

1981 BILL 73

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 73

PUBLIC AUCTIONS ACT

MR. ZAOZIRNY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 73
Mr. Zaozirny

BILL 73

1981

PUBLIC AUCTIONS ACT

(Assented to , 1981)

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

Definitions

1 In this Act,

- (a) “auctioneer” means an individual who conducts the bidding at a sale by public auction;
- (b) “auction sales business” means an individual, partnership or corporation that engages in any activity referred to in section 3(1);
- (c) “Director” means an employee of the Government under the administration of the Minister designated by the Minister as the Director of Public Auctions;
- (d) “licence” means an auction sales business licence issued under this Act and the regulations and includes a renewal licence;
- (e) “Minister” means the member of the Executive Council charged with the administration of this Act;
- (f) “sale by public auction” means a sale of goods by public auction and includes a sale of goods in lots by public auction.

Application

2(1) Subject to subsection (2), this Act does not apply to a sale by public auction

- (a) to which the *Seizures Act* applies, or that is held pursuant to an order of a court of competent jurisdiction,
- (b) of goods taken in distress under the authority of an enactment for the recovery of a tax, rate or imposition made or levied pursuant to that enactment,

(c) of livestock by an auction sales business that is licensed as a livestock dealer and bonded pursuant to regulations under the *Livestock and Livestock Products Act*,

(d) held by a religious, charitable or non-profit organization, or

(e) held by an educational institution as part of a course of instruction in auctioneering offered by it, where the goods that are auctioned are owned by the institution.

(2) No person shall conduct the bidding at a sale by public auction referred to in subsection (1)(a) to (d) unless he meets the qualifications for an auctioneer under the regulations.

Licence required

3(1) No person shall

(a) engage in the business of holding sales by public auction,

(b) hold a sale by public auction,

(c) advertise a sale by public auction, or

(d) hold himself out as an auction sales business

unless he is the holder of a valid and subsisting licence.

(2) No auctioneer shall conduct the bidding at a sale by public auction unless the auction sales business holding the sale is the holder of a valid and subsisting licence.

(3) No auction sales business shall

(a) authorize, permit or direct any of its employees, or

(b) engage, permit or authorize any other individual,

to conduct the bidding at a sale by public auction held by the auction sales business unless the employee or individual meets the qualifications for an auctioneer under the regulations.

Issue of licence

4(1) The Director may,

(a) on application in a form prescribed by him,

(b) on payment of the fee prescribed in the regulations, and

(c) on being satisfied that the applicant meets the requirements of this Act and the regulations,

issue to the applicant a licence in the form prescribed by the Director.

(2) Subject to sections 5 and 6, a licence remains in effect for a period prescribed in the regulations.

(3) If a licensee applies for a licence for the succeeding period before his existing licence expires, and the application is accompanied by the prescribed documents and fees, the existing licence remains in force, notwithstanding subsection (2), until the new licence is issued or until the Director notifies the licensee that he will not be issued a new licence.

(4) The Director may require

- (a) that further information be submitted to him by an applicant or licensee within a time specified by the Director, and
- (b) verification by affidavit or otherwise of any information, whenever submitted.

(5) A licensee who ceases to act as an auction sales business shall forthwith send a notice in writing to that effect to the Director by registered mail, and return his licence with the notice.

Refusal,
cancellation and
suspension of
licence

5(1) The Director may cancel or suspend a licence issued under this Act

- (a) if the auction sales business contravenes this Act or the regulations, or
- (b) if, in the opinion of the Director, it is in the public interest to do so.

(2) A person

- (a) who is refused a licence under section 4, or
- (b) whose licence is cancelled or suspended under subsection (1)

may appeal the refusal, cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being notified in writing of the refusal, cancellation or suspension.

(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 and who is not the Director or his representative or 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 refusal, cancellation or suspension,
- (b) require a licence to be issued,
- (c) reinstate the cancelled licence,
- (d) substitute a suspension for a cancellation or a cancellation for a suspension, or
- (e) remove or vary the suspension.

(7) The Director or a person whose appeal is heard by an appeal board may appeal the decision of the 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 may make any order that an appeal board may make under subsection (6).

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

6(1) A licensee and any person who applies for a licence shall deliver to the Director a bond in the form and amount and on the conditions prescribed by the Minister.

(2) No person who is required to provide a bond under this section shall act as an auction sales business unless he so provides the bond and the bond remains in force while he is so acting.

(3) If

- (a) a judgment is obtained by any person against a licensee who is a principal under a bond referred to in subsection (1) or against an auctioneer acting for him,
- (b) the judgment arises out of the failure of the licensee or his auctioneer to perform his obligations in accordance with the terms and conditions of the bond to the person who recovered the judgment, and
- (c) the person who recovered the judgment delivers to the Director
 - (i) a certified copy of the judgment,
 - (ii) notice that the judgment has become final by reason of lapse of time or of being confirmed by the highest court to

which it may be appealed and has not been satisfied within 30 days after it became final, and

(iii) a statutory declaration setting out the particulars of the failure of the licensee or auctioneer to perform his obligations to the person who recovered the judgment,

the bond is forfeited on the Director notifying the surety in writing that the judgment remains unsatisfied 30 days after the date that it became final.

(4) If a bond is forfeited under subsection (3), the surety shall, within 30 days after receiving the notice from the Director under that subsection, pay to the Minister the principal sum of the bond.

(5) If the Minister receives money under subsection (4), he shall pay that money into the Court of Queen's Bench in trust for those persons who obtain judgments against the licensee or auctioneer and comply with this section, and the Court shall, not less than 1 year after the forfeiture of the bond, pay out that money to those persons.

(6) If the amount of money paid into Court under subsection (5) is insufficient to satisfy the judgments referred to in that subsection, the Court shall pay out the money on a pro rata basis.

(7) If, after paying out all judgments under subsection (5), there is a surplus of money, the Court shall pay that surplus to the surety.

(8) A licence terminates if the bond provided by the licensee under this Act

(a) is forfeited, or

(b) terminates, unless prior to the termination of the bond the licensee provides a new bond in accordance with this Act.

(9) If a licensee holds a sale by public auction referred to in section 2(1), this section applies to a failure of the licensee or any auctioneer acting for him to perform his obligations in accordance with the terms and conditions of the bond in respect of that sale, notwithstanding that the auction sales business does not have to be licensed or bonded in respect of it.

Attendance at sale **7** An auction sales business that holds a sale by public auction shall ensure that the sale is open to all members of the public who desire to attend for the purpose of bidding at the sale.

Conditions of sale **8** An auctioneer conducting the bidding at a sale by public auction shall

(a) at the commencement of the sale, or

(b) at the recommencement of the sale if it is adjourned,

and before any goods are offered for sale, read the conditions of sale or cause them to be read to those present at the sale and announce the name of the auction sales business holding the sale and its licence number.

Removal of goods purchased

9 When a sale by public auction is held,

- (a) no purchaser shall remove, and
- (b) no auctioneer and no auction sales business or its employees shall permit to be removed

from the place at which the sale is held any goods purchased at the sale unless the purchase price of the goods is first paid to the auction sales business or other arrangements satisfactory to the auction sales business are made for payment of the purchase price.

Statement by owner

10(1) If a person causes any goods valued at more than \$500 to be offered for sale by public auction, the auction sales business shall, before the sale is held, obtain from that person a statutory declaration in writing made or signed by him or by some other person authorized by him and who has knowledge of the facts, setting out whether or not the goods offered for sale are subject to a mortgage, charge, lien or encumbrance and, if so, full particulars of the mortgage, charge, lien or encumbrance.

(2) No auction sales business shall sell by public auction any goods in respect of which it must obtain a statutory declaration under subsection (1) without first obtaining the statutory declaration.

(3) If an auction sales business

- (a) sells by public auction goods valued at more than \$500 without first obtaining the statutory declaration required under subsection (1), or
- (b) sells by public auction goods valued at \$500 or less without first obtaining a statutory declaration that complies with subsection (1),

it is liable to the purchaser of the goods for the losses sustained by the purchaser resulting from any mortgage, charge, lien or encumbrance to which the goods were subject at the time of sale.

Duty to keep records

11 An auction sales business shall

- (a) retain in its possession a statutory declaration provided to it under section 10 for at least 2 years after the day on which the goods to which the declaration relates were sold,
- (b) produce a statutory declaration provided to it under section 10 on demand to a person having an interest in the goods to which the declaration relates,

(d) within 14 days after the date of a sale by public auction, send to each person who caused any of the goods to be sold or who had an interest in a mortgage, charge, lien or encumbrance as disclosed in a statutory declaration under section 10 on any of the goods sold, an itemized statement setting out the amount received for those goods.

Investigation

12(1) The Director or a person authorized in writing by the Director may, on his own initiative or on complaint of a person interested, investigate any matter concerning the administration of this Act.

(2) For the purposes of an investigation under subsection (1), the Director or authorized person

(a) may inquire into and examine

(i) the business affairs of the auction sales business involved in the matter under investigation, and

(ii) the books, files, papers, documents, correspondence, records or other things in relation to or connected with an auction sales business involved in the matter under investigation

as they relate to the subject matter of the investigation,

(b) may give to the auction sales business, its employees and auctioneers acting for it notice in writing requiring it or them to bring and produce before the Director or authorized person at a place and time stated in the notice, which time shall be at least 10 days after the giving of the notice, all books, files, papers, documents, correspondence, records and other things in its or their custody, possession or control that are relevant to the matter under investigation,

(c) may take possession of, examine and remove and take extracts from or obtain reproduced copies of any of the things referred to in clause (a), and

(d) may enter, inspect and examine at all reasonable times any premises or other place, other than a private dwelling, in which an auction sales business carries on business.

(3) If a person

(a) fails to comply with a notice under subsection (2)(b), or

(b) refuses to permit a person conducting an investigation to enter, inspect and examine a premises or place in accordance with subsection (2)(d),

the person making the investigation may apply to the Court of Queen's Bench by originating notice and the Court may make any order it considers necessary requiring the person to comply with the notice or permit the entry, inspection or examination.

(4) A copy of the originating notice, and each affidavit in support, shall be served not less than 3 days before the date named in the notice for hearing the application.

(5) A person who, pursuant to subsection (2)(c), removes any of the things permitted by that subsection to be removed shall

(a) give to the person from whom the things were taken a receipt for the things taken, and

(b) forthwith make copies of, take photographs of or otherwise record the things removed and forthwith return them to the person to whom the receipt was given under clause (a).

Offence

13 A person

(a) shall make prompt and explicit answers to an inquiry made under section 12(2)(a),

(b) shall comply with a notice given under section 12(2)(b),

(c) shall not prohibit or interfere with the examination or removal of anything under section 12(2), and

(d) shall not obstruct, hinder or interfere with the Director or a person acting on his behalf in the making of an investigation under section 12.

Trust account

14(1) An auction sales business shall

(a) place the proceeds of a sale by public auction held by it in a trust account in a bank, treasury branch, credit union or trust company located in Alberta, separate from other funds held by the auction sales business, and

(b) disburse the money it holds in trust in accordance with the regulations and the terms of the trust pursuant to which it is held.

(2) The Director may authorize in writing any person to inspect any account referred to in subsection (1).

(3) No person shall prevent, obstruct, hinder or otherwise interfere with a person making an inspection under subsection (2).

Offence and penalty

15(1) A person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$1000.

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

Director's certificate

16 For the purposes of a prosecution under this Act, a certificate purporting to be signed by the Director and stating that a person was or was not on a named day the holder of a valid and subsisting

licence is, without proof of the signature or official character of the person signing the certificate, prima facie proof of the facts stated in it.

Lieutenant
Governor in
Council may make
regulations

17 The Lieutenant Governor in Council may make regulations

- (a) respecting the issuing of licences, including
 - (i) the qualifications of applicants,
 - (ii) the fees payable,
 - (iii) the term of the licence, and
 - (iv) the terms and conditions to which the licence is subject,
- (b) respecting the qualifications of auctioneers,
- (c) respecting standards of conduct to be followed by auction sales businesses and auctioneers in connection with any activities referred to in section 3,
- (d) prescribing the form and contents of any record or other document required by this Act to be made or kept, and
- (e) respecting the keeping of records by an auction sales business of money received from a sale by public auction and the payment of money into and out of the trust account referred to in section 14.

Licensing of
Trades and
Businesses Act not
to apply

18 The *Licensing of Trades and Businesses Act* does not apply to any person acting as an auction sales business within the meaning of this Act.

Transitional

19 An auction sales business licence issued under the *Sale of Chattels by Public Auction Act* that is valid and subsisting on the date this Act comes into force is deemed to have been issued under this Act.

Repeal

20 The *Sale of Chattels by Public Auction Act* is repealed.

Coming into force

21 This Act comes into force on Proclamation.