

1973 Bill 88

Second Session, 17th Legislature, 22 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 88

The Licensing of Trades and Businesses Amendment Act, 1973

THE MINISTER OF CONSUMER AFFAIRS

First Reading

Second Reading

Third Reading

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THE LICENSING OF TRADES AND BUSINESSES AMENDMENT ACT, 1973

(Assented to _____, 1973)

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

1. *The Licensing of Trades and Businesses Act is hereby amended.*

2. *Section 2 is amended by adding the following clause after clause (a):*

(a1) "Director" means the person designated by the Minister as the Director of Licensing of Trades and Businesses;

3. *Section 3, clause (a) is amended by striking out the words "The Amusements Act, or The Billiard Rooms Act" and by substituting the words "or The Amusements Act".*

4. *Section 5, subsection (1) is amended*

(a) *by striking out the word "and" at the end of clause (i),*

(b) *as to clause (j)*

(i) *by striking out subclause (i) and by substituting the following subclause:*

(i) governing applications for licences or for renewals of licences and the requirements therefor,

(ii) *by striking out the word "and" at the end of subclause (vi) and by adding the following subclause after subclause (vi):*

(vii) prescribing with respect to bonds given pursuant to subclause (v)

(A) the persons or class of persons entitled to claim a share in the bond proceeds,

EXPLANATORY NOTES

1. This Bill will amend Chapter 207 of the Revised Statutes of Alberta 1970.

2. Consequential.

3. Consequential to An Act to Amend The Municipal Government Act and to Repeal The Billiard Rooms Act. (To be Proclaimed as of December 1, 1973.) Section 3, clause (a) presently reads:

3. This Act applies to all trades, businesses, industries, employments and occupations that are carried on in the Province and to which the powers of the Legislative Assembly extend, except

(a) trades, businesses, industries, employments and occupations that are for the time being licensed pursuant to The Fuel Oil Licensing Act, The Liquor Control Act, The Amusements Act, or The Billiard Rooms Act,

4. Regulation making powers of the Minister are extended. Section 5(1)(j) presently reads:

5. (1) The Minister may from time to time by order

(j) make such regulations, not inconsistent with this Act, as to the Minister seem necessary for carrying out the provisions of this Act, and without limiting the generality of the foregoing, make regulations

(i) prescribing the information which shall accompany any application for a licence or for a renewal of a licence,

(ii) prescribing standards as to the nature and condition of the premises to be occupied by the applicant for a licence in carrying on his business,

(iii) prescribing as to certain specified businesses the equipment and facilities for the proper accommodation of the public required to be provided by an applicant for a licence or for a renewal of a licence,

(iv) prescribing with regard to certain specified businesses the proof of good character or physical condition of the applicant for a licence or for a renewal of a licence that must accompany the application,

(v) requiring in respect of any specified business or description or class of business that a bond be given in respect of the applicant for a licence in the form and amount and on the conditions prescribed by the Minister, and

(vi) declaring that compliance with the requirements provided for in subclauses (i) to (v), or any of them, is to be a condition precedent to the granting of a renewal of a licence,

and

- (B) the procedure for the filing of claims by the claimants referred to in paragraph (A),
- (C) the manner by which claimants referred to in paragraph (A) shall prove their claims,
- (D) the circumstances and procedures under which all or any part of the bond proceeds shall be paid to those claimants whose claims have been proven in accordance with the regulations or into the Supreme Court of Alberta to be dealt with as that Court directs, and
- (E) the procedure for refunding to the surety or obligor under the bond any moneys remaining unexpended after all claims have been satisfied pursuant to the regulations,

(c) *by adding the following clauses after clause (j):*

- (j1) make regulations providing, as to any business or description or class of business, that any person carrying on or engaged in that business is, with respect to moneys received from customers under contracts or any specified class of contracts, a trustee of those moneys, and for that purpose, make regulations
 - (i) prescribing the persons for whose benefit the moneys are to be held in trust,
 - (ii) prescribing the rights and duties of the trustee in respect of the trust moneys,
 - (iii) prescribing the form and manner in which the trustee shall hold the trust moneys,
 - (iv) prohibiting the appropriation or conversion by the trustee of any of the trust moneys otherwise than as authorized by the regulations,
 - (v) prescribing the conditions on which the trustee may appropriate or convert all or any part of the trust moneys to his own use, and
 - (vi) prescribing the circumstances and procedures under which all or any part of the trust moneys shall be paid by the trustee to the persons for whose benefit it is held or into the Supreme Court of Alberta to be dealt with as a judge of that Court directs,

- (j2) make regulations
 - (i) prescribing as to any business or description or class of business the information to be contained in agreements used by persons carrying on or engaged in that business in their dealings with the public,
 - (ii) requiring in respect of any business or description or class of business that specified accounts and records be maintained by persons carrying on or engaged in that business, and
 - (iii) governing the service of any document, notice or order under this Act or a regulation or order under this Act,
- and

5. Section 6, subsection (1) is amended by adding after the word “may” the words “by regulation”.

6. Section 7 is amended by striking out subsections (2), (3) and (4).

7. The following section is added after section 7:

7.1 Notwithstanding that the Crown in right of Alberta has not suffered any loss or damages, a bond required pursuant to the regulations under section 5 shall be construed as a penal bond and upon forfeiture the amount owing to the Crown by the persons bound thereby shall be determined as if the Crown suffered such damages as would entitle the Crown to be indemnified to the maximum amount of liability prescribed by the bond.

8. Section 11 is amended

- (a) by striking out the words “a regulation, rule or order” and by substituting the words “this Act or a regulation or order”,*
- (b) as to clause (a) by striking out the figure “\$1,000” and by substituting the figure “\$5,000”, and*
- (c) as to clause (b) by striking out the figure “\$250” and by substituting the figure “\$1,000”.*

9. The following section is added after section 11:

11.1 A prosecution for a contravention of this Act or any regulation or order passed pursuant to this Act may be commenced within three years after the contravention but not thereafter.

5. Section 6, subsection (1) presently reads:

6. (1) The Lieutenant Governor in Council may formulate codes setting up standards of ethics, methods, practices and systems applicable to all businesses or to any description or class of business to effect an end to or prevent competitive practices that are in their nature detrimental either to the business, to persons employed therein or to the public.

6. Subsection (2) is expanded to cover all bonds and re-enacted as new section 7.1. Subsections (3) and (4) are now covered by section 5. Section 7 presently reads:

7. (1) Where the business of negotiating, soliciting and concluding sales contracts to which The Direct Sales Cancellation Act applies is designated by the Minister as a business or a description or class of business to which this Act applies and a bond given to the Minister in respect of a seller or salesman is forfeited by reason of breach of a condition of the bond requiring compliance with the provisions of The Direct Sales Cancellation Act, the proceeds of the bond may be used for the benefit of persons who, as buyers under the sales contracts, have claims against the seller following cancellation of the sales contract in accordance with section 6 of that Act.

(2) Notwithstanding that the Crown in right of Alberta has not suffered any loss or damages, the bond mentioned in subsection (1) shall be construed as a penal bond and upon forfeiture the amount owing to the Crown by the person bound thereby shall be determined as if the Crown suffered such damages as would entitle the Crown to be indemnified to the maximum amount of liability prescribed by the bond.

(3) The Minister may by order make regulations providing for

- (a) the procedure for the filing of claims by the claimants referred to in subsection (1),
- (b) the manner of proving the claims, and
- (c) the conditions on which the proceeds of the bonds are to be used to satisfy the claims filed.

(4) Any moneys remaining unexpended after the satisfaction of the claims pursuant to the regulations shall be refunded to the surety or obligor under the bond.

7. This was formerly section 7, subsection (2) but has been expanded to cover all bonds.

8. Fines increased. Section 11 presently reads:

11. A person who contravenes any of the provisions of a regulation, rule or order passed pursuant to this Act is guilty of an offence and liable on summary conviction

- (a) if the offender is a corporation to a fine of not less than \$200 and not more than \$1,000, and
- (b) in any other case to a fine of not less than \$50 and not more than \$250, and in default of payment to imprisonment for a term not exceeding 90 days.

9. Extends time for prosecuting.

10. The following sections are added after section 12:

12.1 (1) Where in a prosecution under this Act or any regulation or order passed pursuant to this Act it is alleged that the accused carried on or engaged in a business or a description or class of business designated pursuant to this Act without being the holder of a licence or while his licence was suspended, evidence of one transaction is prima facie proof that the accused carried on or engaged in that business or description or class of business.

(2) A certificate purporting to be under the hand of the Director and stating that on a specified day or during a specified period

(a) the person named in the certificate was or was not licensed pursuant to this Act, or

(b) the licence of the person named in the certificate had been suspended pursuant to this Act,

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

12.2 When a corporation is convicted of an offence under this Act or a regulation or order made pursuant to this Act, every officer, director, employee or agent of the corporation who prescribed to or authorized the commission of the offence or who assented thereto or acquiesced or participated therein is also guilty of an offence and is liable on summary conviction to the penalty provided in section 11, clause (b).

11. The following section is added after section 13:

14. (1) The Director, or a person authorized by him in writing, may

(a) upon receipt of a complaint from a person interested, or when he considers it necessary, investigate and inquire into any matter concerning the administration of this Act,

(b) for the purpose of such investigation and inquiry, inquire into and examine any book, document, paper, correspondence or record of the person in respect of whom the investigation is being made, and

(c) seize and take possession of any thing described in clause (b).

(2) A person who has the custody, possession or control of any book, document, paper, correspondence or record referred to in subsection (1) shall upon demand produce them and permit the inspection of them by the Director or the person authorized by him.

10. 12.1 Evidence.

12.2 Offence of officers.

11. Investigation.

(3) A person who does not comply with subsection (2) is guilty of an offence and is liable on summary conviction to the penalty provided in section 11.

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