

No. 73

2nd Session, 15th Legislature, Alberta
13 Elizabeth II

BILL 73

A Bill for the Licensing and Regulation of Collection
Agencies

HON. MR. MANNING

Explanatory Note

This Bill provides a separate Act for the licensing and regulation of collection agencies. At present they are governed by regulations made under section 6 of The Licensing of Trades and Businesses Act. Administrative jurisdiction is transferred from the Department of Industry and Development to the Department of the Attorney General.

2. Definitions.

3. Inapplicability of Act to certain classes of persons.

BILL

No. 73 of 1965

An Act for the Licensing and Regulation of Collection Agencies

(Assented to _____, 1965)

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 Collection Agencies Act*".

2. In this Act,

- (a) "Administrator" means the employee in the Department of the Attorney General designated by the Attorney General as the Administrator of this Act;
- (b) "collection agency" means a person, other than a collector, who carries on the business
 - (i) of collecting debts for other persons, or
 - (ii) of receiving money periodically from persons for distribution to creditors of those persons, in consideration of the payment of a commission or other remuneration, and includes a person who takes an assignment of debts in consideration of such payment;
- (c) "collector" means a person employed, appointed or authorized by a collection agency to solicit business or collect debts for the collection agency.

3. This Act, other than section 14, does not apply

- (a) to barristers and solicitors in the regular practice of their profession, or
- (b) to an insurer, agent or broker licensed under *The Alberta Insurance Act* to the extent of the business authorized by the licence or to his employees in the regular course of their employment in that business, or
- (c) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy Act* (Canada), *The Companies Act*, *The Judicature Act* or the *Winding-up Act* (Canada) or a person acting under the order of any court, or

4. Collection agencies and collectors working for collection agencies are required to be licensed.

5. Application for a licence.

- (d) to a bank, treasury branch, or trust company or the employees thereof in the regular course of their employment, or
- (e) to a real estate agent or broker or his employee licensed under *The Real Estate Agents' Licensing Act* to the extent of the business authorized by the licence.

4. (1) No person shall carry on the business of a collection agency without a collection agency licence issued under this Act.

(2) No person shall act as a collector for a collection agency without a collector's licence issued under this Act.

(3) No collection agency shall employ any person as a collector unless that person holds a collector's licence.

(4) No person shall

(a) advertise himself, or

(b) in any way hold himself out,

as acting as a collector or as carrying on the business of a collection agency unless he holds a collection agency licence.

5. (1) An application for a licence as a collection agency shall be made to the Administrator in the prescribed form and shall be accompanied by

(a) the prescribed licence fee,

(b) the security required under subsection (3),

(c) an affidavit

(i) of the applicant, or

(ii) where the applicant is a partnership, of each of the partners, or

(iii) where the applicant is a corporation, of each of the directors,

showing what, if any, convictions there are against him,

(d) copies of forms of agreement to be entered into with the collection agency by persons for whom the collection agency acts,

(e) copies of forms and letters that the collection agency uses or proposes to use in making demands for the collection of money, and

(f) such other information as may be required by the regulations.

(2) An application for a licence as a collector shall be made to the Administrator in the prescribed form and shall be accompanied by

(a) the prescribed licence fee,

(b) the security required under subsection (3),

(c) an affidavit of the applicant showing what, if any, convictions there are against him,

6. Issue of licences.

7. Appeals from refusals to issue licences or suspensions and cancellations of licences.

- (d) a letter signed by a collection agency stating that the applicant is or will be employed by the agency as a collector, and
- (e) such other information as may be required by the regulations.

(3) A licence shall not be issued to any person until there is deposited with the Administrator security in the amount and form prescribed by the regulations, for faithful, honest and lawful performance by that person of the business or employment in respect of which the licence is to be held.

6. (1) The Administrator may make whatever inquiry and investigation he considers sufficient regarding

- (a) an applicant for a licence, or
- (b) where the applicant is a partnership, each partner, or
- (c) where the applicant is a corporation, each director, and may issue or refuse to issue the licence applied for where in his opinion that action is in the public interest.

(2) The Administrator, in his discretion, may suspend or cancel a licence when the licensee, or one of the partners or directors of the licensee,

- (a) is convicted of an indictable offence or an offence punishable by imprisonment for two or more years, or
- (b) is convicted of a contravention of this Act or the regulations, or
- (c) fails to pay a judgment against himself for damages sustained by reason of an act or omission of his or of an employee of his done or occurring in or in connection with the business or employment in respect of which the licence is held, or
- (d) has made an untrue statement
 - (i) in his application for a licence, or
 - (ii) in a return made or information produced to the Administrator,
 or
- (e) neglects or refuses to make a return or to produce to the Administrator any information required pursuant to this Act or the regulations, or
- (f) is not in the opinion of the Administrator a fit and proper person to hold a licence.

7. (1) A person who is refused a licence or whose licence is suspended or cancelled under section 6 may, within thirty days thereafter appeal the decision of the Administrator by filing a notice of appeal with the Deputy Attorney General.

(2) The Deputy Attorney General shall refer the appeal to an appeal board consisting of three persons appointed by him, one of whom shall be a judge of a district court.

8. Duration of licences.

9. Display of licences.

10. Temporary licences to estates.

11. Moneys collected are to be placed in a trust account.

12. Records are to be kept and annual returns made to the Administrator.

(3) The Deputy Attorney General shall not be a member of an appeal board.

(4) After holding a hearing the appeal board may uphold the Administrator's decision or it may direct him to issue the licence applied for or reinstate the suspended or cancelled licence.

8. (1) Subject to this section a licence issued pursuant to this Act, expires on the thirty-first day of December of the year for which it was issued, unless sooner suspended or cancelled.

(2) A temporary licence terminates in accordance with the regulations.

(3) The licence of a collector

(a) terminates upon his ceasing to be employed by a collection agency as a collector, and

(b) is suspended or cancelled, as the case may be, upon the suspension or cancellation of the collection agency licence of his employer.

9. (1) The holder of a collection agency licence shall display his licence and the licences of his employees in a conspicuous position in the principal office or place in the Province where he is engaged in or carries on the business in respect of which the licences are held.

(2) Each person in charge of or employed in an office or place of business of a collection agency, other than the principal place of business, shall on the request of any person inform that person of the address or location of the office or place of business in the Province in which the licences are displayed.

10. Where a person who holds a collection agency licence dies, the Administrator may grant a temporary licence to his executor or administrator, and in such a case all employees of the deceased person who hold licences under this Act shall be deemed to be licensed as employees of the executor or administrator.

11. Every collection agency shall deposit all moneys collected by it, less the proper earned commission of the agency, in a separate trust account in a bank or treasury branch.

12. (1) Every collection agency shall keep proper records and books of account showing moneys received and moneys paid out, including a receipt book, cash book, clients' ledger and journal.

13. Approval of collection agency forms by the Administrator.

14. General control over the use of objectionable forms in attempting to collect debts.

(2) In the month of January in each year, a person who held a collection agency licence in the preceding year shall file a return with the Administrator.

(3) The return

(a) shall give the address of each office in which he carried on the business in respect of which the licence was issued in the immediately preceding calendar year, and

(b) shall give the names and addresses of each of his employees who have been employed by him during the immediately preceding calendar year.

(4) The return shall contain such other information with respect to the agency as may be prescribed by the regulations.

13. (1) No collection agency or collector shall

(a) enter into any agreement with a person for whom the collection agency acts unless a copy of the form of the agreement is approved by the Administrator, or

(b) use any form or form of letter to collect or attempt to collect money from a debtor unless a copy of the form or form letter is approved by the Administrator.

(2) The Administrator may refuse to approve any form that, in his opinion,

(a) in any way misrepresents the rights and powers of a collection agency or of a person for whom the collection agency acts, or

(b) in any way misrepresents the obligations or legal liabilities of a debtor, or

(c) is in any way misleading as to its true nature and purpose or that purports to be a court form or other legal process.

14. (1) This section applies to persons who are not collection agencies or collectors.

(2) Where

(a) the Administrator has reason to believe that a person is using a form or form of letter to collect or attempt to collect a debt from a debtor, and

(b) the Administrator is of the opinion that the form or form of letter is objectionable on any of the grounds on which an approval can be refused under section 13,

the Administrator may issue an order directing that person to cease using that form or form of letter by a date specified in the order and not to use any other form or form of letter of a similar nature.

15. Enforcement of security.

16. Offences and penalties.

17. Evidence in prosecutions.

15. (1) Where a person in respect of whom security is deposited under section 5 is liable to another person for damages sustained by that other person by reason of an act or omission of the secured person, or his servant,

(a) during the course of the business or employment in respect of which the security was given, and

(b) during the period in respect of which the security was given,

the insurer on the security is, to the amount set out in the bond or policy, liable to indemnify the person who sustained the damage and that person may in an action for the damages join the insurer on the security, notwithstanding that he is not a party to the security.

(2) This section does not apply to any action commenced more than two years after the expiration or cancellation of the licence to which the security relates.

16. (1) A person who contravenes section 4 is guilty of an offence and liable on summary conviction to a fine of not more than five hundred dollars and in default of payment to imprisonment for a term not exceeding twelve months.

(2) A person who fails to comply with an order issued under subsection (2) of section 14 is guilty of an offence and liable on summary conviction to a fine of not more than two hundred dollars and in default of payment to imprisonment for a term not exceeding three months.

(3) A person who contravenes any provision of this Act or the regulations for which a penalty is not otherwise provided is guilty of an offence and liable on summary conviction to a fine of not more than two hundred dollars and in default of payment to imprisonment for a term not exceeding six months.

(4) A person who is convicted of a second or subsequent offence under this Act may, in addition to or in lieu of any other penalty, be sentenced to a term of imprisonment of not more than one year.

17. (1) A certificate purporting to be signed by the Administrator and to the effect that the person named therein did or did not at any given time or during any given period hold a licence as

(a) a collection agency, or

(b) a collector,

shall be admitted in evidence as *prima facie* proof of the facts stated therein, without proof of the signature or appointment of the person signing the certificate.

(2) A statement in a letter, advertisement, card or other document or paper to the effect that a person is engaged in the business of a collection agency or is acting as a collector

18. Authority to make regulations.

19. Repeal of provisions in chapter 175 of the Revised Statutes providing for the regulation of collection agencies.

20. Commencement of Act.

is admissible in evidence as *prima facie* proof that he is so engaged or acting, as the case may be.

18. The Lieutenant Governor in Council may make regulations

- (a) prescribing the fees payable for different classes of licences,
- (b) prescribing the amount, terms, conditions and form of security to be given under section 5 for different classes of licences,
- (c) prescribing forms for use under this Act and providing for their use,
- (d) providing for, and prescribing the term and other conditions of, temporary licences,
- (e) requiring records to be kept and returns to be made to the Administrator,
- (f) respecting advertising by persons licensed under this Act,
- (g) requiring and governing the surrender of licences that have been suspended or cancelled or that have terminated,
- (h) regulating the appointment of and procedure before an appeal board,
- (i) prohibiting or regulating the use of any particular method in the collection of debts,
- (j) governing the control and disposition of moneys collected by collection agencies that are payable to clients of collection agencies, and
- (k) respecting any matter he considers necessary or advisable to carry out effectively the intent and purpose of this Act.

19. (1) *The Licensing of Trades and Businesses Act* is amended

- (a) as to section 2 by striking out clause (b),
- (b) by striking out section 6.

(2) Every collection agency licence issued under *The Licensing of Trades and Businesses Act* that is subsisting at the commencement of this Act shall continue to subsist

- (a) until the thirty-first day of March, 1966, or
- (b) until it is cancelled or it terminates for any reason that a collection agency licence may be cancelled or does terminate under this Act, or
- (c) until it is replaced by a collection agency licence issued under this Act.

20. This Act comes into force on the first day of August, 1965.

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No. 73

SECOND SESSION

FIFTEENTH LEGISLATURE

13 ELIZABETH II

1965

BILL

An Act for the Licensing and
Regulation of Collection
Agencies

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
