



Province of Alberta

## **FUNERAL SERVICES ACT**

Revised Statutes of Alberta 2000  
Chapter F-29

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Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Regulations

The following is a list of the regulations made under the *Funeral Services Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Funeral Services Act</b>		
Exemption .....	233/98	107/99, 251/2001, 63/2003, 325/2003, 67/2009, 146/2015
General .....	226/98	55/2000, 206/2001, 251/2001, 145/2003, 345/2003, 113/2004, 8/2005, 212/2005, 14/2006, 158/2006, 316/2006, 35/2007, 68/2008, 168/2010, 152/2011, 31/2012, 152,2015

# **FUNERAL SERVICES ACT**

## Chapter F-29

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

#### **Definitions**

**1** In this Act,

- (a) "administration fee" means a fee under section 6;
- (b) "authorized trustee" means the Public Trustee or a trust corporation;
- (b.1) "Court" means the Court of Queen's Bench;
- (c) "Director" means the person appointed by the Minister under section 14 to act as the Director for the purposes of this Act and the regulations;
- (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 or services 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;
- (h.1) “inspector” means the Director or an individual appointed as an inspector under section 14;
- (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;
- (l.1) “personal information” means information about an identifiable individual;
- (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;
- (m.1) “regulated person” means a person licensed under this Act or the regulations or a person who is required to be licensed under this Act or the regulations;
- (n) “regulatory board” means a board established under section 22(1)(a) and the regulations;
- (o) “trust corporation” means a corporation or trust corporation registered under the *Loan and Trust Corporations Act* or under similar legislation of another province or territory that is designated by the Director as a trust corporation.

RSA 2000 cF-29 s1;2001 c28 s10;2003 c19 s26;  
2008 c33 s2

**Exemptions**

**2(1)** This Act does not apply to a fraternal society licensed under the *Insurance Act*.

**(2)** The Lieutenant Governor in Council may by regulation 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 and may provide for terms or conditions for any such exemption.

RSA 2000 cF-29 s2;RSA 2000 cl-3 s857;  
2003 c19 s27;2008 c33 s3

## **Part 1**

### **Funeral Services Contracts**

**Prohibitions**

**3(1)** No person shall, unless that person holds a funeral services business licence, solicit to enter into or enter into a contract under which that person promises to provide, or to arrange for the provision of, funeral services to another person.

**(1.1)** No person shall perform the duties and functions of a business manager, as prescribed by the regulations, unless that person holds a business manager licence.

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

**(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.

RSA 2000 cF-29 s3;2008 c33 s4

**Licences**

**4(1)** A person who wishes to apply for

- (a) a funeral services business licence,
- (a.1) a business manager 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.

**(1.1)** The Director may issue a licence if the applicant meets the requirements set out in 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.

RSA 2000 cF-29 s4;2008 c33 s5

#### **Right of cancellation**

**5(1)** Notwithstanding any agreement to the contrary, a pre-need funeral services contract must be cancelled if the cancellation is requested by any of the following persons:

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

**(1.1)** A request for cancellation may be made under subsection (1) at any time and without providing a reason.

**(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.

RSA 2000 cF-29 s5;2008 c33 s6



**Administration fee**

**6(1)** A licensee who enters into 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 5(2) expires, or
- (b) the funeral services contract is either
  - (i) cancelled after the expiry of the cancellation period referred to in section 5(2), or
  - (ii) assigned by any person referred to in section 11(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 into will be charged in accordance with subsection (1)(a) or in accordance with subsection (1)(b).

1998 c10 s6

**Licensee to hold money in trust**

**7** 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, and all income earned as a result of the investment of that money have 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.

RSA 2000 cF-29 s7;2008 c33 s7

**Transfer of money to authorized trustee**

**8(1)** Money held in trust by a licensee pursuant to section 7 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 6 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 trust fund provided by the authorized trustee by agreement with the licensee, and
  - (b) may, subject to the regulations, invest the money only in accordance with the regulations.
- (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 trust 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 trust 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.

RSA 2000 cF-29 s8;2001 c28 s10;2006 c9 s10;  
2008 c33 s8

#### **Payment out of trust fund**

- 9(1)** Money and income held in a trust fund under section 8 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 trust fund to the credit of that pre-need funeral services contract must 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 5, all money and income held in the trust 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 8(2), an authorized trustee shall pay from the money and income held in the trust fund any administration fee owing to the licensee.

(5) Money and income held by an authorized trustee under section 8 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.

RSA 2000 cF-29 s9;2008 c33 s9

#### **Unclaimed trust funds**

**9.1** Any unclaimed trust funds must be accounted for and distributed in accordance with the regulations.

2008 c33 s10

#### **Reporting requirements**

**10(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 trust fund maintained by the authorized trustee in regard to that contract, including a statement of that fund's current balance.

RSA 2000 cF-29 s10;2008 c33 s11

### **Assignment of contracts**

**11(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,
- (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.

**(2)** When an assignment of a pre-need funeral services contract is made to a licensee,

- (a) the authorized trustee maintaining the trust fund on behalf of the funeral services business shall make all necessary changes in the records and funds in order to make the assignment complete, and
- (b) if the trust fund of the assignee is maintained elsewhere than with that authorized trustee, money held under the assigned pre-need funeral services contract may be transferred to the trust fund maintained on behalf of the assignee, on the payment of any charges and fees that may be prescribed by the regulations.

**(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 6.

RSA 2000 cF-29 s11;2008 c33 s12

### **Contracts entered into through direct contact**

**12(1)** No person shall, by telephoning or appearing in person at the home of an individual,

- (a) enter into a funeral services contract with or assign a funeral services contract on behalf of that individual,
- (b) offer to enter into a funeral services contract with or to assign a funeral services contract on behalf of that individual,
- (c) offer to make an appointment for the purpose of entering into a funeral services contract with that individual or assigning a funeral services contract on behalf of, or
- (d) solicit in any other way the entering into of a funeral services contract with that individual or the assigning of a funeral services contract on behalf of 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.

RSA 2000 cF-29 s12;2008 c33 s13

#### **Unfair practices**

**13(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) repealed 2008 c33 s14,
- (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 bylaws of a cemetery, mausoleum, columbarium or crematorium when that is not the case,
- (e) to carry out any activity that is designated in the regulations as an unfair practice,
- (f) to make any representation, statement or claim that is not true or is likely to mislead an individual into entering into a funeral services contract,
- (g) to make any representation when advertising the funeral services that savings, price benefits or advantages exist unless the representation of the savings, price benefits or advantages can be supported with verifiable and accurate data,
- (h) to make any representation when entering into a funeral services contract with an individual that savings, price benefits or advantages exist if they do not exist,
- (i) to make any oral representation regarding a funeral services contract respecting rights or obligations that are not contained in the written funeral services contract,
- (j) to abuse the trust of an individual or to exploit an individual's fear, lack of experience or knowledge,
- (k) to use undue, excessive or unreasonable pressure on an individual to enter into the funeral services contract, or
- (l) to use threatening, intimidating, abusive or coercive language in discussions with an individual.

**(1.1)** It is an unfair practice for any person, in information that is published by any means, to make a statement about any matter related to the operation of a funeral services business that might reasonably be regarded as being misleading or deceptive.

**(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.

RSA 2000 cF-29 s13;2008 c33 s14

## Part 2

### Director and Inspectors

#### Appointment of Director

**14(1)** The Minister may appoint a person to act as the Director for the purposes of this Act and the regulations.

**(1.1)** The Director is an inspector 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 that the Director considers appropriate.

**(5)** The Director may appoint individuals as inspectors for the purposes of this Act and the regulations.

RSA 2000 cF-29 s14;2008 c33 s16

#### Duties relating to licences

**15(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 the requirements for that licence set out in the regulations and may issue the licence subject to any terms and conditions the Director considers appropriate.

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

**(4)** The Director may refuse to issue or renew a licence, may cancel or suspend a licence or may impose terms and conditions on a licence if

- (a) the applicant or licensee does not meet the requirements of this Act and the regulations with respect to the class of licence applied for or held;
- (b) the applicant or licensee or any of its employees
  - (i) fails to comply with an order of the Director under this Act or the regulations,

- (ii) provides false information or misrepresents any fact or circumstance to the Director or an inspector,
- (iii) fails to comply with an agreement under section 19,
- (iv) fails to pay an administrative penalty in accordance with a notice under section 34.1,
- (v) in the Director's opinion, has contravened or is contravening this Act or the regulations,
- (vi) fails to comply with any other legislation that may be applicable,
- (vii) fails to pay a fine in respect of a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere,
- (viii) fails to comply with an order made in relation to a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere, or
- (ix) is convicted of an offence or is serving a sentence imposed in respect of a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere,

or

- (c) in the Director's opinion, it is in the public interest to do so.

**(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.

**(5.1)** Before refusing to issue or renew a licence or suspending, cancelling or imposing terms and conditions on a licence, the Director shall give the applicant or licensee

- (a) written notice of the proposed refusal, suspension or cancellation of the licence or the proposed terms and conditions to be imposed on the licence, with reasons, and
- (b) an opportunity to make representations to the Director.



**(5.2)** Despite subsection (5.1), the Director may suspend the licence of a licensee without notice or an opportunity to make representations to the Director if the licensee is being investigated under this Act and the Director is of the opinion that the licensee has misappropriated or will misappropriate funds that the licensee is required to hold in trust.

**(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.

RSA 2000 cF-29 s15;2008 c33 s17

### **Appeal**

**16(1)** A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence has been suspended or cancelled, or
- (d) to whom an order under section 15(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.

**(1.1)** A notice of appeal referred to in subsection (1) must be in writing and must set out

- (a) the appellant's name,
- (b) the appellant's address for service,
- (c) the decision or order being appealed, and
- (d) a brief description of the grounds for the appeal.

**(1.2)** The Minister is responsible for appointing members to an appeal board.

**(2)** The Minister shall, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed under subsection (1.2) or to an appeal board designated under subsection (5).

**(2.1)** When the Minister appoints members to an appeal board under subsection (1.2) or designates an appeal board under subsection (5), the Minister shall specify the appeal or appeals for which the appeal board is responsible.

**(2.2)** The Minister may appoint an Administrator to assist with administrative matters in respect of appeals whether or not an appeal board exists, and the Minister may designate the Administrator as chair of an appeal board.

**(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;
- (b.1) any person holding a subsisting licence issued under this Act or the regulations;
- (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 provide the appellant with the appeal board's written 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) vary, 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 that it considers appropriate.

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

**(9)** The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.

**(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 application with the Court within 30 days after being notified in writing of the decision of the appeal board, and the Court may make any order that an appeal board may make.

**(10.1)** An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.

**(11)** Repealed 2008 c33 s18.

RSA 2000 cF-29 s16;2008 c33 s18;2009 c53 s69

**Effect of appeal**

**16.1(1)** Subject to subsection (2), an appeal under section 16 does not affect the status or enforceability of the decision or order being appealed.

**(2)** A person who is appealing a decision under section 16(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision being appealed until the appeal board provides the appellant with the appeal board's written decision on the appeal.

**(3)** On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision being appealed until the appeal board provides the appellant with its written decision on the appeal.

2008 c33 s19

**Powers of appeal board**

**16.2** For the purposes of appeals before an appeal board,

- (a) the appeal board has the same power as is vested in the Court for the trial of civil actions
  - (i) to summon and enforce the attendance of witnesses,
  - (ii) to compel witnesses to give evidence on oath or otherwise,
  - (iii) to compel witnesses to give evidence in person or otherwise, and
  - (iv) to compel witnesses to produce any record, object or thing that relates to the matter being heard;
- (b) the appeal board may take evidence under oath;
- (c) any member of the appeal board may administer oaths for the purpose of taking evidence;
- (d) the appeal board may reconsider a previous decision made by the appeal board.

2008 c33 s19

**Director as party**

**16.3** The Director is a party to every appeal.

2008 c33 s19

**Appeal hearings**

**16.4(1)** Unless section 16.5 applies, the appeal board responsible for hearing an appeal shall send a notice of the time and place of the hearing of the appeal to the appellant's address for service and to the Director.

**(2)** An appeal board may grant an adjournment of a hearing for any period of time and on any terms it considers appropriate if the appeal board is satisfied that

- (a) there are compelling reasons for granting the adjournment, or
- (b) not granting the adjournment would amount to a denial of fairness to one or more of the parties to the appeal.

**(3)** The parties to an appeal have a right to attend all hearings held in respect of the appeal.

**(4)** A person appearing before an appeal board may be represented by a lawyer or other agent.

**(5)** A hearing before an appeal board is open to the public unless the chair of the appeal board considers it to be in the public interest to direct that the hearing be closed to the public.

**(6)** If a party to an appeal fails to appear in person or by lawyer or other agent within one hour from the time set out in the notice given under subsection (1), the appeal may be dismissed or the hearing conducted and determined in that person's absence, whichever option the appeal board considers proper in the circumstances.

2008 c33 s19

**Appeal without hearing**

**16.5(1)** An appeal may be conducted without a hearing with the consent of all of the parties.

**(2)** Where an appeal is conducted without a hearing, all matters concerning the appeal must be submitted to the appeal board in writing, or as otherwise directed by the appeal board, not more than 30 days after the parties provide their consent under subsection (1).

2008 c33 s19

**Evidence**

**16.6(1)** An appeal board is not bound by the rules of evidence in judicial proceedings.

(2) Evidence may be given before an appeal board in any manner that the appeal board considers appropriate.

2008 c33 s19

#### **Rules of Court**

**16.7** The provisions of the Alberta Rules of Court relating to the payment of conduct money and witness fees apply to appeals.

2008 c33 s19

#### **Decision of appeal board**

**16.8(1)** An appeal board shall give its decision on an appeal not more than 45 days after the conclusion of the hearing or, if the appeal is conducted without a hearing under section 16.5(1), not more than 30 days after the parties provide their submissions to the appeal board under section 16.5(2).

(2) The time periods provided for in subsection (1) are subject to any time period set by the Minister under section 16(6).

(3) The decision of an appeal board must be in writing and must include reasons.

(4) After an appeal board makes a decision, the appeal board shall promptly provide a copy of the decision, with reasons, to the parties to the appeal.

2008 c33 s19

#### **Protection from liability**

**16.9** No action or other proceeding for damages may be commenced against an appeal board, a member or employee of an appeal board or a person appointed or engaged to perform a duty or exercise a power for an appeal board

(a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act or the regulations, or

(b) for any omission or default in the performance of the duty or exercise of the power in good faith.

2008 c33 s19

#### **Restraining order**

**17** 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 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.

RSA 2000 cF-29 s17;2008 c33 s20

### **Investigations and inspections**

**18(1)** An inspector may conduct an inspection or investigation with respect to any matter for any purpose related to the administration of this Act or the regulations.

**(2)** An inspector who enters any premises or place under the authority of this Act shall, on request,

- (a) produce a document that identifies the person as an inspector under this Act, and
- (b) explain the inspector's reason for entering the premises or place.

RSA 2000 cF-29 s18;2008 c33 s21

### **Inspections**

**18.1(1)** An inspector may enter a regulated person's premises and inspect the premises and the records of a regulated person to ensure compliance with this Act and the regulations.

**(2)** An inspection under subsection (1) must be conducted at a reasonable time.

**(3)** A regulated person and an employee or agent of a regulated person shall co-operate with an inspector during an inspection.

**(4)** An inspector may in the course of an inspection require a regulated person or an employee or agent of a regulated person to

- (a) give written or oral replies to questions,
- (b) produce any books, records, reports, documents or other items requested by the inspector,
- (c) provide any other information requested by the inspector, and

(d) give the inspector all reasonable assistance.

(5) An inspector may in the course of an inspection require the presence of the owner or business manager at the premises during the inspection.

(6) An inspector may in the course of an inspection inspect, examine and make copies of or temporarily remove books, records, reports, documents or other items that are relevant to the inspection to determine whether there is compliance with this Act and the regulations.

(7) When an inspector removes any books, records, reports or documents or other items under subsection (6), the inspector

- (a) shall 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,
- (c) on request, shall provide a copy of the books, records, reports or other documents removed to the person from whom they were taken or to a person who is entitled to custody of them, and
- (d) shall, within a reasonable period of time, return them to the person to whom the receipt was given when they have served the purposes for which they were taken.

2008 c33 s21

#### **Inspections by court order**

**18.2(1)** If entry under section 18.1 is refused or a regulated person or an employee or agent of a regulated person refuses to co-operate with, interferes with or hinders the inspector's performance of duties under this Act, the inspector may apply to the Court by way of originating notice for an order

- (a) authorizing the inspector to enter the premises at any reasonable time and inspect the premises and records,
- (b) directing a regulated person or an employee or agent of a regulated person to allow the inspector to enter the premises or other place occupied or controlled by the regulated person or an employee or agent of the regulated person,
- (c) directing a regulated person or an employee or agent of a regulated person to produce, for the inspector's



examination, books, records, reports, documents or other items relevant to the inspection,

- (d) authorizing the inspector to copy or remove the books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,
- (e) directing a regulated person or an employee or agent of a regulated person to co-operate with the inspector on any terms and conditions that the Court considers appropriate, and
- (f) directing a peace officer to accompany the inspector, if requested by the inspector, while the inspector carries out the powers and duties of an inspector under this Act,

and the Court may, on being satisfied that the order is necessary for the purposes of this Act, make any order that it considers appropriate.

**(2)** Before entering a private dwelling or a part of premises used as a private dwelling to carry out powers and duties under this Act, an inspector shall

- (a) obtain the consent of the owner or occupant of the private dwelling, or
- (b) obtain an order from a judge of the Court.

**(3)** If the consent required under subsection (2) is refused or cannot reasonably be obtained, a judge of the Court may, on the application of the inspector by way of originating notice, issue an order

- (a) authorizing the inspector to enter the private dwelling or the part of premises used as a private dwelling to carry out the powers and duties of an inspector under this Act,
- (b) directing the owner or occupant to allow the inspector to enter the private dwelling or the part of the premises used as a private dwelling,
- (c) directing the owner or occupant of the private dwelling to produce, for the inspector's examination, books, records, reports, documents or other items relevant to the inspection,
- (d) authorizing the inspector to copy or remove the books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,

- (e) directing the owner or occupant of the private dwelling to co-operate with the inspector on any terms and conditions that the Court considers appropriate, and
- (f) directing a peace officer to accompany the inspector, if requested by the inspector, while the inspector carries out the powers and duties of an inspector under this Act.

**(4)** No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized by the order to use force.

**(5)** An application under subsection (1) or (3) may be made ex parte if the Court considers it appropriate.

2008 c33 s21

#### **Retaining documents**

**18.3** If an administrative process is commenced as a result of an inspection, an inspector may retain books, records, reports, documents or other items removed in the course of the inspection until the administrative process has been concluded.

2008 c33 s21

#### **Commencing an investigation during an inspection**

**18.4** If in the course of an inspection reasonable grounds are found to indicate that a regulated person has committed an offence under this Act or the regulations, the inspection may be discontinued and an investigation may be commenced.

2008 c33 s21

#### **Investigations**

**18.5(1)** An inspector who has reasonable grounds to believe that a regulated person has committed an offence under this Act or the regulations may enter the regulated person's premises with the consent of the regulated person and inspect the premises and the records of the regulated person for the purposes of carrying out an investigation.

**(2)** An investigation under subsection (1) must be conducted at a reasonable time.

**(3)** An inspector may in the course of an investigation request a regulated person or an employee or agent of a regulated person to

- (a) give written or oral replies to questions,
- (b) produce any books, records, reports, documents or other items requested by the inspector, and

(c) provide any other information requested by the inspector.

**(4)** In the course of an investigation an inspector may, with the consent of the regulated person, inspect, examine and make copies of or temporarily remove books, records, reports, documents or other items that are relevant to the investigation to determine if an offence has been committed under this Act or the regulations.

**(5)** When an inspector removes any books, records, reports, documents or other items under subsection (4), the inspector

- (a) shall 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,
- (c) on request, shall provide a copy of the books, records, reports or other documents removed to the person from whom they were taken or to a person who is entitled to custody of them, and
- (d) shall, within a reasonable time, return them to the person to whom the receipt was given when they have served the purposes for which they were taken.

**(6)** During an investigation, an inspector

- (a) may retain or copy any books, records, reports, documents or other items already in the inspector's possession as a result of an inspection, and
- (b) shall, within a reasonable time, return them to the person to whom the receipt was given when they have served the purposes for which they were retained.

2008 c33 s21

#### **Investigations by court order**

**18.6(1)** If entry under section 18.5 is refused or there are reasonable grounds to believe an offence has been committed under this Act or the regulations, the inspector may apply to the Court by way of originating notice for an order

- (a) directing the regulated person or an employee or agent of the regulated person to allow the inspector to enter the premises, including a private dwelling, or any other place occupied or controlled by the regulated person, or employee or agent of the regulated person,
- (b) directing the regulated person or an employee or agent of a regulated person to produce, for the inspector's

examination, books, records, reports, documents or other items relevant to the investigation,

- (c) authorizing the inspector to copy or remove the books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,
- (d) authorizing the inspector to retain books, records, reports, documents or other items on any terms and conditions that the Court considers appropriate,
- (e) directing the regulated person or an employee or agent of a regulated person to co-operate with the investigation on any terms and conditions that the Court considers appropriate, and
- (f) directing a peace officer to accompany the inspector, if requested by the inspector, while the inspector carries out the powers and duties of an inspector under this Act

and the Court may, on being satisfied that the order is necessary for the purposes of this Act, make any order that it considers appropriate.

**(2)** No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized by the order to use force.

**(3)** An application under this section may be made ex parte if the Court considers it appropriate.

**(4)** The following persons may apply to the Court for an order varying or cancelling an order made under subsection (1):

- (a) a person to whom the order is directed;
- (b) a person under investigation who is named in the order;
- (c) any other person who is otherwise affected by the order.

**(5)** On an application under subsection (4), the Court may vary or cancel an order on any terms and conditions the Court considers just if the Court finds that

- (a) all or a part of the order is not required for the protection of persons who are dealing with a person under investigation named in the order, or
- (b) one or more affected persons are unduly prejudiced by the order.

**Special circumstances**

**18.7(1)** Despite any provision of this Act, an inspector may, during an investigation under this Act, enter premises and seize or make copies of any books, records, reports, documents or other items if the inspector has reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed,
- (b) the books, records, reports, documents or other items will provide evidence of the commission of the offence, and
- (c) the delay involved in obtaining an order under section 18.2 or 18.6 could result in the loss or destruction of evidence.

**(2)** An inspector, on seizing any books, records, reports, documents or other items under this section,

- (a) shall inform the person, if any, from whom the books, records, reports, documents or other items were seized of the reason for the seizure,
- (b) shall give a receipt for the books, records, reports, documents or other items to the person, if any, having physical possession of the books, records, reports, documents or other items when they are seized, and
- (c) may make copies of, take photographs of or otherwise record the books, records, reports, documents or other items.

**(3)** An inspector who seizes any books, records, reports, documents or other items pursuant to this section shall deal with them in the same manner as if the books, records, reports, documents or other items were seized pursuant to an order.

**(4)** No force may be used by an inspector while exercising the inspector's powers under this section.

2008 c33 s21

**Settlement**

**19** If in the course of an investigation or inquiry under section 18 the Director discovers that a licensee has contravened this Act or the regulations, the Director may, instead of acting pursuant to section 15, enter into an agreement respecting 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.

RSA 2000 cF-29 s19;2008 c33 s22

**Other duties of Director**

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

1998 c10 s6

**Trust corporations**

**20.1** The Director may designate trust corporations for the purposes of this Act and the regulations.

2008 c33 s23

**Director's ability to disclose information**

**21(1)** The Director may disclose any information, including personal information, relating to

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

**(1.1)** The Director shall maintain a public record of agreements entered into under section 19, Director's orders made under section 15 and restraining orders issued by the Court under section 17 and any other prescribed documents or information, including personal information.

**(1.2)** The Director may determine the form of the public record referred to in subsection (1.1) and which documents or information must or may be included.

**(1.3)** The Director may publish any of the following information, including personal information, for the purpose of assisting the public in choosing whom to do business with:

- (a) information obtained in an investigation under this Act about persons required to be licensed under this Act or the regulations;
- (b) information about agreements entered into under section 19;
- (c) a list of licensees and information relating to their licence status, including suspensions and cancellations, if any;
- (d) information relating to disciplinary action taken or administrative penalties imposed under this Act or the regulations;
- (e) decisions of appeal boards;
- (f) any other information prescribed by regulation.

**(1.4)** No liability attaches to the Director for any information published under subsection (1.3) in good faith.

**(2)** Repealed 2008 c33 s24.

RSA 2000 cF-29 s21;2008 c33 s24

### **Part 3 Regulatory Board**

#### **Establishment of regulatory board**

**22(1)** The Minister may make regulations

- (a) providing for the establishment of a regulatory board to exercise the powers and perform the duties and functions delegated to it under section 23(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 bylaws

- (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 bylaws;
  - (e) respecting the establishment, membership, duties and functions of special, standing and other committees.
- (3) A bylaw made by a regulatory board is not effective until it is approved by the Director.
- (4) The *Regulations Act* does not apply to a bylaw of a regulatory board.

1998 c10 s6

**Delegation to regulatory board**

- 23(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 and performance of the delegated 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.

1998 c10 s6

**Payment for services of regulatory board**

- 24(1)** The Minister may make regulations respecting
- (a) the collection of fees by a regulatory board on the Government's behalf and their remittance to the Minister,



- (b) the payment of a commission to a regulatory board for its services under this subsection,
- (c) the use and application of money received as payment of investigation costs due to an agreement under section 19 or an order of an appeal board under section 16(7)(f), and
- (d) the payment of administrative penalties to a regulatory board on the Director's behalf.

(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 23(1).

RSA 2000 cF-29 s24;2006 c23 s37;2008 c33 s25

#### **Establishment of claims fund**

**25(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, loan 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.

RSA 2000 cF-29 s25;2003 c19 s28

**Confidentiality**

**26** 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.

1998 c10 s6

**Protection from liability**

**26.1** No action or other proceeding for damages may be commenced against a regulatory board, a member or employee of a regulatory board or a person appointed or engaged to perform a duty or exercise a power for a regulatory board

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act or the regulations, or

- (b) for any omission or default in the performance of the duty or exercise of the power in good faith.

2008 c33 s26

## **Part 4**

### **Powers of the Minister**

#### **Regulations**

**27** 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;
- (a.1) respecting the investing of money for the purpose of section 8(3)(b);
- (b) designating a corporation for the purpose of section 1(o);
- (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 6(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 8(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 11(1), including the giving of notice to the authorized trustee that holds the trust funds relating to the contracts;
- (n) prescribing charges and fees for the purposes of section 11(2)(b);
- (o) respecting the payment of fees and reasonable living and travelling expenses to members of an appeal board;
- (p) prescribing the powers, duties and functions of the Director;
- (q) respecting agreements entered into under section 19, including the kinds of agreements that may be entered into, records of agreements, the procedure to vary or cancel an agreement, and the effect of variation or cancellation of an agreement;
- (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 the 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 7 and 8,
  - (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 to be dealt with as a judge of the 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;
- (ff) prescribing documents or information, including personal information, that must be maintained by the Director in the public record;
- (gg) prescribing information, including personal information, that may be published by the Director;
- (hh) prescribing the form and contents of notices of administrative penalties for the purposes of section 34.1;
  - (ii) prescribing contraventions of this Act or the regulations in respect of which an administrative penalty may be imposed by the Director;
  - (jj) prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed;
- (kk) respecting any other matter necessary for the administration of the system of administrative penalties;
  - (ll) respecting how unclaimed trust funds are to be accounted for and distributed;
- (mm) establishing fees for appeals;
- (nn) respecting items that are required to be placed in caskets or with cremated remains;

- (oo) modifying the licensing requirements for funeral directors and embalmers in the event of a pandemic;
- (pp) defining terms that are used but not defined in this Act.

RSA 2000 cF-29 s27;2001 c28 s10;2008 c33 s27

### **Regulations under the Alberta Public Agencies Governance Act prevail**

**27.1** If regulations under the *Alberta Public Agencies Governance Act* apply in respect of the payment of fees and expenses to members of an appeal board, those regulations prevail, to the extent of any conflict or inconsistency, over any regulations made under this Act.

2009 cA-31.5 s43

## **Part 5 General Provisions**

### **Service of documents**

**28(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.

1998 c10 s6

### **Offences**

**29** 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, a delegate of the Director or an inspector,
- (e) fails to co-operate with the Director, a delegate of the Director or an inspector in an inspection under this Act, or
- (f) fails to comply with the terms of an agreement entered into under section 19,

is guilty of an offence.

RSA 2000 cF-29 s29;2008 c33 s28

#### **Penalty**

**30(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.

1998 c10 s6



**Commencement of prosecution**

**31** 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.

1998 c10 s6

**Carrying on business**

**32** 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 proof, in the absence of evidence to the contrary, that the person was carrying on that business or activity.

1998 c10 s6

**Status of licensee and nature of substance**

**33** 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 proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or appointment of the person who signed it.

1998 c10 s6

**Copies**

**34** 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 proof, in the absence of evidence

to the contrary, of the document without proof of the signature or appointment of the person who signed the certificate.

RSA 2000 cF-29 s34;2008 c33 s29

#### **Administrative penalties**

**34.1(1)** Where the Director is of the opinion that a person has contravened a provision of this Act or the regulations, the Director may, by notice in writing given to that person, require that person to pay to the Director an administrative penalty.

**(2)** A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

**(3)** Where a person fails to pay an administrative penalty in accordance with a notice under subsection (1), the Director may recover the amount owing in respect of the penalty in an action in debt.

**(4)** A notice of an administrative penalty under this Act may not be issued more than 3 years after the date on which the contravention to which the notice relates occurred.

2008 c33 s30

#### **Appeal of administrative penalty**

**34.2(1)** A person to whom a notice to pay an administrative penalty is given under section 34.1(1) may, within 30 days after receipt of the notice, by serving a written notice of appeal on the Minister, appeal the decision to an appeal board.

**(2)** A notice of appeal under subsection (1)

(a) must describe the administrative penalty appealed from and state the reason for the appeal, and

(b) must set out the appellant's name and address for service.

**(3)** The Minister shall, within 30 days after being served with a notice of appeal under subsection (1) and the receipt of payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed under section 16(1.2) or designated under section 16(5).

**(4)** The appeal board on an appeal may vary, quash or confirm the decision of the Director.

**(5)** The appeal board's decision under this section is final.

(6) Sections 16(1.2), (2.1), (2.2), (3), (4), (5), (6), (8), (9) and (10.1) and 16.2 to 16.9 apply, with all necessary modifications, to the proceedings of an appeal board under this section.

2008 c33 s30

## Part 6 Transitional Provisions

### Transitional

**35** 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.

1998 c10 s6

### Transitional

**36** 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 7, and
- (b) shall not charge any other penalty or administration or other fee under this Act or the regulations.

1998 c10 s6

### Licensee's ability to retain income

**37(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 the funds received under the contract in trust in accordance with section 7.

1998 c10 s6









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