

No. 131

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 131

A Bill to amend The Cemeteries Act

HON. DR. ROSS

Explanatory Note

1. The Cemeteries Act, Statutes of Alberta, 1960, chapter 12, amended.

2. (a) The definition of "endowment care" is amended to add the references to grave stones, markers and monuments and to make the references to lots, etc., conform to similar references elsewhere in the Act. (See clause 8 of this Bill.)

(b) The definition of "endowment care funds" is amended to include reference to deposits made under the new section 28a. (See clause 9 of this Bill.)

3. The effect of the amendment is to prohibit any new commercial mausoleum or columbarium, just as in 1962, new commercial cemeteries were prohibited.

4. The new sections 15a to 15d are intended to provide a solution to certain existing cases of commercial cemetery companies that are inactive and have no means or inadequate means of providing perpetual care of the cemeteries.

BILL

No. 131 of 1964

An Act to amend The Cemeteries Act

(Assented to _____, 1964)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Cemeteries Act* is hereby amended.

2. Section 2 is amended

- (a) as to clause (e) by striking out the words "lots, plots, tombs, monuments or enclosures," and by substituting the words "grave stones, grave markers, monuments, lots, plots, compartments, crypts or other space,"
- (b) as to clause (f) by adding at the end thereof the words "and the deposits made by an owner and referred to in section 28a".

3. The following section is added after section 3a:

3b. No new columbarium or mausoleum may be established except by a religious auxiliary, religious denomination or municipality.

4. The following heading and sections are added after section 15:

Winding up of Certain Cemetery Companies

15a. (1) In this section and sections 15b to 15d, "cemetery company" means a corporation that is incorporated under *The Companies Act* and is the owner of a cemetery.

(2) The securities commission shall, when directed by the Minister to do so, apply by petition to the Supreme Court of Alberta to have a cemetery company wound up by the court.

(3) The provisions of Part X of *The Companies Act* pertaining to the winding up of companies by the court apply, subject to this section, to the winding up of the cemetery company as if the application under subsection (2) were authorized by that Act.

(4) The court shall grant the petition if it is satisfied, on the basis of the material filed with the petition and the evidence adduced, that

- (a) the cemetery company is inactive or unable financially to provide perpetual endowment care for the cemetery, and
- (b) there are no endowment care funds for the cemetery or that its endowment care funds are inadequate.

15b. If the petition is granted by the court, no further burials shall be made in any cemetery owned by the cemetery company and no person shall be entitled to compensation or the return of money paid for a lot, plot or other space in that cemetery unless the court makes a direction in that regard pursuant to clause (c) of section 15d.

15c. (1) The court shall not order the dissolution of the cemetery company until it is satisfied that all of the bodies in the cemetery have been disinterred and re-buried in a cemetery in which endowment care is adequately provided.

(2) The liquidator of the cemetery company shall, whenever possible, arrange with the next of kin of a deceased person whose body is buried in the cemetery for the disinterment and re-burial of the body.

(3) Where the liquidator is unable to locate the next of kin of the deceased person or has been unable to agree with the next of kin on the arrangements for disinterment and re-burial, the court may, upon the application of the liquidator, give directions as to disinterment and re-burial of the body.

(4) Notice of an application under subsection (3) shall be given in accordance with the directions of the court.

15d. (1) Upon the application of the liquidator, the court shall order that the trust in respect of the endowment care funds, if any, of the cemetery company be dissolved and thereupon the funds shall be disposed of

- (a) firstly, towards the payment of the costs of winding up,
- (b) secondly, toward the payment of the costs of disinterment and re-burial of the bodies in the cemetery, and
- (c) lastly, in accordance with the directions of the court.

(2) Where there are no endowment care funds or the funds are insufficient, the costs or the balance of the costs, as the case may be, of disinterment and re-burial of the bodies shall be paid by the Government out of the General Revenue Fund.

5. Section 26, subsection (1) is contained in Part III entitled "Endowment Care Funds" and presently reads:

"26. (1) This Part does not apply to a cemetery, columbarium or mausoleum that is owned and operated by a religious denomination or a religious auxiliary or by a municipality."

6. New. Prohibition against certain advertising practices which are the subject of adverse comment in the Report of the Royal Commission on Prearranged Funeral Services.

7. Section 27 presently reads:

"27. No person shall sell, lease or rent or offer for sale, lease or rent, any lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum or in a proposed cemetery, columbarium or mausoleum unless

- (a) the form of the contract of sale, lease or rental has been filed with and approved by the securities commission, and**
- (b) such person is registered by the securities commission for that purpose."**

The new subsections incorporate into the Act matters now dealt with in the regulations.

5. Section 26 is amended by adding the following subsection after subsection (1) :

(1a) Where the Minister is satisfied that a religious denomination, religious auxiliary or municipality owning a cemetery does not also solely operate that cemetery in so far as the sale of lots, plots or other space in the cemetery is concerned, the Minister may by order declare that this Part and Part V apply to that owner in respect of that cemetery.

6. The following section is added after section 26:

26a. No person shall, in any advertisement for, or in the course of promoting or negotiating the sale, lease or rental of lots, plots, compartments, crypts or space in a cemetery, columbarium or mausoleum

(a) use moving pictures, or

(b) show or portray in any sales literature or other advertising medium, a picture of a cemetery, columbarium or mausoleum unless

(i) the picture is a still photograph of the whole or part of the cemetery, columbarium or mausoleum that is the subject of the advertisement, promotion or negotiations, or

(ii) the literature or medium shows pictures of two or more of the whole or part of the cemeteries, columbaria or mausolea of the same owner and each picture truly identifies by name and location each cemetery, columbarium or mausoleum represented therein, or

(c) use any other thing prohibited by the regulations.

7. Section 27 is amended by renumbering the section as subsection (1) and by adding the following subsections:

(2) An approval under subsection (1) and a renewal thereof is effective for a period of one year from the date it is granted.

(3) An application for approval under subsection (1) or a renewal thereof shall be accompanied by proof satisfactory to the securities commission

(a) that the applicant is or is entitled to be registered as the owner in fee simple of the cemetery or the land used or to be used for the columbarium or mausoleum, free of any mortgage, hypothecation, charge or encumbrance, and

(b) that there has been paid to an authorized trustee the amount prescribed by section 28a or the regulations, as the case may be, as the minimum amount for endowment care funds.

(4) An application for renewal of an approval under subsection (1) shall be accompanied by a balance sheet and a profit and loss statement pertaining to the cemetery, columbarium or mausoleum and that is

8. Section 28, subsection (1) presently reads:

"28. (1) From all moneys received on the sale, lease or rental of a lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum, the owner thereof shall deduct and set aside for endowment care such portion of those moneys as may be prescribed by the regulations."

The subsection is revised to include references to the sale of grave stones, etc., in clause (b), a matter presently contained in the regulations.

9. The new section 28a requires minimum amounts for endowment care funds, requirements presently found in the regulations.

- (a) prepared within thirty days prior to the day the application is made,
 - (b) reported on by an independent auditor, and
 - (c) in a form satisfactory to the commission.
- (5) The securities commission may refuse to grant an approval or a renewal thereof where
- (a) subsections (3) and (4) have not been complied with,
 - (b) the commission is not satisfied that the applicant is a reputable person, or
 - (c) the sum to be charged under the contract for the lot, plot, compartment, crypt or space or any cemetery services is, in its opinion, unconscionable having regard to the capital and operating costs of the owner and any other circumstances considered by the commission to be relevant.
- (6) Notwithstanding subsection (2), an approval under subsection (1) or a renewal thereof is deemed to be cancelled when
- (a) the owner at the time the approval or renewal thereof was granted ceases to manage the cemetery, columbarium or mausoleum, or
 - (b) any of the shares of a corporate owner have been transferred to a person who was not a shareholder at the time the approval or renewal thereof was granted, unless the securities commission consents to the transfer, or
 - (c) the owner or any salesman of the owner is convicted of an offence under this Act or *The Securities Act, 1955*.

8. Section 28 is amended by striking out subsection (1) and by substituting the following:

- 28.** (1) Where the owner enters into a contract for
- (a) the sale, lease or rental of a lot, plot, compartment, crypt or other space in his cemetery, columbarium or mausoleum, or
 - (b) the sale by him of a grave stone, grave marker or monument,

the owner shall deduct and set aside for endowment care such portion of the moneys paid as the consideration under the contract of sale, lease or rental as may be prescribed in the regulations.

9. The following section is added after section 28:

28a. (1) Subject to the regulations, the minimum amount of the endowment care funds for each cemetery shall be fifteen thousand dollars.

10. New. Self-explanatory.

The new section 35a will be in Part III and thus will not apply to a religious denomination, religious auxiliary or municipality.

(2) Any deposit that is made by an owner with an authorized trustee or that heretofore has been so made pursuant to the regulations in order to have the endowment care funds in the minimum amount referred to in subsection (1) are part of the endowment care funds.

(3) A deposit referred to in subsection (2) may be in the form of cash or of bonds of the Government of Canada or of any province or bonds guaranteed by the Province of Alberta, but the income derived from the bonds belongs to the owner.

(4) Notwithstanding anything in section 28 or 29, where a deposit is made under subsection (2) the owner may recover the deposit when the endowment care funds are in the amount of at least thirty thousand dollars either

(a) by requesting the return of the deposit when the endowment care funds reach an amount at least equal to the sum of thirty thousand dollars plus the deposit, or

(b) by thereafter retaining moneys that would otherwise be required to be paid to an authorized trustee under section 28 until and to the extent that the moneys retained are equal to the sum of the deposit.

10. The following section is added after section 35:

35a. (1) Every owner shall file annually with the securities commission a balance sheet and a profit and loss statement with respect to each cemetery, columbarium or mausoleum owned by him and which shall be

(a) filed within one month after the end of the owner's preceding fiscal year,

(b) reported upon by an independent auditor, and

(c) in a form satisfactory to the securities commission.

(2) An owner shall, if required by the securities commission,

(a) supply the commission with full and complete information on any matter pertaining to the ownership, financial affairs or operation of the cemetery, columbarium or mausoleum of the owner, and

(b) keep and maintain at its principal place of business in the Province such books and records pertaining to the cemetery, columbarium or mausoleum as the commission may require.

11. Section 40, clauses (p) and (q) presently read:

- "40. The Lieutenant Governor in Council may make regulations
- (p) prescribing the powers and duties of the securities commission with respect to the filing of contracts for the sale of lots and plots in a cemetery and space in a columbarium or mausoleum and the registration and suspension and cancellation of registration of salesmen of owners of cemeteries and columbaria,
 - (q) prescribing the terms and conditions upon which the salesmen of lots and plots in a cemetery or space in a columbarium or mausoleum may be registered by the securities commission, the fees payable therefor, and the terms and conditions to be included in any contracts for the sale thereof to be filed with the securities commission,"

These clauses are revised so that all matters pertaining to salesmen will be in clause (p) and matters incidental to contract form approvals under section 27 will be in clause (q). See clauses 5 and 6 of this Bill with respect to the provisions in the new clauses (q1) and (q2).

12. Self-explanatory.

The new section 42a will be in Part IV and thus will apply to all owners.

13. A new Part V is added. It will permit regulation of pre-need sales of grave markers, etc., by cemetery owners in a manner similar to sales regulated under The Prearranged Funeral Services Act. It applies to sales before and after the coming into force of this Part and requires 50% of the contract consideration to be placed in trust. The only sales affected are those made by an owner of a commercial cemetery.

49. Definitions.

50. Application of Part.

11. Section 40 is amended by striking out clauses (p) and (q) and by substituting the following:

- (p) prescribing the powers and duties of the securities commission with respect to the registration and the suspension and cancellation of registration of salesmen of lots, plots, compartments, crypts or space in a cemetery, columbarium or mausoleum, the terms and conditions upon which salesmen may be registered, and the registration fees payable,
- (q) providing for any matter not provided for in this Act and relating to the filing and approval of forms of contracts for the sale of lots, plots, compartments, crypts or space in a cemetery, columbarium or mausoleum.
- (q1) respecting any matter in connection with any proceedings referred to in sections 15a to 15d,
- (q2) providing for any matter arising out of a declaration made by the Minister under subsection (1a) of section 26 or in connection with a cemetery or the owner thereof affected by the declaration,

12. The following section is added after section 42:

42a. (1) A cemetery or land used for a columbarium or mausoleum shall not be transferred, sold, mortgaged, pledged, hypothecated, charged or encumbered by the owner thereof or any person having an interest therein, except with the consent of the securities commission.

(2) Any sale, mortgage, pledge, hypothecation, charge or encumbrance made in contravention of subsection (1) and after the coming into force of this section is void.

13. The following Part is added after section 48:

PART V

PRE-NEED SALE OF CEMETERY SUPPLIES AND SERVICES

49. In this Part,

- (a) "cemetery supplies" means burial vaults, grave markers or bases for use in a cemetery;
- (b) "cemetery services" means the supplying of any service to be rendered at a cemetery in respect of any lot or plot or grave stone, grave marker or monument;
- (c) "pre-need assurance fund" means a pre-need assurance fund referred to in section 51 or 52.

50. This Part does not apply where the owner of a cemetery is a religious denomination, a religious auxiliary or a municipality.

51. Pre-need assurance funds created after commencement of Part.

52. Pre-need assurance funds created as to contracts existing before the commencement of this Part.

53. Investments by trustee.

54. Payment out of moneys in pre-need assurance fund.

51. (1) Where an owner of a cemetery enters into a contract for the sale of cemetery supplies or cemetery services to be supplied upon the death of a person who is alive at the time the contract is made, fifty per cent of any moneys paid as the whole or part of the consideration under the contract constitutes a pre-need assurance fund in respect of that contract.

(2) The owner shall, within thirty days of receiving any moneys that constitute the whole or part of a pre-need assurance fund, pay the moneys received to an authorized trustee and such moneys shall be recorded in separate accounts for each purchaser.

52. (1) Where, before the commencement of this Part, an owner of a cemetery has entered into a contract for the sale of cemetery supplies or cemetery services to be supplied upon the death of a person who is alive at the time the contract is made and the contract has not been discharged before the commencement of this Part, the owner shall pay to an authorized trustee on or before the thirtieth day of June, 1964, an amount equal to fifty per cent of any moneys paid before the commencement of this Part as the whole or part of the consideration under the contract.

(2) Where any moneys are paid as the whole or part of the consideration under a contract referred to in subsection (1) but after the commencement of this Part, fifty per cent of the moneys shall be paid by the owner to an authorized trustee within thirty days of receipt by him.

(3) Moneys paid to an authorized trustee under subsections (1) and (2) shall be recorded in separate accounts for each purchaser and upon being deposited constitute a pre-need assurance fund in respect of that contract.

53. Moneys held by an authorized trustee as pre-need assurance funds may be invested in any investments authorized for trustee investments under *The Trustee Act*.

54. (1) A pre-need assurance fund held by an authorized trustee is held in trust and no part of it shall be paid to any person other than

- (a) to the purchaser or his personal representative, upon the joint authorization of the purchaser or his personal representative and the owner, or if the owner is not available or refuses to authorize payment, upon the direction of the chairman of the securities commission if the chairman considers the request for payment reasonable, or
- (b) to the owner, upon production of proof of the death of the person on whose behalf the moneys were paid and proof that the cemetery supplies or cemetery services have been provided in accordance with the contract.

55. Passing of accounts re pre-need assurance funds.

14. Commencement of Act.

(2) Where clause (a) of subsection (1) applies, the purchaser or his personal representative, as the case may be, is also entitled to be paid by the owner an amount equal to twenty-five per cent of the moneys paid as the whole or part of the consideration under the contract.

(3) It is an implied provision of every contract referred to in subsection (1) of section 51 or in subsection (1) of section 52 that no penalty or charge shall be deducted from any payment made under subsection (1) or (2).

55. (1) Every owner of a cemetery shall, at the same time that he is required to submit his accounts pertaining to endowment care funds, submit to be examined, audited and passed by a judge of the district court for the judicial district in which the cemetery is situated, accounts of his dealings with pre-need assurance funds.

(2) Subsections (2), (5), (6), (7) and (8) of section 32 and sections 33 to 35 apply to pre-need assurance funds as though a reference therein to endowment care funds were a reference to pre-need assurance funds.

14. This Act comes into force on the day upon which it is assented to.

No. 131

FIRST SESSION
FIFTEENTH LEGISLATURE
12 ELIZABETH II
1964

BILL

An Act to amend The Cemeteries
Act

Received and read the

First time

Second time

Third time

HON. DR. ROSS
