

No. 121

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 121

A Bill respecting Relief with regard to Certain Contracts

HON. MR. MANNING

Explanatory Note

1. General. This Bill is intended to provide a method of obtaining relief against unconscionable loan transactions where the cost of the loan is excessive. This is similar to Ontario legislation recently found by the **Supreme Court of Canada** to be within the constitutional powers of the provinces.

2. Definitions.

3. Powers of court.

BILL

No. 121 of 1964

An Act respecting Relief with regard to Certain Contracts

(Assented to _____, 1964)

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

1. This Act may be cited as "*The Unconscionable Transactions Act*".

2. In this Act,

- (a) "cost of the loan" means the whole cost to the debtor of money lent, and includes interest, discount, subscription, premium dues, bonus, commission, brokerage fees and charges, but does not include registration or filing fees prescribed by or pursuant to any statute;
- (b) "court" means a court having jurisdiction in any action for the recovery of a debt or money demand to the account claimed by a creditor in respect of money lent;
- (c) "creditor" includes the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;
- (d) "debtor" means a person to whom or on whose account money lent is advanced, and includes every surety and endorser or other person liable for the repayment of money lent, or upon any agreement or collateral or other security given in respect thereof;
- (e) "money lent" includes money advanced on account of any person under a mortgage or in any transaction that, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced.

3. Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable, the court may

- (a) reopen the transaction, take an account between the creditor and the debtor, and relieve the debtor from payment of any sum in excess of the sum ad-

4. Exercise of powers of court.

5. Saving rights.

6. Commencement of Act.

judged by the court to be fairly due in respect of the principal and the cost of the loan,

- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan,
- (c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor, or
- (d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor.

4. The powers conferred by section 3 may be exercised

- (a) in an action or proceeding by a creditor for the recovery of money lent,
- (b) in an action or upon an originating notice of motion brought by the debtor, notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived, and
- (c) in an action or proceeding in which the amount due or to become due in respect of money lent is in question.

5. Nothing in this Act affects the rights of a *bona fide* assignee or holder for value without notice, or derogates from the existing powers or jurisdiction of any court or judge thereof.

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

No. 121

FIRST SESSION

FIFTEENTH LEGISLATURE

12 ELIZABETH II

1964

BILL

An Act respecting Relief with
regard to Certain Contracts

Received and read the

First time

Second time

Third time

HON. MR. MANNING
