

1998 BILL 30

Second Session, 24th Legislature, 47 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 30

**CEMETERIES AND FUNERAL SERVICES
STATUTES AMENDMENT ACT, 1998**

MRS. LAING

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill 30
Mrs. Laing

BILL 30

1998

CEMETERIES AND FUNERAL SERVICES STATUTES AMENDMENT ACT, 1998

(Assented to , 1998)

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

Part 1 Cemeteries Act

Amends RSA
1980 cC-2

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

(2) Section 1 is amended

(a) by adding the following after clause (b):

(b.1) “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;

(b.2) “cemetery supplies” means burial vaults, grave stones, grave liners, grave markers, monuments or bases for use in a cemetery;

(b) by repealing clause (d.1) and substituting the following:

(d.1) “Director” means the person appointed by the Minister under section 59 to act as the Director for the purposes of this Act and the regulations;

(d.2) “income” means the interest or other money earned, including through compounding, by the investment of funds;

(d.3) “licence” means a licence referred to in section 26 or 53, as the case may be;

Explanatory Notes

Part 1 Cemeteries Act

1(1) Amends chapter C-2 of the Revised Statutes of Alberta 1980.

(2) Definitions of “cemetery services”, “cemetery supplies” and “pre-need assurance fund” are being moved to section 1 from section 52. Section 1 presently reads in part:

1 In this Act,

(d.1) “Director” means the person designated by the Minister as the Director of Licensing of Trades and Businesses;

(e) “endowment care” means the preservation, improvement, embellishment and maintenance, in perpetuity and in a proper manner, of grave stones, grave markers, monuments, lots, plots, compartments, crypts or other space, in a cemetery, or of compartments in a columbarium or mausoleum;

(f) “endowment care funds” means funds and property received by an owner for the purpose of providing endowment care generally of a cemetery, columbarium or mausoleum, or of any particular part thereof, whether received

(i) under this Act or otherwise, or

(ii) under the terms of a contract, trust or gift or otherwise,

(c) by repealing clauses (e) and (f);

(d) by repealing clause (h) and substituting the following:

- (h) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(e) by adding the following after clause (j):

- (j.1) “perpetual care” means the preservation, improvement, embellishment and maintenance, in perpetuity and in a proper manner, of grave stones, grave markers, monuments, lots, plots, compartments, crypts or other space in a cemetery, or of compartments in a columbarium or mausoleum;

- (j.2) “perpetual care fund” means funds and property received by an owner for the purpose of providing perpetual care generally of a cemetery, columbarium or mausoleum, or of any particular part of a cemetery, columbarium or mausoleum, whether received

- (i) under this Act, or

- (ii) under the terms of a contract, trust or gift or otherwise,

and includes money deducted and set aside under section 38 and deposits made by an owner referred to in section 39;

- (j.3) “pre-need assurance fund” means money held in trust under section 54 or 55;

- (j.4) “pre-need contract” means a contract for the provision of cemetery supplies or cemetery services or both under which all or part of the cost of the cemetery supplies and cemetery services to be provided is paid before the death of the person for whose benefit the contract is entered into;

- (j.5) “regulatory board” means a board established under section 59.71(1)(a) and the regulations;

(f) by adding the following after clause (l):

and includes money deducted and set aside under section 38 and the deposits made by an owner and referred to in section 39;

- (h) *“Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;*

(1.1) “seller” means a person who contracts to sell cemetery supplies or cemetery services or both under a pre-need contract;

(1.2) “trust corporation” means an approved corporation as defined in section 2 of the *Trustee Act* or as designated by the regulations;

(3) The following is added after section 5:

Burial in
approved
cemetery

5.1 No person shall bury a dead human body in any place other than a cemetery in respect of which a final certificate of approval has been issued by the Director under this Act or the regulations.

Alternatives to
burial

5.2 As an alternative to burial, the disposition of a dead human body may be

- (a) by cremation in a crematory approved under this Act or the regulations,
- (b) by placing the body for permanent interment in a mausoleum approved under this Act or the regulations,
- (c) in accordance with the *Universities Act*, or
- (d) in accordance with the regulations.

(4) Sections 7 and 10 are repealed.

(5) Section 13 is repealed and the following is substituted:

(3) New provisions in Act, moved from sections 2 and 3 of Establishment and Operation of Cemeteries and Mausolea Regulation, AR 240/90, which presently read:

2 No person shall bury a dead human body in any place other than a cemetery in respect of which a final certificate of approval has been issued by the Director.

3 As an alternative to burial, the disposition of a dead human body may be

- (a) by cremation in a crematorium approved under the Act,*
- (b) by placing the body for permanent interment in a mausoleum approved under this Regulation,*
- (c) in accordance with the Universities Act, or*
- (d) in accordance with section 4, 5 or 6.*

(4) Sections 7 and 10 presently read:

7(1) The owner of a cemetery shall construct and maintain all proper and necessary sewers and drains in and about the cemetery for the purpose of draining it and keeping it dry.

(2) The owner shall, as occasion requires, cause any sewer or drain to open into an existing sewer of the highway, street, road or land through which or part of which the opening is intended to be made.

(3) In exercising the powers given by subsection (2), the owner shall do as little damage as possible to the highway, street, road or land, and shall restore it to the same condition or as good a condition as it was before being disturbed.

10 Except as provided in section 8 or in the case of a mausoleum, no body shall be interred in a vault or otherwise in or under a chapel or other building in a cemetery, or within 15 feet of the outer wall of a chapel or building therein or in any manner contrary to the regulations.

(5) Section 13 presently reads:

Plots for
indigents

13(1) Unless subsection (2) applies, the owner of a cemetery shall make plots in the cemetery available for the burial of unclaimed bodies and bodies of destitute or indigent persons.

(2) If the owner referred to in subsection (1) is a religious auxiliary or religious denomination, the obligation under subsection (1) applies only to the burial of deceased persons who were followers of the religious denomination.

(3) When a burial plot is made available under subsection (1), the owner of the cemetery may charge for the following:

- (a) to provide the plot, 50% of the amount that would ordinarily be charged;
- (b) for a grave liner if required by cemetery by-laws and for digging and backfilling the grave, the amount that would ordinarily be charged.

(4) When the owner of a cemetery differentiates in its charge for the provision of the same plot on the basis of the place of residence of the person to be buried, then the lowest charge made for the plot is to be the amount ordinarily charged for the plot for the purposes of subsection (3)(a).

Plots for
veterans

13.1 An owner of a cemetery shall make plots in the cemetery available as provided in section 13(3) and (4) to veterans as defined in the *War Veterans Allowance Act* (Canada) and the regulations under that Act.

(6) Section 18 is repealed and the following is substituted:

Recovery of
interment
space

18(1) In this section, “interment space” means a lot, plot, compartment, crypt or other space for the disposition of human remains in a cemetery, mausoleum or columbarium.

(2) If interment space is sold by an owner, the Director, on the application of the owner, may by order cancel the conveyance and re-vest the interment space in the owner when the Director is satisfied on evidence verified by affidavit or otherwise that

- (a) the interment space is not in use for interment,
- (b) the owner has not heard from the purchaser of the interment space, or from that purchaser’s personal representative, for a period of 20 years, and

13(1) A religious auxiliary or religious denomination that owns a cemetery shall provide and preserve

- (a) plots for the burial of unclaimed bodies and bodies of destitute or indigent persons who were at the time of death adherents of the same religious denomination, and*
- (b) contiguous plots in an area of the cemetery for the burial of former members of Her Majesty's armed forces who were at the time of death adherents of the same religious denomination.*

(2) The owner of a cemetery other than a religious auxiliary or religious denomination shall provide and preserve

- (a) plots for the burial of unclaimed bodies and bodies of destitute or indigent persons, and*
- (b) contiguous plots in an area of the cemetery for the burial of former members of Her Majesty's armed forces.*

(3) In the case of the burial of a person referred to in subsection (1) or (2), the owner of the cemetery may charge

- (a) for the provision of a plot, not more than 50% of the amount that would ordinarily be charged for the plot, and*
- (b) for digging and backfilling the grave, the amount ordinarily charged for those services.*

(4) When the owner of a cemetery differentiates in its charge for the provision of the same plot on the basis of the place of residence of the person to be buried, then for the purposes of subsection (3)(a), the lowest charge made for the plot shall be deemed to be the amount ordinarily charged for the plot.

(6) Section 18 presently reads:

18 If a plot has been sold by the owner of a cemetery for a burial site, the Director, on the application of the owner of the cemetery, may by order cancel any conveyance of the plot and revest the plot in the owner of the cemetery when the Director is satisfied on evidence verified by affidavit or otherwise that

- (a) the plot is not in use as a burial site,*
- (b) the owner of the cemetery has not heard from the purchaser of the plot, or his personal representative, for a period of 20 years, and*
- (c) reasonable efforts have been made to locate the purchaser of the plot, or his personal representative, and have failed,*

but the revesting of the plot in the owner of the cemetery is subject to the condition that if that purchaser, or his personal representative, subsequently claims the plot the owner of the cemetery will provide

- (c) the owner has made reasonable efforts to locate the purchaser of the interment space, or that purchaser's personal representative, and has failed.

(3) An order under subsection (2) is subject to the condition that if the purchaser from whom the interment space is revested, or that purchaser's personal representative, subsequently claims the interment space, the owner will

- (a) pay to that purchaser an amount equal to the current market value of the revested interment space, or
- (b) provide to that purchaser another interment space that is equal in value to the current market value of the revested interment space.

(7) Section 20 is repealed and the following is substituted:

Winding-up,
liquidation and
dissolution of
cemetery
companies

20(1) In this section and sections 21 to 23, "cemetery company" means a corporation that owns a cemetery and

- (a) is incorporated under the *Companies Act* or the *Cemetery Companies Act*, or
- (b) is incorporated or continued under the *Business Corporations Act*.

(2) A cemetery company owned by a corporation incorporated under the *Cemetery Companies Act* may be dissolved or liquidated and dissolved only in accordance with Part 17 of the *Business Corporations Act* and this section.

(3) A cemetery company owned by a corporation incorporated under the *Companies Act* may be wound up only in accordance with Division 4 of Part 10 of the *Companies Act* and this section.

(4) A cemetery company owned by a corporation incorporated or continued under the *Business Corporations Act* may be dissolved or liquidated and dissolved only in accordance with Part 17 of the *Business Corporations Act* and this section.

(5) Notwithstanding any Act, any interested person has the right to apply to have a cemetery company wound up, dissolved or liquidated and dissolved.

(6) Notwithstanding any Act, a court may not order that a cemetery company be wound up, dissolved or liquidated and

to him another plot of equal value or will pay to him an amount equal to the value of the plot so revested.

(7) 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 or the Cemetery Companies Act, or incorporated or continued under the Business Corporations Act, and is the owner of a cemetery.

(2) Notwithstanding anything in the Companies Act, the Business Corporations Act or the Cemetery Companies Act, a cemetery company may be wound up only by the Court of Queen's Bench and for that purpose

(a) Part 17 of the Business Corporations Act applies to the winding up of a cemetery company incorporated under the Cemetery Companies Act as if it were a corporation being dissolved or liquidated and dissolved under the Business Corporations Act, and

(b) subject to subsection (3), the Director has, in respect of the cemetery company,

(i) the same status as the cemetery company itself to apply under section 215 of the Companies Act to have a company wound up by the court, and

(ii) the same status as a person has under the Business Corporations Act to apply to the court for an order dissolving or liquidating and dissolving a corporation by reason of a contravention of section 205(1) or 206(1)(a) of that Act or under section 207(1)(b)(ii) of that Act.

(3) The Director may apply to have a cemetery company wound up, dissolved or liquidated and dissolved by the court only if it is directed to do so by the Minister and the court shall grant the application by the Director if it is satisfied, on the basis of the material filed with the application and the evidence adduced, that

dissolved unless, in addition to the requirements set out in any other Act,

- (a) the cemetery company is inactive or financially unable to provide perpetual care for the cemetery and either there are no perpetual care funds for the cemetery or its perpetual care funds are inadequate,
- (b) the cemetery company is not maintaining the cemetery properly,
- (c) the cemetery company is not meeting its financial obligations in the operation of the cemetery,
- (d) a shortage in the perpetual care funds required to be set aside by this Act is shown by an annual financial report or otherwise, or
- (e) the cemetery company has failed to establish and maintain a pre-need assurance fund as required in respect of pre-need contracts.

(8) The following is added after section 23:

War graves

23.1(1) No owner of a cemetery, columbarium or mausoleum shall without the prior agreement of the Commonwealth War Graves Commission alter or move

- (a) the remains or marker of a Commonwealth war burial, or
- (b) any memorial erected by that Commission.

(2) An owner who seeks agreement under subsection (1) shall pay to the Commonwealth War Graves Commission any reasonable cost associated with reaching agreement.

Resale of plot to owner of cemetery

23.2 If the owner of a cemetery sells a plot for a burial site and prohibits its resale on the open market and if the purchaser of the plot offers to sell the unused plot back to the owner of the cemetery, the owner of the cemetery shall

- (a) purchase the plot, and
- (b) pay a purchase price calculated in accordance with the regulations.

(9) Section 26 is amended

- (a) by renumbering it as section 26(1);**

- (a) the cemetery company is inactive or unable financially to provide endowment care for the cemetery and either there are not endowment care funds for the cemetery or its endowment care funds are inadequate,*
- (b) the cemetery company is not maintaining the cemetery properly,*
- (c) the cemetery company is not meeting its financial obligations in the operation of the cemetery,*
- (d) there is found, on 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.*

(8) Adds new sections to Part 1.

(9) Section 26 presently reads:

26 No human bodies shall be cremated in a crematory, and no crematory shall be maintained or operated, unless the owner of the

(b) in subsection (1) by striking out “valid and subsisting licence for the purpose issued by the Minister” and substituting “licence for that purpose”;

(c) by adding the following after subsection (1):

(2) A person who wishes to apply for a licence to maintain or operate a crematory or to have a licence renewed must apply to the Director in accordance with the regulations.

(3) A licence is valid for the period specified in the regulations or until it is suspended or cancelled by the Director pursuant to Part 5.

(10) Sections 27, 29 and 30 are repealed.

crematory holds a valid and subsisting licence for the purpose issued by the Minister.

(10) Sections 27, 29 and 30 presently read:

27 When he is satisfied that the crematory has the proper equipment installed for the disposal of human bodies by cremation and that the crematory is satisfactory in every respect, the Minister may, on payment of the required fee, issue to the owner of the crematory a licence authorizing the maintenance and operation of the crematory.

29 A licence under this Part shall be issued for such period as may be prescribed by the regulations and expires unless sooner suspended or cancelled on the last day of the period for which it is issued.

30(1) Subject to this section, the Minister may suspend for such period as he considers desirable or may cancel a licence issued under this Part,

(a) if he is satisfied that a crematory is not being maintained and operated as required by this Part or by the regulations or by any other statute, by-law or regulations applicable to the crematory, or

(b) for any other just and reasonable cause,

or the Minister for any like cause may refuse to issue a subsequent licence for a further period in place of a licence that has expired.

(2) Before suspending or cancelling a licence and before refusing to issue a subsequent licence for a further period in place of a licence that has expired, the Minister shall, by written notice, notify the licensee named in the licence or expired licence

(a) of his intention so to suspend or to cancel the licence or to refuse to issue a licence, and

(b) of a time when, and a place where, he will hear representations by or on behalf of the licensee respecting the proposed suspension, cancellation or refusal.

(11) Section 32 is repealed and the following is substituted:

Registration of
deaths, etc.

32(1) The statutes and regulations that govern registration of deaths and certificates of registration and any other provisions required to be observed before burial is permitted apply, with all necessary modifications, to cremation of human bodies.

(2) The statutes and regulations that govern registers of death and the admissibility of extracts from those registers as evidence in court or otherwise apply, with all necessary modifications, to a register of cremations kept as directed under the regulations.

(12) The heading “ENDOWMENT CARE FUNDS” preceding section 35 is amended by striking out “ENDOWMENT” and substituting “PERPETUAL”

(13) Section 35(2) is repealed and the following is substituted:

(2) If the Minister is satisfied that a religious denomination, religious auxiliary or municipality owning a cemetery, columbarium or mausoleum does not also solely operate that cemetery, columbarium or mausoleum insofar as the sale of lots, plots, compartments, crypts or other space is concerned, the Minister may by order declare that this Part and Part 4 apply to that owner in respect of that cemetery, columbarium or mausoleum.

(14) Sections 36 and 37 are repealed.

(3) At the time and place fixed in the notice given under subsection (2), or at any adjournment thereof respecting which the licensee has had notice, the Minister shall hear the licensee or counsel on his behalf respecting the matter.

(4) At a hearing held under subsection (3) the Minister may receive the testimony of witnesses either on oath or otherwise and in person or by affidavit, and the licensee or counsel on his behalf may examine witnesses on behalf of the licensee and cross-examine any witness whose testimony supports the proposed suspension, cancellation or refusal.

(11) Section 32 presently reads:

32 All statutory provisions relating to the registration of deaths and certificates of registration, and all other provisions required to be observed before burial is permitted, shall, with all necessary modifications, be observed in all cases where human bodies are cremated, and all provisions relating to registers of death, and the admissibility of extracts therefrom as evidence in courts or otherwise, apply, with all necessary modifications, to registers of cremations directed by the regulations to be kept.

(12) The heading preceding section 35 presently reads:

ENDOWMENT CARE FUNDS

(13) Section 35(2) presently reads:

(2) If 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 4 apply to that owner in respect of that cemetery.

(14) Sections 36 and 37 presently read:

36 No person shall, in an 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,

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

(15) Section 37.1 is repealed.

(16) Section 39 is amended

(a) by repealing subsection (1) and substituting the following:

Minimum
funds

39(1) Subject to subsection (1.1), the owner of a cemetery, columbarium or mausoleum shall maintain for each cemetery, columbarium or mausoleum owned by that owner a perpetual care fund consisting of a minimum amount that is not less than

- (a) the initial amount prescribed by regulation to be set aside for each cemetery, columbarium or mausoleum owned by that owner, and
- (b) the percentage or flat rate of each sale prescribed by regulation to be set aside.

(1.1) Where an owner purchases an existing cemetery, the Director may increase, reduce or waive the owner's

(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 2 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.*

37 No person shall sell, lease or rent or offer for sale, lease or rent a lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum or in a proposed cemetery, columbarium or mausoleum unless that person is registered by the Director for that purpose.

(15) Section 37.1 presently reads:

37.1 Any term of a contract entered into on or after this section comes into force for the sale, lease or rent of an existing or proposed lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum that

(a) misrepresents the obligations or liabilities of the parties to the contract,

(b) is misleading as to its true nature or purpose, or

(c) contravenes this Act or the regulations

is void and severable from the contract.

(16) Section 39 presently reads:

39(1) Subject to the regulations, the minimum amount of the endowment care funds for each cemetery shall be \$15 000.

(2) Any deposit that is made by an owner with an authorized trustee or that before April 15, 1964 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 Government of Alberta, but the income derived from the bonds belongs to the owner.

(4) Notwithstanding anything in section 38 or 40, when 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 \$30 000 either

obligation under subsection (1) in regard to that cemetery, columbarium or mausoleum.

(b) in subsections (2) and (4) by striking out “endowment” wherever it occurs and substituting “perpetual”.

(17) Section 41 is amended

(a) in subsections (1) and (3) by striking out “endowment” and substituting “perpetual”;

(b) by adding the following after subsection (3):

(4) The authorized trustee shall, for the purpose of its financial records, keep the money received under each perpetual care fund separate from any other money but may, for the purpose of investing in accordance with subsection (1), combine the money received under all perpetual care funds of the same owner.

(18) Section 42 is repealed and the following is substituted:

Remuneration
for services

42 An authorized trustee may, as remuneration for services rendered, deduct and retain in each year a reasonable administration fee from the income received in that year from money invested on behalf of an owner as provided in this Part.

(19) Sections 43 and 44 are repealed and the following is substituted:

Reporting
requirements

43 Each owner of a cemetery, columbarium or mausoleum shall provide to the Director in the form set by the Director information relating to each perpetual care fund maintained by that owner, including a statement from the authorized trustee in the form set by the Director.

- (a) by requesting the return of the deposit when the endowment care funds reach an amount at least equal to the sum of \$30 000 plus the deposit, or*
- (b) by thereafter retaining money that would otherwise be required to be paid to an authorized trustee under section 38 until and to the extent that the money retained is equal to the sum of the deposit.*

(17) Section 41 presently reads:

- 41(1) Subject to section 42, the authorized trustee shall invest, on behalf of the owner, in securities that are authorized investments for trustees under the Trustee Act, all endowment care funds received by him from an owner.*
- (2) The authorized trustee shall, as may be prescribed by the regulations, pay to the owner the income derived therefrom, less the amount of the remuneration for the services of the authorized trustee that he is authorized to deduct and retain for that purpose.*
- (3) Pending the investment of endowment care funds, an authorized trustee may deposit them during such period as is reasonable in the circumstances in a bank or treasury branch.*

(18) Section 42 presently reads:

- 42 An authorized trustee may, as remuneration for his services, deduct and retain in each year from the income received in that year from money invested on behalf of an owner as provided in this Part such portion of that income as may be approved by the Minister.*

(19) Sections 43 and 44 presently read:

- 43(1) The owner of a cemetery, columbarium or mausoleum shall submit his accounts with respect to endowment care funds to a judge of the Court of Queen's Bench to be examined, audited and passed*
 - (a) within 5 years of the establishment of the cemetery, columbarium or mausoleum, and*
 - (b) at intervals not exceeding 5 years from the date of the order made on the last previous passing of accounts.*
- (2) On passing of accounts the judge may require the owner*
 - (a) to submit additional accounts or information with respect to the endowment care funds, and*
 - (b) to make a full disclosure and accounting of all endowment care funds that have come into the possession of the owner at any time.*
- (3) The judge may at any time direct a passing of accounts for endowment care funds held by an owner.*

(20) Section 47 is amended

(a) by repealing subsection (1);

(b) in subsection (2) by striking out “An owner” and substituting “An owner of a cemetery, columbarium or mausoleum”.

(21) Part 4 is repealed and the following is substituted:

PART 4

PRE-NEED SALE OF CEMETERY SUPPLIES AND SERVICES

Application of
Part

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

(4) If, for any reason, the judge considers it expedient, he may from time to time, after notice has been given to the authorized trustee of an application to extend the time for passing accounts, extend the times prescribed in subsection (1) for a period not exceeding 2 years.

(5) Except as specifically otherwise provided in this section, the rules and practice with respect to the passing of accounts of an executor, administrator or trustee apply with all necessary modifications, to the passing of accounts under this Part.

(6) Notice of the passing of accounts shall be served only on the authorized trustee and Director unless the judge otherwise directs.

44 If on the passing of accounts the judge finds that an owner has been guilty of a breach of this Act, he may direct the whole of the endowment care funds then in the hands of the owner, or any portion of it that the judge may specify, be paid over forthwith to the authorized trustee, with notice to the Director.

(20) Section 47 presently reads:

47(1) Every owner shall file annually with the Director 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 on by an independent auditor, and

(c) in a form satisfactory to the Director.

(2) An owner shall, if required by the Director,

(a) supply the Director 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 Alberta the books and records pertaining to the cemetery, columbarium or mausoleum the Director requires.

(21) Part 5 adds new provisions concerning appointment of Director, duties of Director in regard to approvals, permissions and licensing, and appeal boards. Part 4's definitions (section 52) have been moved to section 1. Part 4 (sections 52 to 59) presently reads:

52 In this Part,

(a) "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;

(b) "cemetery supplies" means burial vaults, grave stones, grave markers, monuments or bases for use in a cemetery;

Licence to sell
pre-need
contracts

53(1) In this section, “cemetery supplies” includes the sale, lease or rental of a lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum or in a proposed cemetery, columbarium or mausoleum.

(2) No person shall, unless that person holds a pre-need contract sales licence, solicit to enter or enter a pre-need contract

- (a) under which that person promises to provide, or to arrange for the provision of, cemetery supplies or cemetery services or both, or
- (b) as an agent for another person who holds a pre-need contract sales licence.

(3) A person who wishes to apply for a pre-need contract sales licence or to have a licence renewed must apply to the Director in accordance with the regulations.

(4) A licence is valid for the period specified in the regulations or until it is suspended or cancelled by the Director pursuant to Part 5.

Seller to hold
money in trust

54 A seller who enters into a pre-need contract holds all money paid under the contract in trust for the purposes for which it has been paid until

- (a) the cemetery supplies and cemetery services listed in the contract have been provided in accordance with the contract, or
- (b) the money, or any unused portion of the money, and all income earned as a result of the investment of that money has been refunded to
 - (i) the person who made the payment or payments under the contract, or
 - (ii) the person for whose benefit the contract was entered into or that person’s personal representative.

Transfer of
trust money to
authorized
trustee

55(1) Subject to subsection (2), money held in trust by a seller pursuant to section 54 must be transferred to an authorized trustee within the period set out in the regulations.

(2) Subsection (1) does not apply to money paid

(c) *“pre-need assurance fund” means a pre-need assurance fund referred to in section 54 or 55.*

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

54(1) When an owner or a cemetery enters into a contract for the sale of cemetery supplies or cemetery services to be supplied on the death of a person who is alive at the time the contract is made, 50% of any money 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 30 days of receiving money that constitutes the whole or part of a pre-need assurance fund, pay the money received to an authorized trustee and the money shall be recorded in separate accounts for each purchaser.

55(1) If, before April 15, 1964, an owner of a cemetery entered into a contract for the sale of cemetery supplies or cemetery services to be supplied on the death of a person who was alive at the time the contract was made and the contract was not discharged before April 15, 1964, the owner shall pay to an authorized trustee on or before June 30, 1967 or such longer period as the Minister may prescribe, an amount equal to 50% of any money paid before April 15, 1964 as the whole or part of the consideration under the contract or an amount equal to the cost to the owner of the cemetery supplies and cemetery services to be provided under the contract, whichever amount is directed by the Director.

(2) An amount referred to in subsection (1) may be in the form of a fully paid-up life insurance policy deposited with the authorized trustee and under which the insured is the person in respect of whom the cemetery supplies and services are to be provided and the beneficiary is the authorized trustee.

(3) When money is paid as the whole or part of the consideration under a contract referred to in subsection (1) but after April 15, 1964, 50% of the money shall be paid by the owner to an authorized trustee within 30 days of receipt by him.

(4) Money paid to an authorized trustee under this section shall be recorded in separate accounts for each purchaser and on being deposited constitutes a pre-need assurance fund in respect of that contract.

56 Notwithstanding section 54 or 55, if the owner of a cemetery

(a) maintains at his office in Alberta

(i) a copy of each contract entered into,

(ii) a record of every payment received under the contract showing the apportionment of each payment to or in respect of a plot, cemetery supplies, cemetery services, endowment care fund and pre-need assurance fund, and

(a) for the cost of any grave stone, grave marker or monument that is manufactured or inscribed within the period set out in the regulations, or

(b) to purchase interment space that exists for use at the time the contract is entered.

(3) A seller may deduct an administration fee in accordance with section 56 from the money to be transferred under subsection (1) to an authorized trustee.

(4) The authorized trustee

(a) shall deposit money received under subsection (1) in a pre-need assurance fund, and

(b) may invest the money in any investments authorized as trustee investments under the *Trustee Act*.

(5) The authorized trustee shall, for the purpose of its financial records, keep the money received under each pre-need contract separate from any other money but may, for the purpose of investing in accordance with subsection (4), combine the money received under all pre-need contracts of the same seller.

(6) The financial records required under subsection (5) must show

(a) the amount of principal and income held in the pre-need assurance fund to the credit of each pre-need contract, and

(b) the name of the person for whose benefit the pre-need contract was entered into.

(7) Money that is held in a pre-need assurance fund is not, while in the fund or being transferred to or from the fund, liable to demand, seizure or detention under any legal process.

Payment out
of pre-need
assurance
fund

56(1) Money held in a pre-need assurance fund and any income earned as a result of the investment of that money shall not be paid out of the fund by the authorized trustee except in accordance with this section and the regulations.

(2) When the cemetery supplies and cemetery services listed in a pre-need contract have been provided, all money and income held in a pre-need assurance fund to the credit of that pre-need contract shall be paid to the seller, on production by the seller of proof

(iii) a copy of each interment authorization to which a contract is related,

and

(b) files with the Director annually an audited statement of the total amount paid to an authorized trustee on account of the pre-need assurance fund,

the authorized trustee is not required to record the amounts paid to it in separate accounts for each purchaser.

57 Money held by an authorized trustee as pre-need assurance funds may be invested in any investments authorized for trustee investments under the Trustee Act.

58(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, on 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, on the direction of the Director if the Director considers the request for payment reasonable, or

(b) to the owner, on production of proof of the death of the person on whose behalf the money was paid and proof that the cemetery supplies or cemetery services have been provided in accordance with the contract.

(2) When subsection (1)(a) applies, the purchaser or his personal representative, as the case may be, is also entitled to be paid by the owner an amount which together with the pre-need assurance fund in respect of the contract, equals 75% of the money paid as the whole or part of the consideration under the contract.

(3) It is an implied provision of every contract referred to in section 54(1) or 55(1) that no penalty or charge shall be deducted from any payment made under subsection (1) or (2) of this section.

59(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 Court of Queen's Bench, accounts of his dealings with pre-need assurance funds.

(2) Section 43(2), (3), (4), (5) and (6) and sections 44 to 46 apply to pre-need assurance funds as though a reference therein to endowment care funds were a reference to pre-need assurance funds.

- (a) of the death of the person for whose benefit the contract was entered into, and
- (b) that the cemetery supplies and cemetery services have been provided.

(3) A seller who has received money under a pre-need contract and has transferred the money to an authorized trustee under section 55(1) may charge an administration fee not exceeding the amount set out in the regulations on the date when

- (a) the cancellation period under section 63 expires, or
- (b) the pre-need contract is cancelled after the expiry of the cancellation period under section 63.

(4) A seller who charges an administration fee shall elect as set out in the regulations whether every administration fee on every pre-need contract that the seller enters will be charged in accordance with subsection (3)(a) or in accordance with subsection (3)(b).

(5) If no administration fee has been deducted under section 55(3), an authorized trustee shall pay from the money and income held in a pre-assurance fund any administration fee owing to a seller.

Use of
investment
income

57(1) Notwithstanding any agreement to the contrary, a seller who, in the period commencing on May 1, 1962 and ending on November 30, 1998, entered into a pre-need contract that specifically permits the seller to retain income earned by the investment of the funds received under the contract shall not withdraw any of that income from trust until

- (a) the contract is cancelled, or
- (b) the cemetery supplies and cemetery services listed in the contract have been provided in accordance with the contract.

(2) A seller who enters into a pre-need contract after November 30, 1998 must hold the income earned by the investment of funds received under the contract in trust in accordance with section 54.

Reporting to
Director

58 Each seller must provide to the Director in the form set by the Director information relating to each pre-need assurance fund maintained by that seller, including a

statement from the authorized trustee in the form set by the Director.

PART 5

DIRECTOR

Appointment
of Director

59(1) The Minister may appoint a person to act as the Director for the purposes of this Act and the regulations.

(2) The Director may delegate in writing to any person under the Minister's administration any power, duty or function conferred or imposed on the Director by this Act or the regulations.

(3) The Director may, when delegating a matter, authorize the further delegation of the matter.

(4) A delegation may be made subject to any terms and conditions the Director considers appropriate.

Duties relating
to approvals

59.01(1) The Director is authorized to receive applications for

(a) provisional approval of

(i) the operation or establishment of a cemetery, or

(ii) any alteration in the size of an existing cemetery,

(b) a final certificate of approval for

(i) the operation or establishment of a cemetery, or

(ii) any alteration in the size of an existing cemetery,

(c) approval of any plan or site for a mausoleum or columbarium, and

(d) permission to alter an approved plan for a mausoleum or columbarium.

(2) The Director may grant any approval or permission applied for under subsection (1) if the applicant meets all the requirements for that approval or permission set out in the regulations.

Duties relating
to licences

59.02(1) The Director is authorized to receive applications for the issuance or renewal of licences.

(2) The Director may issue a licence if the applicant meets all of the requirements for that licence set out in the regulations and may issue the licence subject to conditions.

(3) The Director may renew a licence if the applicant meets all of the requirements for renewal of that licence set out in the regulations and may renew the licence subject to conditions.

(4) The Director may refuse to issue or renew a licence

- (a) for any of the reasons set out in the regulations, or
- (b) if, in the Director's opinion, it is not in the public interest to issue or renew the licence.

(5) The Director may suspend or cancel a licence

- (a) if the licensee contravenes this Act or the regulations,
- (b) for any of the reasons set out in the regulations, or
- (c) if, in the Director's opinion, it is in the public interest to suspend or cancel the licence.

(6) When the Director refuses to renew a licence or makes a decision to suspend or cancel a licence, the Director may also, by written order, do any or all of the following:

- (a) assign to another licensee any pre-need contracts entered into by the licensee;
- (b) prohibit the licensee from continuing to carry out the activities authorized by the licence, subject to any terms and conditions set out in the order;
- (c) direct any person to cease any act or omission that contravenes this Act or the regulations;
- (d) prohibit the licensee who committed the act or omission that resulted in the suspension or cancellation or who directed, authorized, assented to, acquiesced in or participated in the act or omission from so acting, subject to any terms and conditions set out in the order.

(7) Where the Director issues or renews a licence subject to conditions or refuses to issue or renew a licence, the Director must notify the applicant in writing of the decision and the reasons for the decision.

(8) Where the Director suspends or cancels a licence, the Director must notify the licensee in writing of the decision and the reasons for the decision.

Appeal

59.03(1) A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to conditions,
- (c) whose licence has been suspended or cancelled,
- (d) to whom an order under section 59.02(6) has been issued, or
- (e) to whom an order under section 59.4 has been issued,

may appeal the decision by serving the Minister with a notice of appeal within 30 days after being notified of the Director's decision.

(2) The Minister shall, within 30 days of being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

(3) An appeal board shall consist of the following members:

- (a) a person designated by the Minister as chair of the appeal board, and
- (b) not fewer than 2 and not more than 4 other persons.

(4) The following persons shall not be members of an appeal board:

- (a) the Director;
- (b) a delegate, agent or employee of the Director;
- (c) a member of a regulatory board.

(5) Notwithstanding subsection (3), the Minister may designate a board or commission established by or under an Act of the Legislature to act as an appeal board under this

section, and in that case, references in this section to an appeal board are deemed to be references to that board or commission.

(6) The Minister may set the time within which an appeal board is to hear an appeal and make a decision, and may extend that time.

(7) An appeal board that hears an appeal under this section may, by order, do any one or more of the following:

- (a) confirm or quash the decision;
- (b) direct that the licence be issued or that the licence be renewed;
- (c) reinstate a suspended or cancelled licence;
- (d) substitute a suspension for a cancellation or a cancellation for a suspension;
- (e) add, vary or delete conditions on a licence;
- (f) add, vary or delete any measure that may be ordered under section 59.4;
- (g) order the appellant to pay all or part of the investigation costs;

and may make the order subject to any terms and conditions it considers appropriate.

(8) An appeal board may order that the costs of the appeal are to be paid by the appellant.

(9) Fees and reasonable living and travelling expenses may be paid to the members of an appeal board in accordance with the regulations.

(10) The Director or a person who appeals to an appeal board under subsection (1) may appeal the decision of the appeal board by filing an originating notice with the Court of Queen's Bench within 30 days of being notified in writing of the decision of the appeal board, and the Court may make any order that an appeal board may make under subsection (7).

(11) Where a licence is refused, suspended or cancelled or an order under section 59.02(6) is issued by a regulatory board instead of the Director, the regulatory board has the

right of appeal under subsection (10) as if it were the Director.

(22) The heading “PART 5 GENERAL” preceding section 59.1 is repealed.

(23) Section 59.4 is repealed and the following is substituted:

Act,
regulations
contravened

59.4 If, in the opinion of the Director, an owner or salesperson is contravening or has contravened this Act or the regulations, or any form, form of agreement or form of letter is misleading or contains a term that misrepresents or contravenes this Act or the regulations, the Director may issue an order directing that owner or salesperson

(a) to stop engaging in any practice that is described in the order, and

(b) to take any measures specified in the order, within the time specified in the order, that, in the opinion of the Director, are necessary to ensure that this Act or the regulations are complied with.

Enforcement
of Director's
orders

59.5(1) Whether or not a person is prosecuted under this Act, if the Director is of the opinion that that person is not complying or has not complied with an order of the Director under section 59.02(6) or 59.4, the Director may apply to the Court of Queen's Bench for an order directing that person to comply with the order.

(2) An application under this section must be by way of an originating notice.

(3) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate in the circumstances.

(5) On hearing an application the Court may, if it is of the opinion that the person is not complying or has not complied with the order, grant an order, subject to any terms and

(22) The heading preceding section 59.1 presently reads:

PART 5

GENERAL

(23) Section 59.4 presently reads:

59.4(1) A person who is dissatisfied with a decision of the Director

(a) issuing an order under section 67.1,

(b) refusing to register a salesperson, or

(c) suspending or cancelling the registration of a salesperson,

may appeal the decision by serving the Minister with a notice of appeal within 30 days of being notified in writing of the decision.

(2) The Minister shall, within 30 days of being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

(3) The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.

(4) An appeal board that hears an appeal under this section may, by order, either vary, revoke or confirm the decision.

(5) An appeal board appointed under this section shall consist of the following members:

(a) a person (who is not the Director or a representative of the Director) who is designated as chairman of the appeal board by the Minister, and

(b) not less than 2 or more than 4 other persons.

(6) Notwithstanding subsection (5), the Minister may designate a board or commission established by or under an Act of the Legislature to hear an appeal under subsection (2), and a reference to an appeal board in this section is deemed to be a reference to a board or commission so designated.

(7) The Minister may pay reasonable fees and living and travelling expenses to the members of an appeal board.

(8) The Director or a person whose appeal is heard by an appeal board may appeal the decision of the appeal board by filing an

conditions the Court considers appropriate in the circumstances, doing one or more of the following:

- (a) directing the person to comply with the order of the Director;
- (b) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;
- (c) awarding costs in respect of the matter.

Director's
ability to
disclose
information

59.6(1) The Director may disclose any information relating to

- (a) the refusal, cancellation or suspension of a licence issued under this Act, or
- (b) a disciplinary action taken under this Act.

(2) If there is an inconsistency or conflict between subsection (1) and a provision of the *Freedom of Information and Protection of Privacy Act*, subsection (1) prevails.

Settlement

59.7 If in the course of an investigation or inquiry under this Act the Director discovers that a person has contravened this Act or the regulations, the Director may enter into a settlement of the matter with the person where in the Director's opinion it is in the public interest to do so, subject to any terms and conditions the Director considers appropriate, including payment of all or part of the investigation costs by the person.

PART 6

REGULATORY BOARD

Establishment
of regulatory
board

59.71(1) The Minister may make regulations

- (a) providing for the establishment of a regulatory board to exercise the powers, duties and functions delegated to it under section 59.72(1);
- (b) providing for the appointment and removal of the members of a regulatory board including, without limitation, the number of members, the method of appointment of members, the terms of office of members and the filling of vacancies.

originating notice with the Court of Queen's Bench within 30 days of being notified in writing of the decision, and the Court may make any order that an appeal board may make under subsection (4).

Provisions concerning the Director's authority to order owners and salespeople to stop engaging in practices which contravene the Act or regulations and concerning court enforcement of those orders are moved from their existing place in sections 67.1 and 67.2.

New provisions are added concerning Director's ability to disclose information and to enter settlements.

Part 6 adds new provisions concerning the establishment or designation of regulatory board, delegation of Director's duties, establishment of a claims fund, and a delegate's duty of confidentiality.

(2) Notwithstanding subsection (1), the Minister may by regulation designate any board established under any Act of the Legislature to be a regulatory board for the purposes of this Act.

(3) A regulatory board may make by-laws

- (a) respecting the conduct of the business and affairs of the board;
- (b) respecting the calling of meetings of the board and the conduct of business at those meetings;
- (c) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of members, officers and employees of the board;
- (d) delegating to the officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make by-laws;
- (e) respecting the establishment, membership, duties and functions of special, standing and other committees.

(4) A by-law made by a regulatory board is not effective until it is approved by the Director.

(5) The *Regulations Act* does not apply to a by-law of a regulatory board.

Delegation to
regulatory
board

59.72(1) The Director may by notice in writing to a regulatory board

- (a) delegate to the regulatory board any or all of the Director's powers, duties or functions under this Act and the regulations, and
- (b) impose any conditions on the regulatory board's exercise of the delegated powers, duties or functions that the Director considers appropriate.

(2) The Director may, when delegating a matter under subsection (1), authorize the further delegation of the matter.

(3) The Director may amend or revoke a notice referred to in subsection (1).

(4) Where the Director makes a delegation under subsection (1), a reference in this Act or the regulations to the Director

with respect to the delegated power, duty or function is to be read as if it were a reference to the regulatory board to which the delegation was made.

Payment for
services of
regulatory
board

59.73(1) The Minister may make regulations respecting

- (a) the collection of fees by a regulatory board on the Government's behalf and their remission to the Provincial Treasurer, and
- (b) the payment of a commission to a regulatory board for its services under this subsection.

(2) Notwithstanding subsection (1)(b), a regulatory board may, in accordance with the regulations, levy an assessment on licensees and owners of cemeteries for the purpose of enabling the board to carry out the powers, duties and functions delegated to it under section 59.72(1).

Establishment
of claims fund

59.74(1) A regulatory board may create a fund to be used for the following purposes:

- (a) to pay claims of persons who have suffered loss or damage arising out of the operation by a licensee of a business to which this Act applies or of a cemetery;
- (b) any other purpose authorized by the regulations.

(2) Subject to the regulations, the regulatory board may levy an assessment on licensees and owners of cemeteries for the purposes of the fund.

(3) A regulatory board is deemed to hold all money collected under subsection (2) in trust and shall immediately deposit that money in a trust account in a bank, treasury branch, trust corporation or credit union in Alberta, separate and apart from any other money of the regulatory board.

(4) Notwithstanding subsection (3), a regulatory board may pay the administrative costs associated with the fund out of the income earned as a result of the investment of the money in the fund.

(5) If the income earned as a result of the investment of the money in the fund is insufficient to pay the administrative costs associated with the fund, the regulatory board may levy an assessment on licensees and owners of cemeteries in accordance with the regulations.

(6) The Minister may make regulations

- (a) respecting purposes for which the money in a fund established under this section may be used in addition to the purpose referred to in subsection (1)(a);
- (b) respecting the levying of assessments for the purposes of subsections (2) and (5);
- (c) respecting the investment of money in a fund that is not currently required for disposition;
- (d) respecting the protection, by insurance or other means, of the money in a fund against claims or losses;
- (e) respecting the administration of a fund;
- (f) requiring a regulatory board to provide a report to the Minister and respecting the nature and contents of such a report and the times at which it must be provided;
- (g) respecting the kinds of claims that may be paid from a fund and the conditions to be met before any claim is paid from a fund;
- (h) respecting the limits of liability of a fund;
- (i) respecting the time within which claims against a fund must be made;
- (j) providing for the recovery by the regulatory board from a licensee of any amount paid from the fund to a claimant in respect of a claim against that licensee for loss or damage arising out of the operation by the licensee of a business to which this Act applies;
- (k) respecting the winding-up of a fund.

Confidentiality

59.75 No person shall, without the written consent of the Director, disclose any information obtained in the course of exercising a delegated authority under this Act.

(24) The following heading is added before section 60:

PART 7

GENERAL

(25) Section 60 is amended

(24) New heading.

(25) Section 60 presently reads:

- (a) by renumbering it as section 60(1);**
- (b) in subsection (1)**
 - (i) by striking out “Lieutenant Governor in Council” and substituting “Minister”;**
 - (ii) by adding the following after clause (f):**
 - (f.1) governing the calculation of a resale price under section 23.2;
 - (iii) by repealing clause (g) and substituting the following:**
 - (g) respecting the collection, amounts to be collected and investment of funds for perpetual care and maintenance of cemeteries, columbaria or mausolea, where not provided for or insufficiently provided for in this Act;
 - (iv) in clause (i) by striking out “cemeteries and columbaria” and substituting “cemeteries, columbaria and mausolea”;**
 - (v) in clause (j)**
 - (A) by striking out “cemetery and columbarium” and substituting “cemetery, columbarium and mausoleum”;**
 - (B) by adding “and mausolea” after “columbaria”;**
 - (vi) by adding the following after clause (j):**
 - (j.1) respecting the initial amount of a perpetual care fund that must be set aside for a cemetery, columbarium or mausoleum;
 - (vii) by repealing clause (k) and substituting the following:**
 - (k) specifying the flat rate or percentage of money received on the sale of a lot or plot in a cemetery or space in a columbarium or mausoleum that is to be set aside in the perpetual care fund by the owner;
 - (viii) by repealing clause (l) and substituting the following:**

60 *The Lieutenant Governor in Council may make regulations*

- (a) respecting the cremation of bodies of deceased human beings, and the location, construction, maintenance and operation of crematories and columbaria, and the disposal of unclaimed ashes;*
- (a.1) respecting the plans, surveys, arrangements, condition, care, sale and conveyance of lots, plots, mausolea and other cemetery grounds and property;*
- (b) respecting the location, construction, maintenance and operation of cemeteries and the approval of the location of proposed cemeteries;*
- (b.1) respecting the erection, arrangement and removal of tombs, vaults, monuments, gravestones, markers, copings, fences, hedges, shrubs, plants and trees in cemeteries;*
- (c) respecting the depth to which graves must be dug;*
- (c.1) requiring persons selling cemetery lots or plots or selling space in a columbarium or mausoleum to be bonded or insured and fixing the amount and type of bond or insurance that is to be furnished or carried by any such person, and prescribing to whom the bond is to be furnished or the proof of insurance that is to be furnished and to whom it is to be furnished;*
- (d) requiring owners of cemeteries to permit the planting, installation and erection of cemetery supplies by owners of lots and such other persons and on such conditions as may be prescribed by the regulations;*
- (d.1) defining cemetery supplies and cemetery and crematory services for the purposes of the regulations;*
- (e) governing and regulating the charges for the sale and care of lots and plots and for cemetery supplies and cemetery and crematory services;*
- (f) regulating or restricting or prohibiting the sale or offering for sale of cemetery lots or plots or space in a mausoleum or columbarium in accordance with the intent of this Act, and prescribing the method, manner and conditions under which lots and plots in cemeteries and space in a mausoleum or columbarium may be sold or offered for sale;*
- (g) respecting the collection, amounts to be collected and investment of funds for endowment care and maintenance of cemeteries or columbaria, where not provided or insufficiently provided for in this Act;*
- (h) requiring the filing or registration of plans of cemeteries with the Minister and prescribing the contents and details of the plans and requiring that burials be made in accordance with the plans;*

- (l) requiring and prescribing financial information in connection with perpetual care funds, governing the times at which the financial information is to be submitted to the Director and prescribing any other statements and certificates that are to accompany the information;

(ix) in clause (m) by striking out “cemeteries and columbaria” and substituting “cemeteries, columbaria and mausolea”;

(x) by adding the following after clause (m):

- (m.1) respecting disclosure requirements governing pre-need contracts, including cancellation and refund policies, listing of goods and services to be provided and the description of other goods or services that may be required;
- (m.2) governing the period within which a seller must transfer to an authorized trustee money held in trust under a pre-need contract;
- (m.3) governing the period within which any grave stone, grave marker or monument must be manufactured or inscribed for the purposes of the exemption under section 55(2)(a);
- (m.4) respecting the requirements and procedures governing payment out by an authorized trustee of money held in a pre-need assurance fund under section 55 and any income earned as a result of the investment of that money;
- (m.5) governing the calculation of an administration fee under section 56(3) and setting a maximum administration fee that may be charged;
- (m.6) specifying the form and manner in which an election under section 56(4) is to be made, including to whom notice of an election must be given, the form of the notice and whether and how an election may be changed;
- (m.7) respecting the requirements and procedures governing refunding by a seller of money held in trust under section 54 and all income earned as a result of investment of that money;

- (i) *requiring that the by-laws, rules or regulations made by the owners of cemeteries and columbaria be approved by the Minister;*
- (j) *requiring cemetery and columbarium owners to supply financial and other information prescribed by the regulations to owners of lots and plots in the cemetery and to purchasers of space in columbaria and to such other persons as the regulations prescribe;*
- (k) *prescribing the percentage of money received on the sale of a lot or plot in a cemetery or space in a columbarium or mausoleum that is to be set aside in the endowment care fund by the owner;*
- (l) *requiring and prescribing audits and financial statements in connection with endowment care funds and prescribing the times at which the financial statements are to be submitted to the Director and the information and certificates to accompany the statements;*
- (m) *requiring and prescribing records in connection with the establishment, maintenance and operation of cemeteries and columbaria to be kept by the owners and prescribing the times at which the records are to be submitted to the Minister and the information to accompany the records;*
- (n) *requiring and prescribing the submission to the Director of Vital Statistics, by persons in charge of cemeteries, mausolea and crematories, of periodic returns, covering burials or interments or cremations;*
- (o) *prescribing the powers and duties of the Director with respect to the registration and the suspension and cancellation of registration of salespersons of lots, plots, compartments, crypts or space in a cemetery, columbarium or mausoleum, the terms and conditions on which salespersons may be registered, and the registration fees payable;*
- (p) *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;*
- (q) *governing the accounting by an administrator of his administration pursuant to section 61(7);*
- (r) *respecting any matter in connection with any proceedings referred to in sections 20 to 23;*
- (s) *providing for any matter arising out of a declaration made by the Minister under section 35(2) or in connection with a cemetery or the owner thereof affected by the declaration;*

- (m.8) requiring and prescribing financial information in connection with pre-need assurance funds, governing the times at which the financial information is to be submitted to the Director and prescribing any other statements and certificates that are to accompany the information;

(xi) by repealing clause (o) and substituting the following:

- (o) providing for the issuance and renewal of licences, including the form of the application and the setting of fees for the issuance and renewal of licences, and specifying the requirements to be met by applicants for licences or for renewal of licences;
- (o.1) respecting the reasons for which the Director may suspend or cancel a licence or refuse to issue or renew a licence;
- (o.2) governing the duration of licences;

(xii) by adding the following after clause (p):

- (p.1) respecting the payment of fees and reasonable living and travelling expenses to members of an appeal board appointed under section 59.03;
- (p.2) respecting settlements under section 59.7, including the kind of settlement undertakings that may be entered into, records of undertakings, the procedure to vary or cancel an undertaking, and the effect of variation or cancellation of an undertaking;

(xiii) by repealing clause (s) and substituting the following:

- (s) providing for any matter arising out of a declaration made by the Minister under section 35(2);

(xiv) by repealing clause (t);

(xv) by repealing clause (x) and substituting the following:

- (x) respecting the disposal of fetuses and the bodies of newborn infants who have died, subject in each case to the parents' or guardians' request,

- (t) exempting any cemetery, crematory, columbarium or mausoleum or any class thereof from any provisions of this Act, and prescribing conditions for the exemption;*
- (u) respecting the licensing of cemeteries, crematories, columbaria and mausolea, and setting the licence fees;*
- (v) classifying cemeteries, crematories, columbaria and mausolea;*
- (w) respecting the burial and cost of burial of the bodies of destitute or indigent persons;*
- (x) respecting the disposal of fetuses and the bodies of newborn infants who have died under 28 days of age, subject, in each case, to the parents' or guardian's request;*
- (y) prescribing the location, construction, maintenance and operation of public mausolea or of any specified public mausoleum, the prohibition of the construction of any building, erection or structure intended to be used as a mausoleum and the prohibition of the future reception of corpses into any mausoleum;*
- (z) prescribing forms for the purposes of this Act;*
- (z.1) respecting such other matters and things not provided for in this Act or insufficiently provided for as is considered advisable to carry out the intent of this Act.*

and defining newborn infant for the purposes of the regulations;

(xvi) by adding the following after clause (z):

- (z.01) designating a corporation as an approved trust corporation for the purposes of this Act;
- (z.02) to resolve disputes about the disposition of human remains or cremated human remains;
- (z.03) to resolve disputes about eligibility for plots under section 13;
- (z.04) respecting the procedure to be used to resolve a dispute between the Commonwealth War Graves Commission and the owner of a cemetery, columbarium or mausoleum;
- (z.05) respecting the delegation of all or part of the Director's powers, duties or functions under this Act or regulations to a regulatory board;
- (z.06) governing assessments levied by regulatory boards under section 59.74(2);
- (z.07) respecting the disposition of pre-need contracts where it is clear that alternative arrangements have been made for provision of the cemetery supplies or cemetery services or both;
- (z.08) specifying the period within which a notice of cancellation must be given under section 63(2);

(c) by adding the following after subsection (1):

- (2) The Lieutenant Governor in Council may exempt any cemetery, crematory, columbarium or mausoleum or its owner from the operation of all or any provisions of this Act or the regulations and may prescribe conditions for the exemption.

(26) Section 61 is amended

(a) in subsection (2)

- (i) in clause (a) by striking out "endowment" and substituting "perpetual";
- (ii) by repealing clause (c) and substituting the following:

(26) Changes to reflect new terminology.

- (c) there is found, on review of financial information provided by an owner or otherwise, a shortage in the perpetual care funds required to be set aside under this Act for perpetual care of a cemetery, mausoleum or columbarium, or

(b) in subsection (3)

- (i) by striking out “endowment” wherever it occurs and substituting “perpetual”;**
- (ii) in clause (c) by striking out “under Part 4”;**
- (iii) in clause (f)(i) by striking out “subject to compliance with Part 3”.**

(c) in subsection (7)(a)

- (i) by striking out “endowment” and substituting “perpetual”;**
- (ii) by striking out “under Part 4”.**

(27) Section 62 is repealed.

(28) Section 63 is amended

(a) by repealing subsection (1);

(b) in subsection (2)

- (i) by striking out “rescind” and substituting “without any reason cancel”;**
- (ii) in clause (a) by striking out “not later than the 4th day after the day on which the copy of the contract was received by him by personal delivery or mail” and substituting “within the period specified in the regulations”;**
- (iii) by striking out “not later than the 4th day after the day on which the copy of the contract was received by him by personal delivery or mail” and substituting “within the period specified in the regulations”.**

(27) Section 62 presently reads:

62 The owner of a cemetery who defaults in carrying out any of the provisions of sections 6 and 7 is guilty of an offence and liable to a fine of not more than \$50 for every day the default continues.

(28) Section 63 presently reads:

63(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 4th 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.

(c) in subsection (4) by striking out “mausoleum” wherever it occurs and substituting “mausoleum or seller”.

(29) Section 65 is amended by striking out “mausoleum” and substituting “mausoleum or seller”.

(30) The following is added after section 65:

Contracts
entered into
through direct
contact

65.1(1) In this section and in section 65.2, “cemetery supplies” includes the sale, lease or rental of a lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum or in a proposed cemetery, columbarium or mausoleum.

(2) No person shall, by telephoning or appearing in person at the home of an individual,

- (a) enter into a contract with that individual for the provision of cemetery services or cemetery supplies or both,
- (b) offer to enter into a contract with that individual for the provision of cemetery services or cemetery supplies or both,
- (c) offer to make an appointment for the purpose of entering into a contract with that individual for the provision of cemetery services or cemetery supplies or both, or
- (d) solicit in any other way the entering into of a contract with that individual for the provision of cemetery services or cemetery supplies or both.

(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 salesperson acting on behalf of the owner of the cemetery, columbarium or mausoleum,

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

(iii) to the Minister 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.

(29) Section 65 presently reads:

65 The owner of the cemetery, columbarium or mausoleum shall, within 15 days of the giving of the notice of cancellation in accordance with section 63, refund to the party cancelling the contract all money paid under the contract and any related transaction.

(30) New provisions. Section 37.1 presently reads:

37.1 Any term of a contract entered into on or after this section comes into force for the sale, lease or rent of an existing or proposed lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum that

(a) misrepresents the obligations or liabilities of the parties to the contract,

(b) is misleading as to its true nature or purpose, or

(c) contravenes this Act or the regulations

is void and severable from the contract.

(3) Subsection (2) does not apply to any presentation relating to the provision of cemetery services or cemetery supplies or both made at an individual's home where the individual has requested the presentation.

(4) A person may solicit an individual to enter into a contract for the provision of cemetery services or cemetery supplies or both by any means not prohibited by subsection (2), including solicitation by mail, advertising in the media or Internet communication.

(5) This section applies to any person who represents or advertises for the purpose of selling a contract of life insurance under the *Insurance Act* that the proceeds of that insurance

(a) will pay in whole or in part for specified cemetery services or cemetery supplies or both, or

(b) will be paid by assignment to a seller or an owner of a cemetery, columbarium or mausoleum as beneficiary.

(6) This section does not apply to any person who is licensed under the *Licensing of Trades and Businesses Act* to sell grave stones, grave markers, monuments or bases except when the person sells them under a pre-need contract.

65.2(1) It is an unfair practice for any person before, after or while dealing with an individual in relation to a contract for the provision of cemetery services or cemetery supplies or both,

(a) to exert undue pressure or influence on the individual to enter into the contract,

(b) to take advantage of the individual as a result of the individual's inability to understand the character, nature, language or effect of the contract or any matter related to the contract,

(c) to enter into the contract if the salesperson knows or ought to know that there is no reasonable probability that the individual is able to pay the full price for the cemetery services or cemetery supplies or both listed in the contract,

(d) to represent that the cemetery services or cemetery supplies or both provided for in the contract are required by law or under the by-laws of a cemetery,

mausoleum, columbarium or crematorium when that is not the case, or

(e) to carry out any activity that is designated in the regulations as an unfair practice.

(2) No person shall commit an unfair practice.

(3) An unfair practice may occur even if no contract for the provision of cemetery services or cemetery supplies is entered into or concluded.

Void contracts

65.3 Any term of a contract entered into on or after June 1, 1996 for the sale, lease or rent of an existing or proposed lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum that

(a) misrepresents the obligations or liabilities of the parties to the contract,

(b) is misleading as to its true nature or purpose, or

(c) contravenes this Act or the regulations

is void and severable from the contract.

(31) Section 66 is amended by adding the following after clause (a):

(a.1) it states the name of the salesperson and the name of any owner for whom the salesperson is acting,

(32) Section 67 is amended

(a) in subsection (1) by adding “and in accordance with any conditions imposed by the Director” after “Director”;

(b) in subsection (2) by adding “transfer,” after “sale.”.

(33) Sections 67.1 and 67.2 are repealed.

(31) Section 66 presently reads:

66 A contract under this Act is void unless

- (a) it is signed by the purchaser or lessee,*
- (b) it contains a notice in the prescribed form 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 7 days after the day the contract was signed by him.*

(32) Section 67 presently reads:

67(1) Land used for a cemetery, columbarium or mausoleum shall not be transferred, sold, mortgaged, pledged, hypothecated, charged or encumbered by the owner or any person having an interest in it, except with the consent of the Director.

(2) A sale, mortgage, pledge, hypothecation, charge or encumbrance made in contravention of subsection (1) and after April 15, 1974 is void.

(33) Sections 67.1 and 67.2 presently read:

(34) Section 68 is amended

- (a) in subsection (1) by striking out** “and in addition to any other remedy existing by law, liable to a fine of not more than \$50 for every such offence”;
- (b) in subsection (2) by striking out** “subsection (1)” **and substituting** “this Act and in addition to any other remedy existing by law”;

67.1 If, in the opinion of the Director, an owner or salesperson is contravening or has contravened this Act or the regulations, or any form, form of agreement or form of letter is misleading or contains a term that misrepresents or contravenes this Act or the regulations, the Director may issue an order directing that owner or salesperson

(a) to stop engaging in any practice that is described in the order, and

(b) to take any measures specified in the order, within the time specified in the order, that, in the opinion of the Director, are necessary to ensure that this Act or the regulations are complied with.

67.2(1) Whether or not a person is prosecuted under this Act, if the Director is of the opinion that that person is not complying or has not complied with an order of the Director under section 67.1, the Director may apply to the Court of Queen's Bench for an order directing that person to comply with the order.

(2) An application under this section must be by way of an originating notice.

(3) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate in the circumstances.

(5) On hearing an application the Court may, if it is of the opinion that the person is not complying or has not complied with the order, grant an order, subject to any terms and conditions the Court considers appropriate in the circumstances, doing one or more of the following:

(a) directing the person to comply with the order of the Director;

(b) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;

(c) awarding costs in respect of the matter.

(34) Section 68 presently reads:

68(1) The owner of a cemetery who at any time causes or suffers to be brought to, or to flow into, any river, spring, well, stream, canal, reservoir, aqueduct, lake, pond or watering place, any offensive matter from the cemetery whereby the river, spring, well, stream, canal, reservoir, aqueduct, lake, pond or watering place is fouled is guilty of an offence and in addition to any other remedy existing by law, liable to a fine of not more than \$50 for every such offence.

- (c) in subsection (3) by striking out “\$10” and substituting “\$250”.

(35) Section 69 is amended

- (a) by repealing clause (c);
- (b) by striking out “and liable to a fine of not more than \$100 and in default of payment to imprisonment for not more than 60 days”.

(36) Section 70 is repealed and the following is substituted:

Offence

70(1) A person who contravenes a provision of this Act for which no express penalty is provided or a provision of a regulation made under this Act is guilty of an offence and liable to a fine of not less than \$500 and not more than

(a) \$100 000, or

(b) an amount equal to 3 times the amount obtained by the person as a result of the offence,

whichever is greater, or to imprisonment for not more than 2 years or to both a fine and imprisonment.

(2) Each day that a contravention continues constitutes a separate offence, but the total term of imprisonment that

(2) In addition to the penalty provided by subsection (1), a person having the right to use the water may sue the owner of the cemetery for any damage specially sustained by him by reason of the water being fouled.

(3) If in the action no special damage is alleged or proved, the Court shall award a sum not exceeding \$10 for every day during which the fouling has continued after the expiration of 24 hours from the time when a notice of the fouling was served, by the person mentioned in subsection (2), on the owner of the cemetery.

(35) Section 69 presently reads:

69 A person who

- (a) wilfully destroys, mutilates, defaces, injures or removes a tomb, monument, gravestone or other structure placed in a cemetery, or a fence, railing or other work for protection or ornament of a cemetery or of a tomb, monument, gravestone or other structure or a cemetery lot within a cemetery,*
- (b) wilfully destroys, cuts, breaks or injures any tree, shrub or plant in a cemetery,*
- (c) plays at any game or sport in a cemetery,*
- (d) discharges firearms in a cemetery, except at a military funeral,*
- (e) wilfully and unlawfully disturbs persons assembled for the purpose of burying a body in a cemetery, or*
- (f) commits a nuisance in a cemetery,*

is guilty of an offence and liable to a fine of not more than \$100 and in default of payment to imprisonment for not more than 60 days.

(36) Section 70 presently reads:

70 A person who contravenes a provision of this Act for which no express penalty is provided or of a regulation made hereunder, is guilty of an offence and liable to a fine of not more than \$100 and in default of payment to imprisonment for not more than 60 days.

may be imposed on a person in respect of a continuing offence may not exceed 2 years.

(3) When a corporation commits an offence under this Act or the regulations, every principal, director, manager, employee or agent of the corporation who authorized the act or omission that constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the corporation has been prosecuted for the offence.

(4) If a partner in a partnership is convicted of an offence under this Act or the regulations, each partner in that partnership who authorized the act or omission that constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence.

Time limit for prosecution

71 A prosecution of an offence under this Act or the regulations may not be commenced more than 3 years after the commission of the offence.

(37) In the following provisions “endowment” is struck out wherever it occurs and “perpetual” is substituted:

section 23(1) and (2);
section 38(1);
section 40;
section 45;
section 46.

2(1) In this section,

- (a) “amended Act” means the *Cemeteries Act* as amended by this Part;
- (b) “previous Act” means the *Cemeteries Act* as it read immediately before it was amended by this Part.

(2) The Minister may make regulations respecting the transition to the amended Act of any matter under the previous Act, including

- (a) converting a licence, registration or other authorization under the previous Act to a licence or authorization under the amended Act;
- (b) dealing with the length of the term of licences that have been converted.

(37) Changes to reflect new terminology.

2 Transitional provision.

(3) An appeal of a decision respecting a licence, registration or other authorization made under the previous Act that has been filed before December 1, 1998 is not continued under the amended Act and must be decided under the previous Act under which the appeal was made.

3 The *Fatality Inquiries Act* is amended by repealing section 16(3) and substituting the following:

(3) Notwithstanding subsection (1), in the case of the death in a hospital of a fetus or of a newborn infant as defined in the regulations under the *Cemeteries Act*, the hospital may dispose of the body in the manner specified by the regulations under the *Cemeteries Act*.

4 The *Metric Conversion Amendment Act* is amended by repealing section 1(6).

5 This Part comes into force on December 1, 1998.

Part 2 Prearranged Funeral Services Act

Amends RSA
1980 cP-14

6(1) The *Prearranged Funeral Services Act* is amended by this section.

(2) The title and chapter number of the Act are repealed and the following is substituted:

FUNERAL SERVICES ACT

CHAPTER F-22.7

(3) Section 1 is repealed and the following is substituted:

Definitions

- 1** In this Act,
- (a) “administration fee” means a fee under section 4.2;
 - (b) “authorized trustee” means the Public Trustee or a trust corporation;
 - (c) “Director” means the person appointed by the Minister under section 10 to act as the Director for the purposes of this Act and the regulations;

3 Consequential amendment to RSA 1980 cF-6.

4 Consequential amendment to RSA 1980 c12 (Supp).

5 Coming into force.

Part 2
Pearranged Funeral Services Act

6(1) Amends chapter P-14 of the Revised Statutes of Alberta 1980.

(2) The title and chapter number of the Act presently read:

PEARRANGED FUNERAL SERVICES ACT

CHAPTER P-14

(3) Section 1 presently reads:

1 In this Act,

(a) "Director" means the person designated by the Minister as the Director of Licensing of Trades and Businesses;

(a.1) "funeral services" means the services or commodities usual in the preparation for burial or the burial of the dead, including embalming and restoration, casket, outer wooded receiving case, or such service or commodity other than the supplying of lots, metal, cement and fibre glass burial vaults, grave markers, bases and services rendered or to be rendered at the cemetery;

- (d) “embalm” means to treat human remains with chemicals for the purposes of
 - (i) reducing the presence and growth of micro-organisms,
 - (ii) retarding decomposition, and
 - (iii) restoring an acceptable physical appearance;
- (e) “funeral services” means the care and preparation of human remains and other arrangements necessary for their interment, cremation or other disposition and includes the supply of goods incidental to that purpose and the arrangement and direction of memorial rites or ceremonies but does not include the sale of interment space;
- (f) “funeral services contract” means an agreement relating to the provision of funeral services entered into by a licensee and a purchaser of funeral services;
- (g) “human remains” means a dead human body in any stage of decomposition but does not include cremated remains;
- (h) “income” means the interest or other money earned, including through compounding, by the investment of funds received under a pre-need funeral services contract;
- (i) “interment” means disposition by
 - (i) burial of human remains or cremated remains in a cemetery,
 - (ii) entombment of human remains in a mausoleum, or
 - (iii) placing cremated remains in a columbarium;
- (j) “licence” means a licence referred to in section 4;
- (k) “licensee” means a person who holds a licence issued under the regulations;
- (l) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

- (b) *“licensee” means a person licensed under this Act to provide funeral services under a prearranged funeral plan;*
- (c) *“Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;*
- (d) *“prearranged funeral plan” means an agreement whereby in consideration of payment therefor in advance, by a lump sum or instalments, a person contracts to provide funeral services for a person alive at the time the agreement is entered into;*
- (f) *“trust corporation” means a trust corporation that is an approved corporation under the Trustee Act.*

2 This Act does not apply to a mutual benefit society or a fraternal society licensed under the Insurance Act.

- (m) “pre-need”, when used in reference to a funeral services contract, means a funeral services contract under which all or part of the cost of the funeral services to be provided under the contract is paid before the death of the person for whose benefit the contract is entered into;
- (n) “regulatory board” means a board established under section 18(1)(a) and the regulations;
- (o) “trust corporation” means an approved corporation as defined in section 2 of the *Trustee Act* or as designated by the regulations.

(4) Section 2 is renumbered as section 2(1) and the following is added after subsection (1):

- (2) The Lieutenant Governor in Council may exempt
 - (a) any person or any class of persons, or
 - (b) any business or any description or class of businesses

from the operation of all or any provisions of this Act or the regulations.

(5) Sections 3 to 8 are repealed and the following is substituted:

PART 1

FUNERAL SERVICES CONTRACTS

Prohibitions

- 3(1)** No person shall, unless that person holds a funeral services business licence, solicit to enter or enter a contract under which that person promises to provide, or to arrange for the provision of, funeral services to another person.
- (2)** No person shall, unless that person holds a funeral director licence, solicit to enter or enter a funeral services contract as agent for a person who holds a funeral services business licence.
- (3)** No person shall, unless that person holds a pre-need salesperson licence, solicit to enter or enter a contract under which that person promises to provide, or to arrange for the provision of, funeral services on a pre-need basis.

(4) Section 2 presently reads:

2 This Act does not apply to a mutual benefit society or a fraternal society licensed under the Insurance Act.

(5) Sections 3 to 8 presently read:

3 No person shall

(a) undertake to provide or make provision for another's funeral services under a prearranged funeral plan, or

(b) solicit another person to enter into a prearranged funeral plan with him or with any person who would provide the funeral services under any such plan,

unless he is licensed by the Director for that purpose.

4(1) A person desiring to give funeral services for remuneration, reward or compensation under prearranged funeral plans may apply to the Director for a licence under this Act to enter into prearranged funeral plans in accordance with the regulations.

(2) When the Director is satisfied that an applicant for a licence is a reputable person and that the necessary agreements have been made with a trust corporation or the Public Trustee, as required by this Act, for the investment and disposal of any money to be received under the prearranged funeral plans proposed to be entered into by the applicant, the Director may issue the applicant a licence.

(4) No person shall embalm human remains pursuant to a funeral services contract unless the person holds an embalmer licence.

(5) Where activities are authorized under a licence referred to in section 4(1)(e), no person shall carry out those activities unless the person holds the licence described in the regulations that authorizes those activities.

Licences

4(1) A person who wishes to apply for

- (a) a funeral services business licence,
- (b) a funeral director licence,
- (c) a pre-need salesperson licence,
- (d) an embalmer licence, or
- (e) any other licence described in the regulations,

or to have a licence renewed must apply to the Director in accordance with the regulations.

(2) A licence is valid for the period specified in the regulations or until it is suspended or cancelled by the Director pursuant to Part 2.

Right of
cancellation

4.1(1) Notwithstanding any agreement to the contrary, a pre-need funeral services contract may be cancelled at any time and without reason

- (a) by the purchaser on the purchaser's own behalf or on behalf of any other person for whom the funeral services were purchased,
- (b) by the person for whom the funeral services were purchased, or
- (c) by the personal representative of the deceased for whom the funeral services were purchased.

(2) A licensee shall not charge any penalty or administration fee or other fee where a pre-need funeral services contract is cancelled within the period specified in the regulations.

(3) Every pre-need funeral services contract must contain a statement in accordance with the regulations concerning the right of cancellation.

(3) A licence may be made subject to any terms and conditions that may be prescribed by the regulations and remains valid during the pleasure of the Lieutenant Governor in Council.

5(1) A licensee who enters into a prearranged funeral plan holds all money paid under the plan in trust for the purposes for which it has been paid until

(a) the funeral services mentioned in the plan have been provided in accordance with the plan, or

(b) the money or any unused balance thereof has been refunded to the person who made the payment or payments or paid to his personal representative, as the case may be.

(2) If any plan entered into before May 1, 1962, provides that the licensee may retain not more than 12% of the money payable under the plan, the licensee may retain that percentage, notwithstanding subsection (1).

6(1) Money held in trust by a licensee under a prearranged funeral plan shall, within the time prescribed by the regulations, be paid to the Public Trustee or a trust corporation to be deposited in a special fund provided by the Public Trustee or trust corporation by agreement with the licensee.

(2) Money in a special fund for the purposes of this Act may be invested in any investments authorized as trustee investments under the Trustee Act.

7(1) Money paid to the Public Trustee or a trust corporation pursuant to section 6 may, at any time on reasonable notice, be paid out in whole or in part

(a) to the person who made the payment or his personal representative, on the joint authorization of the licensee and the person who made the payment or his personal representative, or if the licensee is not available or refuses to authorize repayment on the direction of the Director, or

(b) to the licensee, on production of proof of the death of the person on whose behalf the payment was made and proof that the funeral services have been provided.

(2) Every prearranged funeral plan shall contain a provision stating that all the money paid under it may be withdrawn in the manner specified in subsection (1) without payment of a penalty or other charge.

(3) A person who pays money under a prearranged funeral plan is entitled to such interest on the money paid under the plan as may be agreed upon by himself and the licensee.

8(1) Every licensee shall report, at the periods prescribed by the regulations, to the Director concerning any prearranged funeral

Administration
fee

4.2(1) A licensee who enters a pre-need funeral services contract may charge an administration fee not exceeding the amount set out in the regulations on the date when

- (a) the cancellation period referred to in section 4.1(2) expires, or
- (b) the funeral services contract is either
 - (i) cancelled after the expiry of the cancellation period referred to in section 4.1(2), or
 - (ii) assigned by any person referred to in section 9(1)(b) to (d).

(2) A licensee who charges an administration fee must elect as set out in the regulations whether every administration fee on every pre-need funeral services contract that the licensee enters will be charged in accordance with subsection (1)(a) or in accordance with subsection (1)(b).

Licensee to
hold money in
trust

5 A licensee who enters into a pre-need funeral services contract holds all money paid under the contract in trust for the purposes for which it has been paid until

- (a) the funeral services listed in the contract have been provided in accordance with the contract, or
- (b) the money, or any unused portion of the money, has been refunded to
 - (i) the person who made the payment or payments under the contract, or
 - (ii) the person for whose benefit the contract was entered into or that person's personal representative.

Transfer of
money to
authorized
trustee

6(1) Money held in trust by a licensee pursuant to section 5 must be transferred to an authorized trustee within the period prescribed in the regulations.

(2) The licensee may deduct an administration fee in accordance with section 4.2 from the money to be transferred under subsection (1) to an authorized trustee.

(3) An authorized trustee

- (a) shall deposit money received under subsection (1) in a special fund provided by the authorized trustee by agreement with the licensee, and

plans undertaken by the licensee, and shall give the Director the information in respect of it required by the regulations.

(2) Every trust corporation and the Public Trustee shall prepare as of December 1 in each year, a statement showing

- (a) the number of special funds maintained for licensees by the trust corporation or Public Trustee pursuant to this Act;*
- (b) the amount standing at that date to the credit of each special fund and the name of the licensee for whom the fund is maintained;*
- (c) in respect of each fund the persons who are paying money under a prearranged funeral plan with the licensee for whom the fund is maintained, and the amount paid and to be paid under it on behalf of each such person;*
- (d) the sums charged by the trust corporation or Public Trustee by way of service charge for maintaining the fund and how derived;*
- (e) any other matters required by the regulations.*

(3) The statement required under subsection (2) shall be sent by ordinary mail to the Director before December 31 in each year.

(b) may invest the money in any investments authorized as trustee investments under the *Trustee Act*.

(4) An authorized trustee shall, for the purpose of its financial records, keep the money received under each pre-need funeral services contract separate from any other money but may, for the purpose of investing the money in accordance with subsection (3)(b), combine the money received from all pre-need funeral services contracts of the same licensee.

(5) The financial records required under subsection (4) must show

(a) the amount of principal and income held in the special fund to the credit of each pre-need funeral services contract, and

(b) the name of the person for whose benefit the contract was entered into.

(6) Money that is held in a special fund pursuant to this section is not, while in the fund or while being transferred to or from the fund, liable to demand, seizure or detention under any legal process.

Payment out
of special fund

7(1) Money and income held in a special fund under section 6 shall not be paid out of the fund by an authorized trustee except in accordance with this section.

(2) When the funeral services listed in a pre-need funeral services contract have been provided, all money and income held in the special fund to the credit of that pre-need funeral services contract shall be paid to the licensee who entered into the contract, on production by the licensee of proof

(a) of the death of the person for whose benefit the contract was entered into, and

(b) that the funeral services have been provided.

(3) When a pre-need funeral services contract is cancelled pursuant to section 4.1, all money and income held in the special fund to the credit of that pre-need funeral services contract shall be paid to

(a) the person who made the payment or payments under the contract, or

(b) the person for whose benefit the contract was entered into or that person's personal representative.

(4) Notwithstanding subsection (3), if no administration fee has been deducted under section 6(2), an authorized trustee shall pay from the money and income held in the special fund any administration fee owing to the licensee.

(5) Money and income held by an authorized trustee under section 6 may, at any time on reasonable notice, be paid out in whole or in part to the person who made the payment or payments under the contract or to that person's personal representative where

- (a) the licensee and the person who made the payment or payments under the contract or that person's personal representative authorize the repayment, or
- (b) the Director directs the repayment, if the licensee is not available or refuses to authorize the repayment.

Reporting
requirements

8(1) Each funeral services business must provide to the Director in the form set by the Director information relating to each pre-need funeral services contract entered into by that business, including a statement from the authorized trustee in the form set by the Director.

(2) An authorized trustee shall, on request by

- (a) the person who made the payment or payments under a pre-need funeral services contract, or
- (b) the person for whose benefit a pre-need funeral services contract was entered into or that person's personal representative,

provide a statement of account concerning the special fund maintained by the authorized trustee in regard to that contract, including a statement of that fund's current balance.

(6) Section 9 is amended

(a) by repealing subsection (1) and substituting the following:

Assignment of
contracts

9(1) A pre-need funeral services contract may be assigned to a licensee in accordance with the regulations

- (a) by the funeral services business that entered into the contract,
- (b) by the purchaser on the purchaser's own behalf or on behalf of any other person for whom the funeral services were purchased,

(6) Section 9 presently reads:

9(1) A licensee may, with the consent of the person who is making or has completed the payments under it, assign a prearranged funeral plan to another licensee with notice in writing thereof to the trust corporation or Public Trustee.

(2) When an assignment of a prearranged funeral plan is made to another licensee,

(a) the trust corporation maintaining the special fund on behalf of the licensee or the Public Trustee, as the case may be, shall make all necessary changes in the records and funds in order to make the assignment complete, and

- (c) by the person for whom the funeral services were purchased, or
- (d) by the personal representative of the deceased for whom the funeral services were purchased.

(b) in subsection (2)

- (i) **by striking out** “prearranged funeral plan is made to another” **and substituting** “pre-need funeral services contract is made to a”;
- (ii) **in clause (a) by striking out** “the trust corporation maintaining the special fund on behalf of the licensee or the Public Trustee, as the case may be,” **and substituting** “the authorized trustee maintaining the special fund on behalf of the funeral services business”;

(iii) in clause (b)

- (A) by striking out** “trust corporation or the Public Trustee” **and substituting** “authorized trustee”;
- (B) by striking out** “prearranged funeral plan” **and substituting** “pre-need funeral services contract”;

(c) by adding the following after subsection (2):

- (3)** An assignee of a pre-need funeral services contract shall not charge the individual who entered into that contract
 - (a) any penalty or other fee relating to the assignment, or
 - (b) any administration fee, if an administration fee has been charged by any person under section 4.2.

(7) The following is added after section 9:

Contracts entered into through direct contact

- 9.1(1)** No person shall, by telephoning or appearing in person at the home of an individual,
- (a) enter into a funeral services contract with that individual,
 - (b) offer to enter into a funeral services contract with that individual,

(b) if the special fund of the assignee is maintained elsewhere than with that trust corporation or the Public Trustee, money held under the assigned prearranged funeral plan may be transferred to the special fund maintained on behalf of the assignee, on the payment of such charges and fees as may be prescribed by the regulations.

(7) Adds 2 prohibitions relating to direct sales and unfair practices.

Unfair
practices

- (c) offer to make an appointment for the purpose of entering into a funeral services contract with that individual, or
 - (d) solicit in any other way the entering into of a funeral services contract with that individual.
- (2) Subsection (1) does not apply to any presentation relating to a funeral services contract made at an individual's home where the individual has requested the presentation.
- (3) A person may solicit an individual to enter into a funeral services contract by any means not prohibited by subsection (1), including solicitation by mail, advertising in the media or Internet communication.
- (4) This section applies to any person who represents or advertises for the purpose of selling a contract of life insurance under the *Insurance Act* that the proceeds of that insurance
- (a) will pay in whole or in part for specified funeral services, or
 - (b) will be paid by assignment to a funeral services business as beneficiary.
- 9.2(1)** It is an unfair practice for any person, before, after or while dealing with an individual in relation to a funeral services contract,
- (a) to exert undue pressure or influence on the individual to enter into the contract,
 - (b) to take advantage of the individual as a result of the individual's inability to understand the character, nature, language or effect of the contract or any matter related to the contract,
 - (c) to enter into the contract if the seller knows or ought to know that there is no reasonable probability that the individual is able to pay the full price for the funeral services listed in the contract,
 - (d) to represent that funeral services provided for in the contract are required by law or under the by-laws of a cemetery, mausoleum, columbarium or crematorium when that is not the case, or
 - (e) to carry out any activity that is designated in the regulations as an unfair practice.

(2) No person shall commit an unfair practice.

(3) An unfair practice may occur even if no funeral services contract is entered into or concluded.

(8) Sections 10 to 18 are repealed and the following is substituted:

PART 2

DIRECTOR

Appointment
of Director

10(1) The Minister may appoint a person to act as the Director for the purposes of this Act and the regulations.

(2) The Director may delegate in writing to any person under the Minister's administration any power, duty or function conferred or imposed on the Director by this Act or the regulations.

(3) The Director may, when delegating a matter, authorize the further delegation of the matter.

(4) A delegation may be made subject to any terms and conditions the Director considers appropriate.

Duties relating
to licences

11(1) The Director is authorized to receive applications for the issuance or renewal of licences.

(2) The Director may issue a licence if the applicant meets all of the requirements for that licence set out in the regulations and may issue the licence subject to conditions.

(3) The Director may renew a licence if the applicant meets all of the requirements for renewal of that licence set out in the regulations and may renew the licence subject to conditions.

(4) The Director may refuse to issue or renew a licence

(a) for any of the reasons set out in the regulations, or

(b) if, in the Director's opinion, it is not in the public interest to issue or renew the licence.

(5) The Director may suspend or cancel a licence

(a) if the licensee contravenes this Act or the regulations,

(b) for any of the reasons set out in the regulations, or

(8) Sections 10 to 18 presently read:

10(1) The Director shall suspend or cancel a licence when in his opinion that action is in the public interest.

(2) By the order revoking and cancelling a licence, the Director shall assign all prearranged funeral plans entered into by that person while a licensee to another licensee or other licensees with notice to the persons affected by it, and the order is effective to assign the prearranged funeral plans therein specified and is binding on all persons affected by the order.

11(1) The Director, or a person authorized in writing by him, may on complaint of any person interested or, when the Director considers it necessary, without complaint, investigate and inquire into any matter the investigation of which the Director considers expedient for the due administration of this Act.

(2) The person making the investigation may at all reasonable times demand the production of and inspect all or any of the books, documents, papers, correspondence and records relating to the operation of the licensee, and any person who has the custody, possession or control of any such books, documents, papers, correspondence or records shall produce them and permit the inspection thereof by the person making the investigation.

12(1) The person making the investigation may seize and take possession of any books, documents, papers, correspondence or records of the person in respect of whom the investigation is being made.

(2) If within 30 days after the date of a seizure under subsection (1) no prosecution is instituted against the person whose affairs are being investigated the thing seized shall forthwith be returned to him.

13 In addition to the powers conferred by sections 11 and 12 the person making the investigation has, for the purpose of the investigation, the powers of a commissioner under the Public Inquiries Act.

14(1) A person who is dissatisfied with a decision of the Director

(a) refusing to issue a licence, or

(b) suspending or cancelling a licence,

may appeal the decision by serving the Minister with a notice of appeal within 30 days of being notified in writing of the decision.

- (c) if, in the Director's opinion, it is in the public interest to suspend or cancel the licence.

(6) When the Director refuses to renew a licence or makes a decision to suspend or cancel a licence, the Director may also, by written order, do any or all of the following:

- (a) if the licensee is a funeral services business, assign to another licensee any funeral services contracts entered into by the licensee;
- (b) prohibit the licensee from continuing to carry on the activities authorized by the licence, subject to any terms and conditions set out in the order;
- (c) direct any person to cease any act or omission that contravenes this Act or the regulations;
- (d) prohibit the licensee who committed any act or omission that resulted in the suspension or cancellation or who directed, authorized, assented to, acquiesced in or participated in the act or omission from so acting, subject to any terms and conditions set out in the order.

(7) Where the Director issues or renews a licence subject to conditions or refuses to issue or renew a licence, the Director must notify the applicant in writing of the decision and the reasons for the decision.

(8) Where the Director suspends or cancels a licence, the Director must notify the licensee in writing of the decision and the reasons for the decision.

Appeal

12(1) A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to conditions,
- (c) whose licence has been suspended or cancelled, or
- (d) to whom an order under section 11(6) has been issued

may appeal the decision by serving the Minister with a notice of appeal within 30 days after being notified of the Director's decision.

(2) The Minister shall, within 30 days of being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

(3) The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.

(4) An appeal board that hears an appeal under this section may vary, revoke or confirm the decision.

(5) An appeal board appointed under this section shall consist of the following members:

(a) a person (who is not the Director, a representative of the Director or a licensee) who is designated as chairman of the appeal board by the Minister, and

(b) not less than 2 or more than 4 other persons.

(6) Notwithstanding subsection (5), the Minister may designate a board or commission established by or under an Act of the Legislature to hear an appeal under subsection (2), and a reference to an appeal in this section is deemed to be a reference to a board or commission so designated.

(7) The Minister may pay reasonable fees and living and travelling expenses to the members of an appeal board.

(8) The Director or a person whose appeal is heard by an appeal board may appeal the decision of the appeal board by filing an originating notice with the Court of Queen's Bench within 30 days of being notified in writing of the decision, and the Court may make any order that an appeal board may make under subsection (4).

15 Any money standing to the credit of a prearranged funeral plan is not,

(a) while in the hands of the trust corporation or Public Trustee, or

(b) while in course of transmission from or to the person who is to provide the funeral services under the prearranged funeral plan,

liable to demand, seizure or detention under legal process

(c) as against the person depositing it under the plan or his personal representative, or

(d) as against the person to whom the money is to be paid under the prearranged funeral plan for the provision of funeral services.

16(1) A person is guilty of an offence and liable to a fine of not more than \$1000, and in default of payment to imprisonment for not more than 3 months,

(2) The Minister shall, within 30 days of being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

(3) An appeal board shall consist of the following members:

(a) a person designated by the Minister as chair of the appeal board;

(b) not fewer than 2 and not more than 4 other persons.

(4) The following persons shall not be members of an appeal board:

(a) the Director;

(b) a delegate, agent or employee of the Director;

(c) a member of a regulatory board.

(5) Notwithstanding subsection (3), the Minister may designate a board or commission established by or under an Act of the Legislature to act as an appeal board under this section, and in that case, references in this section to an appeal board are deemed to be references to that board or commission.

(6) The Minister may set the time within which an appeal board is to hear an appeal and make a decision, and may extend that time.

(7) An appeal board that hears an appeal under this section may, by order, do any one or more of the following:

(a) confirm or quash the decision;

(b) direct that a licence be issued or that a licence be renewed;

(c) reinstate a suspended or cancelled licence;

(d) substitute a suspension for a cancellation or a cancellation for a suspension;

(e) add, vary or delete conditions on a licence;

(f) order the appellant to pay all or part of the investigation costs;

and may make the order subject to any terms and conditions it considers appropriate.

(a) who, not being a licensee under this Act, agrees for remuneration or reward

(i) to provide funeral services, or

(ii) to arrange the provision of funeral services,

under a prearranged funeral plan, or

(b) who, being a licensee under this Act, contravenes any provision of this Act.

(2) A person who contravenes a provision of this Act or the regulations for which no express penalty is provided is guilty of an offence and liable to a fine of not more than \$200 and in default of payment to imprisonment for not more than one month.

17 The Lieutenant Governor in Council may make regulations

(a) prescribing forms for use under this Act;

(b) governing the issuing of licences and prescribing the terms and conditions thereof;

(c) prescribing reports to be made under this Act and the times of reporting, and the information to be contained in the reports;

(d) prescribing and fixing fees for services under this Act;

(e) regulating, limiting or prohibiting the solicitation of prearranged funeral plans by licensees or their agents in places which may be specified in the regulations;

(f) governing and regulating any other matters, not being inconsistent with this Act, considered necessary or advisable to carry out the intent of this Act.

18 If before July 1, 1960 a prearranged funeral plan was entered into,

(a) 75% of the money paid under that plan shall be held in trust for the purposes of the plan and deposited, as required by the regulations, with the Public Trustee or a trust corporation until required to be used or expended in accordance with the terms of the prearranged funeral plan, and

(b) any term or provision of the prearranged funeral plan that provides for the forfeiture of the money paid under the plan in the event that the full amount agreed upon is not paid or is not paid within the times stipulated is void except as to 25% of the amount agreed to be paid under the plan.

(8) An appeal board may order that the costs of the appeal are to be paid by the appellant.

(9) Fees and reasonable living and travelling expenses may be paid to the members of an appeal board in accordance with the regulations.

(10) The Director or a person who appeals to an appeal board under subsection (1) may appeal the decision of the appeal board by filing an originating notice with the Court of Queen's Bench within 30 days of being notified in writing of the decision of the appeal board, and the Court may make any order that an appeal board may make under subsection (7).

(11) Where a licence is refused, suspended or cancelled or an order under section 11(6) is issued by a regulatory board established under Part 3 instead of the Director, the regulatory board has the right of appeal under subsection (10) as if it were the Director.

Restraining
order

13 If a person who is required to be licensed under this Act in respect of the carrying on of a business or activity carries on that business or so acts

(a) without being licensed,

(b) while the person's licence is suspended or cancelled,
or

(c) in contravention of this Act or the regulations,

the Director or a delegate of the Director may apply to the Court of Queen's Bench for an order restraining the person and the person's employees and agents from carrying on business or so acting until the person holds a valid and subsisting licence and complies with this Act and the regulations.

Investigation

14(1) The Director may investigate and inquire into any matter for any purpose related to the administration of this Act or the regulations.

(2) During an investigation or inquiry, the Director may, at any reasonable time,

(a) inspect, audit or examine the records of a person required to keep records under this Act or the regulations and any document of that person or of any other person that relates or may relate to the

information that is or should be in the records of the person required to keep records under this Act, and

- (b) require the production for inspection, audit or examination of all records or documents that are or may be relevant to the investigation or inquiry.

(3) For the purposes of an investigation or inquiry under this section, the Director may, if the Director has reasonable grounds to believe that records or documents described in subsection (2) are likely to be found in any premises or place,

- (a) enter the premises or place, subject to subsection (7), and
- (b) require the owner or manager of the premises or place and any other person on the premises or at the place to give the Director all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the Director.

(4) The Director may in the course of an inspection or inquiry inspect, examine and make copies of or temporarily remove books, records or documents or other things that are relevant to determine if there is compliance with this Act and the regulations.

(5) When the Director removes any books, records, documents or other things under subsection (4), the Director

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

(6) If, on an ex parte application by the Director, a judge of the Court of Queen's Bench is satisfied by information on oath that

- (a) there are reasonable grounds to believe that there are in any premises or place, other than a dwelling-house, records or documents described in subsection (2), and

- (b) entry into the premises or place is necessary for the administration of this Act,

the judge may issue a warrant authorizing a person named in the warrant to enter the premises or place and to exercise any of the powers referred to in subsections (1) to (3), subject to the conditions specified in the warrant.

(7) If the premises or place is a dwelling-house, the Director may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (8).

(8) If, on an ex parte application by the Director, a judge of the Court of Queen's Bench is satisfied by information on oath

- (a) that there are reasonable grounds to believe that a dwelling-house is the premises or a place referred to in subsection (3)(a),
- (b) that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, and
- (c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry into it will be refused,

the judge may issue a warrant authorizing a person named in the warrant to enter that dwelling-house subject to the conditions specified in the warrant.

(9) If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, the judge may

- (a) order the occupant of the dwelling-house to provide reasonable access to a person named in the order to any records or documents that are being or should be kept in the dwelling-house, and
- (b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

(10) In executing a warrant issued under this section, the person named in the warrant may not use force unless specifically authorized to do so in the warrant.

(11) No person may interfere with any person doing anything that is authorized by or pursuant to this section or

prevent or attempt to prevent any person from doing that thing and, notwithstanding any other law to the contrary, a person must, unless unable to do so, do everything the person is required to do by or pursuant to this section.

Settlement

15 If in the course of an investigation or inquiry under section 14 the Director discovers that a licensee has contravened this Act or the regulations, the Director may, instead of acting pursuant to section 11, enter into a settlement of the matter with the licensee where in the Director's opinion it is in the public interest to do so, subject to any terms and conditions the Director considers appropriate, including payment of all or part of the investigation costs by the licensee.

Other duties of Director

16 The Director is authorized to carry out any other powers, duties and functions conferred or imposed on the Director by the regulations.

Director's ability to disclose information

17(1) The Director may disclose any information relating to

- (a) the refusal, cancellation or suspension of a licence issued under the regulations, or
- (b) a disciplinary action taken under this Act or the regulations.

(2) If there is an inconsistency or conflict between subsection (1) and a provision of the *Freedom of Information and Protection of Privacy Act*, subsection (1) prevails.

PART 3

REGULATORY BOARD

Establishment of regulatory board

18(1) The Minister may make regulations

- (a) providing for the establishment of a regulatory board to exercise the powers, duties and functions delegated to it under section 19(1);
- (b) providing for the appointment and removal of the members of a regulatory board, including, without limitation, the number of members, the method of appointment of members, the terms of office of members and the filling of vacancies.

(2) A regulatory board may make by-laws

- (a) respecting the conduct of the business and affairs of the board;
- (b) respecting the calling of meetings of the board and the conduct of business at those meetings;
- (c) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of members, officers and employees of the board;
- (d) delegating to the officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make by-laws;
- (e) respecting the establishment, membership, duties and functions of special, standing and other committees.

(3) A by-law made by a regulatory board is not effective until it is approved by the Director.

(4) The *Regulations Act* does not apply to a by-law of a regulatory board.

Delegation to
regulatory
board

19(1) The Director may by notice in writing to a regulatory board

- (a) delegate to the regulatory board any or all of the Director's powers, duties or functions under this Act and the regulations, and
- (b) impose any conditions on the regulatory board's exercise of the delegated powers, duties or functions that the Director considers appropriate.

(2) The Director may, when delegating a matter under subsection (1), authorize the further delegation of the matter.

(3) The Director may amend or revoke a notice referred to in subsection (1).

(4) Where the Director makes a delegation under subsection (1), a reference in this Act or the regulations to the Director with respect to the delegated power, duty or function is to be read as if it were a reference to the regulatory board to which the delegation was made.

Payment for
services of
regulatory
board

20(1) The Minister may make regulations respecting

- (a) the collection of fees by a regulatory board on the Government's behalf and their remission to the Provincial Treasurer,
- (b) the payment of a commission to a regulatory board for its services under this subsection, and
- (c) the use and application of money received as payment of investigation costs due to a settlement agreement under section 15 or an order of an appeal board under section 12(7)(f).

(2) Notwithstanding subsection (1)(b), a regulatory board may, with the approval of the Minister, levy an assessment on licensees for the purpose of enabling the board to carry out the powers, duties and functions delegated to it under section 19(1).

Establishment
of claims fund

21(1) A regulatory board may create a fund to be used for the following purposes:

- (a) to pay claims of persons who have suffered loss or damage arising out of the operation by a licensee of a business to which this Act applies;
- (b) any other purpose authorized by the regulations.

(2) Subject to the regulations, a regulatory board may levy an assessment on licensees for the purpose of establishing the fund.

(3) A regulatory board is deemed to hold all money collected under subsection (2) in trust and shall immediately deposit that money in a trust account in a bank, treasury branch, trust corporation or credit union in Alberta, separate and apart from any other money of the regulatory board.

(4) Notwithstanding subsection (3), a regulatory board may pay the administrative costs associated with the fund out of the income earned as a result of the investment of the money in the fund.

(5) If the income earned as a result of the investment of the money in the fund is insufficient to pay the administrative costs associated with the fund, a regulatory board may levy an assessment on licensees in accordance with the regulations.

(6) The Minister may make regulations

- (a) respecting purposes for which the money in a fund established under this section may be used in addition to the purpose referred to in subsection (1)(a);
- (b) respecting the levying of assessments for the purposes of subsections (2) and (5);
- (c) respecting the investment of money in a fund that is not currently required for disposition;
- (d) respecting the protection, by insurance or other means, of the money in a fund against claims or losses;
- (e) respecting the administration of a fund;
- (f) requiring a regulatory board to provide a report to the Minister and respecting the nature and contents of such a report and the times at which it must be provided;
- (g) respecting the kinds of claims that may be paid from a fund and the conditions to be met before any claim is paid from a fund;
- (h) respecting the limits of liability of a fund;
- (i) respecting the time within which claims against a fund must be made;
- (j) providing for the recovery by a regulatory board from a licensee of any amount paid from the fund to a claimant in respect of a claim against that licensee for loss or damage arising out of the operation by the licensee of a business to which this Act applies;
- (k) respecting the winding-up of a fund.

Confidentiality

22 No person shall, without the written consent of the Director, disclose any information obtained in the course of exercising a delegated authority under this Act.

PART 4

POWERS OF THE MINISTER

Regulations

23(1) The Minister may make regulations

- (a) designating any business or any description or class of business as a business or a description or class of business to which this Act applies;
- (b) designating a corporation as an approved trust corporation for the purposes of this Act;
- (c) providing for the issuance and renewal of licences, including the form of the application and the setting of fees for the issuance and renewal of licences, and specifying the requirements to be met by applicants for licences or for renewal of licences;
- (d) respecting the reasons for which the Director may suspend or cancel a licence or refuse to issue or renew a licence;
- (e) governing the duration of licences;
- (f) governing the form and manner in which and period during which a person may cancel a pre-need funeral services contract without penalty;
- (g) governing the calculation of an administration fee and setting a maximum administration fee that may be charged;
- (h) specifying the form and manner in which an election under section 4.2(2) is to be made, including to whom notice of an election must be given, the form of the notice, and whether and how an election may be changed;
- (i) specifying the statement of cancellation rights that every pre-need funeral services contract must contain;
- (j) prescribing time periods for the purposes of section 6(1);
- (k) respecting reports that licensees and authorized trustees are required to prepare and provide to the Director;

- (l) requiring in respect of any business or a description or class of business to which this Act applies that specified accounts and records be maintained by persons carrying on or engaged in that business;
- (m) respecting the assignment of funeral services contracts under section 9(1), including the giving of notice to the authorized trustee that holds the special funds relating to the contracts;
- (n) prescribing charges and fees for the purposes of section 9(2)(b);
- (o) respecting the payment of fees and reasonable living and travelling expenses to members of an appeal board appointed under section 12;
- (p) prescribing powers, duties and functions of the Director;
- (q) respecting settlements under section 15, including the kinds of settlement undertakings that may be entered into, records of undertakings, procedure to vary or cancel an undertaking, and the effect of variation or cancellation of an undertaking;
- (r) providing that a person required to be licensed in respect of a business or a description or class of business shall be licensed in respect of
 - (i) each additional business, or each additional business of the description or class, carried on by the person, and
 - (ii) each separate location at which the person carries on the business or the description or class of business;
- (s) prohibiting a licensee
 - (i) from carrying on an additional business without being licensed, and
 - (ii) from carrying on a business or a description or class of business at a location in respect of which the person is not licensed;
- (t) requiring licensees to appoint business managers, respecting the requirements that must be met by persons who may be appointed as business managers

and prescribing the powers, duties and functions of business managers;

- (u) establishing codes of conduct for licensees;
- (v) designating activities as unfair practices;
- (w) prescribing powers, duties and functions of licensees;
- (x) prescribing or adopting, with or without modification, codes, standards or rules governing
 - (i) the manner of carrying on a business or a description or class of business to which this Act applies, and
 - (ii) the type and condition of premises and equipment used in such a business;
- (y) regulating, limiting or prohibiting the solicitation of contracts for the provision of funeral services on a pre-need basis by licensees or their agents in the places specified in the regulations;
- (z) respecting the disposition of pre-need contracts where it is clear that alternative arrangements have been made for provision of the funeral services;
- (aa) to resolve disputes about the disposition of human remains or cremated remains;
- (bb) respecting disclosure requirements governing contracts for the provision of funeral services, including cancellation and refund policies, listing of goods and services to be provided and description of other goods or services that may be required;
- (cc) where money is received by a licensee and held in trust pursuant to sections 5 and 6,
 - (i) specifying the persons for whose benefit the money is to be held in trust,
 - (ii) specifying the rights and duties of the trustee in respect of the trust money,
 - (iii) governing the form and manner in which the trustee shall hold the trust money,

- (iv) prohibiting the appropriation or conversion by the trustee of any of the trust money otherwise than as authorized by the regulations,
- (v) specifying the circumstances and procedures under which all or any part of the trust money is to be paid by the trustee to the persons for whose benefit it is held or into the Court of Queen's Bench to be dealt with as a judge of that Court directs;
- (dd) specifying as to any business or description or class of business to which this Act applies the information to be contained in funeral services contracts used by licensees in their dealings with the public;
- (ee) providing for a system of resolving complaints against persons who carry on a business or a description or class of business to which this Act applies, including regulations respecting
 - (i) the kinds of complaints that the complaint resolution system may deal with,
 - (ii) the procedure to be followed in making and attempting to resolve a complaint,
 - (iii) the appointment of one or more arbitrators to deal with a complaint that cannot be resolved and the procedure to be followed in such an arbitration, and
 - (iv) matters relating to the payment of any award made by an arbitrator.

PART 5

GENERAL PROVISIONS

Service of
documents

24(1) If this Act requires the Director or a delegate of the Director to serve a person with a document or to give notice of a document to a person, the service or notice may be given

- (a) personally,
- (b) by ordinary mail, or
- (c) if the person requests that service or notice be given by electronic means that results in a printed copy of

the document being received by the person, by the electronic means.

(2) If service or notice is given to a person by ordinary mail, it must be sent to the last address shown for the person on the records of the Director or a delegate of the Director, and any service or notice given by ordinary mail is deemed to have been received 7 days after it is mailed unless

- (a) the document is returned otherwise than by the addressee, or
- (b) the document was not received by the addressee, the proof of which lies on the addressee.

Offences

25 Any person who

- (a) contravenes this Act or the regulations,
- (b) fails to comply with an order under this Act or to co-operate with any person enforcing an order under this Act,
- (c) fails to comply with a direction of the Director or a delegate of the Director,
- (d) furnishes false information or misrepresents any fact or circumstance to the Director or a delegate of the Director,
- (e) fails to co-operate with the Director or a delegate of the Director in an investigation under this Act, or
- (f) fails to comply with an undertaking under this Act,

is guilty of an offence.

Penalty

26(1) A person who is convicted of an offence under this Act or the regulations is liable to a fine of not less than \$500 and not more than

- (a) \$100 000, or
- (b) an amount equal to 3 times the amount obtained by the person as a result of the offence,

whichever is greater, or to imprisonment for not more than 2 years, or to both a fine and imprisonment.

(2) Each day that an offence continues constitutes a separate offence, but the total term of imprisonment that may be

imposed on a person in respect of a continuing offence may not exceed 2 years.

(3) When a corporation commits an offence under this Act, every principal, director, manager, employee or agent of the corporation who authorized the contravention or failure or assented to it or acquiesced or participated in it is guilty of the offence whether or not the corporation has been prosecuted for the offence.

(4) If a partner in a partnership is convicted of an offence, each partner in that partnership who authorized the commission of the offence or assented to it or acquiesced or participated in it is guilty of the offence.

Commence-
ment of
prosecution

27 A prosecution for a contravention of this Act or a regulation or order passed pursuant to this Act may not be commenced more than 3 years after the contravention.

Carrying on
business

28 Evidence that

- (a) a person entered into one transaction in a business or activity, or
- (b) a person set out in a letter, advertisement, card or other document issued by or under the authority of the person that the person is carrying on a business or activity

is prima facie proof that the person was carrying on that business or activity.

Status of
licensee and
nature of
substance

29 A certificate purporting to be signed

- (a) by the Director and stating that on a specified day or during a specified period
 - (i) the person named in the certificate was or was not licensed under the regulations, or
 - (ii) the licence of the person named in the certificate had been suspended under this Act,

or

- (b) by an expert, defining or stating the nature of any substance, goods or services examined,

must be admitted in evidence as prima facie proof of the facts stated in the certificate without proof of the signature or appointment of the person who signed it.

Copies

30 A copy of a document made during an inspection or investigation under this Act and certified to be a true copy by the person who conducted the inspection or investigation is admissible in evidence in any proceeding as prima facie proof of the document without proof of the signature or appointment of the person who signed the certificate.

PART 6

TRANSITIONAL PROVISIONS

Transitional

31 If before July 1, 1960 a pre-need funeral services contract was entered into,

- (a) 75% of the money paid under that contract shall be held in trust for the purposes of the contract and deposited, as required by the regulations, with the Public Trustee or a trust corporation until required to be used or expended in accordance with the terms of the pre-need funeral services contract, and
- (b) any term or provision of the pre-need funeral services contract that provides for the forfeiture of the money paid under the contract in the event that the full amount agreed on is not paid or is not paid within the times stipulated is void except as to 25% of the amount agreed to be paid under the contract.

Transitional

32 Where a pre-need funeral services contract that was entered into before May 1, 1962 provides that a licensee may retain up to 12% of the money paid under the contract, the licensee

- (a) may retain that percentage, notwithstanding section 5, and
- (b) shall not charge any other penalty or administration or other fee under this Act or the regulations.

Licensee's
ability to retain
income

33(1) Notwithstanding any agreement to the contrary, a licensee who, in the period commencing on May 1, 1962 and ending on November 30, 1998, entered into a pre-need funeral services contract that specifically permits the licensee to retain income earned by the investment of the funds received under the contract shall not withdraw any of that income from trust until

- (a) the contract is cancelled, or

(b) the funeral services under the contract have been provided.

(2) A licensee who enters into a pre-need funeral services contract after November 30, 1998 must hold the income earned by the investment of funds received under the contract in trust in accordance with section 5.

7(1) In this section,

(a) “amended Act” means the *Prearranged Funeral Services Act* as amended by this Part;

(b) “former regulation” means the *Funeral Services Business Licensing Regulation* (AR 360/92) as it existed on November 30, 1998;

(c) “previous Act” means the *Prearranged Funeral Services Act* as it read immediately before it was amended by this Part.

(2) The Minister may make regulations respecting the transition to the amended Act of any matter under the previous Act or the former regulation, including

(a) converting a licence under the previous Act or the former regulation to a licence under the amended Act;

(b) dealing with the length of the term of licences that have been converted.

(3) An appeal of a decision respecting a licence made under the previous Act or under the *Licensing of Trades and Businesses Act* that has been filed before December 1, 1998 is not continued under the amended Act and must be decided under the previous Act or the *Licensing of Trades and Businesses Act*, as the case may be, under which the appeal was made.

(4) Every licensee who was obliged to report under section 8(1) of the previous Act must provide to the Director the quarterly report that, but for this Act, would have been due under that section on December 1, 1998.

(5) The Public Trustee and every trust corporation that was obliged to report under section 8(2) of the previous Act must provide to the Director in accordance with that section the statement that, but for this Act, would have been due under that section on December 1, 1998.

7 Transitional provisions.

8 This Part comes into force on December 1, 1998.

8 Coming into force.