

1981 BILL 87

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 87

**MINES AND MINERALS AMENDMENT
ACT, 1981 (NO. 2)**

THE MINISTER OF ENERGY
AND NATURAL RESOURCES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 87

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1981

THE MINES AND MINERALS AMENDMENT ACT, 1981 (NO.2)

(Assented to _____, 1981)

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

1 *The Mines and Minerals Act is amended by this Act.*

2 *Section 2(1) is amended by adding the following after clause 24:*

24.1 "transfer" means, in relation to an agreement, a specified undivided interest in an agreement or part of the location contained in an agreement, a transfer in Form B, C or D, respectively, in the Schedule and capable of registration under Division 1 of Part 7;

3 *The heading of Part 7 is amended by striking out "DOCUMENTS" and substituting "SECURITY NOTICES".*

4 *Section 175 is repealed and the following is substituted:*

Division 1

Transfers

175 In this Division, "registered" means registered under this Division.

Explanatory Notes

1 This Bill will amend chapter 238 of the Revised Statutes of Alberta 1970.

2 The definition of “transfer” is being placed in section 2(1) instead of in Part 7 so that it will apply to the whole of the Act. See also section 3 of this Bill.

3 The present heading of Part 7 is “REGISTRATION OF TRANSFERS AND DOCUMENTS”. The amendment conforms with the amendments being made by sections 4 to 7 of this Bill.

4 Section 175 presently reads:

175 In this Part,

(a) “approved lender” means a member of a class of money lenders designated by the Minister pursuant to section 180.3;

(b) “document” means an instrument that pertains to a right granted under an agreement;

(c) “notice of financial transaction” means a document in the form prescribed in the regulations and capable of registration under section 180;

(d) “registration” means

5 *Section 178 is repealed.*

6 *Section 179 is repealed and the following is substituted:*

179 The Lieutenant Governor in Council may make regulations

- (a) respecting the registration of transfers,
- (b) prescribing the fees payable to the Minister for
 - (i) registration of a transfer, and
 - (ii) any other service provided by the Department under this Division.

7 *Sections 180 to 181 are repealed and the following is substituted:*

(i) the entering of a document in a record authorized by the Minister for that purpose,

(ii) in the case of a transfer, the endorsing or attaching of a memorandum evidencing an entry under subclause (i) on or to the original and a duplicate of an agreement affected by the transfer and on or to that transfer, and

(iii) in the case of a document other than a transfer, the endorsing or attaching of a memorandum evidencing an entry under subclause (i) on or to the original of an agreement affected by that document and on or to that document;

(e) "transfer" means a document in Form B, C or D in the Schedule and capable of registration under section 176.

See the proposed new section 180 of the Act in section 6 of this Bill.

5 Section 178 presently reads:

178(1) A lessee may transfer an agreement to himself and another person or persons, and upon registration of the transfer is entitled to the interest that the transfer purports to convey to him to the same extent as if he were not the transferor.

(2) Two or more persons, being the lessee of an agreement, may transfer the agreement to one or more of them, who upon registration of the transfer are entitled to the interest that the transfer purports to convey to him or them to the same extent as if he or they were not the transferor.

6 Section 179 presently reads:

179 The Lieutenant Governor in Council may make regulations

(a) respecting the registration of documents,

(b) prescribing the nature of the documents that may be registered, and

(c) prescribing the conditions under which documents may be registered.

7 Sections 180 to 181 presently read:

180(1) A notice of financial transaction may be submitted to the Minister for registration under this section if, under the financial transaction to which that notice relates, an agreement or an interest in an agreement has been assigned to an approved lender as security by

(a) the holder of that agreement or interest, or

Division 2
Security Notices

179.1(1) In this Division,

(a) “collateral” means

(i) the interest of the lessee or of any of the lessees in an agreement, or

(ii) an interest in an agreement derived directly or indirectly from the lessee or any of the lessees of the agreement or from a former lessee or any of the former lessees of the agreement;

(b) “operator’s lien” means an interest in or charge on collateral if

(i) the interest or charge arises under a contract to which an owner of the collateral is a party,

(ii) the contract provides for the conduct by a person (in this clause called “the operator”) other than that owner, of exploration, mining, drilling, development, production, processing or abandonment operations in respect of the mineral to which rights are granted by the agreement concerned,

(iii) the contract requires that owner to make payments to the operator to cover all or part of the advances made by the operator in respect of the cost of those operations, and

(iv) the interest or charge secures the payments referred to in subclause (iii);

(c) “registered” means registered under this Division;

(d) “secured party” means a person who has a security interest;

(e) “security instrument” means a contract or instrument that creates a security interest;

(f) “security interest” means an interest in or charge on collateral if the interest or charge secures

(i) the payment of an indebtedness arising from an existing or future loan or advance,

(ii) bonds or debentures of a corporation, or

(b) a person having an interest in that agreement or interest derived directly or indirectly from that holder.

(2) The Minister may refuse to register a notice of financial transaction if

(a) it is not in the form prescribed under the regulations,

(b) it is not executed in the manner and accompanied by the proof of execution satisfactory to the Minister,

(c) the fee prescribed under the regulations is not paid, or

(d) the person who submits the notice of financial transaction does not submit an address for service for the approved lender.

(3) A notice of financial transaction registered under this Part has priority over an unregistered notice of financial transaction.

(4) A person whose notice of financial transaction has been registered shall file immediately with the Department a notice of any change of the address for service relating to the notice of financial transaction.

(5) An approved lender named in a registered notice of financial transaction may by notice in writing to the Minister executed in the manner and accompanied by proof of execution satisfactory to the Minister, discharge the registration of the notice of financial transaction in whole or in part and the Minister shall register the notice of discharge according to its intent.

(6) This section and section 180.1 do not apply to a document made pursuant to section 82 of the Bank Act (Canada) that was registered by the Minister before the date of the coming into force of this section.

180.1 The registration of a notice of financial transaction under this Part in respect of an agreement or an interest in an agreement does not restrict or in any manner affect any right or power of the Crown under a provision of this Act or the regulations applicable to that agreement or under that agreement and does not derogate from the estate or interest of the Crown in the mines and minerals comprised in that agreement.

180.2 A document that evidences a financial transaction but is not a notice of financial transaction or is not referred to in or incorporated into a notice of financial transaction is not capable of registration under section 180.

180.3 The Minister may in writing designate as approved lenders the classes of money lenders considered appropriate by him for giving loans on the security of an agreement or of an interest in an agreement.

181 The Lieutenant Governor in Council may from time to time establish a tariff of fees pertaining to

(a) repealed 1980 c33 s17,

(b) the registration of documents, and

(c) any services supplied by the Department in connection with documents.

(iii) the performance of the obligations of a guarantor under a guarantee given in respect of all or any part of the indebtedness referred to in subclause (i) or all or any part of amounts owing on bonds or debentures referred to in subclause (ii),

but does not include an operator's lien;

(g) "security notice" means a security notice in the form prescribed by the regulations.

(2) For the purposes of this Division,

(a) the registration of a notice of financial transaction under this Part during the period commencing October 1, 1980 and ending immediately before the commencement of this Division, and

(b) the registration of an instrument giving a security under section 82 of the *Bank Act* (Canada) as that section was in force between April 6, 1955 and October 1, 1980, a copy of such an instrument, or a caution, caveat or memorial in respect of the rights of a bank under that section, if it was registered under this Part before October 1, 1980,

continues under this Division as the registration of a security notice in respect of the same security interest.

(3) On the registration of a notice of assignment pursuant to section 180.1, a reference in this Division to the secured party under a registered security notice shall, with respect to the security notice to which the assignment relates, be read as a reference to the assignee named in the notice of assignment.

180(1) A security notice in respect of a security interest may be submitted to the Minister for registration.

(2) The Minister shall register a security notice submitted to him for registration unless

(a) it is not in the form prescribed in the regulations,

(b) the regulations are not otherwise complied with, or

(c) it shows on its face that it relates to a security interest acquired by a person other than a bank prior to the coming into force of this Division.

(3) If a security interest was acquired before the commencement of this Division by a person other than a bank, the registration of a security notice is void to the extent that it relates to that security interest.

(4) A security interest in respect of which a security notice is registered has priority

(a) over any other security interest acquired before the registration of that security notice unless a security notice in respect of that other security interest is registered before the registration of the first-mentioned security notice,

(b) over any transfer acquired before the registration of that security notice unless that transfer is registered before the registration of that security notice,

(c) over any builder's lien acquired before the registration of that security notice unless that builder's lien is registered before the registration of that security notice, and

(d) over any interest, right or charge acquired after the registration of that security notice.

(5) Notwithstanding subsection (4), if a security interest is acquired by a person other than a bank and a security notice is registered in respect of that security interest, the priority of that security interest is, in relation to a builder's lien, subject to the *Builders' Lien Act*.

(6) If a security interest was acquired before the commencement of this Division otherwise than pursuant to section 177 of the *Bank Act* (Canada) or section 82 of the *Bank Act* (Canada) as that section was in force prior to December 1, 1980,

(a) subsection (4) does not apply to that security interest, and

(b) any priority of the secured party in relation to that security interest

(i) is not affected by his inability to obtain a valid registration of a security notice relating to that security interest, and

(ii) shall be determined as if this Division had not been enacted.

(7) The form of a security notice prescribed by the regulations shall provide for an address for service for the secured party named in it for the purposes of this Division.

(8) The secured party under a registered security notice may submit to the Minister for registration a notice of any change of his address for service under the security notice.

(9) If a security notice is registered against an agreement, the registration

(a) does not restrict or in any manner affect any right or power of the Crown or the Minister under this Act or the regulations or the agreement, and

(b) does not derogate from the proprietary rights of the Crown in the minerals in respect of which rights are granted by the agreement.

(10) If a security notice is registered against an agreement and the Minister, as a consequence of the exercise by the lessee of a right of lease selection conferred on him, issues one or more leases for all or part of the location of the agreement, the registration of the security notice shall be continued in respect of the lease or leases as though the security notice referred to them and as though they had been issued prior to the registration of the security notice.

180.1(1) There may be submitted to the Minister for registration

(a) a notice of the discharge or partial discharge of the security interest that is the subject of a registered security notice, or

(b) a notice of the assignment of all or part of the security interest that is the subject of a registered security notice.

(2) The Minister shall register a notice submitted for registration under subsection (1) unless

(a) the notice is not in the form prescribed by the regulations, or

(b) the regulations are not otherwise complied with.

(3) The form of a notice of assignment prescribed by the regulations shall provide for an address for service for the assignee named in it for the purposes of this Division.

180.2(1) A person may serve a demand under this section if he is

(a) the lessee or one of the lessees of an agreement against which a security notice is registered,

(b) the person named in a security notice as the person who gave the security instrument,

(c) the secured party under another security notice registered against the same agreement,

(d) a person who has obtained leave from the Court of Queen's Bench to do so, or

- (e) a person who is a member of a class of persons designated by the regulations for the purposes of this clause.
- (2) A person within any of the classes enumerated in subsection (1) may serve on the secured party under a registered security notice a written demand requiring the secured party
 - (a) to inform him, within 15 days after being served with the demand, of the place where the security instrument that is the subject of the security notice, or a copy of that instrument, is located and available for examination and of the normal business hours during which the examination may be made, and
 - (b) to make the security instrument or a copy of it available for examination at that place during normal business hours by him or a person authorized by him within a reasonable time after the demand is served.
- (3) Whether or not a demand under subsection (2) is served or complied with in relation to the same security instrument, a person within any of the classes enumerated in subsection (1) may serve on the secured party under a security notice a written demand requiring the secured party to mail or deliver to him a true copy of the security instrument that is the subject of the security notice.
- (4) A reference in this section to a security instrument includes amendments to the security instrument.
- (5) A demand referred to in subsection (2) or (3) is sufficiently served if it is sent by registered mail or delivered to the secured party's address for service according to the records of the Department.
- (6) A demand referred to in subsection (3)
 - (a) shall contain an address for the person serving the demand to which the copy of the security instrument is to be mailed or delivered, and
 - (b) shall be complied with by sending the copy by registered mail to, or delivering the copy to, the address referred to in clause (a) within 15 days after the day on which the demand is served.
- (7) A person served with a demand under subsection (3) may refuse to mail or deliver the copy of the security instrument unless the person serving the demand first pays to him a charge for making the copy that is reasonable in the circumstances but not in excess of the maximum charge prescribed by the regulations.
- (8) If a secured party on whom a demand is served under this

section fails without reasonable excuse to comply with the demand, the person who served the demand may apply to the Court of Queen's Bench for an order requiring the secured party to comply with the demand within the time and in the manner prescribed in the order.

(9) If a secured party fails to comply with an order of the Court under subsection (8), the Court may, on the application of the person who obtained the order,

(a) make any further order the Court considers necessary to ensure compliance with the order made under subsection (8), or

(b) make a further order directing the Minister to cancel the registration of the security notice of the secured party.

(10) Notwithstanding anything in this section, a person served with a demand under subsection (2) or (3) is excused from complying with the demand if

(a) he has, at the time the demand is served on him, assigned his security interest and he is not one of the assignees, and

(b) he informs the person serving the demand, within 15 days of being so served, of the name and address of the assignee.

(11) If a person served with a demand complies with subsection (10), the person who served the demand may serve another demand under subsection (2) or (3) on the assignee at the address furnished pursuant to subsection (10) as though the assignee had registered a notice of assignment and as though the address so furnished were the assignee's address for service under a registered notice of assignment.

180.3(1) In this section,

(a) "notice to take proceedings" means a notice served under subsection (2)(a);

(b) "show-cause notice" means an originating notice under subsection (2)(b).

(2) A person within any of the classes enumerated in subsection (3) may

(a) serve on the person named in a registered security notice as the secured party a notice to take proceedings directing that person to commence an application by originating notice in the Court of Queen's Bench returnable within 60 days after the date on which the notice is served, for an order substan-

tiating the security interest that is the subject of the registered security notice, or

(b) apply to the Court of Queen's Bench by originating notice requiring the secured party under a registered security notice to show cause why the registration of the security notice should not be cancelled.

(3) A person may serve a notice to take proceedings or apply under subsection (2)(b) if he is

(a) the lessee or one of the lessees of an agreement against which the security notice is registered,

(b) the person named in a registered security notice as the person who gave the security instrument,

(c) the secured party named in another security notice registered against the same agreement that is the subject of the notice to take proceedings or the show-cause notice,

(d) a person who has obtained leave from the Court of Queen's Bench to do so, or

(e) a person who is a member of a class of persons designated by the regulations for the purposes of this clause.

(4) If proceedings are commenced as a result of a notice to take proceedings, the person serving the notice to take proceedings shall be the only respondent in the proceedings unless the Court, after the proceedings are commenced, orders that one or more other persons are to be added as respondents.

(5) The Court may, on ex parte application by a person who proposes to serve a notice to take proceedings, by order shorten the 60-day period referred to in subsection (2)(a) and, if the order is made,

(a) subsection (2)(a) shall, in relation to that notice, be deemed to refer to the shorter period, and

(b) a certified copy of the order shall be served with that notice.

(6) The Court, on the application of a person served with a notice to take proceedings, may extend the period for commencing the application to the Court under subsection (2)(a), whether or not that period has been shortened pursuant to subsection (5).

(7) For the purposes of this section,

(a) a show-cause notice may be served in any manner in

which an originating notice in the Court of Queen's Bench may be served, and

(b) a notice to take proceedings or a show-cause notice is sufficiently served if sent by registered mail to the secured party under the registered security notice at the address that is, at the time of mailing, that person's address for service in relation to the security notice according to the records of the Department.

(8) The Minister shall cancel the registration of a security notice if he is provided with an affidavit satisfactory to him showing

(a) that a notice to take proceedings was served in accordance with this section on the secured party under the security notice, and

(b) that no application was commenced in accordance with the notice or that an application so commenced was dismissed or discontinued.

(9) If the registration of a security notice is cancelled pursuant to subsection (8), the person who was named as the secured party under the security notice as it was originally registered may not submit for registration another security notice relating to the same security interest except with leave of the Court of Queen's Bench.

180.4(1) The Minister shall .

(a) cancel the registration of a security notice if there is submitted to him for registration a certified copy of an order or judgment of the Court of Queen's Bench directing him to do so whether as a consequence of proceedings under section 180.2 or 180.3 or otherwise, or

(b) register a certified copy of an order or judgment of the Court of Queen's Bench submitted to him for registration that directs him to do any act in relation to the registration of a security notice or a notice referred to in section 180(8) or 180.1.

(2) The Minister may cancel any registration made under this Division if the registration was made in error.

181 The Lieutenant Governor in Council may make regulations

(a) respecting the registration of security notices, notices referred to in sections 180(8) and 180.1 and certified copies of orders or judgments referred to in sections 180.2(9)(b) and 180.4(1);

(b) respecting the cancellation of registrations;

- (c) prescribing the form of notices under this Division;
- (d) prescribing the fees payable to the Minister for
 - (i) registration of a security notice, a notice referred to in section 180(8) or 180.1 or a certified copy of an order or judgment referred to in section 180.2(9)(b) or 180.4(1),
 - (ii) cancellation of the registration of a security notice pursuant to section 180.3(8), and
 - (iii) any other service provided by the Department under this Division;
- (e) designating classes of persons for the purposes of section 180.2(1)(e) or 180.3(3)(e) or both;
- (f) prescribing a maximum charge for the purposes of section 180.2(7).

8 *This Act comes into force on Proclamation.*

