

No. 74

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 74

A Bill respecting Pension Benefits

HON. MR. REIERSON

Explanatory Note

General. This Bill will provide for the registration and regulation of private pension plans in the Province and facilitate the integration of such plans with similar plans in other provinces.

2. Definitions.

BILL

No. 74 of 1966

An Act respecting Pension Benefits

(Assented to _____, 1966)

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 Pension Benefits Act*".

2. (1) In this Act,

- (a) "deferred life annuity" means a life annuity that commences at retirement age under a pension plan, but in any event not later than age seventy years;
- (b) "designated province" means a province or territory of Canada that is designated by regulation as a province or territory in which there is in force legislation substantially similar to this Act;
- (c) "employee" means an individual who performs service in Alberta or in a designated province for a continuous period of not less than six months under a contract of service or of apprenticeship and includes an officer or director of a corporation or of an unincorporated organization and an agent acting for his principal on a substantially full-time basis;
- (d) "employer" means, in relation to an employee, the person carrying on business or established in Alberta from whom the employee receives his remuneration and includes the successors or assigns of the employer;
- (e) "life annuity" means an annuity that continues for the duration of the life of the annuitant, whether or not it is thereafter continued to some other person;
- (f) "Minister" means the member of the Executive Council charged with the administration of this Act;
- (g) "pension benefit" means the aggregate annual, monthly or other periodic amounts to which an employee will become entitled upon retirement or to which any other person is entitled by virtue of his death after retirement under a pension plan;

- (h) "pension benefit credit" means the value at a particular time of the pension benefits and any other benefits provided under the pension plan to which an employee has become entitled;
 - (i) "pension plan" means a superannuation or pension fund or plan organized and administered to provide a pension benefit for employees and includes,
 - (i) a unit benefit plan under which pension benefits are determined with reference to remuneration of an employee for each year of service or for a selected number of years of service,
 - (ii) a money purchase plan under which pension benefits are determined at the retirement of an employee with reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee,
 - (iii) a flat benefit plan under which the pension benefits are expressed either as a fixed amount in respect of each year of employment or as a fixed periodic amount, and
 - (iv) a deferred profit sharing pension plan other than a profit sharing plan as defined in section 79C of the *Income Tax Act* (Canada);
 - (j) "qualification date" means
 - (i) in respect of employment in Alberta, a date to be determined by the Lieutenant Governor in Council, and
 - (ii) in respect of employment in a designated province, the date upon which, under the law of that province, a pension plan is required to maintain its qualification for registration;
 - (k) "registered pension plan" means a pension plan that is registered with and certified by the Superintendent as a plan organized and administered in accordance with this Act;
 - (l) "service for a continuous period" means service for a period of time without regard to periods of temporary suspension of employment;
 - (m) "Superintendent" means the Superintendent of Pensions;
 - (n) "supplemental pension plan" includes a pension plan established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan;
 - (o) "voluntary additional contribution" means an additional contribution by an employee to or under a pension plan except a contribution the payment of which, under the terms of the plan, imposes upon the employer an obligation to make a concurrent additional contribution to or under the plan.
- (2) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment

3. Conflict with other Acts.

4. Superintendent of Pensions to be appointed.

5. Functions and powers of the Superintendent.

of his employer to which he reports for work is situated and where the employee is not required to report for work at any establishment of his employer, he shall be deemed to be employed in the province in which the establishment of his employer from which his remuneration is paid is situated.

3. In the event of conflict between any provision of this Act and any provision of any other Act, the provision of this Act prevails.

4. Subject to *The Public Service Act, 1962* the Lieutenant Governor in Council shall appoint a Superintendent of Pensions who shall be the chief administrative officer charged with the administration of this Act.

5. (1) It is the function of the Superintendent and he has power

- (a) to promote the establishment, extension and improvement of pension plans throughout Alberta,
- (b) to accept for registration all pension plans required to be registered or filed for registration with the Superintendent under this Act, and to reject any pension plan that does not qualify for registration,
- (c) to administer and enforce this Act, and to cancel pension plan certificates of registration issued in respect of pension plans that
 - (i) fail to meet the tests for solvency prescribed by the regulations, or
 - (ii) otherwise cease to qualify for registration under this Act,
- (d) to conduct surveys and research programs and to obtain statistics for the purposes of the Superintendent,
- (e) to assess and collect fees for the registration and annual supervision of pension plans, and
- (f) to perform such other functions and discharge such other duties as are assigned to him from time to time by the Lieutenant Governor in Council.

(2) The Superintendent or his authorized representative may, at any reasonable time,

- (a) inspect the books, files, documents and other records respecting a pension plan kept by an employer, an insurer, a trustee of the pension plan or any other person, and
- (b) require any employer, insurer, trustee of a pension plan or other person to furnish, in a form acceptable to the Superintendent, such information as the Superintendent considers necessary for the purpose of ascertaining whether this Act and the regulations have been or are being complied with.

6. Agreement with Federal and Provincial Governments.

7. Administrative expenses of the Act to be paid from appropriation.

8. Annual audit of Superintendent's accounts.

9. Annual report by Superintendent.

10. No action for deducting sums in compliance with the Act.

11. Agreements to evade the Act are void.

12. Pension agency may be designated.

13. Appointment of beneficiaries under a pension plan are validated.

6. The Superintendent may, subject to the approval of the Lieutenant Governor in Council,

- (a) enter into agreements with the authorized representatives of a designated province or the Government of Canada to provide for the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension commissions, and
- (b) authorize a Canadian association of pension commissions to carry out such duties on behalf of the Superintendent as the Superintendent may require.

7. The moneys required for the purposes of the Superintendent shall be paid out of the moneys appropriated therefor by the Legislature.

8. The accounts and financial transactions of the Superintendent shall be examined annually by the Provincial Auditor.

9. (1) The Superintendent shall make an annual report of the affairs of his office to the Minister.

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

10. No action lies against any person for withholding, deducting, paying or crediting any sum of money in compliance or intended compliance with this Act.

11. Where this Act requires an amount to be deducted, withheld, paid or credited, an agreement by the person on whom that obligation is imposed not to deduct, withhold, pay or credit the amount is void.

12. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefit credits under this Act.

13. (1) In this section,

- (a) "employee" means an employee or former employee who is a member of a pension plan, and
- (b) "employer" includes the trustee or insurer under a pension plan.

(2) Where in accordance with the terms of a pension plan an employee has designated a person or persons to receive a benefit payable under the plan in the event of the employee's death,

14. Existing and new plans are to be filed with the Superintendent for registration.

15. Acceptance of plans for registration.

- (a) the employer's liability to provide the benefit is discharged upon payment to the person or persons of the amount of the benefit, and
 - (b) the person or persons may upon the death of the employee enforce payment of the benefit, but the employer is entitled to set up any defence that he could have set up against the employee or his personal representatives.
- (3) An employee may from time to time alter or revoke a designation made under a pension plan, but any such alteration or revocation may be made only in the manner set forth in the plan.
- (4) This section does not apply to a designation of a beneficiary to which *The Alberta Insurance Act* applies.

14. (1) Every employer of employees in Alberta covered by a pension plan established before the date to be determined by the Lieutenant Governor in Council shall, unless under the terms of the plan the employer is not required to make contributions to or under the plan,

- (a) file a copy of the pension plan with the Superintendent for registration as soon as the Superintendent requires, and
- (b) while the plan remains in force, maintain its qualification for registration as required by this Act.

(2) Every employer who establishes a pension plan for employees in Alberta on or after the date to be determined by the Lieutenant Governor in Council shall, unless under the terms of the plan the employer is not required to make contributions to or under the plan,

- (a) file a copy of the pension plan with the Superintendent for registration within sixty days after the establishment of the plan, and
- (b) while the plan is in force, maintain its qualification for registration as required by this Act.

(3) Notwithstanding subsections (1) and (2), a pension plan required to be registered shall be deemed to include a supplemental pension plan established by the employer under the terms of which the employer is not required to make contributions.

(4) Commencing in the year to be determined by the Lieutenant Governor in Council, every employer of employees in Alberta covered by a pension plan shall file with the Superintendent annually an information return as prescribed by the regulations in respect of every pension plan administered by or on behalf of the employer or the employees.

15. The Superintendent shall accept for registration and issue his certificate in respect of each pension plan filed

16. Requirements of registerable pension plan.

for registration under section 14 that, in his opinion, is a pension plan organized and administered in accordance with this Act.

16. (1) A pension plan filed for registration in accordance with section 14 shall contractually provide that

- (a) a member of the plan who has been in the service of the employer for a continuous period of ten years, or has been a member of the plan for such period, whichever first occurs, and who has attained the age of forty-five years is entitled, upon termination of his employment prior to his attaining retirement age or upon termination of his membership in the plan prior to his attaining retirement age, to a deferred life annuity commencing at his normal retirement age equal to the pension benefits (except pension benefits provided by voluntary additional contributions) provided in respect of service as an employee in Alberta or in a designated province,
 - (i) under the terms of the plan in respect of service on or after the qualification date,
 - (ii) by an amendment to the terms of the plan made on or after the qualification date, or
 - (iii) by the creation of a new pension plan on or after the qualification date,
 - (b) both the pension benefits provided under the terms of the plan and the deferred life annuity prescribed by this section are not capable of assignment or alienation and do not confer upon any employee, personal representative or dependant, or any other person, any right or interest in the pension benefits or the deferred life annuity capable of being assigned or otherwise alienated, and
 - (c) upon termination of his employment or upon termination of his membership in the plan, a member of the plan who is entitled to a deferred life annuity under clause (a) is not entitled to withdraw any part of his contributions to or under the plan, except voluntary additional contributions, in respect of service in Alberta or in a designated province on or after the qualification date, and such contributions shall be applied under the terms of the plan toward the provision of the deferred life annuity required to be provided to the employee under clause (a).
- (2) Notwithstanding any provision of a pension plan,
- (a) the deferred life annuity prescribed by subsection (1) is not capable of surrender or commutation during the lifetime of the employee and does not confer upon any employee, personal representative or dependant, or any other person, any right or interest in the deferred annuity capable of being surrendered or commuted during the lifetime of the employee, and

- (b) the pension benefits provided under the terms of the plan in respect of service after the qualification date are not, on or after the date of retirement of an employee, capable of surrender or commutation during his lifetime and do not confer upon any employee, personal representative or dependant, or any other person, any right or interest in such pension benefits capable of being surrendered or commuted during the lifetime of the employee.
- (3) Notwithstanding subsections (1) and (2), a pension plan may provide for
 - (a) vesting or locking in at an earlier age than forty-five years or upon service or membership in the plan for less than ten years, or for both, and
 - (b) payment to an employee of an amount equal to the commuted value of the deferred life annuity or pension benefit to which the employee is entitled if the amount thereof payable to the employee at normal retirement age is less than ten dollars a month payable during his lifetime.
- (4) Notwithstanding subsections (1) and (2), where a pension plan so provides, an employee may receive in partial discharge of his rights under the plan as a lump sum, upon or after termination of employment or membership in the plan prior to his attaining normal retirement age as defined by the plan, an amount that in total does not exceed twenty-five per cent of the commuted value of the deferred life annuity prescribed by subsection (1).
- (5) If a pension plan so provides, a person who is entitled to a deferred life annuity under subsection (1) may, before the commencement of payment of the life annuity, elect to receive
 - (a) a deferred life annuity the amount of which is reduced or increased by reason of early or deferred retirement by provision for the payment of an optional annuity to a survivor or to the estate of the employee or by variation of the terms of payment of the annuity to any person after the employee's death, and
 - (b) a payment or series of payments by reason of a mental or physical disability as prescribed by the regulations,partly or wholly in lieu of the deferred life annuity described by subsection (1).
- (6) If a pension plan so provides, an employee may, on or before attaining normal retirement age as defined by the plan, elect to receive an annuity the amount of which is varied by reference to benefits payable under the *Old Age Security Act* (Canada) or under any other pension plan administered by the Government of Canada or by the government of a province of Canada.

17. Funding and solvency requirements of pension plan.

18. Moneys in a pension fund may not be assigned or attached.

(7) Upon the termination or winding-up of a pension plan, all contributions by an employer and an employee made after the qualification date in respect of the deferred life annuity prescribed by subsection (1) shall be applied under the terms of the plan,

(a) in the case of a former employee, toward the provision of the deferred life annuity to which he was entitled at the date of termination of his employment, and

(b) in the case of an employee, toward the provision of the deferred life annuity to which he would be entitled if he ceased to be an employee upon the date of termination or winding-up of the plan.

(8) A pension plan filed for registration in accordance with section 14 shall provide for contributions and benefits calculated in accordance with a formula prescribed by the regulations.

17. (1) A pension plan filed for registration in accordance with section 14 shall contractually provide for

(a) funding, in accordance with the tests for solvency prescribed by the regulations, that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan,

(b) a written explanation to each member of the plan of the terms and conditions of the plan and amendments thereto applicable to him, together with an explanation of the rights and duties of the employee with reference to the benefits available to him under the terms of the plan and such other information as may be prescribed by the regulations, and

(c) investment of pension fund moneys in the securities and loans prescribed by the regulations.

(2) Upon the termination or winding-up of a pension plan filed for registration as required by section 14, the employer is liable to pay all amounts that would otherwise have been required to be paid to meet the tests for solvency prescribed by the regulations.

(3) No amendment of a pension plan consequent upon the coming into force of the *Canada Pension Plan* shall adversely affect the pension benefit credits of any member in respect of remuneration and service or membership in the plan prior to the first day of January, 1966.

18. Moneys payable under a pension plan shall not be assigned, charged, attached, anticipated or given as security and are exempt from execution and seizure, and any transaction purporting to assign, charge, attach, anticipate or give as security such moneys is void.

19. Notice of objection may be given when Superintendent refuses to register a plan.

20. Appeal to Appellate Division of the Supreme Court on Superintendent's refusal to register a plan.

19. (1) Where the Superintendent refuses to accept for registration a pension plan filed for registration under this Act or cancels a certificate of registration, the employer may, within sixty days of the day of mailing of a notification of refusal or cancellation of registration, serve on the Superintendent a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Superintendent at Edmonton.

(3) Upon receipt of a notice of objection, the Superintendent shall with all due despatch reconsider his opinion and vary or confirm his opinion, and he shall thereupon notify the employer of its actions by registered mail.

20. (1) Where an employer has served a notice of objection under section 19, he may appeal to the Appellate Division of the Supreme Court for an order requiring the Superintendent to accept the pension plan for registration under this Act,

(a) within ninety days after the Superintendent has confirmed its opinion that the pension plan is not acceptable for registration, or

(b) after ninety days and before one hundred and eighty days have elapsed after service of the notice of objection and the Superintendent has not notified the employer that he has confirmed or varied his opinion.

(2) An appeal to the Court shall be instituted by filing with the Registrar of the Court or by sending by registered mail addressed to him at Edmonton three copies of a notice of appeal.

(3) Upon receipt of the copies of the notice of appeal, the Registrar shall transmit two copies to the Superintendent.

(4) Immediately after receiving a copy of the notice of appeal, the Superintendent shall forward to the Registrar copies of all documents relevant to the appeal.

(5) An appeal may, in the discretion of the Court, be heard in camera or in public unless the appellant requests that it be heard in camera, in which case it shall be so heard.

(6) The Court may dispose of an appeal by dismissing it, by referring the matters in issue back to the Superintendent for reconsideration or by allowing the appeal.

(7) Where the Court allows an appeal under this section, the Superintendent shall accept the pension plan for registration in accordance with the direction of the Court, which may include conditions precedent to qualification for registration of the plan imposed upon the appellant.

21. Authority of Lieutenant Governor in Council to make regulations.

21. The Lieutenant Governor in Council may make regulations

- (a) respecting methods of computing pension benefit credits and pension benefits and the commuted value of a deferred life annuity,
- (b) respecting the variation of pension benefits and deferred life annuities by reference to pensions payable under the *Old Age Security Act* (Canada) or under any other pension plan administered by the Government of Canada or by the government of a province of Canada,
- (c) prescribing the classes of investments and loans, both qualitative and quantitative, in which pension fund moneys heretofore or hereafter accumulated may be invested, and governing the making of such investments and loans,
- (d) prescribing tests and standards for solvency of pension plans,
- (e) prescribing the conditions under which, upon termination of employment of an employee, upon termination of an employee's membership in a pension plan or upon the termination or winding-up of a pension plan, pension benefit credits may be held in trust by the administrator, insurer or trustee of the pension plan or transferred to the administrator, insurer or trustee of another pension plan or to a registered retirement savings plan or to the agency described in section 12,
- (f) designating employees or pension plans, or any class thereof, that are excepted from the application of the Act and the regulations,
- (g) designating any province or territory of Canada as a province or territory, as the case may be, in which there is in force legislation substantially similar to this Act,
- (h) prescribing mental or physical disability for the purpose of clause (b) of subsection (5) of section 16,
- (i) providing for, regulating and governing the disposition of the assets of a pension plan that is discontinued, terminated or wound up,
- (j) requiring the furnishing of information to the Superintendent in respect of pension plans,
- (k) prescribing forms and providing for their use,
- (l) prescribing fees for registration and the annual supervision of pension plans,
- (m) prescribing approved contributions and benefit formulae in respect of pension plans required to be registered under this Act, and
- (n) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

22. Offences and penalties.

23. Commencement of Act.

22. (1) Every person who contravenes any provision of this Act or the regulations or who obstructs an officer or agent of the Superintendent in the performance of his duties is guilty of an offence and is liable on summary conviction to a fine of not more than ten thousand dollars.

(2) Every employer who is convicted of an offence under subsection (1) shall pay to the insurer, trustee or administrator of the pension plan in respect of which the offence was committed all amounts that the employer has wrongly failed to pay as required by this Act and the regulations.

(3) Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

23. This Act comes into force on a day to be fixed by proclamation of the Lieutenant Governor.

No. 74

THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act respecting Pension Benefits

Received and read the

First time

Second time

Third time

HON. MR. REIERSON
