

NATIONAL ASSEMBLY

FIRST SESSION

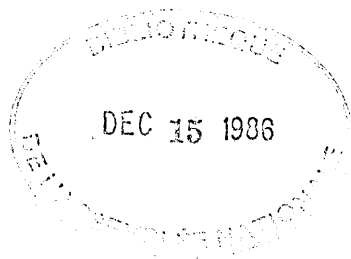
THIRTY-THIRD LEGISLATURE

Bill 162

An Act respecting prearranged funeral services and sepultures

Introduction

Introduced by
Mr Herbert Marx
Minister of Justice responsible for Consumer Protection



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EXPLANATORY NOTES

The main object of this bill is to ensure that the sums of money paid for funeral prearrangements are protected. This bill applies more particularly to funeral directors and to operators of cemeteries other than religious cemeteries.

Under this bill, the sellers of funeral services or of places of sepulture have an obligation to place in a trust account with a financial institution 90% of the price of goods and services to be provided on the death of the buyer.

Once deposited the sums of money cannot be withdrawn by the seller except on presentation of a death certificate and on proof that the goods and services have been delivered or rendered.

The income yielded by the trust account will be kept in the account up to the percentage of increase in the Consumer Price Index of the current year, any excess amount being subject to withdrawal by the seller.

The bill creates, with respect to the sums of money held in trust, a trust for the benefit of the buyers whereby their money is protected from the creditors of a bankrupt or insolvent seller.

The bill also provides that prearranged funeral services or sepulture contracts made by itinerant sellers may be cancelled without penalty within thirty days.

After the thirty-day-period or if the contract was not made through an itinerant seller, the buyer will be authorized to cancel his contract unilaterally against a penalty of 10% of the price of the contract not deposited in trust. The buyer will then receive 90% of the price of the contract plus cost of living indexing. The right of cancellation is not applicable to places of sepultures such as cemetery plots or columbarium compartments nor to goods, such as funeral monuments, already delivered.

Various obligations are imposed on sellers such as that of holding, in certain specified cases, a funeral director's permit issued under the Public

Health Protection Act (R.S.Q., chapter P-35) and that requiring contracts to be made in writing and contain a breakdown of all the goods and services offered and their respective prices.

Finally, the bill provides, to the extent defined, similar protection measures for the sums of money collected before the coming into force of the Act.

ACTS AMENDED BY THIS BILL:

- (1) the Consumer Protection Act (R.S.Q., chapter P-40.1)
- (2) the Public Health Protection Act (R.S.Q., chapter P-35)

Bill 162

An Act respecting prearranged funeral services and sepultures

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

DEFINITIONS AND APPLICATION

1. In this Act, unless the context indicates otherwise,

“**buyer**” means the party to a prearranged funeral services contract or prepurchased sepulture contract who undertakes to pay for the property, goods or services stipulated in the contract;

“**contract**” means a contract governed by this Act;

“**representative**” means a person acting for a seller or regarding whom a seller has given reasonable cause to believe that he is acting for him;

“**seller**” means the party to a prearranged funeral services contract or prepurchased sepulture contract who undertakes to provide the property, goods or services stipulated in the contract.

2. This Act applies to every prearranged funeral services contract and to every prepurchased sepulture contract, except a contract entered into without intermediary by a person and the operator of a religious cemetery for the sole provision of property, an item of goods or a service in the cemetery.

A prearranged funeral services contract is a contract entered into with a living person whereby funeral services are provided to that person upon or in connection with his death, in consideration of partial or total payment before the death.

Funeral services are the services and goods required before the burial or cremation of a deceased person, as well as the burial or cremation and the other services or goods provided by reason of or in connection with a death, except a sepulture and its maintenance.

A prepurchased sepulture contract is a contract for the purchase of a right of use or for the purchase of maintenance services in respect of a sepulture intended for the remains of one or several persons not deceased at the time of the purchase, in consideration of total or partial payment before the death.

A sepulture is a lot, plot, compartment or other space in a cemetery, columbarium, mausoleum or any other place used for the same purposes.

The expression “operator of a religious cemetery” means a person authorized by the competent religious authority to operate or manage a cemetery established by the religious authority pursuant to an Act of Québec which empowers it to do so.

CHAPTER II

MAKING OF CONTRACTS AND RIGHT OF CANCELLATION

DIVISION I

PERMITS

3. No person may solicit or make a contract whereby he undertakes to provide or procure property, goods or services which no person may provide except under the funeral director’s permit required by the Public Health Protection Act (R.S.Q., chapter P-35), unless he is the holder of such a permit.

DIVISION II

MAKING OF CONTRACTS

4. Every contract must be evidenced in writing and is subject to the rules governing the making of contracts that must be evidenced in writing prescribed under sections 24 to 28 and 30 to 33 of the Consumer Protection Act (R.S.Q., chapter P-40.1), adapted as required. Every contract modification is subject to the same rules.

5. Where the contract is solicited, negotiated or made elsewhere than at a funeral home or at a place of business of the seller, the seller must attach to the duplicate of the contract he is required to give to the buyer a cancellation form consistent with the model appearing in Schedule 1.

6. Within two days after the contract is made, the seller must transmit a copy of the contract to the third person designated by the buyer.

The seller is dispensed from the obligation set out in the first paragraph where the buyer wishes to abstain from designating a third person and his wish in that respect is expressed in writing in the contract and attested by means of a separate signature.

7. Every prearranged funeral services contract must set forth

(1) the name and address of the buyer and, where the goods and services are to be provided to a person other than the buyer, the name and address of that person;

(2) the name and address of the seller and, where the contract is made elsewhere than at his place of business, the name and address of his representative;

(3) the number and date of the contract and the address where it is signed;

(4) the description of each item of goods and service;

(5) the price of each item of goods and service and the charges exigible under federal or provincial law;

(6) the total amount the buyer must pay for goods, the total amount he must pay for services and the total price of the contract;

(7) the terms and conditions of payment;

(8) the name and address of the person to whom the seller must transmit a copy of the contract, except in circumstances described in the second paragraph of section 6;

(9) any other information prescribed by regulation.

Every contract modification must identify the contract and describe the changes to which the parties have agreed, including any resulting changes in the information required under subparagraphs 5, 6 and 7

of the first paragraph. Every contract modification is deemed to form part of the contract.

8. Every prepurchased sepulture contract must set forth

- (1) the name and address of the buyer;
- (2) the name and address of the seller and, where the contract is made elsewhere than at the seller's place of business, the name and address of his representative;
- (3) the number and date of the contract and the address where it is signed;
- (4) the description of the sepulture, specifying its location, its dimension, the number of deceased persons it can contain and, where the sepulture is specifically determined, the particulars by means of which it can be located;
- (5) the description of the maintenance services;
- (6) the price of the sepulture and that of the maintenance services;
- (7) the terms and conditions of payment;
- (8) the name and address of the person to whom the seller must transmit a copy of the contract, except in circumstances described in the second paragraph of section 6;
- (9) any other information prescribed by regulation.

Every contract modification must identify the contract and describe the changes to which the parties have agreed, including any resulting changes in the information required under subparagraphs 6 and 7 of the first paragraph. Every contract modification is deemed to form part of the contract.

9. No person may, in a contract or in several contracts between the same buyer and a seller or several sellers who cooperate on a regular basis, allocate the price of the goods and services so as to minimize unduly and in a way that may cause prejudice to the buyer the sum that must be deposited in a trust account under this Act.

No indexation clause nor any other clause allowing the seller to increase the price of property, goods or services to be provided under a contract may be included in a contract.

DIVISION III

CANCELLATION OF CONTRACTS BY THE BUYER

§ 1. — *Cancellation without penalty*

10. Any contract solicited, negotiated or made elsewhere than at a funeral home or at a place of business of the seller may be cancelled by the buyer at his discretion, without cost or penalty, within thirty days following the day on which each of the parties is in possession of a duplicate of the contract.

Where the person for whom the funeral services or the sepulture are or is intended dies before the end of the cancellation period, the buyer or the succession of the deceased person if he is the buyer, may waive in writing the unexpired portion of the cancellation period, which is shortened accordingly.

11. To avail himself of his right of cancellation, the buyer must send the form provided for in section 5 or a written notice to that effect to the seller or his representative.

The contract is cancelled of right from the sending of the form or the notice.

12. No seller may provide any property, goods or services or collect partial or total payment under a contract contemplated in section 10 before the end of the cancellation period provided in that section.

§ 2.— *Cancellation with penalty*

13. Any prearranged funeral services contract solicited, negotiated or made at a funeral home or at a place of business of the seller may be cancelled at any time by the buyer at his discretion, subject to a penalty under section 17.

The same applies to any prearranged funeral services contract solicited, negotiated or made elsewhere, once the cancellation period provided in section 10 has ended.

14. To avail himself of his right of cancellation, the buyer must send a written notice to that effect to the seller or his representative.

15. The contract is cancelled of right from the sending of a cancellation notice. Cancellation has no effect with respect to goods or services already provided.

16. For the purposes of this Act, property or an item of goods is deemed to be provided where it is put in the actual possession of the buyer or where it is identified and reserved for the buyer, who may take delivery of it on request.

Similarly, a service consisting in making an inscription is deemed to be provided, though the inscription of the date of death has been deferred, where the inscription is otherwise completed in the manner, on the terms and within the time agreed to in writing by the parties.

17. Where a contract is cancelled pursuant to section 13, the seller may retain, as a penalty, the percentage of the price of the contract he is authorized not to deposit in trust under the second paragraph of section 20, and to the income generated before the cancellation by the amounts deposited in trust for the buyer, after deducting the part of the income that must be held in trust pursuant to section 26.

18. The seller must return to the buyer within forty-five days of the cancellation an amount equal to the sum of the amounts he is required to deposit in trust for that buyer under section 20 and that part of the income generated by those amounts that must be held in trust pursuant to section 26.

CHAPTER III

PROTECTION OF FUNDS

DIVISION I

DEPOSITS IN TRUST

19. Before making the first deposit in trust with the financial institution chosen by the seller to receive deposits in trust under this Act, the seller must obtain the institution's written undertaking that it will assume the duties, obligations and responsibilities imposed by this Act on a depositary with respect to the amounts entrusted to it by the seller.

The written undertaking must be consistent with the model appearing in Schedule 2 and be forwarded to the president of the Office de la protection du consommateur at his request.

A "financial institution" is a bank or an institution authorized to receive deposits under the Deposit Insurance Act (R.S.Q., chapter A-26).

A “depository” is a financial institution having signed an undertaking in accordance with the first paragraph.

20. The seller must deposit in a trust account with the depository any amount received as partial or total payment for a prearranged funeral services contract, within 45 days of receiving the amount.

A seller is not, however, required to deposit in trust

(1) an amount representing 10 per cent or less of the price of goods and services under the contract which have not been provided;

(2) the amount representing the price of goods and services already provided and any charge exigible under federal or provincial law.

21. Where a seller receives an amount as partial or total payment for a prepurchased sepulture contract and the particulars by means of which the sepulture can be located are not specified in the contract, or where the sepulture is not then available, the seller must deposit the amount in a trust account with the depository within 45 days of receiving the amount.

22. Except pursuant to section 30, in no case may a seller withdraw all or part of the amounts deposited in trust under section 20 or 21.

23. With each deposit or withdrawal made with the depository, the seller must produce a list of the names and addresses of each buyer on whose behalf the deposit or withdrawal is made, indicating for each the contract number and the amount deposited or withdrawn on the buyer’s behalf.

DIVISION II

ADMINISTRATION AND USE OF FUNDS

24. The depository shall administer the trust funds held by it under this Act. The depository shall keep such funds in Québec and permit that they be used only in accordance with this Act.

In this Act, the expression “funds held in trust” means the aggregate of the amounts deposited in trust under section 20 or 21 and that part of the income held in trust under section 26, except the amounts withdrawn under sections 30 and 31.

25. No funds held in trust may be invested in any form of investment other than Treasury bonds or bonds issued or guaranteed

by the Government of Canada or of a province or by a municipal or school corporation in Canada, or term deposit certificates of a financial institution or another form of investment prescribed in the regulations.

Investments in any of the forms authorized under the first paragraph shall be at the option of the depositary or seller according to the agreement between the parties in that regard.

In no case may the term of any investment exceed five years.

26. Between 15 March and 31 March each year, part of the income generated by the funds held in trust must be set aside and kept in trust by the depositary.

That part of the income to be set aside and kept in trust pursuant to the first paragraph must be equal to a percentage of the average annual balance of the funds held in trust for the year that ended on the preceding 31 December, computed on the basis of the average monthly balances of the funds.

The percentage contemplated in the second paragraph must be equal to the percentage increase in the Consumer Price Index for the year contemplated in that paragraph over that of the preceding year.

27. The Consumer Price Index for a year is the annual average of the Consumer Price Index for Canada established by Statistics Canada under the Statistics Act (Revised Statutes of Canada, 1970, chapter 16) for each of the twelve months preceding 1 January in the year for which the index is computed.

Where the annual average computed under the first paragraph or the percentage computed under section 26 has more than three decimals, only the first three decimals are kept and the third decimal is increased by a unit if the fourth decimal is 5 or over.

28. The income kept in trust pursuant to section 26 is deemed to accrue proportionally to each amount held in trust on behalf of a buyer.

29. That part of the income generated by the funds held in trust which exceeds the part to be kept in trust pursuant to section 26 belongs to the seller and the income may be paid to him at such dates and according to such terms and conditions as may be agreed to between the seller and the depositary. The administration costs related to the funds held in trust are chargeable to the seller.

30. The amounts deposited in trust on behalf of a determined buyer may be withdrawn only in the following circumstances and proportions and on the following conditions:

(1) where the contract is cancelled by the buyer pursuant to section 13, all the amounts deposited pursuant to the contract may be withdrawn on production of a copy of the notice provided for in section 14 and of a receipt signed by the buyer certifying that an amount equal to the amount claimed has been paid to him;

(2) where an item of goods or a service under a prearranged funeral services contract is provided after the first deposit in trust pursuant to the contract and before the death of the person for whom the goods or services are intended, an amount equal to the price set forth in the contract for the goods or services may be withdrawn upon production of the acknowledgement of receipt contemplated in paragraph 1 of section 35 or of a copy of the notice contemplated in paragraph 2 of section 35 and of proof that the buyer has received it;

(3) where the particulars by means of which the sepulture to be provided under the prepurchased sepulture contract can be located are determined and the sepulture is then available, all the amounts deposited pursuant to the contract may be withdrawn on production of the notice contemplated in section 36 and of proof that the buyer has received it;

(4) where a prepurchased sepulture contract is cancelled by written agreement between the buyer and the seller all the amounts deposited pursuant to the contract may be withdrawn on production of a copy of the agreement and of a receipt signed by the buyer certifying that an amount equal to the amount claimed has been paid to him;

(5) where a contract modification entails a reduction in the total price first established under the contract for goods and services, an amount not exceeding the reduction may be withdrawn on production of a copy of the contract and modifying document together with a receipt signed by the buyer certifying that an amount equal to the amount claimed has been paid to him;

(6) following the death of the person for whom the goods or services under a prearranged funeral services contract were intended, all the amounts deposited pursuant to the contract for goods and services purchased for that person may be withdrawn upon production of a death certificate emanating from a competent authority other than the seller and of a sworn declaration of the seller describing the goods and services provided following the death and indicating the amount claimed by him;

(7) where a judgment concerning an amount deposited that is still held in trust orders that the amount be paid by the seller or released by the depositary, the amount may be withdrawn on production of the judgment;

(8) where a change of depositary occurs, all the funds held in trust or all the amounts contemplated in section 79 must be transferred between the two depositaries, directly from one trust account to another, at the time and according to the terms and conditions prescribed in the regulations.

31. Whenever an amount is withdrawn under section 30, the depositary must release the proportion of the income kept in trust which, under section 28, is deemed to have accrued to that amount.

The income so released belongs to the person entitled to the amount to which it is deemed to have accrued.

32. The depositary must keep an up to date account of the amounts deposited and of the balance held in trust with respect to each buyer.

The depositary must also retain the documents produced upon each withdrawal under section 30 for the period prescribed in the regulations.

33. The amounts received by a seller and which must be deposited in trust under this Act as well as funds held in trust are unseizable.

The amounts and funds referred to in the first paragraph are deemed to be held in a trust for the buyers by the seller, until their withdrawal is authorized by this Act and, in the case of a winding-up, assignment or bankruptcy, an amount equal to the aggregate of the amounts and funds deemed held in a trust shall be considered as a separate fund not forming part of the property subject to the winding-up, assignment or bankruptcy, whether or not the amount was kept separate from the seller's own funds or from the mass of the property.

CHAPTER IV

MISCELLANEOUS OBLIGATIONS

34. Within thirty days of the first deposit in trust made on behalf of a buyer pursuant to a contract, the depositary shall notify the buyer in writing of the date and amount of the deposit and specify the number of the contract pursuant to which the deposit was made.

35. Where an item of goods or a service under a prearranged funeral services contract is provided to a buyer after the first deposit in trust pursuant to the contract and before the death of the person for whom the goods or services are intended, the seller must

(1) in the case of an item of goods put in the actual possession of the buyer, cause the buyer to sign an acknowledgement of receipt describing the item of goods provided and specifying the contract number, the price of the item and the date on which it was provided;

(2) in the case of an item of goods identified and reserved for the buyer who is entitled to take possession of it on request or, in the case of a service, send to the buyer a notice describing the item of goods or the service and indicating the contract number, the price of the item or service, the date on which it was provided and, in the case of an item of goods, the manner in which it is identified and the place where it is available to the buyer.

36. Where the particulars by means of which the sepulture provided under a prepurchased sepulture contract can be located are determined only after the first deposit in trust pursuant to the contract or where the sepulture has become available only after that deposit, the seller must send to the buyer a notice informing him of the particulars by means of which the sepulture can be located and of its availability, and specifying the contract number and the price of the sepulture.

37. The seller shall place at the disposal of the public at all times and in each of his places of business, a list of the current prices of all the goods and services offered by him.

CHAPTER V

PROVISIONAL ADMINISTRATOR

38. The president of the Office de la protection du consommateur may appoint a provisional administrator to manage temporarily, continue or terminate the current business of a seller, in either of the following cases:

(1) where the seller operates without holding a funeral director's permit or where his permit is cancelled, suspended or has not been renewed and where, in consequence thereof, the seller is or becomes disqualified to fulfil his obligations under the contracts entered into by him;

(2) where the seller is bankrupt, assigns his property, becomes insolvent or ceases to operate.

Sections 338.2, 338.3 and 338.4 of the Consumer Protection Act, adapted as required, apply to such an appointment.

39. The provisional administrator shall have the necessary powers to carry out the mandate entrusted to him by the president.

Subject to the restrictions included in his mandate, he may, of his own initiative, in particular,

(1) take possession of the funds held in a trust account or otherwise, by or for the seller;

(2) engage such funds to carry out the mandate entrusted to him by the president and enter into the contracts necessary for that purpose;

(3) sue for the purposes of the carrying out of his mandate.

In no case may the provisional administrator be prosecuted by reason of acts performed in good faith in the discharge of his duties.

40. Where a provisional administrator is appointed, every document, book, record and other instruments relating to the seller's business must, on request, be remitted to the provisional administrator.

41. After receiving a notice to that effect from the provisional administrator appointed for a seller, no financial institution holding sums of money in a trust account or otherwise for the seller may allow any withdrawal or make any payment from the funds deposited, except with the written authorization of the provisional administrator. The funds must, on request, be put in the possession of the provisional administrator according to his directives.

42. The costs of the provisional administration and the fees of the provisional administrator shall be charged to the seller and become payable upon being approved by the president.

If the provisional administrator is unable to deduct the total amount of the costs and fees from the seller's own funds, of which he may have taken possession pursuant to section 41, the balance of the amount may be taken out of the funds held in trust and the balance shall then affect proportionally the claim of each buyer. In such a case, each buyer is subrogated to the rights of the provisional administrator against the seller for an amount equal to the amount of his claim affected to the payment.

43. A seller for whom a provisional administrator has been appointed may appeal to the Provincial Court from the decision of the president.

Sections 340 to 349 of the Consumer Protection Act, adapted as required, apply to the appeal.

CHAPTER VI

PROOF, PROCEDURE AND PENALTIES

DIVISION I

PROOF AND PROCEDURE

- 44.** No person may derogate from this Act by private agreement.
- 45.** No buyer may waive the rights granted to him by this Act unless otherwise provided herein.
- 46.** Notwithstanding article 1234 of the Civil Code, a buyer, when exercising a right provided by this Act, may make proof by testimony, even to contradict or vary the terms of a document, to establish that this Act has not been complied with.
- 47.** Every document certified true to the original by the president of the Office de la protection du consommateur or any person generally or specially authorized by him for that purpose, is admissible as evidence and has the same probative force as the original.
- 48.** The Attorney General is exempt from the obligation to furnish security in order to obtain an injunction under this Act.
- 49.** Where an injunction granted under this Act is not complied with, a motion for contempt of court may be presented before the court of the place where the contempt was committed.
- 50.** Every notice given by a seller or a depositary under this Act must be drawn up in the language of the contract to which it refers.
- 51.** The provisions of this Act are in addition to any provision of another Act granting a right or a recourse to a buyer.

DIVISION II

CIVIL REMEDIES

- 52.** If any rule provided in section 4 governing the making of contracts is not observed or if a contract does not conform to the requirements of tenor or form prescribed by this Act or the regulations, the buyer may apply for the nullity of the contract.

The buyer may also, without prejudice to his claim for damages, apply for the nullity of the contract where the seller has failed to comply with the obligation prescribed by section 6.

The court shall grant the motion for nullity presented under this section unless the seller proves that the buyer suffered no prejudice from the fact that the obligation or one of the above mentioned rules or requirements was not complied with.

53. If the seller fails to fulfil an obligation imposed on him under sections 3, 9, 20, 21 or 22, the buyer may apply for the nullity of the contract without prejudice to his claim for damages. He may also claim exemplary damages.

54. The buyer may apply for the nullity of a prepurchased sepulture contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the buyer or where the obligation of the buyer is excessive, harsh or unconscionable.

55. An action based on section 52 or on section 54 is prescribed by three years from the making of the contract.

An action based on section 53 is prescribed by one year from the knowledge of the failure.

56. The buyer may set up in defence or in a counterclaim an exception provided by this Act which tends to rebut an action or to justify a right against the seller even if the time to avail himself thereof by a direct action has expired.

57. Where the seller is a corporation, each director is jointly and severally liable with the corporation for the sums which must be deposited in trust under section 20 or 21 and the sums withdrawn otherwise than in accordance with this Act, unless the director proves that he acted in good faith.

DIVISION III

OFFENCES AND PENALTIES

58. Every seller who

(1) gives false or misleading information to the president or a person authorized by him to conduct an investigation or inspection,

(2) gives false or misleading information to the depositary with regard to an amount that he is required to deposit in a trust account or that he alleges to be entitled to withdraw from such account;

(3) is party to a contract in which the price of an item of goods or a service has been affected by a price allocation prohibited by the first paragraph of section 9,

(4) collects partial or total payment under a contract contemplated in section 10 before the expiry of the cancellation period provided for in the said section,

(5) having collected an amount he is required to deposit in a trust account with the depositary under section 20 or 21, fails to deposit the amount as required, within forty-five days after the collection, or

(6) withdraws all or part of an amount deposited in trust under section 20 or 21 otherwise than in accordance with the provisions of any of the paragraphs of section 30,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 500 nor more than \$75 000.

59. Every seller who

(1) fails to record in writing a contract or a contract modification,

(2) fails to send, within two days of its making, copy of the contract to the person designated by the buyer, except if all the requirements of the second paragraph of section 6 are met and is thereby exempt from the application to do so,

(3) includes in a contract a clause prohibited under the second paragraph of section 9,

(4) fails to remit to the buyer, within forty-five days of the cancellation of a contract made under section 13 the amount he is required to remit to him under section 18, or

(5) fails to produce a list including all the particulars set out in section 23 in making a deposit or withdrawal with the depositary,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 000 nor more than \$50 000.

60. Every seller who

(1) fails to observe any of the rules governing the making of contracts referred to in section 4 on making or modifying a contract,

(2) fails to indicate in a prearranged funeral services contract or in a modification to such a contract, any particular prescribed by section 7 for the contract or modification,

(3) fails to indicate in a prepurchased sepulture contract or in a modification to such a contract, any particular prescribed by section 8 for the contract or modification,

(4) fails to put the price list referred to in section 37 at the disposal of the public at any time in any of his places of business, or

(5) fails to send to the president, when he so requires, a report of activities in the manner determined by the president,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$500 nor more than \$25 000.

61. Every seller who

(1) fails to attach to the duplicate of the contract remitted to the buyer a cancellation form in conformity with the model appearing in Schedule 1 where the contract is made in the circumstances described in section 5,

(2) fails, where the president requests him to do so, to transmit the undertaking contemplated in section 19 to the president within the time prescribed by the latter; or

(3) contravenes a provision of a regulation the contravention of which constitutes an offence,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$200 nor more than \$10 000.

62. Every depositary which

(1) makes a false or misleading statement regarding its administration or use of the funds held in trust,

(2) allows partial or total withdrawal of an amount deposited with it under section 20 or 21 otherwise than in accordance with section 30,

(3) fails to set aside, between 15 March and 31 March each year, that part of the income generated by the funds held in trust that it is required to set aside for that year under section 26, or

(4) fails to keep in trust until it is required to release it in accordance with section 31 the income it is required to keep in trust under section 26,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 500 nor more than \$75 000.

63. Every depositary which

(1) allows all or part of the funds held by it be invested in a form of investment other than those authorized by section 16 or for a term exceeding five years, or

(2) fails to keep up to date the accounts prescribed by the first paragraph of section 32,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 000 nor more than \$50 000.

64. Every depositary which

(1) fails to retain for the period prescribed by regulation a document produced pursuant to section 30,

(2) fails to transmit to a buyer in writing and in the language of the contract the information prescribed by section 34 written thirty days of the first deposit in trust made on his behalf, or

(3) contravenes a provision of a regulation the contravention of which constitutes an offence,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$500 nor more than \$25 000.

65. Every financial institution which holds funds in a trust account or otherwise for a seller and which, after receiving a notice pursuant to section 41 from the provisional administrator appointed for the seller,

(1) allows a withdrawal or makes a payment out of those funds without obtaining the written authorization of the provisional administrator, or

(2) fails, where the provisional administrator so requires, to put the funds in his possession and according to his directives,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 500 nor more than \$75 000.

66. Every person who

(1) solicits or makes a contract contemplated in section 3 without holding a funeral director's permit at the time of the solicitation or making of the contract, or

(2) gives false or misleading information to a provisional administrator appointed pursuant to section 38,

is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 500 nor more than \$75 000.

67. Every person who fails to remit to the provisional administrator appointed for a seller any document, book, record or other instrument related to the business of the seller requested by the provisional administrator is guilty of an offence and liable, in addition to costs, to a fine of not less than \$500 nor more than \$25 000.

68. For a subsequent offence within two years after the last conviction for an offence defined in the same provision, the offender is liable, in addition to costs, to a fine of a minimum and maximum amounts twice as high as those provided for the said offence in the section that defines it.

69. Where a corporation is guilty of an offence against this Act, every director or representative of the corporation who had knowledge of the said offence is a party to the offence and is liable to a penalty equal to the penalty prescribed for that offence, unless he establishes to the satisfaction of the court that he did not acquiesce in the commission of such offence.

70. Every person who performs or fails to perform an act in view of aiding a person to commit an offence against this Act or who advises, encourages or incites a person to commit an offence is himself guilty of the offence and is liable to the penalty prescribed for that offence.

71. Penal proceedings under this Act are instituted by the Attorney General or a person generally or specially authorized by him for such purpose. The filing of a complaint creates the presumption that the person who signed it is authorized to file it.

The Summary Convictions Act (R.S.Q., chapter P-15) applies to such proceedings.

72. Where a seller pleads guilty to or is found guilty of an offence against section 58, the court may request from the president of the Office de la protection du consommateur a written report on the economic and commercial activities of the seller, in order to enable it to pronounce the sentence.

73. Where a person repeatedly fails to comply with an obligation imposed on him by any of sections 3, 9, 20, 21, 22, 24, 26 and 79, the Attorney General may, after instituting penal proceedings, require from the Superior Court a brief of interlocutory injunction enjoining that person, or its directors, representatives or employees, to cease the commission of the offences alleged until final judgment in penal jurisdiction is rendered.

After that judgment is rendered, the Superior Court shall render its judgment on the application for an injunction.

CHAPTER VII

REGULATIONS

74. The Government may make regulations

(1) determining the physical presentation of a contract and the additional information it must contain as well as the content and distribution or transmission procedure of any other document contemplated in the Act or the regulations;

(2) determining the period of retention of a document produced pursuant to section 30;

(3) determining, for funds held in trust, other possible forms of investment than those listed in section 25;

(4) determining when funds held in trust and amounts contemplated in section 79 may be transferred from one depositary to another and the terms and conditions of such transfers;

(5) determining the time, the terms and the conditions applicable to the deposit in trust of the amounts contemplated in section 79;

(6) exempting a class of persons it determines from the application of all or part of this Act and fixing conditions applicable to such exemption;

(7) determining among the provisions of a regulation those the contravention of which constitutes an offence.

CHAPTER VIII

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

75. The Minister of Justice is responsible for the administration of this Act.

76. The Office de la protection du consommateur shall supervise the carrying out of this Act.

77. The president of the Office de la protection du consommateur may require from a seller a report of activities at such dates and in such manner as he may determine.

78. For the purposes of section 26, when the first computation is made after the coming into force of this Act, the percentage of the income to be maintained in trust must be equal to a percentage of the average balance of the funds held in trust during the months included between the month preceding the date of coming into force of the Act and the end of the year ending on 31 December preceding the computation, the balance being computed on the basis of the average balance of each of those months.

The percentage shall be determined as provided in the third paragraph of section 26, considering the Consumer Price Index for the current year as being the monthly average of the Consumer Price Index for each of the months contemplated in the first paragraph, and considering the Consumer Price Index for the preceding year as being the monthly average of the Consumer Price Index for each of the months immediately preceding the coming into force of the Act up to a number of months equal to the number of months contemplated in the first paragraph.

79. The amounts that must be placed in a trust account pursuant to section 256 of the Consumer Protection Act shall, at the time and according to terms and conditions prescribed in the regulations, be deposited with a depositary in an account held in trust separate from the account referred to in section 20.

80. Chapters III, IV and V of this Act, except sections 20, 21, 26 to 29, 31, 34, 36 and 37, section 57, Division III of Chapter VI and section 77, adapted as required and in particular as if the words and figures “under section 20 or 21”, wherever they appear, were replaced by the words and figure “under section 79”, apply to the amounts referred to in section 79 and to transactions in respect of such amounts.

81. The Consumer Protection Act is amended by inserting, after section 5, the following section:

“5.1 Contracts governed by the Act respecting prearranged funeral services and sepultures (1987, chapter *insert here the chapter number of this bill*) are exempt from the application of the division on contracts

entered into by itinerant merchants, section 86 and the title on trust accounts.”

82. The Public Health Protection Act (R.S.Q., chapter P-35) is amended by inserting, after section 40.3, the following section:

“**40.4** On the recommendation of the president of the Office de la protection du consommateur, the Minister may cancel, suspend or refuse to renew the funeral director’s permit of any person found guilty

(1) of an offence against the Act respecting prearranged funeral services and sepultures (1987, chapter *insert here the chapter number of this bill*);

(2) of an offence under section 278 of the Consumer Protection Act (R.S.Q., chapter P-40.1) committed while the person was acting as a seller within the meaning of the Act mentioned in paragraph 1.”

83. The provisions of this Act will come into force on the date or dates to be fixed by the Government.

SCHEDULE 1

CANCELLATION FORM

(ACT RESPECTING PREARRANGED FUNERAL SERVICES AND SEPULTURES, S. 5)

To:
(name of seller or his representative)

.....
(address of seller or his representative)

Date:
(date of sending of this form)

By virtue of the first paragraph of section 10 of the Act respecting prearranged funeral services and sepultures, I cancel the contract (No), made
(number of the contract)

..... at.....
(date when the contract was made) (place where the contract was made)

.....
(name of buyer)

.....
(signature of buyer)

.....
(address of buyer)

SCHEDULE 2

UNDERTAKING OF DEPOSITARY

(ACT RESPECTING PREARRANGED FUNERAL SERVICES AND SEPULTURES, S. 19)

We, the undersigned,
 undertake to fulfil the duties, obligations and responsibilities imposed
 upon the depositary under the Act respecting prearranged funeral
 services and sepultures as regards the amounts deposited in trust
 under the said Act by

....., the seller.

Signed at ,

on ,

by

(person duly authorized)