

1979 BILL 55

First Session, 19th Legislature, 28 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

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**THE SALE OF CHATTELS BY PUBLIC AUCTION
AMENDMENT ACT, 1979**

MR. FJORDBOTTEN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

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Bill 55
Mr. Fjordbotten

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THE SALE OF CHATTELS BY PUBLIC AUCTION AMENDMENT ACT, 1979

(Assented to , 1979)

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

1 The Sale of Chattels by Public Auction Act is amended by this Act.

2 Section 2 is amended by renumbering clause (a) as (a.1) and by adding the following before clause (a.1):

(a) "Administrator" means an employee of the Government under the administration of the Minister appointed by the Minister as the Administrator of Public Auctions;

3 Section 6 is repealed and the following is substituted:

6(1) A licence shall not be issued under this Act to a person until that person has delivered to the Administrator a bond in a form approved by the Minister and in an amount and on conditions that are satisfactory to the Minister.

(2) A bond delivered to the Administrator by an auction sales company is forfeited if a person

(a) has obtained a judgment against the auction sales company for failure to perform, in relation to him, obligations that also constitute a breach of a condition of a bond delivered to the Administrator, and

(b) has delivered to the Minister notice of the judgment, that has become final by reason of lapse of time or of being confirmed by the highest court to which it may be appealed,

Explanatory Notes

1 This Bill will amend chapter 326 of the Revised Statutes of Alberta 1970.

2 Definition.

3 Section 6 presently reads:

6(1) No licence shall be issued under this Act to any person until that person has delivered to the Minister such securities as may be approved by the Minister or a bond, in such form as may be approved by the Minister, issued by a company authorized to carry on the business of guarantee and fidelity insurance in the Province to the effect that the company binds itself to pay the face amount of the bond, which shall be in an amount satisfactory to the Minister, forthwith to the Minister on behalf of the applicant for the licence if the applicant makes default in performing his obligations to the person by whom he is engaged to hold a sale by public auction, and containing a provision that the bond will not be cancelled by the company until 30 days after the company has given notice to the Minister of its intention to cancel the bond.

(2) Where a person has against an auction sales company a claim arising out of a default on the part of the auction sales company in the performance of his obligations as an auction sales company to the claimant at any time during which a bond issued pursuant to this section in respect of the auction sales company is in effect, the claimant, notwithstanding that he is not a party to the bond,

(a) is entitled on recovering judgment for the claim against the auction sales company to have the sum payable under the bond applied in or towards the

and the person may make an application to the Minister to pay him, notwithstanding that he is not a party to the bond, the money payable under the bond to satisfy in whole or in part the amount payable under the judgment.

(3) An application pursuant to subsection (2) shall be accompanied by

(a) a statutory declaration that describes the particulars of the breach of the conditions of the bond by the auction sales company and the amount of the claim, and

(b) a certified copy of the judgment for the claim against the auction sales company.

(4) If a bond is forfeited under subsection (2) the surety shall, within 30 days of receiving notice from the Minister, pay to the Minister the principal sum of the bond.

(5) The Minister may one year after a bond is forfeited pay to persons who have applied under this section and whose claims have been accepted by him by that time, the proceeds of a bond that has been forfeited under subsection (2).

(6) If the total amount of all claims accepted by the Minister exceeds the amount of the bond, the Minister may pay the proceeds of the bond on a pro rata basis.

(7) If a person who is licensed under this Act conducts a sale by auction to which *The Seizures Act* applies or that is held pursuant to a court order, then notwithstanding anything in this Act, subsections (2), (3), (4), (5) and (6) apply to a breach of conditions of a bond by the auction sales company in respect of that sale.

4 Section 8 is repealed and the following is substituted:

8(1) The Administrator may cancel or suspend a licence issued under this Act

(a) if the auction sales company contravenes or fails to comply with this Act or the regulations, or

(b) if, in the opinion of the Administrator, it is in the public interest to do so.

(2) A person whose licence has been cancelled or suspended pursuant to subsection (1) may appeal the cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being notified in writing of the cancellation or suspension.

satisfaction of the amount for which he has so obtained judgment for similar claims against the auction sales company, and

(b) may, on behalf of himself and persons having similar judgments against the auction sales company, maintain an action against the obligor under the bond to have the sum payable under the bond so applied.

(3) Where a person who is licensed in accordance with this Act conducts a sale by auction to which The Seizures Act applies or that is held by a court order, then notwithstanding anything in this Act, subsection (2) applies to a default by the auction sales company in respect of that sale.

4 Section 8 presently reads:

8 The Minister may suspend or cancel a licence issued under this Act on being satisfied that the licensee has contravened any of the provisions of this Act, or has been convicted of an offence under the Criminal Code and punishable by imprisonment for a term of two years or more.

(3) The Minister shall, within 30 days of being served with a notice of appeal under subsection (2), appoint an appeal board to hear the appeal.

(4) An appeal board appointed pursuant to this section shall consist of

(a) a person designated by the Minister as chairman of the appeal board who is neither the Administrator nor a person licensed pursuant to this Act, and

(b) not less than 2 nor more than 4 other persons.

(5) The Minister may prescribe the time within which an appeal board is to hear an appeal and render a decision and may extend that time.

(6) An appeal board that hears an appeal pursuant to this section may

(a) confirm the cancellation or suspension,

(b) reinstate the cancelled licence, or

(c) remove or vary the suspension.

(7) A person whose appeal is heard by an appeal board or the Administrator, may appeal the decision of an appeal board by filing an originating notice with the Court of Queen's Bench within 30 days of being notified in writing of the decision, and the Court of Queen's Bench may make any order that an appeal board may make pursuant to this section.

(8) The Minister may pay to the members of an appeal board those fees and reasonable living and travelling expenses that he considers proper.

5 The following is added after section 14:

14.1 (1) If the Administrator receives a complaint in respect of any matter that pertains to this Act or has reason to believe that a contravention of this Act has taken place or is taking place, he may inquire into the complaint or alleged contravention and may require in writing from an auction sales company, its employees or auctioneer any information that he considers to be relevant to the inquiry.

(2) The Administrator or a person authorized by him in writing may

(a) demand production of any record, account, book, file, letter, document or thing that is or may be relevant to an inquiry from an auction sales company, its em-

5 Records search authorization.

employees or auctioneer who has possession, custody or control of it, and

(b) examine and remove, take extracts from or reproduce copies of any record, account, book, file, letter, document or thing that is or may be relevant to an inquiry.

(3) The Administrator or a person authorized by him in writing who removes or takes anything pursuant to subsection (2) shall

(a) give to the auction sales company, its employee or auctioneer from whom anything is taken a receipt for the things taken, and

(b) make copies of, take photographs of or otherwise record the things reviewed and immediately return the things to the auction sales company, its employees or an auctioneer to whom the receipt was given under clause (a).

(4) An auction sales company, its employees or an auctioneer who does not comply with a demand made pursuant to subsection (2) is guilty of an offence.

6 Section 15(1) is repealed and the following is substituted:

15(1) An auction sales company shall place all money it receives on account of a sale it makes into a trust account in a bank, treasury branch, credit union, trust company or other institution recognized under the law of Alberta and hold it separate from the money that belongs to the auction sales company in accordance with the regulations and disburse the money it receives or holds in trust in accordance with the regulations and the terms of the trust governing its use.

7 Section 16 is repealed and the following is substituted:

16 A person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not less than \$100 nor more than \$1000.

8 The following is added after section 16:

16.1 A prosecution under this Act may be commenced within 2 years after the commission of the alleged offence, but not afterward.

6 Section 15(1) presently reads:

15(1) An auction sales company shall place all moneys received on account of a sale made by him into an account kept for that purpose in a bank, treasury branch, trust company or other institution recognized under the law of Alberta.

7 Section 16 presently reads:

16 A person who contravenes any provision of this Act or of the regulations made hereunder is guilty of an offence and liable on summary conviction to a fine of not less than \$10 nor more than \$200, and in default of payment to imprisonment for a term of not less than seven days nor more than 90 days.

8 Limitation of time.

9 Section 17 is amended

(a) by striking out “Minister with the approval of the”, and

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

(e.1) respecting the keeping of records by an auction sales company of money received from any sale,

(e.2) respecting the disbursement of money received or held in trust by an auction sales company,

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

9 Section 17 presently reads in part:

17 The Minister with the approval of the Lieutenant Governor in Council may make regulations.