

1973 Bill ~~25~~ 26

Second Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 25

The Cemeteries Amendment Act, 1973

DR. PAPROSKI

First Reading

Second Reading

Third Reading

Bill 25
Dr. Paproski

BILL 25

1973

THE CEMETERIES AMENDMENT ACT, 1973

(Assented to , 1973)

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

1. The Cemeteries Act is hereby amended.

2. Section 2 is amended

(a) by striking out clause (a) and by substituting the following clause:

*(a) "authorized trustee" means the Public Trustee or a trust company registered under *The Trust Companies Act*;*

(b) by striking out clause (h) and by substituting the following:

(h) "Minister" means the Minister of Health and Social Development;

(h1) "municipality" means a city, town, new town, village, municipal district or county, or, in the case of an improvement district or special area, the Minister of Municipal Affairs;

3. The following section is added after section 2:

2.1 (1) The Minister is charged with the administration of this Act except those provisions specified in subsection (2).

(2) The Attorney General is charged with the administration of the following provisions of this Act:

sections 20 to 23;

Part 3;

Part 4;

section 60, clauses 6, 8, 9, 10, 11, 14, 15, 16, 19, 20, 20.1, 21 and 22;

sections 61 and 63.

4. The following provisions are amended by striking out the word "Minister" wherever it occurs and by substituting the words "Attorney General":

Explanatory Notes

1. This Bill will amend chapter 39 of the Revised Statutes of Alberta 1970.

2. Section 2, clauses (a) and (h) presently read:

2. In this Act,

(a) "authorized trustee" means the Public Trustee or any trust company approved under The Trustee Act as an approved corporation for trustee investment;

(h) "Minister" means the member of the Executive Council charged with the administration of this Act;

Clause (a) is recast because of amendments to The Trustees Act in 1971.

As to clause (h), see note to section 3 of this Bill.

The new clause (h1) defines "municipality" to ensure that it includes the Minister of Municipal Affairs in respect of improvement districts and special areas.

3. The effect of the new section is to divide the administration of the Act between the Minister of Health and Social Development and the Attorney General. The Attorney General will administer those portions of the Act in which the Alberta Securities Commission is involved, that is, the provisions relating to the winding up of certain cemetery companies (ss. 20 to 23), endowment care funds (Part 3) and the pre-need sale of cemetery supplies and services (Part 4).

4. The provisions to be transferred to the Attorney General's administration under the proposed section 2.1 are amended to refer to the Attorney General.

section 35, subsection (2) ;
section 42 ;
section 55, subsection (1) ;
section 60, clause 22.

5. *Section 20 is struck out and the following is substituted therefor:*

20. (1) In this section and in sections 21 to 23, “cemetery company” means a corporation that is incorporated under *The Companies Act* or *The Cemetery Companies Act* and is the owner of a cemetery.

(2) Notwithstanding anything in *The Companies Act* or *The Cemetery Companies Act*, a cemetery company may be wound up only by the Supreme Court of Alberta and for that purpose

- (a) the provisions of Divisions (3) to (7) of Part 10 of *The Companies Act* apply, with the necessary modifications, to cemetery companies incorporated under *The Cemetery Companies Act*, and
- (b) subject to subsection (3), the securities commission has the same status as the cemetery company itself to make a petition under section 198 of *The Companies Act* to have the company wound up by the court.

(3) The securities commission may make a petition to have a cemetery company wound up by the court only if it is directed to do so by the Attorney General and the court shall grant the petition by the commission 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 endowment care for the cemetery and either there are no endowment care funds for the cemetery or its endowment care funds are inadequate, or
- (b) the cemetery company is not maintaining the cemetery properly, or
- (c) the cemetery company is not meeting its financial obligations in the operation of the cemetery, or
- (d) there is found, upon a passing of accounts, a shortage in the endowment care funds required to be set aside by this Act, or
- (e) the cemetery company has failed to establish and maintain a pre-need assurance fund as required under Part 4 in respect of contracts for the sale of cemetery supplies and cemetery services.

5. Sections 20 to 23 deal with commercial cemeteries operated by companies incorporated under The Companies Act. The sections will be extended to cemeteries owned by companies incorporated under The Cemetery Companies Act. The new section 20 makes winding up by Supreme Court compulsory for these companies, so that they cannot go into voluntary liquidation. The grounds upon which the Alberta Securities Commission may petition for a winding up order are enlarged. Section 20 presently reads:

20. (1) In this section and sections 21 to 23, "cemetery company" means a corporation that is incorporated under The Companies Act and is the owner of 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 10 of The Companies Act pertaining to the winding up of companies by the court apply, subject to this section and sections 21 to 23, 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.

See also section 6 of this Bill.

6. Section 22 is struck out and the following is substituted therefor:

22. Notwithstanding anything in *The Companies Act* or *The Cemetery Companies Act*,

- (a) the liquidator of a cemetery company shall not sell any cemetery owned by the company except to a religious auxiliary, religious denomination or municipality or to another cemetery company, and
- (b) the court shall not grant an order for the release of the liquidator unless the court is satisfied that all cemeteries owned by the company have been sold in accordance with clause (a).

7. Section 23, subsection (1) is amended by adding the word "and" at the end of clause (a) and by striking out clause (b).

8. Section 60 is amended by adding the following clause after clause 20:

- 20.1. governing the accounting by an administrator of his administration pursuant to section 61, subsection (7);

9. Section 61 is struck out and the following is substituted therefor:

61. (1) This section applies only in cases where the owner of a cemetery, mausoleum or columbarium is a company incorporated under *The Companies Act* or *The Cemetery Companies Act*.

(2) Where the Attorney General is satisfied that

- (a) the owner for any reason is not maintaining a cemetery, mausoleum or columbarium owned by him properly or as required by any contract under which he undertook to provide endowment care, or
 - (b) the owner is not meeting his financial obligations in the operation of the cemetery, mausoleum, or columbarium, or
 - (c) there is found, upon a passing of accounts of the owner, a shortage in the endowment care funds required to be set aside under this Act for endowment care of a cemetery, mausoleum or columbarium, or
 - (d) the owner of a cemetery has contravened any of the provisions of Part 4,
- the Attorney General may appoint a qualified person as administrator of the cemetery, mausoleum or columbarium, as the case may be, and prescribe his powers and duties.

6. Section 22 presently reads:

22. (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.

The section will now require that cemeteries owned by cemetery companies be sold to another company or organization authorized to operate it by the Act in the event that the company is wound up. See section 5 of this Bill.

7. Section 23(1) presently reads:

23. (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.

In the cases to which sections 20 to 23 apply (i.e., cemeteries owned by cemetery companies incorporated under The Companies Act or The Cemetery Comptanies Act) it is now impractical to arrange disinterment and re-burial on liquidation of the company due to the size and age of the cemeteries.

8. Section 60 enumerates the subject matters of regulations that may be made by the Lieutenant Governor in Council, See section 9 of this Bill and subsection (7)(b) of the proposed re-enactment of section 61.

9. Section 61 presently reads:

61. Where for any reason the owner of a cemetery, mausoleum or columbarium is not maintaining the cemteery, mausoleum or columbarium as required by any contract entered into by the owner whereby he undertook to provide endowment care, the Minister may appoint a qualified person to maintain the cemetery, mausoleum or columbarium and for that purpose the person so appointed shall be deemed for the purposes of this Act to be the owner and may give a valid discharge to the authorized trustee for such part of the endowment care funds as may be required to maintain the cemetery, mausoleum or columbarium in accordance with the contracts respecting endowment care.

(3) During the term of the appointment of an administrator under this section

- (a) the administrator shall operate and maintain the cemetery, mausoleum or columbarium;
- (b) the administrator shall be deemed to be the owner of the cemetery, mausoleum or columbarium for the purposes of this Act, with power to give a valid discharge to the authorized trustee for such part of the endowment care funds as may be required to maintain it, but has no power to sell the cemetery, mausoleum or columbarium;
- (c) the administrator shall take possession of the cemetery, mausoleum or columbarium and all records and accounts of the owner pertaining thereto and to the endowment care funds therefor and any pre-need assurance fund under Part 4;
- (d) the owner shall cease to operate the cemetery, mausoleum or columbarium, and shall, on demand, deliver to the administrator the records and accounts referred to in clause (b) and shall provide any other assistance to the administrator that the administrator may reasonably require;
- (e) the persons employed by the owner to operate and maintain the cemetery, mausoleum or columbarium become employees of the administrator;
- (f) the administrator may
 - (i) sell, lease or rent or agree to sell, lease or rent lots, plots, crypts, compartments or other space in the cemetery, mausoleum or columbarium, subject to compliance with Part 3, other than on a pre-need basis,
 - (ii) keep, maintain and use any moneys received pursuant to subclause (i) and not required to be paid to an authorized trustee, for purposes incidental to or in connection with the operation and maintenance of the cemetery, mausoleum or columbarium and to pay his remuneration and expenses, and
 - (iii) make his own banking arrangements in respect of accounts for such moneys.

(4) The Attorney General shall prescribe the remuneration to be paid to the administrator.

(5) Where the moneys received by the administrator pursuant to subsection (3), clause (f) are insufficient to pay the costs incurred in the operation and maintenance of the cemetery, mausoleum or columbarium and for the administrator's remuneration and expenses, the Provincial Treasurer shall, upon the requisition of the Attorney General,

from time to time advance moneys to the administrator for the purposes of enabling him to meet obligations as they become due, in such amounts as the Attorney General may direct but upon such terms as to repayment and interest as the Provincial Treasurer may direct.

(6) Moneys advanced to the administrator pursuant to subsection (5)

(a) may be paid from the General Revenue Fund in the event that no moneys or insufficient moneys were appropriated by the Legislature for that purpose, and

(b) constitute a debt owing by the cemetery company to the Crown in right of Alberta.

(7) When the appointment of an administrator is terminated,

(a) the administrator shall give up to the owner the possession of the cemetery, mausoleum or columbarium and the records and accounts pertaining thereto and to the endowment care funds therefor and any pre-need assurance fund under Part 4;

(b) the administrator shall make an accounting of his administration to the Attorney General and to the owner in accordance with the regulations.

10. Section 63, subsection (1) is amended by striking out the words "A cemetery or land used for a columbarium or mausoleum" and by substituting the words "Land used for a cemetery, columbarium or mausoleum".

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

10. Section 63, subsection (1) presently reads:

63. (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.

The amendment is made so that it is clear that the subsection will apply to cases where only part of a cemetery is involved.