

1974 Bill 75

Third Session, 17th Legislature, 23 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 75

THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1974
(NO. 2)

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

BILL 75

1974

THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1974 (NO. 2)

(Assented to _____, 1974)

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

The Cemeteries Act

1. (1) *The Cemeteries Act is amended by this section.*
- (2) *The following sections are added after section 62:*

62.1 (1) For the purpose of this section "cemetery services" and "cemetery supplies" have the respective meanings given to those terms in Part 4.

(2) A person may rescind a contract which he has entered into for the purpose of

- (a) purchasing cemetery supplies or cemetery services,
or
- (b) purchasing or leasing a lot, plot, compartment, crypt or other space in an existing or proposed cemetery, columbarium or mausoleum for future use by any person,

by giving a notice of cancellation in accordance with this section not later than the fourth day after the day on which the copy of the contract was received by him by personal delivery or mail.

(3) A notice of cancellation under this section is sufficient if, however expressed, it indicates the intention to cancel, terminate or withdraw from the contract.

(4) A notice of cancellation under this section may be given by delivering it or sending it by mail

- (a) to the owner of the cemetery, columbarium or mausoleum at the address shown in the contract,
or
- (b) if no address is shown in the contract,
 - (i) to any salesman acting on behalf of the owner of the cemetery, columbarium or mausoleum,
or

Explanatory Notes

The Cemeteries Act

1. (1) This section will amend chapter 39 of the Revised Statutes of Alberta 1970.

(2) This amendment will provide for a four-day cooling off period with a right of rescision where cemetery supplies and services are involved, in a similar nature to the provisions of The Direct Sales Cancellation Act.

(ii) to any address of the owner of the cemetery, columbarium or mausoleum known to the purchaser or lessee, or

(iii) to the Attorney General at Edmonton.

(5) For the purposes of this section a notice of cancellation sent by mail shall be deemed to be given at the time it is mailed.

62.2 (1) A notice of cancellation given in accordance with section 62.1 operates to cancel the contract as if the contract never existed.

(2) A notice of cancellation given in accordance with section 62.1 also operates to cancel

(a) any related transaction,

(b) any guarantee given in respect of money payable under the contract, and

(c) any security given by the cancelling party or guarantor in respect of money paid under the contract, as if the contract never existed.

62.3 The owner of the cemetery, columbarium or mausoleum shall, within 15 days of the giving of the notice of cancellation in accordance with section 62.1, refund to the party cancelling the contract all moneys paid under the contract and any related transaction.

62.4 A contract under this Act is void unless

(a) it is signed by the purchaser or lessee,

(b) it contains a notice in Form A, completed as to paragraph 3 thereof, and the notice is at least as prominent as the contents of the contract, and

(c) a copy of the contract is received by the purchaser or lessee, by personal delivery or by mail, within seven days after the day the contract was signed by him.

(3) *The following form is added after section 66:*

FORM A

THE CEMETERIES ACT

STATUTORY NOTICE

Right of Cancellation by Purchaser or Lessee

1. This is a contract to which Part 5 of *The Cemeteries Act* of Alberta applies.

2. The purchaser or lessee may cancel this contract by giving notice of cancellation within four days after the date on which his copy of this contract is received by him, by personal delivery or by mail, without giving reasons for cancellation.

(3) This will provide the statutory form referred to in the proposed section 62.4.

3. A notice of cancellation under paragraph 2 may be delivered to or sent by mail to

.....
(insert name and address of the owner of the cemetery, columbarium or mausoleum)

and if sent by mail, is deemed to be given at the time of mailing.

4. This statutory notice indicates in a general way only the rights of cancellation of a purchaser or lessee. Part 5 of *The Cemeteries Act* should be consulted as to the right of cancellation and other rights of the purchaser or lessee in respect of this contract.

The Companies Act

2. (1) *The Companies Act* is amended by this section.

(2) *Section 81* is amended by adding the following subsection after subsection (2):

(3) For the purpose of reporting under section 82 or 82.1, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent.

(3) *The following section is added after section 82:*

82.1 (1) In this section, "offeror" means a person other than an agent, who makes a take-over bid as defined in Part 9 of *The Securities Act*, and includes two or more persons

(a) whose take-over bids are made jointly or in concert, or

(b) who intend to exercise jointly or in concert any voting rights attached to the shares for which a take-over bid is made.

(2) Where an offeror becomes an insider under this Division and through purchases effected through the facilities of a stock exchange or in the over-the-counter market becomes the beneficial owner, directly or indirectly, of equity shares of a company carrying 20 per cent or more of the voting rights attached to all equity shares of the company for the time being outstanding, such offeror within three days of acquiring such 20 per cent ownership, shall file with the Commission a report as of the day on which he attained such ownership.

(3) An offeror required to file a report under subsection (2) shall, within three days of purchasing further equity shares carrying an additional 5 per cent of the voting rights through the facilities of a stock exchange or in the over-the-counter market, file with the Commission a report as of the day on which he attained the additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent.

The Companies Act

2. (1) This section will amend chapter 60 of the Revised Statutes of Alberta 1970.

(2) Ownership defined for the purposes of insider reporting.

(3) This amendment will require a timely insider report upon the acquisition through market purchases of 20 per cent of the equity shares. A similar report will be required on the acquisition of each 5 per cent thereafter.

(4) Where the facts required to be reported by this section are identical to those required under section 82, a separate report under section 82 is not required.

(4) *The following provisions are amended by adding after the words "section 82" wherever they may appear the words "or 82.1":*

section 84, subsections (1), (2) and (5);

section 87;

section 88, subsections (1) and (2).

The Condominium Property Act

3. (1) *The Condominium Property Act is amended by this section.*

(2) *Section 21 is amended*

(a) *by striking out subsection (1) and by substituting therefor the following subsection:*

21. (1) The corporation shall insure and keep insured the units and the common property

(a) against fire to the replacement value thereof, and

(b) against any other perils, including liability, which may be specified by the by-laws, to the amount required by the by-laws,

and for that purpose the corporation has an insurable interest in the units, the common property and in the subject matter of any other perils insurance.

and

(b) *as to subsection (3) by adding after the words "be paid" the words "to the order of the insurance trustees, if any, designated by the by-laws of the corporation and otherwise shall be paid".*

(3) *Section 22 is amended*

(a) *by striking out subsection (1) and by substituting therefor the following subsection:*

22. (1) Notwithstanding *The Alberta Insurance Act* or any other law relating to insurance, a unit owner may obtain and maintain insurance

(a) in respect of loss or damage to his unit against fire and other perils in excess of any amount for which it is insured by the corporation under section 21, subsection (1), or

(b) in respect of loss or damage to his unit in excess of any amount for which the improvements are insured by the corporation under section 21, subsection (1), or

(4) Consequential amendments.

The Condominium Property Act

3. (1) This section will amend chapter 62 of the Revised Statutes of Alberta 1970 in respect of model provisions recommended by The Uniform Law Conference of Canada.

(2) Section 21, subsections (1) and (3) presently read:

21. (1) The corporation shall insure and keep insured the units and the common property to the replacement value thereof against fire, and against any other supplemental perils which may be specified by the by-laws, to the extent required by the by-laws and for this purpose the corporation has an insurable interest to the replacement value of the units and the common property, and an insurable interest in the subject matter of any other supplemental perils insurance.

(3) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to or to the order of the corporation, and, subject to section 29, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common property so far as the same may lawfully be effected.

(3) Section 22(1) presently reads:

22. (1) Notwithstanding section 21, subsection (1), **The Alberta Insurance Act**, or any other law relating to insurance, a unit owner may insure

- (a) his unit, to the replacement value thereof, against fire and such other supplemental perils to the extent that it is not so insured by the corporation under section 21, subsection (1),
- (b) improvements to his unit, to the extent the improvements are not so insured by the corporation under section 21, subsection (1).
- (c) his unit, in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his unit, and
- (d) his unit, against any other supplemental perils, where the supplemental perils are not insured by the corporation.

- (c) in respect of loss of rental value of his unit in excess of any amount for which it is insured by the corporation under section 21, subsection (1), or
- (d) for the purpose of paying to the mortgagee under a mortgage of the unit the amount owing under the mortgage on the date of any loss or damage to the unit.

(4) *Section 29, subsection (1) is amended by adding after the words "registered mortgagee of a unit" the words "or a vendor under an agreement for sale of a unit".*

(5) *Section 31, subsection (1) is amended by adding after the words "registered mortgagee of a unit" the words "or a vendor under an agreement for sale of a unit".*

(6) *Schedule A is amended with respect to section 2 thereof by striking out clause (e) and by substituting therefor the following clause:*

- (e) on the written request of an owner or registered mortgagee of a unit or a vendor under an agreement for sale of a unit, produce to the owner, mortgagee or vendor, or to any person authorized in writing by the owner, mortgagee or vendor, the policy or policies of insurance effected by the corporation, and the receipt or receipts for the last premium or premiums in respect thereof.

The Alberta Insurance Act

4. (1) *The Alberta Insurance Act is amended by this section.*

(2) *Section 166 is amended*

(a) *by adding after subsection (3) the following subsection:*

(3.1) For the purpose of reporting under subsection (6) or (6.1), ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent.

(b) *by adding after subsection (6) the following subsections:*

(6.1) In this section, "offeror" means a person other than an agent, who makes a take-over bid as defined in Part 9 of *The Securities Act*, and includes two or more persons

- (a) whose take-over bids are made jointly or in concert, or
- (b) who intend to exercise jointly or in concert any voting rights attached to the shares for which a take-over bid is made.

(4) This amendment makes provision for vendors under agreements for sale to have the same rights as mortgagees to apply to court for a settlement scheme respecting damage to a condominium.

(5) This amendment will permit vendors under agreements for sale to apply to terminate condominium status.

(6) This amendment will include vendors under agreements for sale.

The Alberta Insurance Act

4. (1) This section will amend chapter 187 of the Revised Statutes of Alberta 1970.

(2) These amendments will define ownership for the purposes of insider reporting and will require a timely insider report upon the acquisition through market purchases of 20 per cent of the equity shares. A similar report will be required on the acquisition of each 5 per cent thereafter.

(6.2) Where an offeror becomes an insider under this section and through purchases effected through the facilities of a stock exchange or in the over-the-counter market becomes the beneficial owner, directly or indirectly, of equity shares of a company carrying 20 per cent or more of the voting rights attached to all equity shares of the company for the time being outstanding, such offeror within three days of acquiring such 20 per cent ownership, shall file with the Commission a report as of the day on which he attained such ownership.

(6.3) An offeror required to file a report under subsection (2) shall, within three days of purchasing further equity shares carrying an additional 5 per cent of the voting rights through the facilities of a stock exchange or in the over-the-counter market, file with the Commission a report as of the day on which he attained the additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent.

(6.4) Where the facts required to be reported by subsection (6.1) are identical to those required under subsection (6), a separate report under subsection (6) is not required.

(c) *as to subsection (12) by striking out the words "subsection (4), (5) or (6)" and by substituting therefor the words "subsection (4), (5), (6), (6.2) or (6.3)."*

The Judicature Act

5. (1) *The Judicature Act is amended by this section.*

(2) *Section 24 is struck out.*

(3) *The following section is added after section 36:*

36.1 (1) For the purpose of executing a writ of possession respecting any premises, it is not necessary to remove any goods or chattels from the premises.

(2) Where the sheriff in his discretion removes and stores any goods in executing a writ of possession, the party at whose suit or instance the writ is issued and the solicitors who issue it, are severally liable to pay to the sheriff his taxable costs, including transportation and storage costs, for executing the writ.

(3) Where goods have been stored under subsection (2), the owner may, upon the written authorization of the sheriff, obtain the goods from storage upon

(a) paying to the sheriff the costs, including transportation and storage, paid by the sheriff or the person on whose behalf the writ was executed, and

The Judicature Act

5. (1) This section will amend chapter 193 of the Revised Statutes of Alberta 1970.

(2) Section 24 presently reads:

24. (1) No action whereby relief of any kind is claimed on account of anything done or proposed to be done, or on account of anything omitted to be done by a member of the Executive Council of the Province in the execution of his office shall be brought or maintained against that member unless permission to bring or maintain the action has first been given by the Lieutenant Governor in Council.

(2) No action whereby the relief claimed or part of the relief claimed is an injunction, mandamus, prohibition or other process or proceeding affecting or interfering directly or indirectly with the doing by a person or the omission by a person of an act authorized or directed by a statute of the Legislature of the Province, or by an order in council of the Province, shall be brought or maintained unless permission to bring or maintain the action has first been given by the Lieutenant Governor in Council.

The repeal of section 24 is the main recommendation of Report No. 13 of The Institute of Law Research and Reform published last August.

(3) This amendment will insert into the Act provisions governing the disposition of goods remaining on premises after the person lawfully entitled to possession thereof has been placed in possession as the result of the execution of a writ of possession by the sheriff.

- (b) paying to the warehouseman any further outstanding storage charges.
- (4) In the event that the owner does not redeem the goods within 30 days after they have been placed in storage, the person on whose behalf the writ was executed may apply by originating notice of motion to the court which issued the writ for an order directing that the goods be sold.
- (5) The court may direct that the goods be sold either by the sheriff or by the applicant, and by public auction or private sale, as he considers appropriate in the circumstances.
- (6) The proceeds of the sale shall be applied
 - (a) firstly, to the costs of the sale, and
 - (b) secondly, to payment of storage, transportation and other costs incurred in removing and storing the goods and making the application for the order for sale.
- (7) Where the sale is effected by a person other than a sheriff, that person
 - (a) shall within 30 days after the sale file with the sheriff a statutory declaration setting out
 - (i) the particulars of the sale,
 - (ii) the amount realized by the sale, and
 - (iii) the necessary and proper disbursements and fees in connection with the sale, which shall not exceed those which the sheriff would have been entitled to charge if the sale had been effected by the sheriff,and
 - (b) shall pay the balance, if any, to the sheriff on behalf of the former owner of the goods.
- (8) Where the sheriff comes into possession of the balance of the sale price, either pursuant to subsection (6) or upon the conclusion of the sale effected by him, he shall deliver that balance to the persons lawfully entitled thereto.
- (9) In the event that goods are not removed by the sheriff in executing a writ of possession and the owner thereof does not within 30 days after the writ has been executed remove the goods, the person on whose behalf the writ was executed may apply by originating notice of motion to the court which issued the writ for directions as to the disposition of the goods remaining on the premises and upon such application the judge may make any order which appears appropriate in the circumstances.
- (10) If it is made to appear to the court in an application under subsection (4) or (9) that it is not practicable to serve a notice required to be given by this section on any

person, either personally or by registered mail, the court may, on an application ex parte by or on behalf of the applicant, make any order for substituted or other service or for the substitution for service of notice by letter, public advertisement or otherwise, or may dispense with service.

The Legal Profession Act

6. (1) *The Legal Profession Act is amended by this section.*

(2) *Section 47, subsection (2) is amended by adding before the words "is conduct unbecoming" the words "whether or not such act or conduct is disgraceful or dishonourable,".*

(3) *Section 106 is amended by adding after subsection (4) the following subsection:*

(4.1) No part of the income of the Foundation shall be payable to, or otherwise available for the personal benefit of, any member of the board or the Society, but the Foundation may employ and remunerate members of the Society in order to attain the objects of the Foundation.

(4) *Section 109, subsection (1) is amended by striking out the Words "April and October of".*

(5) *The following section is added after section 109:*

110. Upon the dissolution of the Foundation, the net assets thereof then remaining shall be paid to the Government of Alberta to be used for such charitable purposes as it shall determine.

The Proceedings Against the Crown Act

7. (1) *The Proceedings Against the Crown Act is amended by this section.*

(2) *Section 3, subsection (1) is amended by striking out the words ", section 24 of The Judicature Act".*

The Securities Act

8. (1) *The Securities Act is amended by this section.*

(2) *Section 109.1, subsection (1) is amended by striking out the words "or under The Companies Act".*

The Legal Profession Act

6. (1) This section will amend chapter 203 of the Revised Statutes of Alberta 1970.

(2) Section 47, subsection (2) presently reads:

(2) Any act or conduct that in the judgment of the Benchers or the Appellate Division or an investigating committee acting under section 64, as the case may be,

(a) is such as to be inimical to the best interests of the public or the members of the Society, or

(b) tends to harm the standing of the legal profession generally, is conduct unbecoming a barrister and solicitor or a student-at-law, as the case may be, within the meaning of this section.

(3) This amendment clarifies that members of the Society will not benefit from the funds of the Foundation.

(4) Section 109, subsection (1) presently reads:

109. (1) Every member (or firm of more than one member which shall be included in the term "member") shall maintain an interest-bearing trust account in a bank, trust company or treasury branch into which he shall deposit any moneys received by him upon trust from or on account of any client and shall instruct the bank, trust company or treasury branch to remit the interest earned thereon to the Foundation semi-annually in April and October of each year and such interest thereupon becomes the property of the Foundation.

(5) This amendment will clarify the procedures upon the termination of the Foundation in order to clarify the Foundation's position as a non-taxable charitable institution.

The Proceedings Against The Crown Act

7. (1) This section will amend chapter 285 of the Revised Statutes of Alberta 1970.

(2) This amendment is consequential to the removal of section 24 of The Judicature Act by section 5 of this Bill.

The Securities Act

8. (1) This section will amend chapter 333 of the Revised Statutes of Alberta 1970.

(2) The Companies Act will contain its own references governing insider reports through the amendment contained in section (2) of this Bill.

The Trustee Act

9. (1) *The Trustee Act is amended by this section.*

(2) *The following section is added after section 31:*

Income from Dispositions

31.1 (1) Any disposition of property, whether contingent or vested either defeasibly or indefeasibly, includes the income from that property except to the extent that the income, or any part thereof, is otherwise expressly disposed of.

(2) This section applies only to dispositions coming into force on and after January 1, 1975.

(3) *The heading preceding section 32 is struck out and the following heading is substituted therefor:*

Payments from Income and Capital

(4) *Section 32 is amended by adding after subsection (3) the following subsection:*

(4) This section applies to trusts created by instrument or otherwise prior to January 1, 1975.

(5) *The following sections are added after section 32:*

32.1 (1) Where any property is held by a trustee in trust for any person for any interest whatever, whether contingent or vested either defeasibly or indefeasibly, the trustee may in his discretion

(a) in the case of a beneficiary who is an infant

(i) pay to the parent or guardian having custody or control of the infant, or

(ii) otherwise apply for his maintenance, education, benefit or advancement,

or

(b) in the case of a beneficiary who is not an infant and not immediately entitled to payment of the income, pay to that beneficiary or on his behalf for his maintenance, education, benefit or advancement, the whole or any part of the income of the property so held in trust.

(2) The power conferred by this section may be exercised whether or not there is any other property or fund applicable for the same purpose or any person bound by law to provide for the beneficiary, but the power conferred by this section is subject to any prior interests or charges affecting the property.

32.2 (1) The trustee shall accumulate the income by way of compound interest by investing it and the resulting income thereof from time to time in authorized investments.

The Trustee Act

9. (1) This section will amend chapter 373 of the Revised Statutes of Alberta 1970 in accordance with Report No. 10 of The Institute of Law Research and Reform entitled "Maintenance and Advancement". References in the explanatory notes for this section to recommendations are to the numbered recommendations of the Report.

(2) Recommendation No. 1. This section will provide that all gifts, whether testamentary or during one's lifetime, carry the income unless an intention to the contrary is expressly stated.

(3) Consequential amendment.

(4) Consequential. See subsection (5) of this section. Section 32 reads:

32. (1) Where any property is held by trustees in trust for an infant, either absolutely or contingently on his attaining the age of 18 years or on the occurrence of any event prior to his attaining that age, the trustees may at their sole discretion pay to the guardians, if any, of the infant, or otherwise apply for or towards the maintenance or education of the infant, the whole or any part of the income to which such infant is entitled in respect of the property, whether there is any fund applicable for the same purpose or any other person bound by law to provide for such maintenance or education or not.

(2) The trustees shall accumulate all the residue of the income by way of compound interest by investing it and the resulting income thereof from time to time in proper securities for the benefit of the person who ultimately becomes entitled to the property from which such accumulation arises.

(3) Notwithstanding subsections (1) and (2), the trustees at any time if it appears to them expedient may apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

(5) Recommendations 2 to 4. The provision will apply for the benefit of anyone, not just infants. It will also apply to any interest whatsoever. The purposes for which income may be disbursed will be widened. Provisions will be added dealing with the ultimate disposition of accumulated income. Provision will be made also for payments for past maintenance, etc.

(2) Subject to section 32.1, the trustee shall hold the accumulations as follows:

- (a) where the beneficiary is entitled to payment of the income when he attains majority, for him at that time;
- (b) where the beneficiary is entitled to the payment of the income at a time subsequent to attaining majority, then for him at that time;
- (c) where the beneficiary is the vested owner of the property from which the income comes, but his interest is subject to defeasance and he dies prior to defeasance, whether or not his death causes the defeasance, for his personal representative as part of his estate;
- (d) in all other cases, as an accretion to the capital of the property from which the accumulations arose.

(3) The trustee may at any time, if it appears expedient, pay or apply the whole or any part of the accumulations as if it were part of income for the purpose of section 32.1.

(4) The trustee may pay or apply income or accumulations for past maintenance, education, benefit or advancement of the beneficiary.

(5) Section 32.1 and this section extend to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income therefrom to the annuitant for the same period for which the annuity is payable, and accumulations made during the infancy of the annuitant shall be held in trust for the annuitant absolutely.

(6) Section 32.1 and this section have effect if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument and to the provisions therein contained.

(7) For the purposes of subsection (6), a direction to accumulate does not constitute a contrary intention.

(8) Section 32.1 and this section apply to trusts created by instrument or otherwise on or after January 1, 1975.

(6) Section 33 is amended by adding after subsection (2) the following subsection:

(3) This section applies to trusts created by instrument or otherwise prior to January 1, 1975.

(7) The following section is added after section 33:

33.1 (1) Where

- (a) any property either real or personal is held by a trustee in trust for any person for any interest

(6) Consequential. See subsection (7) of this section. Section 33 reads:

33. (1) Where

- (a) any property either real or personal is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of 18 years or on the occurrence of any event prior to his attaining that age, and
- (b) the income arising from the property is insufficient for the maintenance and education of the infant,

the trustees by leave of a judge of the Supreme Court, to be obtained in a summary manner, may sell and dispose of any portion of such real or personal property and pay the whole or any part of the money arising from the sale, to the guardians, if any, of the infant or otherwise apply it for or towards the maintenance or education of the infant.

(2) Where the whole of the money arising from the sale of the real or personal property is not immediately required for the maintenance and education of the infant then the trustees

- (a) shall invest the surplus moneys and the resulting income therefrom from time to time in proper securities,
- (b) shall apply such moneys and the proceeds thereof from time to time for the education and maintenance of the infant, and
- (c) shall hold all the residue of the moneys and interest thereon not required for the education and maintenance of the infant for the benefit of the person who ultimately becomes entitled to the property from which such moneys and interest arise.

(7) The present section 33 will be extended without reference to age. Recommendation No. 5.

whatever, whether contingent or vested either defeasibly or indefeasibly, and

- (b) the income arising from the property is insufficient for the maintenance and education of the beneficiary,

the trustee by leave of a judge of the Supreme Court, to be obtained on application by originating notice of motion, may sell and dispose of any portion of such real or personal property and pay the whole or any part of the money arising from the sale, to the guardians, if any, of the beneficiary or otherwise apply it for or towards the maintenance or education of the beneficiary.

(2) Where the whole of the money arising from the sale of the real or personal property is not immediately required for the maintenance and education of the beneficiary then the trustee

- (a) shall invest the surplus moneys and resulting income therefrom from time to time in authorized investments,
- (b) shall apply such moneys and the proceeds therefrom from time to time for the education and maintenance of the beneficiary, and
- (c) shall hold all the residue of the moneys and interest thereon not required for the education and maintenance of the beneficiary for the benefit of the person who ultimately becomes entitled to the property from which such moneys and interest arise.

(3) This section applies to trusts created by instrument or otherwise on or after January 1, 1975.

Commencement

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