrubs, and trees at reasonable intervals; (ii) keeping in repair the drains, water lines, roads, buildings, fences, and other structures, in keeping with a well-maintained cemetery as provided for in Section 20-5 of this Act and otherwise as required by rule; (iii) maintenance of machinery, tools, and equipment for such care; (iv) compensation of cemetery workers, any discretionary payment of insurance premiums, and any reasonable payments for workers' pension and other benefits plans; and (v) the payment of expenses necessary for such purposes and for maintaining necessary records of lot ownership, transfers, and burials.

"Cemetery" means any land or structure in this State dedicated to and used, or intended to be used, for the interment, inurnment, or entombment of human remains.

"Cemetery authority" means any individual or legal entity that owns or controls cemetery lands or property.

"Cemetery manager" means an individual directly responsible or holding himself or herself directly responsible for the operation, maintenance, development, or improvement of a cemetery that is licensed under this Act or shall be licensed pursuant to Section 10-39 of this Act, irrespective of whether the individual is paid by the licensed cemetery authority or a third party.

"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 installations, and (5) outer burial containers.

"Cemetery operation" means to engage in any or all of the following, whether on behalf of, or in the absence of, a cemetery authority: (i) the interment, entombment, or inurnment of human remains, (ii) the sale of interment, entombment, or inurnment rights, cemetery merchandise, or cemetery services, (iii) the maintenance of interment rights ownership records, (iv) the maintenance of or reporting of interment, entombment, or inurnment records, (v) the maintenance of cemetery property, (vi) the development or improvement of cemetery grounds, or (vii) the maintenance and execution of business documents, including State and federal government reporting and the payment of taxes, for a cemetery business entity.

"Cemetery Oversight Database" means a database certified by the Department as effective in tracking the interment, entombment, or inurnment of human remains.

"Cemetery services" means those services customarily performed by cemetery personnel in connection with the interment, entombment, or inurnment of a dead human body.

"Certificate of organization" means the document received by a cemetery association from the Secretary of State that indicates that the cemetery association shall be deemed fully organized as a body corporate under the name adopted and in its corporate name may sue and be sued.

"Comptroller" means the Comptroller of the State of Illinois.

"Confidential information" means unique identifiers, including a person's Social Security number, home address, home phone number, personal phone number, personal email address, personal financial information, and any other information protected by law.

"Consumer" means an individual who purchases or who is considering purchasing cemetery, burial, or cremation products or services from a cemetery authority, whether for themselves or for another person.

"Customer service employee" means an individual who has direct contact with consumers to explain cemetery merchandise, services, and interment rights and to execute the sale of those items to consumers, whether at the cemetery or an off-site location, irrespective of whether compensation is paid by the cemetery authority or a third party.

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

"Email address of record" means the designated email address recorded by the Department in the applicant's application file or the licensee's license file as maintained by the Department's licensure maintenance unit.

"Employee" means an individual who works for a cemetery authority where the cemetery authority has the right to control what work is performed and the details of how the work is performed regardless of whether federal or State payroll taxes are withheld.

"Entombment right" means the right to place individual human remains or individual cremated human remains in a specific mausoleum crypt or lawn crypt selected by a consumer for use as a final resting place.

"Family burying ground" means a cemetery in which no lots, crypts, or niches are sold to the public and in which interments, inurnments, and entombments are restricted to the immediate family or a group of individuals related to each other by blood or marriage.

"Full exemption" means an exemption granted to a cemetery authority pursuant to subsection (a) of Section 5-20.

"Funeral director" means a funeral director as defined by the Funeral Directors and Embalmers Licensing Code.

"Grave" means a space of ground in a cemetery used or intended to be used for burial.

"Green burial or cremation disposition" means burial or cremation practices that reduce the greenhouse gas emissions, waste, and toxic chemicals ordinarily created in burial or cremation or, in the case of greenhouse gas emissions, mitigate or offset emissions. Such practices include any standards or method for burial or cremation that the Department may name by rule.

"Immediate family" means the designated agent of a person or the persons given priority for the disposition of a person's remains under the Disposition of Remains Act and shall include a person's spouse, parents, grandparents, children, grandchildren and siblings.

"Individual" means a natural person.

"Interment right" means the right to place individual human remains or cremated human remains in a specific underground location selected by a consumer for use as a final resting place.

"Inurnment right" means the right to place individual cremated human remains in a specific niche selected by the consumer for use as a final resting place.

"Lawn crypt" means a permanent underground crypt installed in multiple units for the entombment of human remains.

"Licensee" means a person licensed under this Act as a cemetery authority, cemetery manager, or customer service employee. Anyone who holds himself or herself out as a licensee or who is accused of unlicensed practice is considered a licensee for purposes of enforcement, investigation, hearings, and the Illinois Administrative Procedure Act.

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

"Niche" means a space in a columbarium or mausoleum used, or intended to be used, for inurnment of cremated human remains.

"Partial exemption" means an exemption granted to a cemetery authority pursuant to subsection (b) of Section 5-20.

"Parcel identification number" means a unique number assigned by the Cemetery Oversight Database to a grave, plot, crypt, or niche that enables the Department to ascertain the precise location of a decedent's remains interred, entombed, or inurned after the effective date of this Act.

"Person" means any individual, firm, partnership, association, corporation, limited liability company, trustee, government or political subdivision, or other entity.

"Public cemetery" means a cemetery owned, operated, controlled, or managed by the federal government, by any state, county, city, village, incorporated town, township, multi-township, public cemetery district, or other municipal corporation, political subdivision, or instrumentality thereof authorized by law to own, operate, or manage a cemetery.

"Religious burying ground" means a cemetery in which no lots, crypts, or niches are sold and in which interments, inurnments, and entombments are restricted to a group of individuals all belonging to a religious order or granted burial rights by special consideration of the religious order.

"Religious cemetery" means a cemetery owned, operated, controlled, and 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.

"Secretary" means the Secretary of Financial and Professional Regulation or a person authorized by the Secretary to act in the Secretary's stead.

"Term burial" means a right of interment sold to a consumer in which the cemetery authority retains the right to disinter and relocate the remains, subject to the provisions of subsection (d) of Section 35-15 of this Act.

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

"Unique personal identifier" means the parcel identification number in addition to the term of burial in years; the numbered level or depth in the grave, plot, crypt, or niche; and the year of death for human remains interred, entombed, or inurned after the effective date of this Act. The unique personal identifier is assigned by the Cemetery Oversight Database.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/5-16)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-16. Address of record; email address of record. All applicants and licensees shall:

(1) provide a valid address and email address to the Department, which shall serve as the address of record and email address of record, respectively, at the time of application for licensure or renewal of a license; and

(2) inform the Department of any change of address of record or email address of record within 14 days after such change either through the Department's website or by contacting the Department's licensure maintenance unit.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/5-20)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-20. Exemptions.

(a) **Full exemption.** Except as provided in this subsection, this Act does not apply to (1) any cemetery authority operating as a family burying ground or religious burying ground, (2) any cemetery authority that has not engaged in an interment, inurnment, or entombment of human remains within the last 10 years, or (3) any cemetery authority that is less than 3 acres. For purposes of determining the applicability of this subsection, the number of interments, inurnments, and entombments shall be aggregated for each calendar year. A cemetery authority claiming a full exemption shall apply for exempt status as provided for in Section 10-20 of this Act. A cemetery authority claiming a full exemption shall be subject to Sections 10-40, 10-55, and 10-60 of this Act. A cemetery authority that performs activities that would disqualify it from a full exemption is required to apply for licensure within one year following the date on which its activities would disqualify it for a full exemption. A cemetery authority that previously qualified for and maintained a full exemption that fails to timely apply for licensure shall be deemed to have engaged in unlicensed practice and shall be subject to discipline in accordance with Article 25 of this Act.

(b) **Partial exemption.** If a cemetery authority does not qualify for a full exemption and (1) engages in 25 or fewer interments, inurnments, or entombments of human remains for each of the preceding 2 calendar years, (2) operates as a public cemetery, or (3) operates as a religious cemetery, then the cemetery authority is partially exempt from this Act but shall be required to comply with Sections 10-23, 10-40, 10-55, 10-60, subsections (a), (b), (b-5), (c), (d), (f), (g), and (h) of Section 20-5, Sections 20-6, 20-8, 20-10, 20-12, 20-30, 20-35, 20-40, 25-3, and 25-120, and Article 35 of this Act. Cemetery authorities claiming a partial exemption shall apply for the partial exemption as provided in Section 10-20 of this Act. A cemetery authority that changes to a status that would disqualify it from a partial exemption is required to apply for licensure within one year following the date on which it changes its status. A cemetery authority that maintains a partial exemption that fails to timely apply for licensure shall be deemed to have engaged in unlicensed practice and shall be subject to discipline in accordance with Article 25 of this Act.

(c) Nothing in this Act applies to the City of Chicago in its exercise of its powers under the O'Hare Modernization Act or limits the authority of the City of Chicago to acquire property or otherwise exercise its powers under the O'Hare Modernization Act, or requires the City of Chicago, or any person acting on behalf of the City of Chicago, to comply with the licensing, regulation, or investigation requirements of this Act in exercising its powers under the O'Hare Modernization Act.

(d) A cemetery manager and customer service employee license may be in active status only during the period that such a licensee is employed by a cemetery authority that is licensed under this Act. In the event that a cemetery manager or customer service employee commences work for a cemetery granted an exemption under this Section, it shall be a duty of both the cemetery

authority and the individual licensee to immediately notify the Department so that the license may be placed on inactive status. During the period that a license is in inactive status, the involved person may not hold himself or herself out as licensed. Upon returning to employment by a cemetery licensed under this Act, such a cemetery manager or customer service employee may reinstate the license to active status simply by notifying the Department and paying the applicable fee.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/5-25)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-25. Powers and duties of the Department. The Department shall, subject to the provisions of this Act, exercise the following functions, powers, and duties:

(1) Authorize certification programs to ascertain the qualifications and fitness of applicants for licensing as a licensed cemetery manager or as a customer service employee to ascertain whether they possess the requisite level of knowledge for such position.

(2) Examine a licensed cemetery authority's records from any year or any other aspects of cemetery operation as the Department deems appropriate.

(3) Investigate any and all cemetery operations.

(4) Conduct hearings on proceedings to refuse to issue, renew, or restore licenses or to revoke, suspend, place on probation, or reprimand a licensee under this Act.

(5) Adopt rules required for the administration of this Act.

(6) Prescribe forms to be issued for the administration and enforcement of this Act.

(7) (Blank).

(8) Work with the Office of the Comptroller and the Department of Public Health, Division of Vital Records to exchange information and request additional information relating to a licensed cemetery authority.

(9) Investigate cemetery contracts, grounds, or employee records.

(10) Issue licenses to those who meet the requirements of this Act.

(11) Conduct investigations related to possible violations of this Act.

If the Department exercises its authority to conduct investigations under this Section, the Department shall provide the cemetery authority with information sufficient to challenge the allegation. If the complainant consents, then the Department shall provide the cemetery authority with the identity of and contact information for the complainant so as to allow the cemetery authority and the complainant to resolve the complaint directly. Except as otherwise provided in this Act, any complaint received by the Department and any information collected to investigate the complaint shall be maintained by the Department for the confidential use of the Department and shall not be disclosed. The Department may not disclose the information to anyone other than law enforcement officials or other regulatory agencies or persons that have an appropriate regulatory interest, as determined by the Secretary, or to a party presenting a lawful subpoena to the Department. Information and documents disclosed to a federal, state, county, or local law enforcement agency shall not be disclosed by the agency for any purpose to any other agency or person. A formal complaint filed against a licensee by the Department or any order issued by the

Department against a licensee or applicant shall be a public record, except as otherwise prohibited by law.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/5-26)

(Section scheduled to be repealed on January 1, 2027)

Sec. 5-26. Confidentiality. All information collected by the Department in the course of an examination or investigation of a licensee or applicant, including, but not limited to, any complaint against a licensee filed with the Department and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed. The Department may not disclose the information to anyone other than law enforcement officials, other regulatory agencies that have an appropriate regulatory interest as determined by the Secretary, or a party presenting a lawful subpoena to the Department. Information and documents disclosed to a federal, State, county, or local law enforcement agency shall not be disclosed by the agency for any purpose to any other agency or person. A formal complaint filed against a licensee by the Department or any order issued by the Department against a licensee or applicant shall be a public record, except as otherwise prohibited by law.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/Art. 10 heading)

Article 10.

Licensing and Registration Provisions

(Article scheduled to be repealed on January 1, 2027)

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

(225 ILCS 411/10-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-5. Restrictions and limitations. No person shall, without a valid license issued by the Department, (i) hold himself or herself out in any manner to the public as a licensed cemetery authority, licensed cemetery manager, or customer service employee or (ii) attach the title "licensed cemetery authority", "licensed cemetery manager", or "licensed customer service employee" to his or her name. No person shall, without a valid license or exemption from licensure from the Department, render or offer to render services constituting the practice of cemetery operation.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/10-10)

Sec. 10-10. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/10-15)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-15. Licenses for cemetery authorities, cemetery managers, and customer service employees. **The application for a cemetery authority license must be submitted to the Department within 6 months after the Department adopts rules under this Act.** For cemetery managers already working for a cemetery authority at the time of cemetery authority application for licensure, the application for a cemetery manager license must be submitted at the same time as the original application for licensure as a cemetery authority. Any applicant for licensure as a cemetery manager of a cemetery authority that is already licensed under this Act or that has a pending application for licensure under this Act must submit his or her application to the Department on or before his or her first day of work. The application for a customer service employee license must be submitted to the Department within 10 days after the cemetery authority for which he or she works becomes licensed under this Act or on or before his or her first day of work for a cemetery authority that is already licensed under this Act, whichever the case may be. If the person fails to submit the application within the required period, the person shall be considered to be engaged in unlicensed practice and shall be subject to discipline in accordance with Article 25 of this Act. (Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/10-20)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-20. Application for original license or exemption.

(a) Applications for original licensure as a cemetery authority, cemetery manager, or customer service employee authorized by this Act, or application for exemption from licensure as a cemetery authority, shall be made to the Department in writing on forms or electronically as prescribed by the Department, and shall be accompanied by the required fee that shall not be refundable. If a cemetery authority seeks to practice at more than one location, it shall meet all licensure requirements at each location as required by this Act and by rule, including submission of an application and fee. All applications shall contain information that, in the judgment of the Department, will enable the Department to pass on the qualifications of the applicant for a license under this Act.

(b) (Blank).

(c) After initial licensure, if any person comes to obtain at least 51% of the ownership over the licensed cemetery authority, then the cemetery authority shall have to apply for a new license and receive licensure in the required time as set by rule. The current license remains in effect until the Department takes action on the application for a new license.

(d) (Blank).

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/10-21)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-21. Qualifications for licensure.

(a) An applicant is qualified for licensure as a cemetery authority if the applicant meets all of the following qualifications:

(1) The applicant has not committed any act or offense in any jurisdiction that would constitute the basis for discipline under this Act. When considering such license, the Department shall take into consideration the following:

(A) the applicant's record of compliance with the Code of Professional Conduct and Ethics, and whether the applicant has been found to have engaged in any unethical or dishonest practices in the cemetery business;

(B) whether the applicant has been adjudicated, civilly or criminally, to have committed fraud or to have violated any law of any state involving unfair trade or business practices, has been convicted of a misdemeanor of which fraud is an essential element or which involves any aspect of the cemetery business, or has been convicted of any felony;

(C) whether the applicant has willfully violated any provision of this Act or a predecessor law or any regulations relating thereto;

(D) whether the applicant has been permanently or temporarily suspended, enjoined, or barred by any court of competent jurisdiction in any state from engaging in or continuing any conduct or practice involving any aspect of the cemetery or funeral business; and

(E) whether the applicant has ever had any license to practice any profession or occupation suspended, denied, fined, or otherwise acted against or disciplined by the applicable licensing authority.

If the applicant is a corporation, limited liability company, partnership, or other entity permitted by law, then the Department shall determine whether each principal, owner, member, officer, and shareholder holding 25% or more of corporate stock has met the requirements of this item (1) of subsection (a) of this Section.

(2) The applicant must provide a statement of its assets and liabilities to the Department.

(3) The applicant has not, within the preceding 10 years, been convicted of or entered a plea of guilty or nolo contendere to (i) a Class X felony or (ii) a felony, an essential element of which was fraud or dishonesty under the laws of this State, another state, the United States, or a foreign jurisdiction that is directly related to the practice of cemetery operations. If the applicant is a corporation, limited liability company, partnership, or other entity permitted by law, then each principal, owner, member, officer, and shareholder holding 25% or more of corporate stock has not, within the preceding 10 years, been convicted of or entered a plea of guilty or nolo contendere to (i) a Class X felony or (ii) a felony, an essential element of which was fraud or dishonesty under the laws of this State, another state, the United States, or a foreign jurisdiction that is directly related to the practice of cemetery operations.

(4) The applicant shall authorize the Department to conduct a criminal background check that does not involve fingerprinting.

(5) In the case of a person or entity applying for renewal of his, her, or its license, the applicant has complied with all other requirements of this Act and the rules adopted for the implementation of this Act.

(b) A person is qualified for licensure as a cemetery manager or customer service employee if he or she meets all of the following requirements:

(1) Is at least 18 years of age.

(2) Has acted in an ethical manner as set forth in Section 10-23 of this Act. In determining qualifications of licensure, the Department shall take into consideration the factors outlined in item (1) of subsection (a) of this Section.

(3) Submits proof of successful completion of a high school education or its equivalent as established by rule.

(4) The applicant shall authorize the Department to conduct a criminal background check that does not involve fingerprinting.

(5) Has not committed a violation of this Act or any rules adopted under this Act that, in the opinion of the Department, renders the applicant unqualified to be a cemetery manager.

(6) Submits proof of successful completion of a certification course recognized by the Department for a cemetery manager or customer service employee, whichever the case may be.

(7) Has not, within the preceding 10 years, been convicted of or entered a plea of guilty or nolo contendere to (i) a Class X felony or (ii) a felony, an essential element of which was fraud or dishonesty under the laws of this State, another state, the United States, or a foreign jurisdiction that is directly related to the practice of cemetery operations.

(8) (Blank).

(9) In the case of a person applying for renewal of his or her license, has complied with all other requirements of this Act and the rules adopted for implementation of this Act.

(c) Each applicant for a cemetery authority, cemetery manager, or customer service employee license shall authorize the Department to conduct a criminal background check that does not involve fingerprinting. The Department must, in turn, conduct the criminal background check on each applicant. The Department shall adopt rules to implement this subsection (c), but in no event shall the Department impose a fee upon the applicant for the background check.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/10-22)

Sec. 10-22. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/10-23)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-23. Code of Professional Conduct and Ethics. Licensed cemetery authorities and their licensed cemetery managers and customer service employees, and cemetery authorities maintaining a partial exemption and their cemetery managers and customer service employees shall:

(a) refrain from committing any action that may violate Section 25-10 of this Act;

(b) be aware of applicable federal and State laws and regulations, adhere to those laws and regulations, and be able to explain them to families in an understandable manner;

(c) treat all human remains with proper care and dignity, honoring known religious, ethnic, and personal beliefs;

(d) protect all confidential information;

(e) carry out all aspects of service in a competent and respectful manner;

(f) fulfill all written and verbal agreements and contracts;

(g) provide honest, factual, and complete information regarding all aspects of the services offered and provided;

(h) not engage in advertising that is false, misleading, or otherwise prohibited by law;

(i) not discriminate against any person because of race, creed, marital status, sex, national origin, sexual orientation, or color, except a religious cemetery may restrict its services to those of the same religious faith or creed. A cemetery authority operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation;

(j) to have clear and specific cemetery rules and regulations, subject to other applicable law, including this Act, and to apply them equally to all families served;

(k) report all violations of this Act and this Section to the Department.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/10-25)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-25. Certification.

(a) The Department shall authorize certification programs for cemetery manager and customer service employee applicants. The certification programs must consist of education and training in cemetery ethics, cemetery law, and cemetery practices. Cemetery ethics shall include, without limitation, the Code of Professional Conduct and Ethics as set forth in Section 10-23 of this Act. Cemetery law shall include, without limitation, the Cemetery Oversight Act, the Cemetery Care Act, the Disposition of Remains Act, and the Cemetery Protection Act. Cemetery practices shall include, without limitation, treating the dead and their family members with dignity and respect. The certification program shall include an examination administered by the entity providing the certification.

(a-5) An entity seeking to offer a certification program to cemetery manager applicants and customer service employee applicants must receive approval of its program from the Department in a manner and form prescribed by the Department by rule. As part of this process, the entity must submit to the Department the examination it offers or intends to offer as part of its certification program.

(a-10) A cemetery manager applicant or customer service employee applicant may choose any entity that has been approved by the Department from which to obtain certification.

(b) Cemetery manager applicants and customer service employee applicants shall pay the fee for the certification program directly to the entity offering the program.

(c) If the cemetery manager applicant or customer service employee applicant neglects, fails, or refuses to become certified within one year after filing an application, then the application shall be denied. However, the applicant may thereafter submit a new application accompanied by the required fee. The applicant shall meet the requirements in force at the time of making the new application.

(d) A cemetery manager applicant or customer service employee applicant who has completed a certification program offered by an entity that has not received the Department's approval as required by this Section has not met the qualifications for licensure as set forth in Section 10-21 of this Act.

(e) The Department may approve any certification program that is conducted by a death care trade association in Illinois that has been in existence for more than 5 years that, in the determination of the Department, provides adequate education and training in cemetery law, cemetery ethics, and cemetery practices and administers an examination covering the same.

(f) The Department may, without a hearing, summarily withdraw its approval of a certification program that, in the judgment of the Department, fails to meet the requirements of this Act or the rules adopted under this Act. A certification program that has had its approval withdrawn by the Department may reapply for approval, but shall provide such additional information as may be required by the Department, including, but not limited to, evidence to the Department's satisfaction that the program is in compliance with this Act and the rules adopted under this Act.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/10-30)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-30. **Continuing education.** The Department shall adopt rules for continuing education of cemetery managers and customer service employees. The continuing education programs may consist of education and training in cemetery ethics, cemetery law, and cemetery practices as defined in Section 10-25 of this Act. An entity seeking to offer a continuing education program to cemetery managers and customer service employees must receive approval of its program from the Department in a manner and form prescribed by the Department by rule. Cemetery managers shall be required to complete 6 hours of continuing education during each renewal cycle. Customer service employees shall be required to complete 3 hours of continuing education during each renewal cycle.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/10-39)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-39. **Cemetery manager and customer service employee; display of certification and license; grace periods.** The cemetery manager and customer service employee must conspicuously display the certification and the license after it is received at the cemetery authority's place of business. Any person applying for original licensure as a cemetery manager without the required certification from a program approved by the Department shall have a reasonable period of time, not to exceed one year from the date of his or her original application, but not any second or subsequent application, to complete the program. In the interim, the cemetery manager without certification may manage the cemetery if he or she (1) has submitted an application for licensure and (2) has received training from another person, as verified by an appropriate form approved by the Department, who has received the required certification from a program recognized by the Department. Any person applying for original licensure as a customer service employee without the required certification from a program approved by the Department shall have a reasonable period of time, not to exceed one year from the date of his or her original application, but not any second or subsequent application, to complete the program. In the interim, the customer service employee without certification may engage in the work of a customer service employee if he or she (1) has submitted an application for licensure and (2) has received training from another

person, as verified by an appropriate form approved by the Department, who has received certification from a program recognized by the Department.

(Source: P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/10-40)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-40. Renewal, reinstatement, or restoration of license.

(a) The expiration date and renewal period for each license issued under this Act shall be set by rule. The holder of a license may renew such license during the month preceding the expiration date thereof by paying the required fee.

(b) A licensee under this Act who has permitted his or her license to expire or has had his or her license placed on inactive status may have his or her license restored by making application to the Department and filing proof acceptable to the Department of his or her fitness of having his or her license restored, including, but not limited to, sworn evidence certifying to active practice in another jurisdiction satisfactory to the Department, and by paying the required fee as determined by rule.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/10-45)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-45. Transfer or sale, preservation of license.

(a) (Blank).

(b) In the event of a sale or transfer of all or substantially all of the assets of the cemetery authority, the sale or transfer of the controlling interest of the corporate stock of the cemetery authority, if the cemetery authority is a corporation, or the sale or transfer of the controlling interest of the partnership, if the cemetery authority is a partnership, or the sale or transfer of the controlling membership, if the cemetery authority is a limited liability company, the cemetery authority shall, at least 30 days prior to the sale or transfer, notify the Department, in writing, of the pending date of sale or transfer. The sale or transfer may not be completed by the cemetery authority unless and until:

(1) (Blank).

(2) (Blank).

(3) the Department issues a new cemetery authority license upon application of the newly controlled corporation or partnership, which license must be applied for at least 30 days prior to the anticipated date of the sale or transfer.

(c) In the event of a sale or transfer of any cemetery land, including any portion of cemetery land in which no human remains have been interred, a licensee shall, at least 45 days prior to the sale or transfer, notify the Department, in writing, of the pending sale or transfer. With the notification, the cemetery authority shall submit information to the Department, which may include a copy of a portion of the cemetery map showing the land to be sold or transferred, to enable the Department to determine whether any human remains are interred, inurned, or entombed within the land to be sold or transferred and whether consumers have rights of interment, inurnment, or entombment within the land to be sold or transferred.

(d) For purposes of this Section, a person who acquires the cemetery through a real estate foreclosure shall be subject to the provisions of this Section pertaining to the purchaser, including licensure.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/10-50)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-50. Dissolution. Where any licensed cemetery authority or any trustee thereof seeks dissolution in any manner, by resolution of such cemetery authority, or the trustees thereof, notice shall be given to the Department of such intention to dissolve. The Department, represented by the Attorney General, may apply to the circuit court for the appointment of a receiver or for directions of such court as to the proper continued operation of the cemetery.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/10-55)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-55. Fees.

(a) Except as provided in this Section, the fees for the administration and enforcement of this Act shall be set by the Department by rule. The fees shall not be refundable.

(b) Cemetery manager applicants and customer service employee applicants shall pay any certification program or continuing education program fee directly to the entity offering the program.

(c) The Department may waive fees based upon hardship.

(d) Nothing shall prohibit a cemetery authority from paying, on behalf of its cemetery managers or customer service employees, their application, renewal, or restoration fees.

(e) All fees and other moneys collected under this Act shall be deposited in the Cemetery Oversight Licensing and Disciplinary Fund.

(f) The fee for application as a cemetery authority seeking a full exemption is \$0.

(g) The fee to renew registration as a fully exempt cemetery authority is \$0.

(h) The fee for application as a cemetery authority seeking a partial exemption is \$150.

(i) The fee to renew registration as a partially exempt cemetery authority is \$150.

(j) The fee for original licensure, renewal, and restoration as a cemetery authority not seeking a full or partial exemption is \$75.

(k) The fee for original licensure, renewal, and restoration as a cemetery manager is \$25.

(l) The fee for original licensure, renewal, and restoration as a customer service employee is \$25.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/10-60)

(Section scheduled to be repealed on January 1, 2027)

Sec. 10-60. Returned checks; fines. Any person who delivers a check or other payment to the Department that is returned to the Department unpaid by the financial institution upon which it is drawn shall pay to the Department, in addition to the amount already owed to the Department, a

fine of \$50. The fines imposed by this Section are in addition to any other discipline provided under this Act for unlicensed practice or practice on a non-renewed license. The Department shall notify the person that payment of fees and fines shall be paid to the Department by certified check or money order within 30 calendar days of the notification. If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the Department shall automatically terminate the license or deny the application, without hearing.

If, after termination or denial, the person seeks a license, then he or she shall apply to the Department for restoration or issuance of the license and pay all fees and fines due to the Department. The Department may establish a fee for the processing of an application for restoration of a license to pay all expenses of processing this application. The Secretary may waive the fines due under this Section in individual cases where the Secretary finds that the fines would be unreasonable or unnecessarily burdensome.

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

(225 ILCS 411/Art. 15 heading)

Article 15.
Trust Funds
(Repealed)

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/Art. 20 heading)

Article 20.

Business Practice Provisions

(Article scheduled to be repealed on January 1, 2027)

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

(225 ILCS 411/20-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-5. Maintenance and records.

(a) A cemetery authority shall provide reasonable maintenance of the cemetery property and of all lots, graves, crypts, and columbariums in the cemetery based on the type and size of the cemetery, topographic limitations, and contractual commitments with consumers. Subject to the provisions of this subsection (a), reasonable maintenance includes:

(1) the laying of seed, sod, or other suitable ground cover as soon as practical following an interment given the weather conditions, climate, and season and the interment's proximity to ongoing burial activity;

(2) the cutting of lawn throughout the cemetery at reasonable intervals to prevent an overgrowth of grass and weeds given the weather conditions, climate, and season;

(3) the trimming of shrubs to prevent excessive overgrowth;

(4) the trimming of trees to remove dead limbs;

(5) maintaining, repairing, or removing, if necessary, drains, water lines, roads, buildings, fences, and other structures; and

(6) keeping the cemetery premises free of trash and debris.

In determining whether a cemetery authority provides reasonable maintenance of the cemetery property, the Department shall consider:

(1) the cemetery authority's contractual obligations for care and maintenance;

(2) the size of the cemetery;

(3) the extent and use of the cemetery authority's financial resources;

(4) the standard of maintenance of one or more similarly situated cemeteries; in determining whether a cemetery is similarly situated, the Department shall consider the cemetery's size, location, topography, and financial resources, and whether the cemetery is a fraternal cemetery, a religious cemetery, a public cemetery, a cemetery owned and operated by a cemetery association, or a licensed cemetery.

Reasonable maintenance by the cemetery authority shall not preclude the exercise of lawful rights by the owner of an interment, inurnment, or entombment right, or by the decedent's immediate family or other heirs, in accordance with reasonable rules and regulations of the cemetery or other agreement of the cemetery authority.

In the case of a cemetery dedicated as a nature preserve under the Illinois Natural Areas Preservation Act, reasonable maintenance by the cemetery authority shall be in accordance with the rules and master plan governing the dedicated nature preserve.

A cemetery authority accused of violating the reasonable maintenance standard set forth in this Section shall have a reasonable opportunity to cure the violation. The cemetery authority shall have 10 business days after receipt of notice to cure the violation. If a cemetery authority cannot cure the violation within 10 business days, then the cemetery authority may request a time extension in order to cure the violation. The request for an extension shall be made in writing to the Department and must be postmarked within 10 business days after receipt of the notice of the alleged violation. The request shall outline all reasons for the extension and an estimated date by which the cure will be accomplished. Acceptable reasons include, without limitation, delays caused by weather conditions, season or climate, equipment failures, or acquisitions of materials or supplies being addressed by the authority in a timely manner, and unexpected temporary absences of personnel. The Department may approve or deny the extension. If the extension is denied, then the cemetery authority must cure the violation within 10 business days after the date of receipt of the Department's extension denial. If the extension is granted, then the cemetery authority must cure the violation within the extended period of time. A cemetery authority that does not cure the violation within the appropriate period of time shall be subject to discipline in accordance with Article 25 of this Act.

(b) A cemetery authority, before commencing cemetery operations or within 6 months after the effective date of this Act, shall cause an overall map of its cemetery property, delineating all lots or plots, blocks, sections, avenues, walks, alleys, and paths and their respective designations, to be filed at its on-site office, or if it does not maintain an on-site office, at its principal place of business. The cemetery authority shall update its map and index described in subsection (b-5) within a reasonable time after any expansion or alteration of the cemetery property. A cemetery

manager's certificate acknowledging, accepting, and adopting the map shall also be included with the map. The Department may order that the cemetery authority obtain a cemetery plat and that it be filed at its on-site office, or if it does not maintain an on-site office, at its principal place of business if (1) a human body that should have been interred, entombed, or inurned at the cemetery after the effective date of this amendatory Act of the 97th General Assembly is missing, displaced, or dismembered and (2) the cemetery map contains serious discrepancies.

In exercising this discretion, the Department shall consider whether the cemetery authority would experience an undue hardship as a result of obtaining the plat. The cemetery plat, as with all plats prepared under this Act, shall comply with the Illinois Professional Land Surveyor Act of 1989 and shall delineate, describe, and set forth all lots or plots, blocks, sections, avenues, walks, alleys, and paths and their respective designations. A cemetery manager's certificate acknowledging, accepting, and adopting the plat shall also be included with the plat.

(b-5) A cemetery authority shall maintain an index that associates the identity of deceased persons interred, entombed, or inurned after the effective date of this Act with their respective place of interment, entombment, or inurnment.

(c) The cemetery authority shall open the cemetery map or plat to public inspection. The cemetery authority shall make available a copy of the overall cemetery map or plat upon written request and shall, if practical, provide a copy of a segment of the cemetery plat where interment rights are located upon the payment of reasonable photocopy fees. Any unsold lots, plots, or parts thereof, in which there are not human remains, may be resurveyed and altered in shape or size and properly designated on the cemetery map or plat. However, sold lots, plots, or parts thereof in which there are human remains may not be renumbered or renamed. Nothing contained in this subsection, however, shall prevent the cemetery authority from enlarging an interment right by selling to its owner the excess space next to the interment right and permitting interments therein, provided reasonable access to the interment right and to adjoining interment rights is not thereby eliminated.

(d) A cemetery authority shall keep a record of every interment, entombment, and inurnment completed after the effective date of this Act. The record shall include the deceased's name, age, date of burial, and the specific location of the interred, entombed, or inurned human remains. The specific location shall correspond to the map or plat maintained in accordance with subsection (b) of this Section.

(e) (Blank).

(f) A cemetery authority shall make available for inspection and, upon reasonable request and the payment of a reasonable copying fee, provide a copy of its rules and regulations. A cemetery authority shall make available for viewing and provide a copy of its current prices of interment, inurnment, or entombment rights.

(g) A cemetery authority shall provide access to the cemetery under the cemetery authority's reasonable rules and regulations.

(h) A cemetery authority shall be responsible for the proper opening and closing of all graves, crypts, or niches for human remains in any cemetery property it owns.

(i) A licensed cemetery authority shall keep in this State and use in its business such records as will enable the Department to determine whether such licensee or trustee is complying with the provisions of this Act and with the rules, regulations, and directions made by the Department under

this Act. The licensed cemetery authority shall keep the records in electronic or written format at the location identified in the license issued by the Department or as otherwise agreed by the Department in writing. The books, accounts, and records shall be accessible for review upon demand of the Department.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/20-6)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-6. Cemetery Oversight Database.

(a) Within 10 business days after an interment, entombment, or inurnment of human remains, the cemetery manager shall cause a record of the interment, entombment, or inurnment to be entered into the Cemetery Oversight Database. The requirement of this subsection (a) also applies in any instance in which human remains are relocated.

(b) Within 9 months after the effective date of this Act, the Department shall certify a database as the Cemetery Oversight Database. Upon certifying the database, the Department shall:

(1) provide reasonable notice to cemetery authorities identifying the database; and

(2) immediately upon certification, require each cemetery authority to use the Cemetery Oversight Database as a means of complying with subsection (a).

(c) In certifying the Cemetery Oversight Database, the Department shall ensure that the database:

(1) provides real-time access through an Internet connection or, if real-time access through an Internet connection becomes unavailable due to technical problems with the Cemetery Oversight Database incurred by the database provider or if obtaining use of an Internet connection would be an undue hardship on the cemetery authority, through alternative mechanisms, including, but not limited to, telephone;

(2) is accessible to the Department and to cemetery managers in order to ensure compliance with this Act and in order to provide any other information that the Department deems necessary;

(3) requires cemetery authorities to input whatever information required by the Department;

(4) maintains a real-time copy of the required reporting information that is available to the Department at all times and is the property of the Department; and

(5) contains safeguards to ensure that all information contained in the Cemetery Oversight Database is secure.

(d) A cemetery authority may rely on the information contained in the Cemetery Oversight Database as accurate and is not subject to any administrative penalty or liability as a result of relying on inaccurate information contained in the database.

(e) The Cemetery Oversight Database provider shall indemnify cemetery authorities against all claims and actions arising from illegal, willful, or wanton acts on the part of the Database provider. The Cemetery Oversight Database provider shall at all times maintain an electronic backup copy of the information it receives pursuant to subsection (a).

(f) In the event the provider of the database imposes a fee for entries into the database, the fee shall be paid directly by the Department to the provider, and the fee may not be imposed upon cemetery authorities making entries into the database. However, the provider need not refund any

entry fees paid by cemetery authorities prior to the effective date of this amendatory Act of the 97th General Assembly.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/20-8)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-8. Vehicle traffic control. A cemetery authority shall use its reasonable best efforts to ensure that funeral processions entering and exiting the cemetery grounds do not obstruct traffic on any street for a period in excess of 10 minutes, except where such funeral procession is continuously moving or cannot be moved by reason of circumstances over which the cemetery authority has no reasonable control. The cemetery authority shall use its reasonable best efforts to help prevent multiple funeral processions from arriving at the cemetery simultaneously. Notwithstanding any provision of this Act to the contrary, a cemetery authority that violates the provisions of this Section shall be guilty of a business offense and punishable by a fine of not more than \$500 for each offense.

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

(225 ILCS 411/20-10)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-10. **Contract.** At the time cemetery arrangements are made and prior to rendering the cemetery services, a cemetery authority shall create a completed written contract to be provided to the consumer, signed by both parties by their actual written signatures on either paper or electronic form, that shall contain: (i) the date on which the arrangements were made; (ii) the price of the service selected and the services and merchandise included for that price; (iii) the supplemental items of service and merchandise requested and the price of each item; (iv) the terms or method of payment agreed upon; and (v) a statement as to any monetary advances made on behalf of the family. The cemetery authority shall maintain a copy of such written contract in its permanent records.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/20-11)

Sec. 20-11. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/20-12)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-12. **Method of payment; receipt.** No cemetery authority shall require payment for any goods, services, or easement by cash only. Each cemetery authority subject to this Section shall permit payment by at least one other option, including, but not limited to, personal check, cashier's check, money order, or credit or debit card. In addition to the contract for the sale of cemetery goods, services, or easements, the cemetery authority shall provide a receipt to the consumer upon payment in part or full, whatever the case may be.

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

(225 ILCS 411/20-15)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-15. Interment or inurnment in cemetery. No cemetery authority shall interfere with a licensed funeral director or his or her designated agent observing the final burial or disposition of a body for which the funeral director has a contract for services related to that deceased individual. No funeral director or his or her designated agent shall interfere with a licensed cemetery authority or its designated agent's rendering of burial or other disposition services for a body for which the cemetery authority has a contract for goods, services, or property related to that deceased individual.

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

(225 ILCS 411/20-20)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-20. Display of license. Every cemetery authority, cemetery manager, and customer service employee license issued by the Department shall state the number of the license and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. Nothing in this Act shall prevent an individual from acting as a licensed cemetery manager or customer service employee for more than one cemetery. A cemetery manager or customer service employee who works at more than one cemetery shall display an original version of his or her license at each location for which the individual serves as a cemetery manager or customer service employee.

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

(225 ILCS 411/20-25)

Sec. 20-25. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/20-30)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-30. Signage. The Department shall create, and each cemetery authority shall conspicuously post signs in English and Spanish in each cemetery office that contain the Department's consumer hotline number, information on how to file a complaint, and whatever other information that the Department deems appropriate.

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

(225 ILCS 411/20-35)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-35. Stacking; burial or interment of an unknown individual or unknown body part.

(a) The stacking of caskets underground of any individual is limited to no more than 3 caskets in one grave space with the exception of an arrangement made pursuant to a lawful contract with a consumer that complies with the requirements of Section 20-10 of this Act.

(b) Burials and interments of unknown individuals or unknown body parts must be entered into the Cemetery Oversight Database as provided in Section 20-6 of this Act.

(Source: P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/20-40)

(Section scheduled to be repealed on January 1, 2027)

Sec. 20-40. Burial of multiple persons. A cemetery authority shall not knowingly bury human remains from multiple persons, known or unknown, in the same casket or grave space with the exception of (1) human remains that are placed in individual containers, (2) a mass casualty event, either natural or man-made, or (3) an arrangement made pursuant to a lawful contract with a consumer that complies with the requirements of Section 20-10 of this Act.

(Source: P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/Art. 22 heading)

Article 22.

Cemetery Associations

(Repealed)

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/Art. 25 heading)

Article 25.

Administration and Enforcement

(Article scheduled to be repealed on January 1, 2022)

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

(225 ILCS 411/25-1)

Sec. 25-1. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-3)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-3. Exemption. All cemetery authorities maintaining a partial exemption must submit to the following investigation procedure by the Department in the event of a consumer complaint:

(a) Complaints to cemetery:

(1) the cemetery authority shall make every effort to first resolve a consumer complaint; and

(2) if the complaint is not resolved, then the cemetery authority shall advise the consumer of his or her right to file a complaint with the Department.

(b) Complaints to the Department:

(1) if the Department receives a complaint, the Department shall make an initial determination as to whether the complaint has a reasonable basis and pertains to this Act;

(2) if the Department determines that the complaint has a reasonable basis and pertains to this Act, it shall inform the cemetery authority of the complaint and give it 30 days to tender a response;

(3) upon receiving the cemetery authority's response, or after the 30 days provided in subsection (2) of this subsection, whichever comes first, the Department shall attempt to resolve the complaint telephonically with the parties involved;

(4) if the complaint still is not resolved, then the Department shall conduct an investigation as provided for by rule;

(5) if the Department conducts an on-site investigation with the parties, then it may charge the cemetery authority a single investigation fee, which fee shall be set by rule and shall be calculated on an hourly basis; and

(6) if all attempts to resolve the consumer complaint as provided for in paragraphs (1) through (5) fail, then the cemetery authority may be subject to proceedings for penalties and discipline under this Article when it is determined by the Department that the cemetery authority may have engaged in any of the following: (i) gross malpractice; (ii) dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public; (iii) gross, willful, or continued overcharging for services; (iv) incompetence; (v) unjustified failure to honor its contracts; or (vi) failure to adequately maintain its premises. The Department may issue a citation or institute disciplinary action and cause the matter to be prosecuted and may thereafter issue and enforce its final order as provided in this Act.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-5. Citations.

(a) The Department may adopt rules to permit the issuance of citations for non-frivolous complaints. The citation shall be issued to the licensee and shall contain the licensee's name and address, the licensee's license number, a brief factual statement, the Sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the licensee may choose, in lieu of accepting the citation, to request a hearing. If the licensee does not dispute the matter in the citation with the Department within 30 days after the citation is served, then the citation shall become a final order and shall constitute discipline. The penalty shall be a fine or other conditions as established by rule.

(b) The Department shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare. Citations shall not be utilized if there was any significant consumer harm resulting from the violation.

(c) A citation must be issued within 6 months after the reporting of a violation that is the basis for the citation.

(d) Service of a citation may be made by personal service, regular mail, or email to the licensee at the licensee's address of record.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-10)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-10. Grounds for disciplinary action.

(a) The Department may refuse to issue or renew a license or may revoke, suspend, place on probation, reprimand, or take other disciplinary or non-disciplinary action as the Department may deem appropriate, including fines not to exceed \$10,000 for each violation, with regard to any license under this Act, for any one or combination of the following:

(1) Material misstatement in furnishing information to the Department.

(2) Violations of this Act, except for Section 20-8.

(3) Conviction of or entry of a plea of guilty or nolo contendere, finding of guilt, jury verdict, or entry of judgment or sentencing, including, but not limited to, convictions, preceding sentences of supervision, conditional discharge, or first offender probation under the law of any jurisdiction of the United States that is (i) a Class X felony or (ii) a felony, an essential element of which is fraud or dishonesty that is directly related to the practice of cemetery operations.

(4) Fraud or any misrepresentation in applying for or procuring a license under this Act or in connection with applying for renewal.

(5) Incompetence or misconduct in the practice of cemetery operations.

(6) Gross malpractice.

(7) Aiding or assisting another person in violating any provision of this Act or rules adopted under this Act.

(8) Failing, within 10 business days, to provide information in response to a written request made by the Department.

(9) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

(10) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, narcotics, stimulants, or any other substances that results in the inability to practice pursuant to the provisions of this Act with reasonable judgment, skill, or safety while acting under the provisions of this Act.

(11) Discipline by another state, territory, foreign country, the District of Columbia, the United States government, or any other government agency, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth in this Act.

(12) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership, or association any fee, commission, rebate, or other form of compensation for professional services not actually or personally rendered.

(13) A finding by the Department that the licensee, after having his or her license placed on probationary status, has violated the terms of probation or failed to comply with such terms.

(14) Willfully making or filing false records or reports in his or her practice, including, but not limited to, false records filed with any governmental agency or department.

(15) Inability to practice the profession with reasonable judgment, skill, or safety as a result of physical illness, including, but not limited to, loss of motor skill, mental illness, or disability.

(16) Failure to comply with an order, decision, or finding of the Department made pursuant to this Act.

(17) Directly or indirectly receiving compensation for any professional services not actually performed.

(18) Practicing under a false or, except as provided by law, an assumed name.

(19) Using or attempting to use an expired, inactive, suspended, or revoked license or impersonating another licensee.

(20) A finding by the Department that an applicant or licensee has failed to pay a fine imposed by the Department.

(21) Unjustified failure to honor its contracts.

(22) Negligent supervision of a cemetery manager, customer service employee, employee, or independent contractor.

(23) (Blank).

(24) (Blank).

(25) (Blank).

(b) No action may be taken under this Act against a person licensed under this Act for an occurrence or alleged occurrence that predates the enactment of this Act.

(c) In enforcing this Section, the Department, upon a showing of a possible violation, may order a licensee or applicant to submit to a mental or physical examination, or both, at the expense of the Department. The Department may order the examining physician to present testimony concerning his or her examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The examining physicians shall be specifically designated by the Department. The licensee or applicant may have, at his or her own expense, another physician of his or her choice present during all aspects of the examination. Failure of a licensee or applicant to submit to any such examination when directed, without reasonable cause, shall be grounds for either immediate suspending of his or her license or immediate denial of his or her application.

(1) If the Secretary immediately suspends the license of a licensee for his or her failure to submit to a mental or physical examination when directed, a hearing must be convened by the Department within 15 days after the suspension and completed without appreciable delay.

(2) If the Secretary otherwise suspends a license pursuant to the results of the licensee's mental or physical examination, a hearing must be convened by the Department within 15 days after the suspension and completed without appreciable delay. The Department shall have the authority to review the licensee's record of treatment and counseling regarding the relevant impairment or impairments to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

(3) Any licensee suspended under this subsection shall be afforded an opportunity to demonstrate to the Department that he or she can resume practice in compliance with the acceptable and prevailing standards under the provisions of his or her license.

(d) The determination by a circuit court that a licensee is subject to involuntary admission or judicial admission, as provided in the Mental Health and Developmental Disabilities Code, operates as an automatic suspension. Such suspension may end only upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission, the issuance of an

order so finding and discharging the patient, and the filing of a petition for restoration demonstrating fitness to practice.

(e) In cases where the Department of Healthcare and Family Services has previously determined that a licensee or a potential licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the Department, the Department shall refuse to issue or renew or shall revoke or suspend that person's license or shall take other disciplinary action against that person based solely upon the certification of delinquency made by the Department of Healthcare and Family Services under paragraph (5) of subsection (a) of Section 2105-15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

(f) The Department shall refuse to issue or renew or shall revoke or suspend a person's license or shall take other disciplinary action against that person for his or her failure to file a return, to pay the tax, penalty, or interest shown in a filed return, or to pay any final assessment of tax, penalty, or interest as required by any tax Act administered by the Department of Revenue, until the requirements of the tax Act are satisfied in accordance with subsection (g) of Section 2105-15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois. (Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-13)

Sec. 25-13. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/25-14)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-14. Mandatory reports.

(a) If a cemetery authority receives a consumer complaint that is not resolved to the satisfaction of the consumer within 60 days of the complaint, the cemetery authority shall advise the consumer of the right to seek investigation by the Department and may direct the consumer to the sign posted in its office as required by Section 20-30 of this Act. Cemetery authorities shall report to the Department within 30 days after the settlement of or final judgment in any cause of action that alleges negligence, fraud, theft, misrepresentation, misappropriation, or breach of contract.

(b) The State's Attorney of each county shall report to the Department all instances in which an individual licensed as a cemetery manager or customer service employee, or any individual listed on a licensed cemetery authority's application under this Act, is convicted or otherwise found guilty of the commission of any felony. The report shall be submitted to the Department within 60 days after conviction or finding of guilty.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/25-14.5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-14.5. Comptroller report. The Comptroller shall annually provide a report to the Department with the total amount of trust funds reported by a cemetery authority licensed under the Cemetery Care Act, the Illinois Pre-Need Cemetery Sales Act, or the Illinois Funeral or Burial

Funds Act and provide other information about a cemetery authority upon the request of the Department. Additionally, the Comptroller shall report to the Department any adverse action taken against a cemetery authority under the Cemetery Care Act, the Illinois Pre-Need Cemetery Sales Act, or the Illinois Funeral or Burial Funds Act.

(Source: P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/25-15)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-15. Injunction; cease and desist order.

(a) If any person or entity violates a provision of this Act, the Secretary may, in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois, petition for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in such court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin such violation. If it is established that such person or entity has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this Section are in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

(b) Whenever in the opinion of the Department any person or entity violates any provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against them. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued immediately.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-25)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-25. Investigations, notice, hearings.

(a) The Department may investigate the actions of any applicant or of any person or entity holding or claiming to hold a license under this Act.

(b) The Department shall, before disciplining an applicant or licensee, at least 30 days prior to the date set for the hearing: (i) notify, in writing, the accused of the charges made and the time and place for the hearing on the charges, (ii) direct him or her to file a written answer to the charges under oath within 20 days after service of the notice, and (iii) inform the applicant or licensee that failure to file an answer will result in a default being entered against the applicant or licensee.

(c) Written or electronic notice, and any notice in the subsequent proceedings, may be served by personal delivery, by email, or by mail to the applicant or licensee at his or her address of record or email address of record.

(d) At the time and place fixed in the notice, the hearing officer appointed by the Secretary shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present any statement, testimony, evidence, and argument as may be pertinent to the charges or to their defense. The hearing officer may continue the hearing from time to time.

(e) In case the licensee or applicant, after receiving the notice, fails to file an answer, his or her license may, in the discretion of the Secretary, be suspended, revoked, or placed on probationary status, or be subject to whatever disciplinary action the Secretary considers proper, including limiting the scope, nature, or extent of the person's practice or imposition of a fine, without hearing, if the act or acts charged constitute sufficient grounds for the action under this Act.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-26)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-26. Hearing officer. Notwithstanding any provision of this Act, the Secretary has the authority to appoint an attorney licensed to practice law in the State of Illinois to serve as the hearing officer in any action for refusal to issue or renew a license or discipline a license. The hearing officer shall have full authority to conduct the hearing. The hearing officer shall report his or her findings of fact, conclusions of law, and recommendations to the Secretary.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-30)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-30. Hearing; motion for rehearing.

(a) The hearing officer appointed by the Secretary shall hear evidence in support of the formal charges and evidence produced by the licensee. At the conclusion of the hearing, the hearing officer shall present to the Secretary a written report of his or her findings of fact, conclusions of law, and recommendations.

(b) At the conclusion of the hearing, a copy of the hearing officer's report shall be served upon the applicant or licensee, either personally or as provided in this Act for the service of the notice of hearing. Within 20 calendar days after such service, the applicant or licensee may present to the Department a motion, in writing, for a rehearing which shall specify the particular grounds for rehearing. The Department may respond to the motion for rehearing within 20 calendar days after its service on the Department. If no motion for rehearing is filed, then upon the expiration of the time specified for filing such a motion, or upon denial of a motion for rehearing, the Secretary may enter an order in accordance with the recommendations of the hearing officer. If the applicant or licensee orders from the reporting service and pays for a transcript of the record within the time for filing a motion for rehearing, the 20 calendar day period within which a motion may be filed shall commence upon delivery of the transcript to the applicant or licensee.

(c) If the Secretary disagrees in any regard with the report of the hearing officer, the Secretary may issue an order contrary to the report.

(d) Whenever the Secretary is not satisfied that substantial justice has been done, the Secretary may order a hearing by the same or another hearing officer.

(e) At any point in any investigation or disciplinary proceeding provided for in this Act, both parties may agree to a negotiated consent order. The consent order shall be final upon signature of the Secretary.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-35)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-35. Record of proceedings.

(a) The Department, at its 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 in which a licensee may be revoked, suspended, placed on probationary status, reprimanded, fined, or subjected to other disciplinary action with reference to the license when a disciplinary action is authorized under this Act and rules. The notice of hearing, complaint, and all other documents in the nature of pleadings and written portions filed in the proceedings, the transcript of the testimony, the report of the hearing officer, and the orders of the Department shall be the record of the proceedings. The record may be made available to any person interested in the hearing upon payment of the fee required by Section 2105-115 of the Department of Professional Regulation Law.

(b) The Department may contract for court reporting services, and, if it does so, the Department shall provide the name and contact information for the certified shorthand reporter who transcribed the testimony at a hearing to any person interested, who may obtain a copy of the transcript of any proceedings at a hearing upon payment of the fee specified by the certified shorthand reporter.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-40)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-40. Subpoenas; depositions; oaths.

(a) The Department has the power to subpoena documents, books, records, or other materials and to bring before it any individual and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed in civil cases in the courts of this State.

(b) The Secretary and the designated hearing officer have the power to administer oaths to witnesses at any hearing that the Department is authorized to conduct and any other oaths authorized in any Act administered by the Department.

(c) Every individual having taken an oath or affirmation in any proceeding or matter wherein an oath is required by this Act, who shall swear willfully, corruptly, and falsely in a matter material to the issue or point in question, or shall suborn any other individual to swear as aforesaid, shall be guilty of perjury or subornation of perjury, as the case may be and shall be punished as provided by State law relative to perjury and subornation of perjury.

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

(225 ILCS 411/25-45)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-45. Compelling testimony. Any circuit court, upon application of the Department or designated hearing officer may enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books, and records in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

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

(225 ILCS 411/25-50)

Sec. 25-50. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-55)

Sec. 25-55. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-60)

Sec. 25-60. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-65)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-65. Order or certified copy; prima facie proof. An order or certified copy thereof, over the seal of the Department and purporting to be signed by the Secretary, is prima facie proof that:

(1) the signature is the genuine signature of the

Secretary;

(2) the Secretary is duly appointed and qualified; and

(3) the hearing officer is qualified to act.

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

(225 ILCS 411/25-70)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-70. Receivership. In the event a cemetery authority license is suspended or revoked or where an unlicensed person has conducted activities requiring cemetery authority licensure under this Act, the Department, through the Attorney General, may petition the circuit courts of this State for appointment of a receiver to operate the cemetery.

(a) The court shall appoint a receiver if the court determines that a receivership is necessary or advisable:

(1) to ensure the orderly and proper conduct of a licensee's professional business and affairs during or in the aftermath of the administrative proceeding to revoke or suspend the cemetery authority's license;

(2) for the protection of the public's interest and rights in the business, premises, or activities of the person sought to be placed in receivership;

(3) upon a showing of actual or constructive abandonment of premises or business licensed or which was not but should have been licensed under this Act;

(4) upon a showing of serious and repeated violations of this Act demonstrating an inability or unwillingness of a licensee to comply with the requirements of this Act;

(5) to prevent loss, wasting, dissipation, theft, or conversion of assets that should be marshaled and held available for the honoring of obligations under this Act; or

(6) upon proof of other grounds that the court deems good and sufficient for instituting receivership action concerning the respondent sought to be placed in receivership.

(b) A receivership under this Section may be temporary, or for the winding up and dissolution of the business, as the Department may request and the court determines to be necessary or advisable in the circumstances. Venue of receivership proceedings may be, at the Department's election, in Cook County or the county where the subject of the receivership is located. The appointed receiver shall be the Department or such person as the Department may nominate and the court shall approve.

(c) The Department may adopt rules for the implementation of this Section.
(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/25-75)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-75. **Cemetery Relief Fund.**

(a) A special income-earning fund is hereby created in the State treasury, known as the Cemetery Relief Fund.

(b) Beginning on July 1, 2011, and occurring on an annual basis every year thereafter, three percent of the moneys in the Cemetery Oversight Licensing and Disciplinary Fund shall be transferred into the Cemetery Relief Fund.

(c) All monies transferred into the fund together with all accumulated undistributed income thereon shall be held as a special fund in the State treasury. **The fund shall be used solely for the purpose of providing grants to units of local government and not-for-profit organizations, including, but not limited to, not-for-profit cemetery authorities, to clean up cemeteries that have been abandoned, neglected, or are otherwise in need of additional care.**

(d) The grant program shall be administered by the Department.

(e) In the event there is a structural surplus in the Cemetery Oversight Licensing and Disciplinary Fund, the Department may expend moneys out of the Cemetery Oversight Licensing and Disciplinary Fund for the purposes described in subsection (c) of this Section.
(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12; 97-1130, eff. 8-28-12.)

(225 ILCS 411/25-80)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-80. Surrender of license. Upon the revocation or suspension of a license under this Act, the licensee shall immediately surrender his or her license to the Department. If the licensee fails to do so, the Department has the right to seize the license.

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

(225 ILCS 411/25-85)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-85. Inactive status.

(a) Any licensed manager or customer service employee who notifies the Department in writing on forms prescribed by the Department as determined by rule, may elect to place his or her license on an inactive status and shall, subject to rules of the Department, be excused from payment of

renewal fees until he or she notifies the Department in writing of his or her desire to resume active status. Any licensed manager or licensed customer service employee requesting restoration from inactive status shall pay the current renewal fee and meet requirements as provided by rule. Any licensee whose license is in inactive status shall not practice in the State of Illinois.

(b) A cemetery authority license may only go on inactive status by following the provisions for dissolution set forth in Section 10-50 or transfer in Section 10-45.

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

(225 ILCS 411/25-90)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-90. Restoration of license from discipline.

(a) At any time after the successful completion of a term of indefinite probation, suspension, or revocation of a license under this Act, the Department may restore the license to the licensee, unless after an investigation and a hearing the Secretary determines that restoration is not in the public interest.

(b) Where circumstances of suspension or revocation so indicate, the Department may require an examination of the licensee prior to restoring his or her license.

(c) No person whose license has been revoked as authorized in this Act may apply for restoration of that license until such time as provided for in the Civil Administrative Code of Illinois.

(d) A license that has been suspended or revoked shall be considered non-renewed for purposes of restoration and a licensee restoring his or her license from suspension or revocation must comply with the requirements for restoration as set forth in Section 10-40.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-95)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-95. Administrative review; venue.

(a) All final administrative decisions of the Department are subject to judicial review under the Administrative Review Law and its rules. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(b) Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides, but if the party is not a resident of Illinois, the venue shall be in Sangamon County.

(c) The Department shall not be required to certify any record to the court or file any answer in court, or to otherwise appear in any court in a judicial review proceeding, unless and until the Department has received from the plaintiff payment of the costs of furnishing and certifying the record, which costs shall be determined by the Department.

(d) Failure on the part of the plaintiff to file a receipt in court shall be grounds for dismissal of the action.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-100)

Sec. 25-100. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-105)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-105. Unlicensed practice; violations; civil penalty.

(a) Any person who practices, offers to practice, attempts to practice, or hold himself or herself out as a cemetery manager or customer service employee as provided in this Act without being licensed or exempt under this Act shall, in addition to any other penalty provided by law, pay a civil penalty to the Department in an amount not to exceed \$10,000 for each offense, as determined by the Department. The civil penalty shall be assessed by the Department after a hearing is held in accordance with the provision set forth in this Act regarding the provision of a hearing for the discipline of a licensee.

(b) The Department may investigate any actual, alleged, or suspected unlicensed activity.

(c) The civil penalty shall be paid within 60 days after the effective date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and execution had thereon in the same manner as any judgment from any court of record.

(d) A person or entity not licensed under this Act who has violated any provision of this Act or its rules is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for a second and subsequent offenses.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-110)

Sec. 25-110. (Repealed).

(Source: P.A. 97-679, eff. 2-6-12. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-115)

(Section scheduled to be repealed on January 1, 2027)

Sec. 25-115. Illinois Administrative Procedure Act; application. The Illinois Administrative Procedure Act is expressly adopted and incorporated in this Act as if all of the provisions of that Act were included in this Act, except that the provision of paragraph (d) of Section 10-65 of the Illinois Administrative Procedure Act, which provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention or continuation or renewal of the license, is specifically excluded. The Department shall not be required to annually verify email addresses as specified in paragraph (a) of subsection (2) of Section 10-75 of the Illinois Administrative Procedure Act. For the purpose of this Act, the notice required under Section 10-25 of the Illinois Administrative Procedure Act is considered sufficient when mailed to the address of record or emailed to the email address of record.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-120)

Sec. 25-120. (Repealed).

(Source: P.A. 97-679, eff. 2-6-12. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/25-125)
Sec. 25-125. (Repealed).
(Source: P.A. 97-679, eff. 2-6-12. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/Art. 35 heading)

Article 35.

Consumer Bill of Rights

(Article scheduled to be repealed on January 1, 2027)
(Source: P.A. 96-863, eff. 3-1-10.)

(225 ILCS 411/35-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 35-5. Penalties. Cemetery authorities shall respect the rights of consumers of cemetery products and services as put forth in this Article. Failure to abide by the cemetery duties listed in this Article or to comply with a request by a consumer based on a consumer's privileges under this Article may activate the disciplinary processes in Article 25 of this Act.
(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/35-10)

(Section scheduled to be repealed on January 1, 2027)

Sec. 35-10. Consumer privileges.

(a) **The record required under this Section shall be open to public inspection** consistent with State and federal law. The cemetery authority shall make available, consistent with State and federal law, a true copy of the record upon written request and payment of reasonable copy costs. At the time of the interment, entombment, or inurnment, the cemetery authority shall provide the record of the deceased's name and date of burial to the person who would have authority to dispose of the decedent's remains under the Disposition of Remains Act.

(b) **Consumers have the right to purchase merchandise or services directly from the cemetery authority when available or through a third-party vendor** of the consumer's choice without incurring a penalty or additional charge by the cemetery authority; provided, however, that consumers do not have the right to purchase types of merchandise that would violate applicable law or the cemetery authority's rules and regulations.

(c) **Consumers have the right to complain to the cemetery authority or to the Department regarding cemetery-related products and services as well as issues with customer service, maintenance, or other cemetery activities.** Complaints may be brought by a consumer or the consumer's agent appointed for that purpose.

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

(225 ILCS 411/35-15)

(Section scheduled to be repealed on January 1, 2027)

Sec. 35-15. Cemetery duties.

(a) **Prices for all cemetery-related products offered for sale by the cemetery authority must be disclosed to the consumer in writing on a standardized price list.** Memorialization pricing may be disclosed in price ranges. The price list shall include the effective dates of the prices. The price list shall include not only the range of interment, inurnment, and entombment rights, and the cost of extending the term of any term burial, but also any related merchandise or services offered by the cemetery authority. Charges for installation of markers, monuments, and vaults in cemeteries must be the same without regard to where the item is purchased.

(b) **A contract for the interment, inurnment, or entombment of human remains must be signed by both parties: the consumer and the cemetery authority or its representative.** Such signature shall be personally signed by the signor on either paper or electronic format and shall not include a stamp or electronic facsimile of the signature. Before a contract is signed, the prices for the purchased services and merchandise must be disclosed on the contract and in plain language. If a contract is for a term burial, the term, the option to extend the term, and the subsequent disposition of the human remains post-term must be in bold print and discussed with the consumer. Any contract for the sale of a burial plot, when designated, must disclose the exact location of the burial plot based on the survey of the cemetery map or plat on file with the cemetery authority.

(c) **A cemetery authority that has the legal right to extend a term burial** shall, prior to disinterment, provide the family or other authorized agent under the Disposition of Remains Act the opportunity to extend the term of a term burial for the cost as stated on the cemetery authority's current price list. Regardless of whether the family or other authorized agent chooses to extend the term burial, the cemetery authority shall, prior to disinterment, provide notice to the family or other authorized agent under the Disposition of Remains Act of the cemetery authority's intention to disinter the remains and to inter different human remains in that space.

(d) If any rules or regulations, including the operational or maintenance requirements, of a cemetery change after the date a contract is signed for the purchase of cemetery-related or funeral-related products or services, the cemetery may not require the consumer, purchaser, or such individual's relative or representative to purchase any merchandise or service not included in the original contract or in the rules and regulations in existence when the contract was entered unless the purchase is reasonable or required to make the cemetery authority compliant with applicable law.

(e) **No cemetery authority or its agent may engage in deceptive or unfair practices.** The cemetery authority and its agents may not misrepresent legal or cemetery requirements.

(f) The Department may adopt rules regarding green burial certification, green cremation products and methods, and consumer education.

(g) The contractual requirements contained in this Section only apply to contracts executed after the effective date of this Act.

(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/Art. 75 heading)

Article 75.

Administrative Provisions

(Article scheduled to be repealed on January 1, 2027)

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

(225 ILCS 411/75-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 75-5. Conflict of interest. No investigator may hold an active license issued pursuant to this Act, nor may an investigator have a financial interest in a business licensed under this Act. Any individual licensed under this Act who is employed by the Department shall surrender his or her license to the Department for the duration of that employment. The licensee shall be exempt from all renewal fees while employed.

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

(225 ILCS 411/75-15)

(Section scheduled to be repealed on January 1, 2027)

Sec. 75-15. Civil Administrative Code. The Department shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois and shall exercise all other powers and duties set forth in this Act.

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

(225 ILCS 411/75-20)

Sec. 75-20. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/75-25)

(Section scheduled to be repealed on January 1, 2027)

Sec. 75-25. Home rule. The regulation and licensing as provided for in this Act are exclusive powers and functions of the State. A home rule unit may not regulate or license cemetery authorities, cemetery managers, customer service employees, cemetery workers, or any activities relating to the operation of a cemetery. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

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

(225 ILCS 411/75-35)

Sec. 75-35. (Repealed).

(Source: P.A. 96-863, eff. 3-1-10. Repealed by P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/75-45)

(Section scheduled to be repealed on January 1, 2027)

Sec. 75-45. Fees. The Department shall by rule provide for fees for the administration and enforcement of this Act, and those fees are nonrefundable. All of the fees, fines, and all other

moneys collected under this Act and fees collected on behalf of the Department under subsection (1) of Section 25 of the Vital Records Act shall be deposited into the Cemetery Oversight Licensing and Disciplinary Fund and be appropriated to the Department for the ordinary and contingent expenses of the Department in the administration and enforcement of this Act.
(Source: P.A. 102-20, eff. 6-25-21.)

(225 ILCS 411/75-50)

(Section scheduled to be repealed on January 1, 2027)

Sec. 75-50. Burial permits. Notwithstanding any law to the contrary, every burial permit shall contain information regarding the location of the interment, entombment, or inurnment of the deceased that would enable the Department to determine the precise location of the decedent.
(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(225 ILCS 411/75-55)

(Section scheduled to be repealed on January 1, 2027)

Sec. 75-55. Transition.

(a) (Blank).

(b) (Blank).

(c) All cemeteries not maintaining a full exemption or partial exemption shall pay a one-time fee to the Department, due no later than December 15, 2010, equal to \$20 plus an additional charge of \$1 for each burial performed within the cemetery during calendar year 2009.

(d) All fees collected under this Section prior to the effective date of this amendatory Act of the 97th General Assembly shall not be refunded.

(e) (Blank).

(f) (Blank).

(g) (Blank).

(Source: P.A. 96-863, eff. 3-1-10; 97-593, eff. 8-26-11; 97-679, eff. 2-6-12.)

(225 ILCS 411/Art. 90 heading)

Article 90.

Amendatory Provisions and Repeals

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

(225 ILCS 411/90-1)

Sec. 90-1. (Amendatory provisions; text omitted).

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

(225 ILCS 411/90-3)

Sec. 90-3. (Amendatory provisions; text omitted).

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

(225 ILCS 411/90-5)

Sec. 90-5. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-10)

Sec. 90-10. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-25)

Sec. 90-25. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-12; text omitted.)

(225 ILCS 411/90-30)

Sec. 90-30. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-33)

Sec. 90-33. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 1-19-10; text omitted.)

(225 ILCS 411/90-35)

Sec. 90-35. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-40)

Sec. 90-40. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-45)

Sec. 90-45. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-50)

Sec. 90-50. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-57)

Sec. 90-57. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 1-19-10; text omitted.)

(225 ILCS 411/90-60)

Sec. 90-60. (Amendatory provisions; text omitted).
(Source: P.A. 96-863, eff. 3-1-10; text omitted.)

(225 ILCS 411/90-90)

Sec. 90-90. (Repealed).

(Source: P.A. 96-863, eff. 3-1-12. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/90-92)

Sec. 90-92. The Cemetery Association Act is amended by repealing Sections 16, 16.5, 17, 18, 19, and 20.

(Source: P.A. 96-863, eff. 1-19-10.)

(225 ILCS 411/90-95)

Sec. 90-95. (Repealed).

(Source: P.A. 96-863, eff. 3-1-12. Repealed by P.A. 97-679, eff. 2-6-12.)

(225 ILCS 411/Art. 91 heading)

Article 91.

Additional Amendatory Provisions

(Amendatory provisions; text omitted)

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

(225 ILCS 411/Art. 900 heading)

Article 900.

Severability

(Article scheduled to be repealed on January 1, 2027)

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

(225 ILCS 411/900-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 900-5. Severability. This Act is declared to be severable, and should any word, phrase, sentence, provision or Section hereof be hereafter declared unconstitutional or otherwise invalid, the remainder of this Act shall not thereby be affected, but shall remain valid and in full force and effect for all intents and purposes.

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

(225 ILCS 411/Art. 999 heading)

Article 999.

Effective date

(Article scheduled to be repealed on January 1, 2027)

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

(225 ILCS 411/999-5)

(Section scheduled to be repealed on January 1, 2027)

Sec. 999-5. Effective date. This Act takes effect March 1, 2010, except that Sections 90-25, 90-90, and 90-95 take effect March 1, 2012 and Sections 90-33, 90-57, 90-92, and 999-5 take effect upon becoming law.

(Source: P.A. 96-863, eff. 1-19-10.)

Cemetery Protection Act

765 ILCS 835

PROPERTY

(765 ILCS 835/) Cemetery Protection Act.

(765 ILCS 835/0.001) (from Ch. 21, par. 14.001)

Sec. 0.001. Short title. This Act may be cited as the Cemetery Protection Act.

(Source: P.A. 86-1324.)

(765 ILCS 835/.01) (from Ch. 21, par. 14.01)

Sec. .01. For the purposes of this Act, the term:

"Cemetery authority" means an individual or legal entity that owns or controls cemetery lands or property.

"Community mausoleum" means a mausoleum owned and operated by a cemetery authority that contains multiple entombment rights sold to the public.

(Source: P.A. 96-863, eff. 3-1-10; 97-679, eff. 2-6-12.)

(765 ILCS 835/1) (from Ch. 21, par. 15)

Sec. 1. (a) Any person who acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or who desecrates human remains is guilty of a Class 3 felony.

(a-5) Any person who acts without proper legal authority and who willfully and knowingly removes any portion of the remains of a deceased human being from a burial ground where skeletal remains are buried or from a grave, crypt, vault, mausoleum, or other repository of human remains is guilty of a Class 4 felony.

(b) Any person who acts without proper legal authority and who willfully and knowingly:

(1) obliterates, vandalizes, or desecrates a burial ground where skeletal remains are buried or a grave, crypt, vault, mausoleum, or other repository of human remains;

(2) obliterates, vandalizes, or desecrates a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons;

(3) obliterates, vandalizes, or desecrates plants, trees, shrubs, or flowers located upon or around a repository for human remains or within a human graveyard or cemetery; or

(4) obliterates, vandalizes, or desecrates a fence, rail, curb, or other structure of a similar nature intended for the protection or for the ornamentation of any tomb, monument, gravestone, or other structure of like character;

is guilty of a Class A misdemeanor if the amount of the damage is less than \$500, a Class 4 felony if the amount of the damage is at least \$500 and less than \$10,000, a Class 3 felony if the amount of the damage is at least \$10,000 and less than \$100,000, or a Class 2 felony if the damage is \$100,000 or more and shall provide restitution to the cemetery authority or property owner for the amount of any damage caused.

(b-5) Any person who acts without proper legal authority and who willfully and knowingly defaces, vandalizes, injures, or removes a gravestone or other memorial, monument, or marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, memorial park, or battlefield is guilty of a Class 4 felony for damaging at least one but no more than 4 gravestones, a Class 3 felony for damaging at least 5 but no more than 10 gravestones, or a Class 2 felony for damaging more than 10 gravestones and shall provide restitution to the cemetery authority or property owner for the amount of any damage caused.

(b-7) Any person who acts without proper legal authority and who willfully and knowingly removes with the intent to resell a gravestone or other memorial, monument, or marker commemorating a deceased person or group of persons, whether located within or outside a recognized cemetery, memorial park, or battlefield, is guilty of a Class 2 felony.

(c) The provisions of this Section shall not apply to the removal or unavoidable breakage or injury by a cemetery authority of anything placed in or upon any portion of its cemetery in violation of any of the rules and regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority that in the judgment of the cemetery authority has become wrecked, unsightly, or dilapidated.

(d) If an unemancipated minor is found guilty of violating any of the provisions of subsection (b) of this Section and is unable to provide restitution to the cemetery authority or property owner, the parents or legal guardians of that minor shall provide restitution to the cemetery authority or property owner for the amount of any damage caused, up to the total amount allowed under the Parental Responsibility Law.

(d-5) Any person who commits any of the following:

(1) any unauthorized, non-related third party or person who enters any sheds, crematories, or employee areas;

(2) any non-cemetery personnel who solicits cemetery mourners or funeral directors on the grounds or in the offices or chapels of a cemetery before, during, or after a burial;

(3) any person who harasses or threatens any employee of a cemetery on cemetery grounds;

or

(4) any unauthorized person who removes, destroys, or disturbs any cemetery devices or property placed for safety of visitors and cemetery employees;

is guilty of a Class A misdemeanor for the first offense and of a Class 4 felony for a second or subsequent offense.

(e) Any person who shall hunt, shoot or discharge any gun, pistol or other missile, within the limits of any cemetery, or shall cause any shot or missile to be discharged into or over any portion thereof, or shall violate any of the rules made and established by the board of directors of such cemetery, for the protection or government thereof, is guilty of a Class C misdemeanor.

(f) Any person who knowingly enters or knowingly remains upon the premises of a public or private cemetery without authorization during hours that the cemetery is posted as closed to the public is guilty of a Class A misdemeanor.

(g) All fines when recovered, shall be paid over by the court or officer receiving the same to the cemetery authority and be applied, as far as possible in repairing the injury, if any, caused by such offense. Provided, nothing contained in this Act shall deprive such cemetery authority or the owner of any interment, entombment, or inurnment right or monument from maintaining an action for the recovery of damages caused by any injury caused by a violation of the provisions of this Act, or of the rules established by the board of directors of such cemetery authority. Nothing in this Section shall be construed to prohibit the discharge of firearms loaded with blank ammunition as part of any funeral, any memorial observance or any other patriotic or military ceremony.

(Source: P.A. 95-331, eff. 8-21-07; 96-863, eff. 3-1-10.)

(765 ILCS 835/2) (from Ch. 21, par. 16)

Sec. 2. The cemetery authority is hereby authorized to make by-laws or rules and regulations for the government thereof, and to make rules regarding the driving of cars, motorcycles, carriages,

processions, teams, and the speed thereof, the use of avenues, lots, walks, ponds, water courses, vaults, buildings, or other places within such cemetery, the operations and good management in such cemetery, the protection of visitors, the protection of employees, and for the maintenance of good order and quiet in such cemetery, all such rules to be subject to the rights of interment, entombment, or inurnment right owners, or others, owning any interest in such cemetery; and all persons found guilty of a violation of such rules shall be guilty of a petty offense and shall be punished by a fine of not less than \$100, nor more than \$500 for each offense. No judge shall be disqualified from hearing any cause that may be brought before him under the provisions of this Act, nor shall any person be disqualified from acting as a juror in such cause, by reason of any interest or ownership they or either of them may have in the interment, entombment, or inurnment rights of such cemetery.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/3) (from Ch. 21, par. 17)

Sec. 3. The cemetery authority may appoint policemen to protect such cemetery and preserve order therein, and such policemen shall have the same power in respect to any offenses committed in such cemetery, or any violation of this act, that city marshals or policemen in cities have in respect to maintaining order in such cities or arresting for offenses committed therein.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/4) (from Ch. 21, par. 18)

Sec. 4. The cemetery authority may set apart such portion as they see fit of the moneys received from the sale of the interment, entombment, or inurnment rights, in such cemetery or graveyard, which sums shall be kept separate from all other assets as an especial trust fund, and they shall keep the same invested in safe interest or income paying securities, for the purpose of keeping said cemetery or graveyard, and the interment, entombment, or inurnment rights therein, permanently in good order and repair, and the interest or income derived from such trust fund shall be applied only to that purpose, and shall not be diverted from such use.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/5) (from Ch. 21, par. 19)

Sec. 5. It shall be the duty of the cemetery authority of a public graveyard to receive by gift or bequest, real or personal property, or the income or avails of property which shall be conveyed in trust for the improvement, maintenance, repair, preservation and ornamentation of such interment, entombment, or inurnment rights or lots, vault or vaults, tomb or tombs, or other such structures in the cemetery or graveyard of which such board or trustees have control, as may be designated by the terms of such gift or bequest, and in accordance with such reasonable rules and regulations therefor, as shall be made by such board of directors or trustees, and such board of directors or trustees shall keep such trust funds invested in safe interest or income bearing securities, the income from which shall be used for the purpose aforesaid.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/5a) (from Ch. 21, par. 19a)

Sec. 5a. The cemetery authority may invest the funds received under Section 4 or 5 in notes secured by a first mortgage or trust deed upon improved or income producing real estate situated

in this State and not exceeding one-half the value thereof at the time the investment is made by the directors. Whenever any cemetery society or cemetery authority acquires property as a result of the foreclosure of such mortgage, or in any other manner, the directors or managing officers of such society or authority have the power to sell and convey the land received.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/6) (from Ch. 21, par. 20)

Sec. 6. The trust fund mentioned in Sections 4 and 5 of this act, shall be vested in the board of directors and trustees, and the securities taken therefor shall be approved by circuit court for the county wherein such cemetery or graveyard is located; and the board of directors or trustees shall, once in every 2 years, make an itemized report to the court of all such trust funds in their hands, and the securities taken therefor.

(Source: Laws 1965, p. 595.)

(765 ILCS 835/7) (from Ch. 21, par. 21)

Sec. 7. The trust funds, gifts and bequests mentioned in sections four (4) and five (5) of this act, shall be exempt from taxation and from the operation of all laws of mortmain, and laws against perpetuities and accumulations.

(Source: Laws 1889, p. 63.)

(765 ILCS 835/8) (from Ch. 21, par. 21.1)

Sec. 8. If the cemetery is a privately owned cemetery, as defined in Section 2 of the Cemetery Care Act, or a licensed cemetery authority under the Cemetery Oversight Act, or if the burial lot or grave, vault, tomb, or other such structures are in a privately owned cemetery, as defined in Section 2 of the Cemetery Care Act, or a licensed cemetery authority under the Cemetery Oversight Act, then such company or association shall also comply with the provisions of the Cemetery Care Act or Cemetery Oversight Act, whichever is applicable. Furthermore, no cemetery authority company or other legal entity may deny burial space to any person because of race, creed, marital status, sex, national origin, sexual orientation, or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Religious institution cemeteries may limit burials to members of the religious institution and their families.

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

(765 ILCS 835/9) (from Ch. 21, par. 21.2)

Sec. 9. When there is no memorial, monument, or marker installed on a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment rights in a community columbarium; no interment in a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium; no transfer or assignment of a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium on the cemetery authority records; no contact by an owner recorded in the cemetery authority records; publication has been made in a newspaper of general circulation in the county in which the interment, entombment, or inurnment rights are located and no response was received; and 50 years have passed since the cemetery interment right, entombment rights in a community mausoleum or lawn

crypt section, or inurnment right in a community columbarium was sold, there is a presumption that the cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium has been abandoned, unless a specific agreement has been entered into designating said rights to be inviolate. Alternatively, where there is an obligation to pay a cemetery authority, annually or periodically, maintenance or care charges on a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, or part thereof, and the owner of or claimant to a right or easement for burial in such cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, or part thereof, has failed to pay the required annual or periodic maintenance or care charges for a period of 30 years or more, such continuous failure to do so creates and establishes a presumption that the cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, or part thereof, has been abandoned.

Upon a court's determination of abandonment, the ownership of a right or easement for burial in a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, or part thereof, shall be subject to sale in the manner hereinafter provided.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/10) (from Ch. 21, par. 21.3)

Sec. 10. A cemetery authority may file in the office of the clerk of the circuit court of the county in which the cemetery is located a verified petition praying for the entry of an order adjudging a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium to have been abandoned. The petition shall describe the cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium alleged to have been abandoned, shall allege ownership by the petitioner of the cemetery, and, if known, the name of the owner of the right or easement for burial in such cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium as is alleged to have been abandoned, or, if the owner thereof is known to the petitioner to be deceased, then the names, if known to petitioner, of such claimants thereto as are the heirs-at-law and next-of-kin or the specific legatees under the will of the owner of the right or easement for burial in such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium and such other facts as the petitioner may have with respect to ownership of the right or easement for burial in such cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium.

The petition shall also allege the facts with respect to the abandonment of the cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium or facts about the obligation of the owner to pay annual or periodic maintenance or care charges on such cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, the amount of such charges as are due and unpaid, and shall also allege the continuous failure by the owner or claimant to pay such charges for a period of 30 consecutive years or more.

Irrespective of diversity of ownership of the right or easement for burial therein, a cemetery authority may include in one petition as many cemetery interment rights, entombment rights in a community mausoleum or lawn crypt section, or inurnment rights in a community columbarium as are alleged to have been abandoned.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/11) (from Ch. 21, par. 21.4)

Sec. 11. All persons so named in such petition, except the petitioner, shall be made parties defendant by name, and if the name or names of any owner or claimant are alleged in the petition to be unknown, such persons shall be made parties defendant under the name and style of "Unknown Owners". All parties defendant shall be notified of the pendency of the proceeding in the same manner as is now or may hereafter be required in other civil cases.

(Source: Laws 1961, p. 2908.)

(765 ILCS 835/12) (from Ch. 21, par. 21.5)

Sec. 12. In the event the owner, the claimant, or the heirs-at-law and next-of-kin or the specific legatees under the will of either the owner or claimant submits proof of ownership to the court or appears and answers the petition, the presumption of abandonment shall no longer exist and the court shall set the matter for hearing upon the petition and such answers thereto as may be filed.

In the event the defendant or defendants fails to appear and answer the petition, or in the event that upon the hearing the court determines from the evidence presented that there has been an abandonment of the cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium for 50 years or a continuous failure to pay the annual or periodic maintenance or care charges on such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, or part thereof, for a period of 30 years or more preceding the filing of the petition, then, in either such event, an order shall be entered adjudicating such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, to have been abandoned and adjudging the right or easement for burial therein to be subject to sale by the cemetery authority at the expiration of one year from the date of the entry of such order. Upon entry of an order adjudicating abandonment of a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium, the court shall fix such sum as is deemed a reasonable fee for the services of petitioner's attorney.

(Source: P.A. 94-44, eff. 6-17-05.)

(765 ILCS 835/13) (from Ch. 21, par. 21.6)

Sec. 13. In the event that, at any time within one year after adjudication of abandonment, the owner or claimant of an interment right, entombment rights in a community mausoleum or lawn crypt section, or an inurnment right in a community columbarium which has been adjudged abandoned, shall contact the court or the cemetery authority and pay all maintenance or care charges that are due and unpaid, shall reimburse the cemetery authority for the costs of suit and necessary expenses incurred in the proceeding with respect to such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium and shall contract for its future care and maintenance, then such lot, or part thereof,

shall not be sold as herein provided and, upon petition of the owner or claimant, the order or judgment adjudging the same to have been abandoned shall be vacated as to such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium.

(Source: P.A. 98-756, eff. 7-16-14.)

(765 ILCS 835/14) (from Ch. 21, par. 21.7)

Sec. 14. After the expiration of one year from the date of entry of an order adjudging an interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium to have been abandoned, a cemetery authority shall have the right to do so and may sell such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium at public sale and grant an easement therein for burial purposes to the purchaser at such sale, subject to the interment of any human remains theretofore placed therein and the right to maintain memorials placed thereon. A cemetery authority may bid at and purchase such interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium at such sale.

Notice of the time and place of any sale held pursuant to an order adjudicating abandonment of a cemetery interment right, entombment rights in a community mausoleum or lawn crypt section, or inurnment right in a community columbarium shall be published once in a newspaper of general circulation in the county in which the cemetery is located, such publication to be not less than 30 days prior to the date of sale.

The proceeds derived from any sale shall be used to reimburse the petitioner for the costs of suit and necessary expenses, including attorney's fees, incurred by petitioner in the proceeding, and the balance, if any, shall be deposited into the cemetery authority's care fund or, if there is no care fund, used by the cemetery authority for the care of its cemetery and for no other purpose.

(Source: P.A. 98-756, eff. 7-16-14.)

(765 ILCS 835/14.5)

Sec. 14.5. Correction of encroachment on interment, entombment, or inurnment rights.

(a) Whenever a cemetery becomes aware that there is an encroachment on or in the lawful interment, inurnment, or entombment rights of another, and when the cemetery buried or placed or permitted the burial or placement of the encroaching item in or on these rights, the cemetery may correct the encroachment in accordance with this Section. This Section shall not apply to, or be utilized in connection with, any eminent domain, quick-take, or other condemnation proceeding that is designed to relocate a cemetery or portion thereof to another location.

(b) When the encroaching item is a marker, monument or memorial that should be placed on or in another interment, inurnment, or entombment right located within the cemetery, or when the item is the foundation or base for any of the foregoing, the cemetery may with reasonable promptness, and without being required to obtain any permit, relocate the item to its proper place. Notice of the corrective action shall be given no later than 30 days following the correction in accordance with subsection (d) of this Section.

(c) When the encroaching item is a vault, casket, urn, outer burial container, or human remains that should be placed in or on another interment, inurnment, or entombment right located within the cemetery, the cemetery may with reasonable promptness, and without being required to obtain

any permit, relocate the item to its proper place. Except as otherwise provided in this subsection, notice of the corrective action shall be given no later than 30 days prior to the correction in accordance with subsection (d) of this Section. When the involved encroachment would, if uncorrected within 30 days, interfere with a scheduled interment, inurnment, or entombment, then the notice shall be given in accordance with subsection (d) of this Section with as much advance notice as reasonably possible or, if advance notice is not reasonably possible, no later than 30 days following the correction. In the event the correction is to occur in a religious cemetery that, for religious reasons, maintains rules that preclude advance notice of corrections, the notice shall occur no later than 30 days following the correction.

(d) Notice under this Section shall be by certified mail or other delivery method that has a confirmation procedure, in 12-point type, to the owner of any affected interment, inurnment, or entombment right or, when the owner is deceased, to the surviving spouse of the deceased, or if none, any surviving children of the deceased, or if no surviving spouse or children, a parent, brother, or sister of the deceased, or, if failing all of the above, any other listed heir of the deceased in the cemetery records. In providing notice, the cemetery authority shall exercise due diligence to engage in a reasonable search of available funeral home of record or cemetery records to obtain the current address of the party to be notified. The notice shall provide a clear statement of the correction taken or to be taken, together with the reasons for the correction, and shall outline a simple process for the notified person to obtain additional information regarding the correction from the cemetery. When advance notice is required, the notice shall inform the notified party of his or her right to be present for any reinterment, reinurnment, or reentombment, as well as his or her option to object by obtaining an injunction enjoining the contemplated correction. The cemetery shall maintain for no less than 5 years a record of any notice provided under this Section.

(e) Nothing in this Section shall make a cemetery financially responsible for the correction of encroachments that are directly or indirectly caused by the owner of an interment, inurnment, or entombment right or by his or her heirs or by an act of God, war, or vandalism. The cemetery shall be financially responsible for the correction of all other encroachments covered by this Section.

(f) Nothing in this Section shall be construed to limit the liability of any party.

(Source: P.A. 93-772, eff. 1-1-05.)

(765 ILCS 835/15) (from Ch. 21, par. 21.8)

Sec. 15. Purchases made pursuant to this Act shall be made in compliance with the "Local Government Prompt Payment Act", approved by the Eighty-fourth General Assembly.

(Source: P.A. 84-731.)

(765 ILCS 835/16)

Sec. 16. When a multiple interment right owner becomes deceased, the ownership of any unused rights of interment shall pass in accordance with the specific bequest in the decedent's will. If there is no will or specific bequest then the ownership and use of the unused rights of interment shall be determined by a cemetery authority in accordance with the information set out on a standard affidavit for cemetery interment rights use form if such a form has been prepared. The unused right of interment shall be used for the interment of the first deceased heir listed on the standard affidavit and continue in sequence until all listed heirs are deceased. In the event that an interment right is not used, the interment right shall pass to the heirs of the heirs of the deceased interment right owner in perpetuity. Except as otherwise provided in this Section, this shall not preclude the ability

of the heirs to sell said interment rights, in the event that all listed living heirs are in agreement, and it shall not preclude the ability of a 2/3 majority of the living heirs to sell a specific interment right to the spouse of a living or deceased heir. If the standard affidavit for cemetery interment rights use, showing heirship of decedent interment right owner's living heirs is provided to and followed by a cemetery authority, the cemetery authority shall be released of any liability in relying on that affidavit.

The following is the form of the standard affidavit:

STATE OF ILLINOIS)
) SS
COUNTY OF)

AFFIDAVIT FOR CEMETERY INTERMENT RIGHTS USE

I,, being first duly sworn on oath depose and say that:

1. A. My place of residence is

B. My post office address is

C. I understand that I am providing the information contained in this affidavit to the ("Cemetery") and the Cemetery shall, in the absence of directions to the contrary in my will, rely on this information to allow the listed individuals to be interred in any unused interment rights in the order of their death.

D. I understand that, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

Name Address

City Telephone

Items 2 through 6 must be completed by the executor of the decedent's estate, a personal representative, owner's surviving spouse, or surviving heir.

2. The decedent's name is

3. The date of decedent's death was

4. The decedent's place of residence immediately before his or her death was

5. My relationship to the decedent is and I am authorized to sign and file this affidavit.

6. At the time of death, the decedent (had no) (had a) surviving spouse. The name of the surviving spouse, if any, is, and he or she (has) (has not) remarried.

7. The following is a list of the cemetery interment rights that may be used by the heirs if the owner is deceased:

.....
.....

8. The following persons have an ownership interest in and the right to use the cemetery interment rights in the order of their death:

..... Address

..... Address

..... Address

..... Address

..... Address

..... Address

..... Address

9. This affidavit is made for the purpose of obtaining the consent of the undersigned to transfer the right of interment at the above mentioned cemetery property to the listed heirs. Affiants agree that they will save, hold harmless, and indemnify Cemetery, its heirs, successors, employees, and assigns, from all claims, loss, or damage whatsoever that may result from relying on this affidavit to record said transfer in its records and allow interments on the basis of the information contained in this affidavit.

WHEREFORE affiant requests Cemetery to recognize the above named heirs-at-law as those rightfully entitled to the ownership of and use of said interment (spaces) (space).

THE FOREGOING STATEMENT IS MADE UNDER THE PENALTIES OF PERJURY. (A FRAUDULENT STATEMENT MADE UNDER THE PENALTIES OF PERJURY IS PERJURY AS DEFINED IN THE CRIMINAL CODE OF 2012.)

Dated this day of,

..... (Seal) (To be signed by the owner or the individual who completes items 2 through 6 above.)

Subscribed and sworn to before me, a Notary Public in and for the County and State of aforesaid this day of,

..... Notary Public.
(Source: P.A. 97-1150, eff. 1-25-13.)

Disposition of Remains Act

755 ILCS 65

ESTATES
(755 ILCS 65/) Disposition of Remains Act.

(755 ILCS 65/1)

Sec. 1. Short title. This Act may be cited as the Disposition of Remains Act.
(Source: P.A. 94-561, eff. 1-1-06.)

(755 ILCS 65/5)

Sec. 5. Right to control disposition; priority. Unless a decedent has left directions in writing for the disposition or designated an agent to direct the disposition of the decedent's remains as provided in Section 65 of the Crematory Regulation Act or in subsection (a) of Section 40 of this Act, the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains and are liable for the reasonable costs of the disposition:

- (1) the person designated in a written instrument that satisfies the provisions of Sections 10 and 15 of this Act;
- (2) any person serving as executor or legal representative of the decedent's estate and acting according to the decedent's written instructions contained in the decedent's will;
- (3) the individual who was the spouse of the decedent at the time of the decedent's death;
- (4) the sole surviving competent adult child of the decedent, or if there is more than one surviving competent adult child of the decedent, the majority of the surviving competent adult children; however, less than one-half of the surviving adult children shall be vested with the rights and duties of this Section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving competent adult children;
- (5) the surviving competent parents of the decedent; if one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this Act after reasonable efforts have been unsuccessful in locating the absent surviving competent parent;
- (6) the surviving competent adult person or persons respectively in the next degrees of kindred or, if there is more than one surviving competent adult person of the same degree of kindred, the majority of those persons; less than the majority of surviving competent adult persons of the same degree of kindred shall be vested with the rights and duties of this Act if those persons have used reasonable efforts to notify all other surviving competent adult persons of the same degree of kindred of their instructions and are not aware of any opposition to those instructions on the part of one-half or more of all surviving competent adult persons of the same degree of kindred;
- (6.5) any recognized religious, civic, community, or fraternal organization willing to assume legal and financial responsibility;
- (7) in the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State appointed guardian, or any other public official charged with arranging the final disposition of the decedent;
- (8) in the case of individuals who have donated their bodies to science, or whose death occurred in a nursing home or other private institution and the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution; or

(9) any other person or organization that is willing to assume legal and financial responsibility.

As used in Section, "adult" means any individual who has reached his or her eighteenth birthday.

Notwithstanding provisions to the contrary, in the case of decedents who die while serving as members of the United States Armed Forces, the Illinois National Guard, or the United States Reserve Forces, as defined in Section 1481 of Title 10 of the United States Code, and who have executed the required U.S. Department of Defense Record of Emergency Data Form (DD Form 93), or successor form, the person designated in such form to direct disposition of the decedent's remains shall have the right to control the disposition, including cremation, of the decedent's remains.

(Source: P.A. 100-526, eff. 6-1-18.)

(755 ILCS 65/10)

Sec. 10. Form. The written instrument authorizing the disposition of remains under paragraph (1) of Section 5 of this Act shall be in substantially the following form:

"APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I,, being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by (name of agent first named below) and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact). All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

.....
.....
.....

If the disposition of my remains is by cremation, then:

() I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem a change to be appropriate.

() I wish to allow only the survivors I have designated below the option of canceling my cremation and selecting alternative arrangements, if they deem a change to be appropriate:

.....
.....
.....

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS PROVIDED HEREIN.

AN AGENT MAY SIGN AT ANY TIME, BUT AN AGENT'S AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT SIGNS BELOW TO INDICATE THE ACCEPTANCE OF APPOINTMENT. ANY NUMBER OF AGENTS MAY SIGN, BUT ONLY THE SIGNATURE OF THE AGENT ACTING AT ANY TIME IS REQUIRED.

AGENT:

Name:
Address:
Telephone Number:
Signature Indicating Acceptance of Appointment:
Date of Signature:

SUCCESSORS:

If my agent dies, is determined by a court to be under a legal disability, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name:
Address:
Telephone Number:
Signature Indicating Acceptance of Appointment:
Date of Signature:

2. Second Successor

Name:
Address:
Telephone Number:
Signature Indicating Acceptance of Appointment:
Date of Signature:

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any hospital, cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy

of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

Signed this day of,

.....

STATE OF

COUNTY OF

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this day of, 2.....

.....

Printed Name:

Notary Public, State of

My Commission Expires:

....."

(Source: P.A. 99-143, eff. 7-27-15.)

(755 ILCS 65/15)

Sec. 15. Requirements for written instrument under paragraph (1) of Section 5 of this Act. A written instrument is legally sufficient under paragraph (1) of Section 5 if the wording of the instrument complies substantially with Section 10, the instrument is properly completed, the instrument is signed by the decedent and the agent and the signature of the decedent is notarized. The agent may sign at any time, but the agent's authority to act is not effective until the agent signs the instrument. The written instrument may be modified or revoked only by a subsequent written instrument that complies with this Section.

(Source: P.A. 94-561, eff. 1-1-06; 94-1051, eff. 7-24-06.)

(755 ILCS 65/20)

Sec. 20. Duties of authorized agent.

(a) A person listed in Section 5 has the right, duty, and liability provided by that Section only if there is no person in a priority listed before the person.

(b) If any person who would otherwise have the right to control disposition pursuant to Section 5 has been charged with first or second degree murder or voluntary manslaughter in connection

with the decedent's death and those charges are known to the funeral director or cemetery authority, that person's right to control is relinquished and passed on to the next listed person or group of persons in accordance with Section 5.

(Source: P.A. 94-561, eff. 1-1-06.)

(755 ILCS 65/25)

Sec. 25. Body parts. In the case of body parts, a representative of the institution that has arranged with a funeral home, cemetery, or crematory authority to cremate or make other appropriate disposition of the body parts may serve as the authorizing agent.

(Source: P.A. 94-561, eff. 1-1-06.)

(755 ILCS 65/30)

Sec. 30. Prohibition of cremation; written instructions. No person shall be allowed to authorize cremation when a decedent has left written instructions that he or she does not wish to be cremated.

(Source: P.A. 94-561, eff. 1-1-06.)

(755 ILCS 65/35)

Sec. 35. Misrepresentation; liability. A person who represents that he or she knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent's remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result, directly or indirectly, from that warrant.

(Source: P.A. 94-561, eff. 1-1-06.)

(755 ILCS 65/40)

Sec. 40. Directions by decedent.

(a) A person may provide written directions for the disposition or designate an agent to direct the disposition, including cremation, of the person's remains in a will, a prepaid funeral or burial contract, a power of attorney that satisfies the provisions of Article IV-Powers of Attorney for Health Care of the Illinois Power of Attorney Act and contains a power to direct the disposition of remains, a cremation authorization form that complies with the Crematory Regulation Act, or in a written instrument that satisfies the provisions of Sections 10 and 15 and that is signed by the person and notarized. The directions may include instructions regarding gender identity, including, but not limited to, instructions with respect to appearance, chosen name, and gender pronouns, regardless of whether the person has obtained a court-ordered name change, changed the gender marker on any identification document, or undergone any transition-related medical treatment. The directions may be modified or revoked only by a subsequent writing signed by the person. The person otherwise entitled to control the disposition of a decedent's remains under this Act shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

The changes made by this amendatory Act of the 94th General Assembly shall also apply to any written instrument that: (i) satisfies the provision of Article IV-Powers of Attorney for Health Care of the Illinois Power of Attorney Act; (ii) contains a power to direct the disposition of remains; and (iii) was created before the effective date of this amendatory Act.

(b) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

(Source: P.A. 99-417, eff. 1-1-16.)

(755 ILCS 65/45)

Sec. 45. Liability. There shall be no liability for a cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment that carries out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains. Nothing herein shall be intended or construed to reduce or eliminate liability for the gross negligence or willful acts of any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment.

(Source: P.A. 94-561, eff. 1-1-06.)

(755 ILCS 65/50)

Sec. 50. Disputes. Any dispute among any of the persons listed in Section 5 concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court of competent jurisdiction within 30 days of the dispute being filed with the court. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

(Source: P.A. 101-381, eff. 1-1-20.)

(755 ILCS 65/300)

Sec. 300. (Amendatory provisions; text omitted).

(Source: P.A. 94-561, eff. 1-1-06; text omitted.)

Pre-Need Cemetery Sales Act

815 ILCS 390

BUSINESS TRANSACTIONS
(815 ILCS 390/) Pre-Need Cemetery Sales Act.

(815 ILCS 390/1) (from Ch. 21, par. 201)

Sec. 1. Purpose. It is the purpose of this Act to assure adequate protection for those who contract through pre-need contracts for the purchase of certain cemetery merchandise and cemetery services and undeveloped interment, entombment or inurnment space, when the seller may delay delivery or performance more than 120 days following initial payment on the account.

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

(815 ILCS 390/2) (from Ch. 21, par. 202)

Sec. 2. This Act applies to all persons, except religious, municipal, State and federal cemeteries, that offer for sale or sell cemetery merchandise, cemetery services, or undeveloped interment, entombment or inurnment spaces on a pre-need basis.

Nothing in this Act shall be deemed to apply to pre-arranged funeral programs covered under the Illinois Funeral or Burial Funds Act.

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

(815 ILCS 390/3) (from Ch. 21, par. 203)

Sec. 3. Short title. This Act may be cited as the Illinois Pre-Need Cemetery Sales Act.

(Source: P.A. 90-47, eff. 1-1-98.)

(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. 96-879, eff. 2-2-10.)

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

Sec. 5. It is unlawful for any seller directly or indirectly doing business within this State to engage in pre-need sales without a license issued by the Comptroller.

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

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

Sec. 6. License application.

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

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

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

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

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

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

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

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

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

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

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

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

(Source: P.A. 97-593, eff. 8-26-11.)

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

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

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

(b) The applicant or licensee is insolvent;

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

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

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

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

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

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

(i) The fidelity bond is not satisfactory to the Comptroller;

(j) As to any individual listed in the license application as required pursuant to Section 6, that 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 by any court of competent jurisdiction, or has been convicted of any felony or any theft-related offense;

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

(l) 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 or order made by the Comptroller under this Act; or

(m) 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.

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

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

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

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

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

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

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

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

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

(Source: P.A. 97-593, eff. 8-26-11.)

(815 ILCS 390/8a)

Sec. 8a. 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 the trust funds required 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.)

(815 ILCS 390/8b)

Sec. 8b. 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.)

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

Sec. 9. The Comptroller may upon his own motion investigate the actions of any person providing, selling, or offering pre-need sales contracts or of any applicant or any person or persons holding or claiming to hold a license under this Act. The Comptroller shall make such an investigation on receipt of the verified written complaint of any person setting forth facts which, if proved, would constitute grounds for refusal, suspension, or revocation of a license. Before refusing to issue, and before suspension or revocation of a license, the Comptroller shall hold a hearing to determine whether the applicant or licensee, hereafter called 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 and shall include sufficient information to inform the respondent of the general nature of the charge. 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 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.

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 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 or from the Comptroller.

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

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

Sec. 10. Any circuit court may, upon application of the Comptroller or of the applicant or licensee against whom proceedings under Section 9 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 contempt proceedings.

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

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

Sec. 11. 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", approved August 19, 1981, all amendments and modifications thereto, and any rules adopted under it 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 or from the Comptroller. Exhibits shall be certified without cost.

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

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

Sec. 12. License revocation or suspension.

(a) The Comptroller may, upon determination that grounds exist for the revocation or suspension of a license issued under this Act, 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) Upon the revocation or suspension of any license, the licensee shall immediately surrender the license or licenses to the Comptroller. If the licensee fails to do so, the Comptroller has the right to seize the license or licenses.

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

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

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

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

(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. 96-879, eff. 2-2-10.)

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

Sec. 15. (a) Whenever a seller receives anything of value under a pre-need sales contract, the person receiving such value shall deposit 50% of all proceeds received into one or more trust funds maintained pursuant to this Section, except that, in the case of proceeds received for the purchase of outer burial containers, 85% of the proceeds shall be deposited into one or more trust funds. Such deposits shall be made until the amount deposited in trust equals 50% of the sales price of the cemetery merchandise, cemetery services and undeveloped spaces included in such contract, except that, in the case of deposits for outer burial containers, deposits shall be made until the amount deposited in trust equals 85% of the sales price. In the event an installment contract is factored, discounted or sold to a third party, the seller shall deposit an amount equal to 50% of the sales price of the installment contract, except that, for the portion of the contract attributable to the sale of outer burial containers, the seller shall deposit an amount equal to 85% of the sales price. Proceeds required to be deposited in trust which are attributable to cemetery merchandise and cemetery services shall be held in a "Cemetery Merchandise Trust Fund". Proceeds required to be deposited in trust which are attributable to the sale of undeveloped interment, entombment or inurnment spaces shall be held in a "Pre-construction Trust Fund". If merchandise is delivered for storage in a bonded warehouse, as authorized herein, and payment of transportation or other charges totaling more than \$20 will be required in order to secure delivery to the site of ultimate use, upon such delivery to the warehouse the seller shall deposit to the trust fund the full amount of the actual or estimated transportation charge. Transportation charges which have been prepaid by the seller shall not be deposited to trust funds maintained pursuant to this Section. As used in this Section, "all proceeds" means the entire amount paid by a purchaser in connection with a pre-

need sales contract, including finance charges and Cemetery Care Act contributions, but excluding sales taxes and credit life insurance premiums.

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

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

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

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

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

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

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

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

or entombment, second to items of cemetery merchandise and cemetery services, unless some other allocation is clearly provided in the contract.

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

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

(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 Illinois Prudent Investor Law under Article 9 of the Illinois Trust Code. 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.

(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 a reasonable fee pursuant to the Illinois Trust Code.

(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.

(h) If the trustee has reason to believe that the contact information for a purchaser is no longer valid, then the trustee shall promptly notify the seller. If the trustee has reason to believe that the purchaser is deceased, then the trustee shall promptly notify the seller. A trustee shall remit as provided in Section 18.5 of this Act any pre-need trust funds, including both the principal and any accrued earnings or losses, relating to an individual account that is presumed abandoned under Section 18.5.

(Source: P.A. 101-48, eff. 1-1-20; 101-552, eff. 1-1-20; 102-558, eff. 8-20-21.)

(815 ILCS 390/16.5)

Sec. 16.5. 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.)

(815 ILCS 390/17) (from Ch. 21, par. 217)

Sec. 17. The principal and undistributed income of the trust created pursuant to Section 15 of this Act shall be paid to the seller if:

(1) the seller certifies by sworn affidavit to the trustee that the purchaser or the beneficiary named in the pre-need contract has deceased and that seller has fully delivered or installed all items included in the pre-need contract and fully performed all pre-need cemetery services he is required to perform under the pre-need contract; or

(2) the seller certifies by sworn affidavit to the trustee that seller has made full delivery, as defined herein.

(Source: P.A. 100-863, eff. 8-14-18.)

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

Sec. 18. (a) If for any reason a seller who has engaged in pre-need sales has refused, cannot or does not comply with the terms of the pre-need sales contract within a reasonable time after he is

required to do so, the purchaser or his 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, services or spaces plus undistributed interest amounts held in trust attributable to such 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, the seller's time for performance shall be extended by the length of such delay. Nothing in this Section shall relieve the seller from any liability for non-performance of his obligations under the pre-need sales contract.

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

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

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

(815 ILCS 390/18.5)

Sec. 18.5. Presumptively abandoned trust funds.

(a) After final payment on a pre-need contract, the entire amount held in trust attributable to undelivered cemetery merchandise and unperformed cemetery services, including undistributed interest earned thereon, is presumptively abandoned 2 years after the earlier of:

(A) the later of:

(i) the date the seller in the ordinary course of its business receives notice or an indication of the death of a beneficiary; or

(ii) 10 years after the death of a beneficiary if a beneficiary is cremated and the purchaser or the heir or assign, or other beneficiaries if any, or a duly authorized representative of the purchaser or a beneficiary, has not indicated an interest in the trust funds;

(B) the date a beneficiary has attained, or would have attained if living, the age of 105 where both the trustee and the seller do not know whether a beneficiary is deceased; or

(C) 50 years after the pre-need contract was executed, unless the purchaser or the heir or assign, or a duly authorized representative of the purchaser or a beneficiary, has indicated an interest in the property more than 50 years after the pre-need contract was executed, in which case, 3 years after the last indication of interest by the purchaser or the heir or assign, or a beneficiary, or a duly authorized representative of a purchaser or a beneficiary.

(b) The period after which trust funds are presumed abandoned is measured from the later of: (1) the date the trust funds are presumed abandoned under this Section; or (2) the latest indication of interest by the apparent owner in the trust funds. If more than one beneficiary is included in a pre-need contract, an indication of interest by any one or more of the beneficiaries requires that the presumption of abandonment under paragraphs (A) and (B) of subsection (a) be evaluated based on the beneficiary's information. An indication of interest in the trust funds includes any one or more of the actions listed in subsection (b) of Section 15-210 of the Revised Uniform Unclaimed Property Act.

(c) The seller shall notify the trustee of the pre-need trust funds in writing when any trust funds are presumed abandoned under this Section.

(d) If the seller is licensed to hold care funds under the Cemetery Care Act, then within 30 days of receiving notice that pre-need trust funds are presumed abandoned under this Section, the trustee of the pre-need trust funds shall remit the presumptively abandoned pre-need trust funds to the trustee for the care fund held pursuant to the Cemetery Care Act for deposit into such care fund. If the seller has retained an independent trustee pursuant to the Cemetery Care Act, then any funds remitted pursuant to this Section shall be remitted to the independent trustee. If the purchaser or beneficiary of pre-need trust funds presumed abandoned under this Section and deposited into a care fund makes a claim, then the seller shall direct the trustee of the care funds held pursuant to the Cemetery Care Act to refund the purchaser or beneficiary the amount that was deposited into the care fund.

(e) If the seller is not licensed to hold care funds under the Cemetery Care Act, the trustee of pre-need trust funds shall remit presumptively abandoned trust funds to the Comptroller semi-annually within 30 days after the end of June and December for deposit into the Cemetery Consumer Protection Fund. If the purchaser or beneficiary of pre-need trust funds that were presumed abandoned under this Section and deposited into the Cemetery Consumer Protection Fund makes a claim, then either the seller shall request restitution or reimbursement from the Cemetery Consumer Protection Fund as provided in Section 22 and provide the cemetery merchandise or cemetery services pursuant to the pre-need contract, or the purchaser or beneficiary shall request restitution or reimbursement from the Cemetery Consumer Protection Fund as provided in Section 22.

(f) Notwithstanding any provision of this Act, the only penalties that may be imposed in connection with the administration of this Section are those provided in the Revised Uniform Unclaimed Property Act.

(Source: P.A. 101-552, eff. 1-1-20.)

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

Sec. 19. Construction or development of spaces.

(a) The construction or development of undeveloped interment, entombment or inurnment spaces shall be commenced on that phase, section or sections of undeveloped ground or section of lawn crypts, mausoleums, garden crypts, columbariums or cemetery spaces in which sales are made within 3 years of the date of the first such sale. The seller shall give written notice to the Comptroller no later than 30 days after the first sale. Such notice shall include a description of the project. Once commenced, construction or development shall be pursued diligently to completion.

The construction must be completed within 6 years of the first sale. If construction or development is not commenced or completed within the times specified herein, any purchaser may surrender and cancel the contract and upon cancellation shall be entitled to a refund of the actual amounts paid toward the purchase price plus interest attributable to such amount earned while in trust; provided however that any delay caused by strike, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of the seller shall extend the time of such commencement and completion by the length of such delay.

(b) At any time within 12 months of a purchaser's entering into a pre-need contract for undeveloped interment, entombment or inurnment spaces, a purchaser may surrender and cancel his or her contract and upon cancellation shall be entitled to a refund of the actual amounts paid toward the purchase price plus interest attributable to such amount earned while in trust. Notwithstanding the foregoing, the cancellation and refund rights specified in this paragraph shall terminate as of the date the seller commences construction or development of the phase, section or sections of undeveloped spaces in which sales are made. After the rights of cancellation and refund specified herein have terminated, if a purchaser defaults in making payments under the pre-need contract, the seller shall have the right to cancel the contract and withdraw from the trust fund the entire balance to the credit of the defaulting purchaser's account as liquidated damages. In such event, the trustee shall deliver said balance to the seller upon its certification, and upon receiving said certification the trustee may rely thereon and shall not be liable to anyone for such reliance.

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

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

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

This Certificate is signed (insert date).

.....
Seller Contractor

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

(d) Except as otherwise authorized by this Section, every seller of undeveloped spaces shall provide facilities for temporary interment, entombment or inurnment for purchasers or beneficiaries of contracts who die prior to completion of the space. Such temporary facilities shall be constructed of permanent materials, and, insofar as practical, be landscaped and groomed to the extent customary in the cemetery industry in that community. The heirs, assigns, or personal representative of a purchaser or beneficiary shall not be required to accept temporary underground interment spaces where the undeveloped space contracted for was an above ground entombment

or inurnment space. In the event that temporary facilities as described in this paragraph are not made available, upon the death of a purchaser or beneficiary, the heirs, assigns, or personal representative is entitled to a refund of the entire sales price paid plus undistributed interest attributable to such amount while in trust.

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

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

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

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

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

Sec. 20. Records.

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

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

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

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

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

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

(d) The annual report shall be filed by the licensee with the Comptroller within 75 days after the end of the licensee's fiscal year. An extension of up to 60 days may be granted by the Comptroller, upon a showing of need by the licensee. Any other reports shall be in the form furnished or

specified by the Comptroller. If a licensee fails to submit an annual report to the Comptroller within the time specified in this Section, the Comptroller shall impose upon the licensee a penalty of \$5 per day for the first 15 days past due, \$10 per day for 16 through 30 days past due, \$15 per day for 31 through 45 days past due, and \$20 per day for the 46th day and every day thereafter the licensee remains delinquent in submitting the annual report. The Comptroller may abate all or part of the \$5 daily penalty for good cause shown. Each report shall be accompanied by a check or money order in the amount of \$10 payable to: Comptroller, State of Illinois.

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

(Source: P.A. 97-593, eff. 8-26-11.)

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

Sec. 21. Audits.

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

(b) 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;
- (2) the licensee changing trustees more than twice in any 12-month period;
- (3) any withdrawals or attempted withdrawals from the trusts in violation of this Act; or
- (4) failure to maintain or produce documentation required by this Act for deposits into trust accounts or trust investment activities.

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 or maintaining 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.

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

(815 ILCS 390/22) (from Ch. 21, par. 222)

Sec. 22. Cemetery Consumer Protection Fund.

(a) Every seller engaging in pre-need sales shall pay to the Comptroller \$5 for each said contract entered into, to be paid into a special income earning fund hereby created in the State Treasury, known as the Cemetery Consumer Protection Fund. The above said fees shall be remitted to the Comptroller semi-annually within 30 days after the end of June and December for all contracts that have been entered in such 6 month period.

(b) All monies paid into the fund together with all accumulated undistributed income thereon shall be held as a special fund in the State Treasury. The fund shall be used solely for the purpose of providing restitution to consumers who have suffered pecuniary loss arising out of pre-need sales, to help pay expenses of cemeteries or mausoleums in court-ordered receivership, or to satisfy Receiver's fees.

(c) Restitution or reimbursement for pre-need merchandise or services shall not exceed the reasonable average regional cost of the contracted merchandise at current prices.

(d) Whenever restitution is paid by the fund, the fund shall be subrogated to the amount of such restitution, and the Comptroller shall request the Attorney General to engage in all reasonable post judgment collection steps to collect said restitution from the judgment debtor and reimburse the fund.

(e) (Blank).

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

(g) 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 rights in the fund as a beneficiary or otherwise. Prior to seeking restitution from the fund, a purchaser or beneficiary seeking payment of restitution shall apply for restitution on a form provided by the Comptroller. The form shall include any information the Comptroller may reasonably require in order for the Comptroller to determine that restitution or reimbursement for cemetery merchandise or services is appropriate.

(h) Annually, the status of the fund shall be reviewed by the Comptroller, and if she or he determines that the fund together with all accumulated income earned thereon, equals or exceeds

\$10,000,000 and that the total number of outstanding claims filed against the fund is less than 10% of the fund's current balance, then payments to the fund pursuant to subsection (a) of this Section shall be suspended until such time as the fund's balance drops below \$10,000,000 or the total number of outstanding claims filed against the fund is more than 10% of the fund's current balance, but on such suspension, the fund shall not be considered inactive.

(Source: P.A. 101-34, eff. 6-28-19.)

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

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

(b) If any person violates this Act or fails or refuses to comply with any order of the Comptroller or any part thereof which to such person has become final and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such 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.

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

(d) Whenever a licensee fails or refuses to make a required report or whenever it appears to the Comptroller from any report or examination that such licensee has committed a violation of law or that the trust funds have not been administered properly or that it is unsafe or inexpedient for such licensee or the trustee of the trust funds of such licensee to continue to administer such funds or that any officer of such licensee or of the trustee of the trust funds of such licensee has abused his trust or has been guilty of misconduct or breach of trust in his official position injurious to such licensee or that such licensee has suffered as to its trust funds a serious loss by larceny, embezzlement, burglary, repudiation or otherwise, the Comptroller shall, by order, direct the discontinuance of such illegal, unsafe or unauthorized practices and shall direct strict conformity with the requirements of the law and safety and security in its transactions and may apply to the circuit court of the county where such licensee is located to prevent any disbursements or expenditures by such licensee until the trust funds are in such condition that it would not be jeopardized thereby and the Comptroller shall communicate the facts to the Attorney General of the State of Illinois who shall thereupon institute such proceedings against the licensee or its trustee or the officers of either or both as the nature of the case may require.

(e) 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 engaging in pre-need sales, to enjoin any violation or threatened violation of this Act.

(f) The powers vested in the Comptroller by this Section are additional to any and all other powers and remedies vested in the Comptroller by law, and nothing herein contained shall be

construed as requiring that the Comptroller shall employ the powers conferred herein instead of or as a condition precedent to the exercise of any other power or remedy vested in the Comptroller. (Source: P.A. 92-419, eff. 1-1-02.)

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

Sec. 24. The Comptroller may adopt, amend or repeal such rules, not inconsistent with the law, as may be necessary to enable him to administer and enforce the provisions of this Act. All such action shall be taken according to the provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended. (Source: P.A. 84-239.)

(815 ILCS 390/25) (from Ch. 21, par. 225)

Sec. 25. Any provision of any contract which purports to waive any provision of this Act shall be null and void. (Source: P.A. 84-239.)

(815 ILCS 390/26) (from Ch. 21, par. 226)

Sec. 26. (a) No person shall encumber or mortgage cemetery property, unless the mortgage or other encumbrance documents contain the following clause:

"The mortgagee expressly agrees that there shall be released from the lien of this mortgage, automatically and without recordation of any instrument, any lot, crypt, or niche encumbered hereby with respect to which the mortgagor sells rights of interment, entombment or inurnment in the ordinary course of business".

(b) In the case of a sale of any cemetery or any part thereof or any related cemetery merchandise by a cemetery owner to a purchaser, except the sale of burial rights, interment services, or cemetery merchandise to a person for his or her personal or family burial or interment, the purchaser shall perform all obligations imposed under this Act, all obligations imposed under pre-need sales contracts made by the selling cemetery or any prior cemetery owner relating to pre-need sales and any other related obligations. (Source: P.A. 84-239.)

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

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

(b) The provisions of this Act shall not apply to the isolated or occasional sale by a consumer to another consumer of cemetery merchandise, cemetery services or undeveloped spaces by an individual who does not hold himself out as being engaged in, or who does not engage in, making pre-need sales. (Source: P.A. 85-805.)

(815 ILCS 390/27.1)

Sec. 27.1. 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 sale 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 under 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 must 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 after 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;
- (iii) the Comptroller issues a license upon application of the new owner, which license must be applied for within 30 days after 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 is subject to the provisions of this Section.

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