



BILL NO. 57

Government Bill

*1st Session, 59th General Assembly
Nova Scotia
53 Elizabeth II, 2004*

An Act to Amend Chapter 62 of the Revised Statutes, 1989, the Cemetery and Funeral Services Act

CHAPTER 1
ACTS OF 2004

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
APRIL 23, 2004**

The Honourable Barry Barnet
Minister of Service Nova Scotia and Municipal Relations

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 62
of the Revised Statutes, 1989,
the Cemetery and Funeral Services Act**

Be it enacted by the Governor and Assembly as follows:

1 Chapter 62 of the Revised Statutes, 1989, the *Cemetery and Funeral Services Act*, is amended by adding immediately after Section 27 the following Sections:

27A Where any person of a class referred to in clauses (a) to (d) of Section 27

(a) carries out any act of bankruptcy or makes a general assignment for the benefit of that person's creditors or other acknowledgement of insolvency or makes any application pursuant to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors Arrangement Act* (Canada) or any similar legislation;

(b) fails to fulfil any contractual, fiduciary or statutory duties to

(i) a purchaser or the person for whom a pre-arranged funeral plan or pre-need cemetery plan was purchased, or

(ii) the personal representative of a purchaser or the person for whom the plan was purchased, after the death of the purchaser or that person, or

(c) is unwilling or unable to comply with this Act or the regulations, or where any circumstances prescribed by regulation exist, an act of default is deemed to have occurred for the purpose of Sections 27B to 27D.

27B (1) Where an act of default has occurred, the Registrar may take any steps the Registrar considers necessary or advisable to remedy the default or mitigate the default and, without limiting the generality of the foregoing, may

(a) take control over and administer, assign or dispose of any trust fund relating to a pre-arranged funeral plan or pre-need cemetery plan or a care fund;

(b) refund to the purchaser or the purchaser's personal representative the principal paid under any pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon to the extent funds are available to do so;

(c) order an operator to perform any function relating to the operation of a cemetery;

(d) allocate or specify the use of any income earned on a care fund.

(2) An order made under clause (c) of subsection (1) may be appealed to the Supreme Court of Nova Scotia within thirty days.

27C (1) Where an act of default by an operator has occurred, the Minister may appoint an administrator to perform the duties and functions of the operator with respect to a cemetery until

- (a) another operator becomes responsible for the operation of the cemetery;
- (b) an operational arrangement for the on-going care and maintenance of the cemetery is established; or
- (c) three years have passed since the appointment of the administrator,

whichever occurs first.

(2) An administrator appointed under subsection (1)

- (a) has control and management of the cemetery and any assets or property of the operator used in the operation of the cemetery;
- (b) may act in the stead of the operator upon such terms and conditions as are prescribed by the Minister; and
- (c) has access to and may expend any money that an operator would be entitled to spend pursuant to this Act.

(3) An administrator appointed under subsection (1) shall attempt to

- (a) find another operator for the cemetery; or
- (b) make an operational arrangement for the on-going care and maintenance of the cemetery.

(4) Where three years have passed from the date of appointment of an administrator under subsection (1) and the administrator has not been able to find another operator for the cemetery or make an operational arrangement for the on-going care and maintenance of the cemetery, the operation of the cemetery shall be

- (a) carried on in accordance with the regulations; or
- (b) terminated in accordance with the regulations.

27D Where an act of default by an operator has occurred and the Minister considers it necessary to vest the cemetery in another operator, the Minister may designate the cemetery as land required for a public purpose within the meaning of the *Expropriation Act* and the land may be expropriated in accordance with that Act and conveyed to the other operator.

27E Notwithstanding anything contained in this Act,

- (a) no action for damages may be commenced or maintained and no cause of action lies against the Minister, an administrator appointed by the Minister or an employee or agent acting under the direction of the Minister or an administrator, if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith; and

(b) nothing in this Act makes an administrator, the Minister or Her Majesty in right of the Province liable for any debt or obligation of the operator of a cemetery.

27F Any costs incurred by an administrator that exceed the revenue generated by the operation of a cemetery are a debt due and owing to Her Majesty in right of the Province by the operator of the cemetery.

2 Subsection 28(1) of Chapter 62 is amended by adding immediately after clause (w) the following clauses:

(wa) prescribing circumstances that constitute acts of default under Section 27A;

(wb) respecting circumstances in which the principal from a care fund may be disbursed and any conditions attaching to money disbursed;

(wc) respecting the performance by the Registrar of any duties or functions of an operator after an act of default has occurred under Section 27A;

(wd) respecting the power of the Registrar to address issues arising from acts of default;

(we) respecting the terms and conditions of the appointment of administrators appointed under Section 27C;

(wf) respecting the powers, duties and functions of administrators appointed under Section 27C;

(wg) respecting the operation of cemeteries or the termination of operation of cemeteries in circumstances referred to in subsection (4) of Section 27C;
