

1981 BILL 80

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 80

**TRANSPORTATION OF DANGEROUS
GOODS CONTROL ACT**

HON. MR. MOORE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 80

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TRANSPORTATION OF DANGEROUS GOODS CONTROL 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) “analyst” means a person designated as an analyst under the federal Act;
- (b) “container” means transport equipment, including equipment that
 - (i) is carried on a chassis,
 - (ii) is strong enough to be suitable for repeated use, and
 - (iii) is designed to facilitate the transportation of goods without intermediate reloading,but does not include a vehicle;
- (c) “dangerous goods” means any product, substance or organism specified in the regulations or included by its nature in any of the classes listed in the regulations;
- (d) “federal Act” means the *Transportation of Dangerous Goods Act* (Canada);
- (e) “handling” means loading, packing or placing, unloading, unpacking or removing or reloading, repacking or replacing dangerous goods in or from any container, packaging or vehicle or at any facility for the purposes of, in the course of or following transportation and includes storing dangerous goods in the course of transportation;

- (f) “highway” means a highway as defined in the *Highway Traffic Act, 1975*;
- (g) “inspector” means a person designated as an inspector pursuant to section 6;
- (h) “local authority” means
- (i) the council of a city, town, village, summer village, county or municipal district,
 - (ii) the board of administrators of a new town, or
 - (iii) in the case of an improvement district or special area, the Minister of Municipal Affairs;
- (i) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (j) “packaging” means any receptacle or enveloping material used to contain or protect goods, but does not include a container or vehicle;
- (k) “safety mark” includes any design, symbol, device, sign, label, placard, letter, word, number, abbreviation or any combination thereof that is to be displayed on dangerous goods, packaging, containers or vehicles or facilities used in the handling, offering for transport or transporting of dangerous goods;
- (l) “safety requirements” means requirements for the handling, offering for transport or transporting of dangerous goods, the reporting of those activities, the training of persons engaged in those activities and the inspection of those activities;
- (m) “safety standards” means standards regulating the design, construction, equipping, functioning or performance of containers, packaging or vehicles or facilities used in the handling, offering for transport or transporting of dangerous goods;
- (n) “shipping document” means any document that accompanies dangerous goods being handled or offered for transport or transported and that describes or contains information relating to the goods and, in particular, but without restricting the generality of the foregoing, includes a bill of lading, cargo manifest, shipping order or way-bill;
- (o) “transportation” means transportation in or by means of a vehicle;
- (p) “vehicle” means a vehicle as defined in the *Highway Traffic Act, 1975*.

Crown bound

2 This Act binds the Crown.

Act prevails in case of conflict

3 In case of conflict with any other Act except the *Alberta Bill of Rights* and the *Individual's Rights Protection Act*, this Act and the regulations operate with respect to the handling, offering for transport or transporting of dangerous goods unless the contrary is expressly declared in this Act or the regulations or in any other Act.

Non-application of Act

4(1) This Act does not apply to the handling, offering for transport or transporting of dangerous goods

- (a) to the extent that they are exempted by the regulations,
- (b) while under the sole direction or control of the Minister of National Defence for Canada, or
- (c) for which a permit is issued under subsection (2) while there is compliance with the permit.

(2) The Minister may issue a permit exempting from the application of this Act the handling, offering for transport or transportation of dangerous goods in a vehicle.

(3) A permit issued under subsection (2) is subject to any terms and conditions that the issuer considers appropriate and that are contained in the permit.

Permit for equivalent standards

5(1) The Minister may, in accordance with the regulations, issue a permit, subject to any terms and conditions specified in the permit, authorizing the handling, offering for transport or transporting of dangerous goods in a manner that does not comply with this Act and the regulations where he is satisfied that the manner of handling, offering for transport or transporting provides a level of safety at least equivalent to that provided by compliance with this Act and the regulations.

(2) Compliance with a permit issued pursuant to subsection (1) shall be deemed to be compliance with this Act and the regulations.

Inspectors

6(1) The Minister, in accordance with the regulations, may designate any person or class of persons as inspectors for the purpose of this Act.

(2) An inspector shall be furnished with a certificate of his designation and on inspecting any container, packaging or vehicle he shall, on request, produce the certificate to the person in charge of the thing being inspected.

(3) Where an inspector inspects or seizes or takes a sample of anything under this Act, he shall, if the thing is sealed or closed up, provide the person in charge of it with a certificate in the prescribed form evidencing the inspection, seizure or taking of the sample.

(4) A certificate provided under subsection (3) relieves the person to whom or for whose benefit it is provided of liability with respect to the inspection, seizure or taking of a sample evidenced by the

certificate, but does not otherwise exempt that person from compliance with this Act and the regulations.

Powers of
Inspectors

7(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, at any reasonable time without a warrant, enter and inspect a place or a vehicle and its load or a building, other than a private dwelling, where he believes that dangerous goods are being handled, offered for transport or transported, and request the opening and inspection of or open and inspect any container, packaging or vehicle in or by which he believes that the dangerous goods are being handled, offered for transport or transported.

(2) An inspector may stop a vehicle for the purposes of an inspection under subsection (1).

(3) On inspecting any container, packaging or vehicle under subsection (1), an inspector may,

(a) for the purpose of analysis, take samples of anything found therein that he believes on reasonable and probable grounds to be dangerous goods, and

(b) examine and remove for the purpose of making copies and extracts any books, records, shipping documents or other documents or papers that he believes on reasonable and probable grounds to contain any information relevant to the administration or enforcement of this Act and the regulations.

(4) The owner or person who has the charge, management or control of any container, packaging, vehicle or building inspected under subsection (1) shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act.

(5) No person shall, while an inspector is exercising his powers or carrying out his duties and functions under this Act,

(a) fail to comply with any reasonable request of the inspector;

(b) knowingly make any false or misleading statement either orally or in writing to the inspector;

(c) except with the authority of the inspector, remove, alter or interfere in any way with anything removed by the inspector;

(d) otherwise obstruct or hinder the inspector.

Seizure and
removal

8(1) If an inspector is satisfied on reasonable and probable grounds that

(a) there is occurring or has occurred a discharge, emission or escape of dangerous goods from any container, packaging or means of transport by means of which the goods are being handled or transported,

(b) there exists a serious and imminent danger of a discharge, emission or escape referred to in clause (a) by reason of any condition, or

(c) any provision of this Act or the regulations is being or has been contravened,

he may take any measures prescribed in subsection (2) where he considers it necessary to do so in order to prevent or reduce any serious and imminent danger to life, health, property or the environment.

(2) Subject to subsection (1), an inspector may

(a) seize any dangerous goods, container, packaging or vehicle by means of or in relation to which he believes on reasonable and probable grounds the discharge, emission, escape or condition has arisen or the contravention has occurred,

(b) remove or direct the removal of the seized goods, container, packaging or vehicle to an appropriate place, and

(c) take any other measures that are practicable to protect persons and property.

(3) Any dangerous goods that on reasonable and probable grounds appear to an inspector to be abandoned or to have deteriorated and to be a danger to persons, property or the environment may be destroyed or otherwise disposed of by the inspector in any manner that is appropriate in the circumstances.

(4) Any property seized under this section shall be returned to the person from whom the seizure was made or any other person who appears on reasonable and probable grounds to be entitled to the property

(a) after the provisions of this Act and the regulations have, in the opinion of an inspector, been complied with,

(b) after the danger to life, health, property or the environment has, in the opinion of an inspector, been prevented or adequately reduced, or

(c) not later than 30 days from the day of the seizure,

whichever first occurs, unless before that time proceedings are instituted in respect of an offence under this Act or the regulations in relation to the property seized, in which case the property may be detained until the proceedings are finally concluded, unless the prosecutor agrees otherwise.

(5) If proceedings referred to in subsection (4) have been instituted, any person from whom property that is the subject matter of the proceedings was seized or any other person who appears on reason-

able and probable grounds to be entitled to that property may apply to the court before which the proceedings were instituted for an order that the property be returned to the applicant, and where the court is satisfied that

(a) sufficient evidence for the purposes of the proceedings exists or may reasonably be produced without detaining the property, and

(b) no danger to life, health, property or the environment would be occasioned by the release of the property,

it may grant the application and order the return of the property forthwith to the applicant, subject to any terms and conditions that appear necessary or desirable to ensure that the property is safeguarded and preserved for any purpose for which it may subsequently be required.

(6) If a person has been convicted of an offence under this Act, in addition to any punishment imposed on conviction, any property seized under this section by means of or in relation to which the offence was committed may be forfeited to the Crown in right of Alberta by order of the convicting court, whether or not it has been returned under this section, and on the making of the order the property shall be forfeited and may be disposed of as the Minister directs.

(7) If any property is seized under this section and proceedings referred to in subsection (4) are instituted but no forfeiture is ordered at the final conclusion of the proceedings, the property, if not earlier returned under this section, shall be returned to the person from whom the seizure was made or any other person who appears on reasonable and probable grounds to be entitled to the property, unless that person has been convicted of an offence under this Act, in which case the property may be detained until any fine imposed or conviction has been paid, or sold under execution in satisfaction of the fine or any part of the fine.

Application by
person claiming
interest

9(1) Where any property has been destroyed or otherwise disposed of under section 8(3) or ordered to be forfeited under section 8(6), any person who claims an interest in the property as owner, mortgagee, lien holder or holder of any like interest may, within 30 days after the destruction or disposition or the making of the order of forfeiture, apply by originating notice to the Court of Queen's Bench for an order under subsection (4).

(2) An applicant for an order under subsection (4) shall, at least 30 days prior to the day fixed for the hearing of the application, serve a notice of the application and of the hearing on the Minister and all other persons whom he knows to be claiming an interest as owner, mortgagee, lien holder or holder of any like interest in the property that is the subject matter of the application.

(3) Each person, other than the Minister, who is served with a notice

under subsection (2) or who intends to appear at the hearing of the application to which the notice relates shall, at least 10 days prior to the day fixed for the hearing, file an appropriate notice of intervention in the record of the Court and serve a copy of the notice on the Minister and on the applicant.

(4) Where, on the hearing of an application under this section, the Court is satisfied that the applicant or the intervenors, if any, or any of them,

(a) are innocent of any conduct or complicity in any conduct that caused the property to be subject to destruction or disposition or to forfeiture and of any collusion in relation to any such conduct, and

(b) exercised all reasonable care in respect of the persons permitted to obtain possession and use of the property to satisfy themselves that it was not likely to be used contrary to the provisions of this Act and the regulations or, in the case of a mortgagee or lien holder (other than the holder of a maritime lien or statutory right in rem), that they exercised such care with respect to the mortgagor or the lien giver,

those of the applicant and the intervenors in respect of whom the court is so satisfied are entitled to an order declaring that their interests are not affected by the destruction, disposition or forfeiture and declaring the nature and extent of each of their interests and the priorities among them, and the court may, in addition, order that the property to which the interests relate be delivered by the Minister to one or more of the persons found to have an interest in the property or that an amount equal to the value of each of the interests so declared be paid by the Minister to the persons found to have those interests.

Reports and
remedial measures

10(1) If there is a discharge, emission or escape of dangerous goods from any container, packaging or vehicle, the persons who at the time have the charge, management or control of the dangerous goods shall, in the manner and circumstances set out in the regulations, report the discharge, emission or escape to an inspector or to any other person who is prescribed.

(2) Every person required to make a report under subsection (1) shall, as soon as possible in the circumstances, take all reasonable emergency measures consistent with public safety to repair or remedy any dangerous condition or reduce or mitigate any danger to life, health, property or the environment that results or may reasonably be expected to result from the discharge, emission or escape.

(3) If an inspector is satisfied on reasonable and probable grounds that a discharge, emission or escape referred to in subsection (1) has occurred and that immediate action is necessary in order to carry out any reasonable emergency measures referred to in subsection (2), he may request that the measures be taken by any person he considers qualified to do so or take them himself.

(4) Any inspector or other person required, requested or authorized to take reasonable emergency measures pursuant to subsection (2) or (3) may enter without a warrant and have access to any place or property and may do all reasonable things in order to comply with those subsections or either of them.

(5) Any person requested to act under subsection (3) is not personally liable either civilly or criminally in respect of any act or omission in the course of complying with the request unless it is shown that he did not act reasonably in the circumstances.

Recovery of costs
and expenses

11(1) The Crown in right of Alberta may recover the costs and expenses of and incidental to the taking of any measures pursuant to section 8(3) or 10 jointly and severally from any persons who, through their fault or negligence or that of others for whom they are by law responsible, caused or contributed to the causation of a discharge, emission or escape referred to in section 10(1), to the extent that the costs and expenses can be established to have been reasonably incurred in the circumstances.

(2) For the purposes of proceedings under this section, a defendant engaged in any activity to which this Act applies is deemed to have been at fault or negligent unless he establishes, on a balance of probabilities, that he and any others for whom he is by law responsible took all reasonable measures to comply with this Act and the regulations.

(3) All claims pursuant to this section may be sued for and recovered by the Crown in right of Alberta in the Court of Queen's Bench.

(4) Nothing in this section shall be construed as limiting or restricting any right of recourse or indemnity that any person who is liable under subsection (1) may have against any other person.

(5) No civil remedy for any act or omission is suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to liability under this section.

(6) Nothing in this section relieves an operator within the meaning of the *Nuclear Liability Act* (Canada) from any duty or liability imposed on that operator under that Act.

(7) No proceedings in respect of a claim under this section may be instituted after 2 years from the day the events in respect of which the proceedings are brought or taken occurred or became evident.

(8) This section does not apply in any case where a person who otherwise would be liable to proceedings is liable to proceedings by or on behalf of the Crown in right of Alberta for the recovery of costs and expenses in respect of the same occurrence pursuant to any Act other than this Act.

Stop orders

12 Where the Minister or a person designated by the Minister considers it to be necessary for the protection of public safety, property

or the environment in any case not provided for by this Act and the regulations, he may, subject to any regulations made pursuant to section 16(r), direct any person engaged in handling, offering for transport or transporting dangerous goods to cease any activity with respect to the handling, offering for transport or transporting or to carry it on in the manner directed.

Delegation

13 The Minister may in writing delegate to any person a power, duty or function conferred or imposed on him by this Act or the regulations.

Advisory council

14(1) The Minister may establish an advisory council to act in an advisory or administrative capacity for the purposes of this Act.

(2) The Minister may with respect to the council established under subsection (1)

(a) appoint or provide for the manner of appointment of its members,

(b) prescribe the term of office of any member,

(c) designate a chairman, vice-chairman and secretary, and

(d) authorize, fix and provide for the payment of remuneration and expenses to its members.

(3) The council established under subsection (1) may make rules of procedure, subject to the approval of the Minister, governing the calling of its meetings and the conduct of business at its meetings.

(4) The council established under subsection (1) may exercise those powers and shall perform those duties that the Minister may approve, confer or impose on it.

Agreement with
the Government of
Canada

15(1) Subject to the *Department of Federal and Intergovernmental Affairs Act*, the Minister may enter into an agreement with the Government of Canada with respect to the administration and enforcement of all or any provision of

(a) this Act and the regulations under this Act, and

(b) the federal Act and the regulations under that Act.

(2) An agreement entered into under subsection (1) may provide for any matters necessary for or incidental to the implementation, administration or enforcement agreed on and for the apportionment of any costs, expenses or revenues arising from the agreement.

Regulations

16(1) The Lieutenant Governor in Council may make regulations

(a) prescribing products, substances and organisms as dangerous goods;

- (b) establishing divisions, subdivisions and groups of dangerous goods and classes of dangerous goods;
- (c) specifying, for each product, substance and organism prescribed under clause (a), the class and the division, subdivision or group into which it falls;
- (d) determining or providing the manner of determining the class listed in the Schedule and the division, subdivision or group into which any dangerous goods not prescribed under clause (a) fall;
- (e) exempting from the application of this Act or the regulations or any provision of this Act or the regulations the transporting of dangerous goods in those quantities or concentrations, in those circumstances, for those purposes or in those vehicles that are specified in the regulations;
- (f) prescribing the manner of identifying any quantities or concentrations of dangerous goods exempted under clause (e);
- (g) prescribing the manner in which a permit under section 4 shall be applied for and issued;
- (h) prescribing safety marks, safety requirements and safety standards of general or particular application;
- (i) prescribing shipping documents and other documents to be used in respect of the transporting of dangerous goods in a vehicle on a highway, the information to be included in those documents and the persons by whom and manner in which those documents are to be used and retained;
- (j) prescribing forms for the purposes of this Act and the regulations;
- (k) fixing the form, amount, nature, class, terms and conditions of insurance or bonds that shall be provided and carried by persons or classes of persons while transporting dangerous goods in a vehicle or class of vehicle on a highway;
- (l) prescribing circumstances in which the handling, offering for transport or transporting of dangerous goods is prohibited;
- (m) specifying dangerous goods that shall not be handled, offered for transport or transported in any circumstances;
- (n) governing the route and time of travel of vehicles transporting dangerous goods on highways;
- (o) governing the qualification, training and examination of inspectors and prescribing the manner in which inspectors shall carry out their duties and functions under this Act;

(p) requiring and governing the reporting of any discharge, emission or escape of dangerous goods;

(q) requiring and governing the preparation of emergency plans and programs by the owner or operator of any vehicle or facility that is used in the handling, offering for transport or transporting of dangerous goods and by local authorities;

(r) governing the notification of persons directed to do anything under section 12, and the effect, duration and appeal or review of those directions.

(2) Any regulation made under subsection (1) may adopt by reference, in whole or in part, with those changes that the Lieutenant Governor in Council considers necessary, any code or standard, or any regulation made by the Government of Canada, and may require compliance with any code, standard or regulation that is so adopted.

By-laws

17(1) Subject to the regulations, a local authority may make by-laws with respect to highways under its direction, control and management

(a) designating the route and time of travel of vehicles transporting dangerous goods, and

(b) prohibiting the carriage of dangerous goods on those highways specified in the by-law.

(2) A by-law under subsection (1) does not come into force until it is approved by the Minister.

Inquiries

18(1) Where a discharge, emission or escape of dangerous goods has resulted in death or injury to any person, danger to the health or safety of the public or damage to property, the Minister may order that a public inquiry be made in the manner indicated in the order and may appoint any person or persons he considers qualified to conduct the inquiry.

(2) A person appointed under subsection (1) has the powers, duties and immunities of a commissioner appointed under the *Public Inquiries Act*.

Offences

19(1) No person shall handle, offer for transport or transport any dangerous goods unless

(a) all applicable prescribed safety requirements are complied with, and

(b) all containers, packaging and vehicles comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

(2) No person shall

(a) put any prescribed safety mark on any container, packaging

or vehicle used or intended for use in handling or transporting dangerous goods, or

(b) sell, offer for sale, deliver or distribute any container, packaging or vehicle used or intended for use in handling or transporting dangerous goods, on which any prescribed safety mark is displayed,

unless the container, packaging or vehicle complies with all applicable prescribed safety standards.

Penalty **20**(1) Every person who contravenes section 19 is guilty of an offence and is liable

(a) on the first conviction to a fine of not more than \$50 000, and on each subsequent conviction to a fine of not more than \$100 000, or

(b) to imprisonment for a term not exceeding 2 years.

(2) Every person who contravenes any provision of this Act or the regulations for which no other penalty is provided by this Act is guilty of an offence and is liable

(a) to a fine of not more than \$10 000, or

(b) to imprisonment for a term not exceeding 1 year.

(3) No proceedings under this section may be instituted after 2 years from the day the offence was committed.

Defence **21** It is a defence to a charge under this Act for the accused to establish that he took all reasonable measures to comply with this Act.

Offences by employee or agent **22** In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, but it is a defence for the accused to establish that the offence was committed without his knowledge and that he took all reasonable measures to prevent its commission.

Officers, etc., of corporation **23** Any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of an offence is a party to and guilty of the offence and is liable to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted.

Certificate or report of inspector or analyst **24**(1) Subject to subsections (3) and (4), a certificate or report appearing to have been signed by an inspector or analyst stating that he has made an inspection or analyzed or examined a building, place, vehicle, product, substance or organism and stating the results of the inspection, analysis or examination is admissible in evidence in any

prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate or report.

(2) Subject to subsections (3) and (4), a copy or an extract made by an inspector under section 7(3)(b) and appearing to have been certified under his signature as a true copy or extract is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the copy or extract and, in the absence of any evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

(3) The party against whom a certificate or report is produced under subsection (1) or against whom a copy or an extract is produced under subsection (2) may require the attendance of the inspector or analyst who signed or appears to have signed the certificate, report, copy or extract for the purposes of cross-examination.

(4) No certificate, report, copy or extract referred to in subsection (1) or (2) shall be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced a notice of his intention together with a duplicate of the certificate, report, copy or extract.

Coming into force **25** This Act comes into force on Proclamation.