

1978 BILL 67

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 67

THE CONSUMER AND CORPORATE AFFAIRS STATUTES
AMENDMENT ACT, 1978

THE MINISTER OF CONSUMER
AND CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 67

1978

THE CONSUMER AND CORPORATE AFFAIRS STATUTES AMENDMENT ACT, 1978

(Assented to _____, 1978)

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

The Credit Union Act

1(1) *The Credit Union Act is amended by this section.*

(2) *Section 19 is amended*

(a) *by repealing subsection (3) and substituting the following:*

(3) Notwithstanding section 35(1), a credit union may accept money on deposit from or make loans to

(a) an association as defined in *The Co-operative Associations Act*,

(b) a company registered under *The Companies Act*,

(c) a trust company registered under *The Trust Companies Act*,

(d) a municipal corporation or its agent,

(e) the Government of Alberta or its agent, or

(f) the Government of Canada or its agent.

(b) *by repealing subsection (5) and substituting the following:*

(5) No officer or employee of a credit union shall permit a person to withdraw funds from the deposit of a member or depositor unless the funds on deposit are equal to or in excess of the amount sought to be withdrawn.

Explanatory Notes

The Credit Union Act

1(1) This section will amend chapter 74 of the Revised Statutes of Alberta 1970.

(2) This amendment permits a member to establish a line of credit with the credit union and permits the credit union to write off uncollectible overdrafts.

Section 19(5) presently reads:

(5) No officer or employee of a credit union shall permit any withdrawal of funds from the deposit of a member unless the funds in the deposit are equal to or in excess of the amount sought to be withdrawn, and an officer or employee who contravenes this subsection is guilty of an offence under this Act.

(5.1) Notwithstanding subsection (5), an officer or employee of a credit union may permit a person to withdraw funds in excess of the amount in the deposit of a member or depositor if the member or depositor has executed a line of credit loan agreement in favour of the credit union equal to or in excess of the amount sought to be withdrawn.

(5.2) An officer or employee who contravenes subsection (5) is guilty of an offence.

(5.3) If an overdraft occurs in a member's or depositor's deposit and remains outstanding, the credit union shall write off the overdraft against the current income of the credit union in the accounting period during which the overdraft occurred.

(5.4) If an overdraft is written off under subsection (5.3), the board of directors of the credit union shall be notified forthwith.

and

(c) in the following subsections by adding "or depositors" after "members":

subsection (2)(a) and (b);
subsection (4).

(3) Section 31 is repealed and the following is substituted:

31(1) An assignment of shares and

- (a) a promissory note, or
- (b) a line of credit loan agreement

shall be taken by a credit union for each loan granted by it.

(2) Notwithstanding subsection (1), a credit union may make a loan to a borrower described in section 19(3) without taking an assignment of shares.

(4) Section 60 is amended by striking out "December" and substituting "October".

(5) Section 64(a) is amended by striking out "March" and substituting "January".

(3) Section 31 presently reads:

31 A promissory note and an assignment of shares shall be taken by a credit union for each loan granted.

(4) Section 60 presently reads:

60 The fiscal year of a credit union ends on the 31st day of December.

(5) Section 64 presently reads:

64 Every credit union shall

(a) before the end of March in each year send to the Director and the Stabilization Board an audited statement of the receipts and expenditures, assets and liabilities of the credit union and such other information as may be required by the Director or the Stabilization Board, and

(b) supply free to each shareholder, on his application, a copy of the latest annual return.

(6) *The following is added after section 64:*

64.1 A credit union shall comply with the provisions of section 146 of *The Companies Act* to the extent and in the form required by the Registrar.

(7) *The following is added after section 91:*

91.1 On the dissolution of a credit union, the Corporation shall open and keep a trust account for money in the account of a member of the credit union who cannot be located.

(8) *Section 93(1) is repealed and the following is substituted:*

93(1) In each quarter of the fiscal year of the Corporation, the Board shall assess and levy upon a credit union such sums as the Board determines not exceeding 1/16th of 1% of the aggregate of the average month end balance outstanding on shares, savings, deposits and borrowings of the credit union.

(9) *Section 94 is amended by adding the following after subsection (4):*

(5) The Board shall review the adequacy of the Fund at least once a year.

(6) At the annual meeting of the Federation, the Board shall make a report with respect to

(a) the basis of any assessment made by the Board under this Act, and

(b) the findings of the Board with respect to its review of the Fund.

(10) *In the following provisions “or depositor” is added after “member” wherever it occurs:*

section 19(6);
section 96(1);
section 97(1) and (2).

(6) This amendment requires a credit union to file with the Registrar of Companies the annual report as to shares, shareholders, debts, etc. required by the Registrar under The Companies Act.

(7) Requires the Corporation to hold in trust the money deposited by members who cannot be located.

(8) Section 93(1) presently reads:

93(1) The Board shall each year assess and levy upon each credit union such sums as the Board determines not exceeding one-quarter of 1 per cent of the aggregate of the shares, savings and deposits of the credit union.

(9) The Board must review the Stabilization Fund annually and report to the membership of the Federation with respect to any assessment and the Fund.

(10) Consequential to the amendments made in section 1(2) of this Bill.

The Debtors' Assistance Act

2(1) The Debtors' Assistance Act is amended by this section.

(2) Section 4 is amended by adding the following after subsection (2):

(3) The Board may authorize a person who is not a member of the Board to do any act or thing required or permitted to be done by the Board.

(4) If the person authorized to do any act or thing under subsection (3) is not an employee of the Government, that person may be paid such fees and expenses as the Board sees fit.

(3) Section 5 is amended by adding the following after clause (d):

(d.1) to assist the parties to a proceeding in which maintenance or alimony is an issue in settling the amount of maintenance or alimony to be paid,

(d.2) to provide a court, on its request, with a report as to the finances of the parties to a proceeding in which maintenance or alimony is an issue,

(4) The following is added after section 6:

6.1(1) If an application for an order, the variation of an order or the enforcement of an order directing the payment of alimony or maintenance is made under any other Act, the court to which the application is made may request the Board to inquire into the finances of the parties to the application and report its findings to the court.

(2) This Act applies to an inquiry made under subsection (1) as if the parties to the application were debtors.

(3) A report requested under subsection (1) may be received by the court requesting it as prima facie proof of the facts stated in it, without proof of the authority or signature of the person signing it.

The Franchises Act

3(1) The Franchises Act is amended by this section.

The Debtors' Assistance Act

2(1) This section will amend chapter 86 of the Revised Statutes of Alberta 1970.

(2) The Board may delegate its authority to a person who may be paid for his services. Section 4 presently reads:

4(1) The Board constituted by this Act is a corporation.

(2) For the purpose of performing any duty or function or exercising any power that is conferred or imposed upon the Board by this Act, any member of the Board may act for and on behalf of the Board, and any act or thing so done shall be deemed to have been done by the Board.

(3) Extends the powers, duties and functions of the Board.

(4) The Board may assist a court in its financial inquiries in an application for maintenance or alimony.

The Franchises Act

3(1) This section will amend chapter 38 of the Statutes of Alberta, 1971.

(2) Section 1(1), clause 5 is repealed and the following is substituted:

5. “Director” means the Director or any Deputy Director of the Commission;

The Trust Companies Act

4(1) The Trust Companies Act is amended by this section.

(2) Section 20 is repealed.

(3) Section 72 is amended

(a) by repealing subsection (1)(c) and substituting the following:

(c) “capital security” means a share of any class of shares of a company or a bond, debenture, note or obligation of a company whether secured or unsecured;

(b) in subsection (2)(d) by striking out “capital share” wherever it appears and substituting “capital security”.

(4) In the following provisions “capital shares” is struck out wherever it occurs and “capital securities” is substituted:

section 72(2)(b) and (c);
section 73(1), (2) and (3);
section 76(1).

(5) Section 81 is amended

(a) in subsection (1) by adding “and the minute books mentioned in section 80” after “records mentioned in section 79”, and

(b) in subsection (2) by adding “or all or any part of the minute books mentioned in section 80” after “registers mentioned in section 79, subsection (1)”.

(2) The appointment of a Director for this Act becomes an internal decision of the Securities Commission. Section 1(1), clause 5 presently reads:

5. "Director" means the person designated by the Minister as the Director of Franchises;

The Trust Companies Act

4(1) This section will amend chapter 372 of the Revised Statutes of Alberta 1970.

(2) Section 20 repeats the provisions of section 80. Section 20 presently reads:

20 The transactions of all annual and special general meetings of the company and of all meetings of the board of directors shall be entered in the minute books of the company.

(3) Section 72(1)(c) defines "capital share" for the purpose of the provisions relating to "insider trading". The definition presently reads:

(c) "capital share" means any share of any class of shares of a corporation;

The new definition of "capital security" is the same as the definition of that expression in Part 11 of The Securities Act dealing with insider trading. At the time of the enactment of The Trust Companies Act in 1967, Alberta trust companies were not empowered to issue any debt securities but since have been empowered to issue debentures and subordinated notes. The new definition of "capital security" reflects that change.

(4) Consequential to the amendments in section 4(3) of this Bill.

(5) Section 81 presently reads in part:

81(1) Every company shall cause the documents, registers, books of account and accounting records mentioned in section 79

(a) to be open for inspection by any director during the normal business hours of the company, and

(b) except as provided in subsection (3), to be kept at the head office of the company.

(2) Every person who removes or assists in removing from Alberta any of the documents and registers mentioned in section 79, subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

(6) Section 82(4) is amended by striking out “all minutes” and substituting “any of the minutes”.

(7) The following is added after section 82:

82.1(1) Any document, register, record, book, minutes, file or account required by this Act to be kept by a company may be kept in photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing the text in intelligible written form within a reasonable time.

(2) If under section 81(1) or 82(1) a person wishes to make an inspection of any document, register, record, book, minutes or file kept by the company in a form other than a written form, the company shall make available to that person within a reasonable time a reproduction of the text in intelligible written form.

(8) Section 90 is amended by adding the following after subsection (3):

(3.1) If any books, accounts, documents or vouchers to which the auditors have a right of access under subsection (3) or any information that the auditors may require under subsection (3) are kept by the company in a form other than a written form, the directors and officers shall give the auditors access to the books, accounts, documents, vouchers or information and to the results of the recording of details of mechanical and electronic data processing systems and programs to illustrate what the systems do and how they operate in order to enable the auditors to

(a) reproduce the text of those books, accounts, documents or vouchers or that information in intelligible written form, and

(b) search those books, accounts, documents or vouchers or that information and retrieve any data relating to them.

(9) Section 108(1)(a) is repealed and the following is substituted:

(6) Section 82(4) presently reads:

(4) Every company shall, within seven days after a request, provide to a shareholder a copy of all minutes mentioned in section 80 on payment of such sum as the company may prescribe.

(7) This section permits a company to use microfilm and computers as a form of record keeping.

(8) Section 90(3) presently reads:

(3) The auditors have right of access at all times to the books and accounts, cash, securities, documents and vouchers of the company, and are entitled to require from the directors and officers of the company such information and explanation as in their opinion may be necessary to enable the auditors to report to the shareholders under this section.

(9) Consequential to amendments in section 4(13) of this Bill. Section 108(1)(a) presently reads:

(a) “encumbrance”, with reference to real estate, means an instrument, agreement, notification, memorandum or other document

(i) making the real estate security for the payment of money, or

(ii) charging the real estate with the payment of money,

and includes a caveat in respect of an instrument, agreement, notification, memorandum or other document mentioned in subclause (i) or (ii),

(a.01) “notification”, with reference to real estate, means an instrument, agreement, notification, memorandum or other document

(i) having the effect of making the real estate liable to be sold, leased or otherwise dealt with for the purpose of satisfying a debt or claim, or indicating that it may be so liable, or

(ii) having the effect of prohibiting or restricting the right of the owner to alienate the real estate or any interest in the real estate, or to mortgage, charge or otherwise deal with the real estate,

and includes a caveat in respect of an instrument, agreement, notification, memorandum or other document mentioned in subclause (i) or (ii),

(10) Section 111(1) is amended

(a) in clause (a)(iv) by striking out “, 1945”

(b) in clause (a) by adding “or” after subclause (vii) and adding the following after subclause (vii):

*(viii) issued by a loan company designated as a mortgage investment company under the *Loan Companies Act* (Canada),*

and

(c) by striking out “and” at the end of clause (h) and adding the following after clause (h):

*(h.1) shares of the capital stock of a loan company designated as a mortgage investment company under the *Loan Companies Act* (Canada), and*

(11) Section 112(1.1)(c) is amended by adding “the company” before “is the registered and beneficial owner”.

108(1) In this Division,

(a) “encumbrance or notification”, with reference to real estate, means any instrument, agreement, notification, memorandum or other document

(i) making the real estate security for the payment of money, or

(ii) charging the real estate with payment of money, or

(iii) having the effect of making the real estate liable to be sold, leased or otherwise dealt with for the purpose of satisfying a debt or claim, or indicating that it may be so liable, or

(iv) having the effect of prohibiting or restricting the right of the owner to alienate the real estate or any interest therein, or to mortgage, charge or otherwise deal with the real estate,

and includes any caveat in respect of any instrument, agreement, notification, memorandum or other document mentioned in subclauses (i) to (iv),

(10) Corrects a reference to the Bretton Woods Agreements Act (Canada) and adds the power to invest in designated loan companies.

(11) Corrects a drafting omission.

(12) *Section 115 is amended*

(a) *by repealing subsection (1)(a) and substituting the following:*

(a) “approved lender”, “approved loan” and “insured loan” have the meanings given them by the *National Housing Act*, chapter N-10 of the Revised Statutes of Canada 1970, as amended from time to time;

and

(b) *by repealing subsection (2)(a) and substituting the following:*

(a) if it is an approved lender, making approved loans on the security of a first mortgage in favour of the lender in accordance with the *National Housing Act*, chapter 188 of the Revised Statutes of Canada 1952, as amended from time to time or the *National Housing Act*, chapter N-10 of the Revised Statutes of Canada 1970, as amended from time to time,

(13) *Section 124 is amended*

(a) *by repealing subsection (1.1),*

(b) *in subsection (4)(a) by striking out “encumbrance or”,*
and

(c) *by repealing subsection (5).*

(14) *Section 168 is amended by renumbering the section as subsection (1) and by adding the following:*

(2) If any registers, books of account, accounting records, minutes, documents, files, records or other information pertaining to the affairs and condition of a company are kept by the company in a form other than a written form, the directors and officers shall give the Director, or any person or firm authorized under section 167, at any time within business hours, access to that information and to the results of the recording of details of mechanical and electronic data processing systems and programs to illustrate what the systems do and how they operate in order to enable the Director or that person or firm

(a) to reproduce the text of those registers, books of account, accounting records, minutes, documents, files, records or that information in intelligible written form,
and

(b) to search those registers, books of account, accounting records, minutes, documents, files, records

(12) Corrects references to the 2 National Housing Acts (Canada).

(13) (13)(a) corrects a drafting omission.

Section 124(4) now prohibits an investment or loan in or upon a land mortgage if the title is encumbered in particular ways other than by a mortgage. Restrictions on mortgages are still affected by section 114(1) but a trust company can, as a result of this amendment, have a prior mortgage to a 3rd party postponed in favour of a mortgage to the trust company or buy a 1st mortgage when there is a 2nd mortgage registered against the title.

(14) Section 168 presently reads:

168 The Director, or any person or firm authorized under section 167, is entitled, at any time within business hours, to access to the registers, books of account, accounting records, minutes, documents, files, records, cash, securities or other property of the company for the purpose of inspection and examination and of taking extracts therefrom.

or that information and to retrieve any data relating to them,

for the purposes of making the inspection and examination and of taking extracts from them.

(15) Section 169 is amended by adding the following after clause (b):

(b.1) who refuses or fails to give access to any result or program to any person who is entitled to access to that result or program under section 90 or 168, or

(16) The Trust Companies Amendment Act, 1975 is amended

(a) by repealing section 6, and

(b) in section 42(2) by striking out “section 6;”.

(17) The Trust Companies Amendment Act, 1977 is amended in section 9 by striking out “106(1)(a)” and substituting “106(1)(b)”.

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

(15) Section 169 presently reads:

169 Every director, officer, employee or agent of a company

(a) who refuses or neglects to make any entry in any register, book of account or other book or record of the company that he is required to make by this Act or the regulations or the by-laws of the company, or

(b) who refuses or fails to make available any register, book of account, accounting record, minutes, documents, files, records, cash, securities or other property of the company under his control or in his possession for inspection or auditing for the general purposes of the company or for the purposes of inspection and examination under this Act or the regulations, or to permit extracts to be taken therefrom, or

(c) who hinders or obstructs the Director or any person or firm authorized under section 167 from making an inspection and examination under this Part,

is guilty of an offence.

(16) This amendment is not to be proclaimed.

(17) Corrects a reference.