
Second Session of the 25th Legislature, 25 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 66

THE ATTORNEY GENERAL STATUTES
AMENDMENT ACT, 1976 (NO. 2)

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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BILL 66

1976

**THE ATTORNEY GENERAL STATUTES
AMENDMENT ACT, 1976 (NO. 2)**

(Assented to _____, 1976)

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

The Assignments of Book Debts Act

*1. (1) The Assignments of Book Debts Act is amended by this
section.*

(2) The following section is added after section 7:

7.1 (1) Any person entitled to the benefit of an assignment of
book debts may postpone his rights thereunder by filing in the
Central Registry a postponement in Form 3 in the Schedule.

(2) The Registrar shall note the fact of the postponement
against each entry in the books of his office respecting the
registration of the assignment of book debts, and shall make a
like notation upon the assignment registered in his office.

(3) The registration has the effect of postponing the rights
with regard to the book debts of the person named in the
postponement in the same way and to the same extent as if
the postponed assignment of book debts had been executed
and registered immediately after the assignment, or the last
of such assignments, to which it is expressed to be
postponed.

Explanatory Notes

The Assignments of Book Debts Act

1. (1) This section will amend chapter 25 of the Revised Statutes of Alberta 1970.

(2) This amendment will provide a postponement provision relating to assignments of book debts similar to that which will be provided for bills of sale evidencing chattel mortgages.

(3) This amendment incorporates a provision similar to that in The Bills of Sale Act and The Conditional Sales Act. Section 12 presently reads:

12. (1) A judge of the district court upon being satisfied that an omission to register or file a document within the time prescribed by this Act, or that an omission or misstatement in a document registered or filed under this Act, was accidental or due to inadvertence or impossibility or other sufficient cause, may, subject to the rights of other persons accrued by reason of the omission or misstatement, extend the time for registration or filing or order the omission or misstatement to be rectified, on any terms and conditions he directs.

(2) An order under this section, or a copy thereof, shall be filed in the Central Registry.

(3) The rights of other persons accrued up to the time of the filing of the order or a copy thereof in the Central Registry, by reason of the omission or misstatement referred to in subsection (1), are not affected by the order.

(4) Consequential amendment.

(3) Section 12 is struck out and the following section is substituted therefor:

12. (1) Notwithstanding any other provision of this Act, an assignment or renewal statement not registered within the times prescribed in this Act may be registered at a later date and that registration has the same effect as a registration within the times prescribed except that it does not affect rights which have accrued prior to the late registration.

(2) Subject to the rights of other persons accrued by reason of any omission or misstatement referred to in this subsection, a judge of the District Court, on being satisfied that any omission or misstatement in any document filed under this Act was accidental or due to any other sufficient cause, may in his discretion order the omission or misstatement to be rectified, on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter or thing as the judge sees fit to direct.

(4) The following form is added after Form 2:

FORM 3
(Section 7.1)

**POSTPONEMENT OF ASSIGNMENT
OF BOOK DEBTS**

CANADA

PROVINCE OF ALBERTA

To the of the

I, of hereby agree
(name of assignee) (address of assignee)

to the postponement of my rights as assignee in the following

book debts, namely
(description of book debts as contained in the assignment)

to the rights in and to the said
(description of assignment that is

.....
being given priority)

Signed this day of, 19 ...

Witness:

(Signature of postponer)

The Bills of Sale Act

2. *(1) The Bills of Sale Act is amended by this section.*

(2) Section 16 is amended by adding after subsection (3) the following subsections:

(4) Any person entitled to the benefit of a registered bill of sale evidencing a mortgage of chattels may postpone his rights thereunder by filing in the Central Registry or Vehicle Registry, as the case may be, a postponement in Form 3 in the Schedule.

(5) The proper officer in whose office a postponement is registered shall note the fact of a postponement against each entry in the books of his office respecting the registration of the bill of sale, and shall make a like notation upon the bill of sale or copy filed in his office.

(6) The filing has the effect of postponing the rights with regard to the chattels of the person named in the postponement in the same way and to the same extent as if the postponed bill of sale had been executed and registered immediately after the bill of sale, conditional sale, garageman's lien or other charge, or the last of such documents, to which it is expressed to be postponed.

(3) The Schedule is amended by adding after Form 2 the following form:

The Bills of Sale Act

2. (1) This section will amend chapter 29 of the Revised Statutes of Alberta 1970.

(2) This amendment will permit the postponement in favour of specified lien holders of the rights of persons holding bills of sale evidencing chattel mortgages.

(3) Consequential amendment.

FORM 3
(Section 16)

POSTPONEMENT OF BILL OF SALE

CANADA

PROVINCE OF ALBERTA

To the of the

I, of hereby agree
(name of mortgagee) (address of mortgagee)

to the postponement of my rights as mortgagee in the following
chattels, namely
(description of chattels as contained in the bill of sale)

to the rights in and to the said
(description of document that is

.....
being given priority)

Signed this day of, 19 ...

Witness:
(Signature of postponer)

The Bulk Sales Act

3. (1) *The Bulk Sales Act is amended by this section.*

(2) *Section 1 is amended*

(a) *by adding after clause (e) the following clause:*

(e.1) "secured trade creditor" means a creditor of the
vendor in respect of

(i) stock, money or services furnished for
the purpose of enabling the seller to
carry on business, or

(ii) rental of premises in or from which the
vendor carries on business,

The Bulk Sales Act

3. (1) This section will amend chapter 37 of the Revised Statutes of Alberta 1970 in line with the model Act recommended by the Uniform Law Conference of Canada.

(2) Definitions.

who holds security or is entitled to a preference in respect of his claim;

and

(b) by adding after clause (i) the following clause:

(i.1) "unsecured trade creditor" means a creditor to whom a seller is indebted for stock, money, or services, furnished for the purpose of enabling the seller to carry on a business, whether or not the debt is due, and who holds no security or who is entitled to no preference in respect of his claim;

(3) Section 5 is amended by striking out subsection (2) and by substituting therefor the following subsection:

(2) The statements shall show

(a) the names and addresses of the unsecured trade creditors and the secured trade creditors of the vendor,

(b) the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the vendor to each of them, and

(c) with respect to the claims of the secured trade creditors, the nature of their security and whether their claims are due or, in the event of sale, become due on the date fixed for the completion of the sale.

(4) Section 6, clause (b) is amended by striking out the words "by creditors" and by substituting therefor the words "by unsecured trade creditors".

(5) Section 7 is amended by striking out the word "creditors" wherever it occurs and by substituting therefor the words "unsecured trade creditors".

(6) Schedule A is struck out and the following schedule is substituted therefor:

(3) Consequential to the amendment in subsection (4).

(4) This amendment will require consents to the proposed sale only from unsecured trade creditors rather than all creditors.

(5) By this amendment the trustee will be selected by the unsecured trade creditors.

(6) This amendment will substitute a new declaration separating secured and unsecured trade creditors.

SCHEDULE A

(Section 5)

STATEMENT AS TO SELLER'S CREDITORS

Statement showing names and addresses of all unsecured trade creditors and secured trade creditors of of the of, in the of and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due by him to each of them.

UNSECURED TRADE CREDITORS

Name of Creditor	Address	Amount
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SECURED TRADE CREDITORS

Name of Creditor	Address	Amount	Nature of security	Due or becoming due on the date fixed for the completion of the sale
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I,, of the of, in the of, make oath and say:

1. That the foregoing statement is a true and correct statement
 - (a) of the names and addresses of all the unsecured trade creditors of the said and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said to each of the said unsecured trade creditors; and
 - (b) of the names and addresses of all the secured trade creditors of the said and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said to each of the said creditors, the nature of their security, and whether they are or in the event of the sale will become due and payable on the date fixed for the completion of the sale.
(and, if sworn by someone other than the seller)

2. That I am and have a personal knowledge of the facts herein declared to.

And I make this solemn declaration conscientiously believing it to be

true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at the
..... of
in the Province of Alberta,
this day of
A.D. 19 ...

}
A Commissioner for Oaths
or Notary Public

(7) Schedule B is amended by striking out the word "creditors" and by substituting therefor the words "unsecured trade creditors".

The Conditional Sales Act

4. (1) The Conditional Sales Act is amended by this section.

(2) The following section is added after section 8:

8.1 (1) Any person entitled to the benefit of a conditional sale agreement may postpone his rights thereunder by filing in the Central Registry or Vehicle Registry, as the case may be, a postponement in Form 1 in the Schedule.

(2) The proper officer in whose office the postponement is registered shall note the fact of the postponement against each entry in the books of his office respecting the registration of the conditional sale agreement, and shall make a like notation upon the conditional sale agreement or copy registered in his office.

(3) The registration has the effect of postponing the rights with regard to the goods of the person named in the postponement in the same way and to the same extent as if the postponed conditional sale agreement had been executed and registered immediately after the conditional sale, bill of sale, garageman's lien or other charge, or the last of such documents, to which it is expressed to be postponed.

(3) Section 16 is struck out and the following section is substituted therefor:

16. Where any goods or chattels that are the subject of a conditional sale agreement become, after registration of the agreement, affixed to realty, those goods or chattels remain subject to the conditional sale agreement and are not realty,

(7) Consequential to the amendments to section 6 of the Act in subsection (4) of this section.

The Conditional Sales Act

4. (1) This section will amend chapter 61 of the Revised Statutes of Alberta 1970.

(2) This amendment will provide a postponement provision relating to conditional sale agreements similar to that which will be provided for bills of sale evidencing chattel mortgages.

(3) This amendment will recast the section to correspond with a similar provision added to The Bills of Sale Act in the Spring sitting. Section 16 presently reads:

16. (1) Where a registered bill of sale evidences a mortgage of chattels, the mortgagee, on payment of all moneys due or accruing due under the bill of sale, shall sign and deliver to the mortgagor a memorandum in writing stating that fact.

(2) Where a registered bill of sale evidences a mortgage of chattels, the mortgagee on payment of part of the moneys due or accruing under the bill of sale, shall upon the demand of the mortgagor sign and deliver to him a memorandum stating that fact and stating the amount so paid.

(3) A memorandum under subsection (1) or subsection (2)

(a) may be registered in which case it shall be accompanied by an affidavit of an attesting witness of the execution thereof, and

(b) may be in Form 2.

but the owner or purchaser of the realty, or a mortgagee or encumbrancee of the realty, has the right, as against the manufacturer, bailor or seller thereof or a person claiming through or under any of them, to retain the goods or chattels on payment of the amount due and owing under the registered conditional sale agreement.

(4) The following Schedule is added after section 22:

FORM 1

(Section 8.1)

**POSTPONEMENT OF CONDITIONAL
SALE AGREEMENT**

CANADA

PROVINCE OF ALBERTA

To the of the

I, hereby agree
(name of vendor) (address of vendor)

to the postponement of my rights as vendor in the following chattels,

namely
(description of goods as contained in the conditional sale agreement)

to the rights in and to the said
(description of document that is being

.....
given priority)

Signed this day of, 19 ...

Witness:
(Signature of postponer)

The District Court Act

5. (1) The District Court Act is amended by this section.

(4) Consequential amendment.

The District Court Act

5. (1) This section will amend chapter 111 of The Revised Statutes of Alberta 1970.

(2) The following section is added after section 15:

15.1 (1) A council comprised of the judges of the District Court shall, at least once in every year upon a day fixed by the Chief Judge, and of which he shall cause notice to be given the judges, assemble for the purpose of considering the operation of this Act and the Alberta Rules of Court, the

working of the offices of, and the arrangements governing the performance of duties by, the officers of the Court, and of inquiring into and examining any defects that appear to exist in the procedure or the administration of justice in The District Court of Alberta.

(2) The council shall report concerning the meeting to the Lieutenant Governor in Council.

The Judicature Act

6. (1) The Judicature Act is amended by this section.

(2) Section 6, subsection (2), clause (b) is amended by striking out the word "seven" and by substituting therefor the word "eight".

(3) Section 31 is amended by adding after subsection (1) the following subsection:

(1.1) When in an action or other proceeding a question arises as to whether an enactment of the Parliament of Canada or of the Legislature of Alberta is the appropriate legislation applying to or governing any matter or issue, no decision may be made thereon unless notice has been given to the Attorney General for Alberta and the Attorney General for Canada.

(4) The following section is added after section 39:

39.1 (1) In this section, "Alberta Rules of Court" means the Alberta Rules of Court, filed as Alberta Regulation 390/68 as amended prior to the commencement of this section.

(2) The Alberta Rules of Court are hereby validated notwithstanding that any provision therein may affect substantive rights.

(2) This amendment will create a council of judges to review the operation of the court.

The Judicature Act

6. (1) This section will amend chapter 193 of the Revised Statutes of Alberta 1970.

(2) This amendment will reflect an increase in the number of judges of the Appellate Division.

(3) This amendment will clarify that the Attorney General must be given notice where questions of supremacy of legislation are raised.

(4) This amendment will validate any of the Rules of Court which may contain substantive law.

The Partnership Act

7. (1) *The Partnership Act is amended by this section.*

(2) Section 84 is amended by striking out subsection (1) and by substituting therefor the following subsection:

84. (1) The declaration shall be filed within six months after the formation of the partnership.

(1.1) A declaration submitted for filing more than six months after the formation of the partnership shall not be refused for filing by reason only of the lapse of time.

(3) Section 85 is amended

(a) as to subsection (2) by striking out clause (d) and by substituting therefor the following clause:

(d) be filed within six months of the time when the business name is first used.

(b) by adding after subsection (2) the following subsection:

(3) A declaration submitted for filing more than six months after the time when the business name is first used shall not be refused for filing by reason only of the lapse of time.

(4) Section 87 is struck out and the following section is substituted therefor:

87. Every member of a partnership and every other person required to file a declaration under this Act who fails to comply with the provisions of this Act respecting filing is guilty of an offence and liable upon summary conviction to a fine of not more than \$500.

The Small Claims Act

8. (1) *The Small Claims Act is amended by this section.*

(2) Section 3 is amended

The Partnership Act

7. (1) This section will amend chapter 271 of the Revised Statutes of Alberta 1970.

(2) This amendment will do away with obtaining a fiat for late filing.

(3) Similar to subsection (2) in the case of declarations concerning trade names.

(4) This amendment will increase the penalty for late filing.

The Small Claims Act

8. (1) This section will amend chapter 343 of the Revised Statutes of Alberta 1970.

(2) This amendment will increase the jurisdiction of a provincial judge under this Act to include actions in either debt or damages where the amount claimed does not exceed \$1,000. The present monetary limit is \$500 for an action in debt and \$200 for an action for damages.

(a) by striking out the figure "\$500" wherever it appears in clauses (a) and (b) and by substituting therefor the figure "\$1,000", and

(b) by striking out the figure "\$200" wherever it appears in clauses (a) and (b) and by substituting therefor the figure "\$1,000".

(3) Section 29 is amended by striking out subsection (4) and by substituting therefor the following subsection:

(4) Where the defendant's established counterclaim exceeds \$1,000, the defendant may

(a) abandon that portion of his established counterclaim that exceeds \$1,000 and obtain judgment in his favour for the \$1,000 established, or

(b) apply a sufficient amount of his established counterclaim as is necessary to satisfy any claim established by the plaintiff and sue for the balance in any court of competent jurisdiction.

The Trustee Act

9. (1) The Trustee Act is amended by this section.

(2) Section 5 is amended by adding after clause (e) the following clause:

(e.1) bonds, debentures or other evidences of indebtedness issued by a corporation incorporated in Canada if at the date of the investment or loan the preferred shares or common shares of that corporation are authorized investments under clause (i) or (j);

Commencement

10. (1) This Act, except section 8, comes into force on the day upon which it is assented to.

(2) Section 8 comes into force on a date to be fixed by Proclamation.

(3) Consequential amendment.

The Trustee Act

9. (1) This section will amend chapter 373 of The Revised Statutes of Alberta 1970.

(2) This amendment will add an investment provision contained in The Trust Companies Act and other similar legislation relating to investments but not presently included in The Trustee Act.