1985 BILL 207

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 207

AN ACT TO AMEND THE DEBTORS' ASSISTANCE ACT

MR. GURNETT

First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

Bill 207
Mr. Gurnett

BILL 207

1985

AN ACT TO AMEND THE DEBTORS' ASSITANCE ACT

(Assented to , 1985)

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

1 The Debtors' Assistance Act is amended by this Act.

2 The following is added after section 4:

4.1(1) In this section,

(a) ''farmer'' means a person who is resident of and living in the Province who is personally and bona fide engaged in farming operations in the Province, and includes the personal representative, child or widow of a deceased farmer, and meets such other criteria as may be set out in the regulations;

(b) ''home owner'' means a person who is resident of and living in the Province and occupies as his home any land of which he is the owner, or may be entitled to become the owner by virtue of any agreement of sale, any option to purchase, or the terms of any lease, and includes the personal representative, child or widow of a deceased home owner, and meets such other criteria as may be set out in the regulations;

(c) ''independent business person'' means a person who is resident of and living in the Province who

(i) owns and operates a business from which he derives more than 2/3 of his net annual personal income,

Explanatory Notes

1 This Bill will amend chapter D-5 of the Revised Statutes of Alberta 1980.

2 Adds new sections to provide for special debt handling for farmers, home owners and small businessmen.

(ii) derives from the ownership and operation of his business a net annual personal income not exceeding $66 667, and

(iii) in the operation of his business employs no more than 10 full time and no more than 15 part time employees,

and includes the personal representative, child or widow of a deceased independent business person, and meets such other criteria as may be set out in the regulations.

(2) Upon receipt of an application in writing by or on behalf of a farmer, a home owner or an independent business person, or any creditor of a farmer, a home owner or an independent business person, the Board shall confer with and advise the farmer, home owner or independent business person, or his creditor and shall endeavour to bring about an amicable arrangement for the payment of the farmer's, home owner's or independent business person's indebtedness, and for that purpose the Board shall inquire into the validity of all claims made against the farmer, home owner or independent business person and his ability to pay his debts, either presently or in the future, and shall endeavour to effect an agreement between the farmer, home owner or independent business person and his creditors to provide for the settlement of the farmer's, home owner's or independent business person's debts, either in full or by a composition, and for the purpose of any such inquiry the Board shall have all the powers in that behalf which may be conferred upon a commissioner pursuant to the *Public Inquiries Act.*

(3) An agreement arrived at between a farmer, a home owner or an independent business person and any creditor and made by or through the agency of the Board may be informal or by parole, or partly written and partly by parole, and may be contained wholly or in part in letters written by or to the Board, and it shall be valid and enforcible at law although without consideration, and may alter, modify or rescind in whole or in part the terms of any mortgage, contract or agreement theretofore subsisting between the parties, or by the terms of which the rights of any of the parties are affected.

(4) Unless the Board or any person designated by the Lieutenant Governor in Council for the purpose issues a permit in writing in a form prescribed in the regulations giving consent thereto

(a) no action or suit for any debt founded on contract not being indebtedness for rates or taxes payable pursuant to any statute;

(b) no action or proceeding for the sale under or foreclosure of a mortgage on land, or for cancellation, rescission or specific performance of an agreement for sale of land or for recovery of possession of land, whether in court or otherwise, except as against overholding tenants or other occupants who have no interest in title;

(c) no action or proceeding to sell land under or in satisfaction of any judgment or lien; and

(d) no seizure or distress under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement or in attornment as tenant under any agreement for sale or mortgage, or no sale or other proceeding thereunder either by virtue of rights of property at common law or under a statute except a statute that contains a provision that it operates notwithstanding this Act

shall be taken, made or continued by any person whomsoever against a farmer in any case, or against a home owner in case the same relate to or affect the land occupied by the home owner as his home or are for the purpose of enforcing any claim whatsoever founded on or arising out of any mortgage, charge, lien of any kind affecting the said land, or by agreement of sale, option to purchase or the terms of any lease by virtue whereof the resident may become the owner of the said land, or against an independent business person if it relates to or affects the ongoing operations of his business to the extent that he may thereby be forced to discontinue the business.

(5) The consent of the Board under subsection (4) whenever given shall relate back to anything done in the action or other proceedings in respect of which the permit is given.

(6) The Board may at any time in its discretion cancel or suspend any permit which has been previously issued under subsection (4) by the Board.

(7) Upon the receipt of any application by or on behalf of a creditor in writing, in such form and containing such particulars as may be prescribed by the regulations for a permit to commence or continue any action or proceedings, against a farmer, a home owner or an independent business person the Board shall proceed to make such inquiries as it may deem proper into the circumstances, and thereupon may either issue a permit or may refuse the application, and as a condition of the refusal may give such directions to the debtor as to the conduct of his affairs and the disposition of his property as it deems to be in the best interests of the debtor and his creditors, and also may determine a basis upon which the debtor ought to pay the claims of his creditors and direct the debtor to pay the same accordingly.

(8) In the case of a farmer, any direction given under subsection (7) shall be applicable only to so much of the money, crop and livestock of the debtor as is not required for

(a) the payment of any sums necessarily borrowed, or debts necessarily incurred by the farmer in growing and harvesting the crop, or any sums necessarily borrowed or debts necessarily incurred by the farmer during the period of 6 months before the sale of any livestock for the purpose of feeding and preparing his livestock for the market and the provision of a sufficient amount of money for the necessary subsistence of the farmer and his family and for the continuance of his operations for a period of not longer than until the next ensuing harvest;

(b) the payment of any current taxes and any installment of consolidated arrears payable in respect to the farmer's property for the year in which the direction is given.

4.2(1) Upon the receipt of an application in writing in the form set out in the regulations, signed by a farmer or by any person authorized by him for that purpose, the Board may, if from inquiries made by it, it is satisfied that it is in the interests of the farmer and his creditors so to do, file in the office of the Clerk of the Court and the office of the sheriff of the judicial district in which the farmer resides, and in the office of the Registrar of the Land Registration District in which the farmer resides, a certificate in the form set out in the regulations, and shall cause a notice to be published in The Alberta Gazette to the effect that a certificate has been filed by it in respect of such farmer in pursuance to the provisions of this Act.

(2) Every application shall be witnessed and shall be accompanied by an affidavit of execution and if the application is signed by a person on behalf of the farmer, by a statutory declaration of the person so signing that he was duly authorized by the farmer for that purpose.

(3) Upon the filing of a certificate, no proceeding in the nature of an execution and no proceedings leading to the sale or foreclosure of real property, and no proceeding of any sort either in court or extra-judicial, which may lead to the seizure or sale of the property of the farmer named in the certificate, shall be taken or continued without the consent in writing of the Board.

(4) Upon the receipt by the Registrar of any Land Titles Office of a certificate, the Registrar shall, with all reasonable expedition, prepare an abstract of title as to the interest of the person named in the certificate in any land of which such person is the registered owner, and forward it to the Board which shall thereupon send to every other person shown by such abstract to have an interest in the land a notice to the effect that a certificate has been filed pursuant to this Act.

(5) Notwithstanding the *Execution Creditors Act*, the *Exemptions Act* and the *Seizures Act*, if at the time of the filing of the said certificate any of the goods and chattels of a farmer, not consisting of growing crops, farm produce or livestock, are under seizure by virtue of any writ of execution or distress warrant, the Board may in its sole discretion direct that the goods and chattels so seized be sold at such time and in such manner as the Board deems proper, and that the proceeds of such sale be distributed, having due regard to the rights of any persons having any interest in the goods and chattels so sold, or that the same be again placed in the possession of the farmer, and every direction so given shall be binding upon the sheriff or other person who made the seizure.

(6) As soon as conveniently may be after the filing of any certificate, the Board shall take such steps as it deems proper to advise the creditors of the financial position of the farmer.

4.3(1) From and after the filing of a certificate and so long as such certificate remains uncancelled and in force, no sale, conveyance, mortgage or dealing of any description by the farmer named in such certificate with any of his personal property or with any land shall have any validity, force or effect unless made or done with the consent in writing of the Board, which consent may be either general or specific.

(2) The Registrar of Land Titles in whose office a certificate has been filed in respect of a farmer shall refuse to register any transfer, conveyance, mortgage, encumbrance or other instrument affecting any property of the farmer unless it is accompanied by the consent of the Board or a certified copy thereof.

(3) Notwithstanding the *Limitation of Actions Act* the period during which a certificate is in force as well as any period during which by reason of the refusal by the Board to grant a permit the right to commence any action is suspended shall be excluded in the computation of the time within which an action must be commenced.

(4) The period during which proceedings by a creditor are prohibited under this Act shall not be included in the time within which an action or other proceeding is to be commenced under the *Limitation of Actions Act*, or under any other statute or law for the time being in force in the Province limiting or prescribing the time within which actions or proceedings are to be commenced, and any party to an action or other proceeding which has been prohibited by this Act shall have the same time for continuing such action or proceeding after the expiry of the said period as he would have had if the action or proceeding had not been prohibited, and shall not be prejudiced by reason of the delay.

(5) For the purpose of this section the proceedings mentioned and described in section 4.1(7) shall, insofar as a farmer and a creditor of a farmer are concerned, and whether or not such creditor has applied or hereafter applies to the Board for the issue of a permit pursuant to section 4.1(7) or for the written authority of the Board pursuant to subsection (5), be deemed to have been prohibited so long as this Act remains in force, subject to subsection (6).

(6) Upon the issue of the permit or written authority of the Board, the period subsequent to the issue thereof shall be included in the time within which the action or other proceeding affected thereby is to be commenced under the *Limitation of Actions Act* or under any other statute of law for the time being in force in the Province limiting or prescribing the time within which actions or proceedings are to be commenced.

4.4 The Clerk of the Court of Queen's Bench and every sheriff and every Registrar of Land Registration Districts shall, without fee, perform all services required to be rendered by the Board and keep a record of every instrument filed by it in its office pursuant to this Act, and may issue certified copies thereof, and every certified copy shall be evidence of the issue and filing of such instrument without proof of the signature or official character of the officer signing the same.

4.5 In any case where a certificate in respect of a farmer under this Act has been filed, and it is made to appear by any creditor to the Board that the property of the farmer therein named is for any reason whatsoever in jeopardy, the Board may by writing under its hand directed to the sheriff of the judicial district in which such property is situated require such sheriff to seize such designated property and to hold and deal with the same for it in such manner as the Board may in writing direct, and thereupon the sheriff shall proceed forthwith to seize such property and to deal with the same in such manner as the Board may from time to time by writing direct.

4.6 The Board and any person authorized by the Board in writing may make all such inquiries as may be from time to time deemed advisable with regard to the property of any farmer in respect of whom directions have been given, and as to the disposition of any such property, and for that purpose the Board or any person authorized by the Board in writing shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to the *Public Inquiries Act.*

4.7 In any case in which a certificate has been issued in respect of any farmer and so long as the same remains uncancelled and in force, the Board may in its discretion, having regard to the circumstances and necessities of the farmer, direct the disposal of any crop grown by the farmer or of any livestock of the farmer, or of both, notwithstanding any provisions of any mortgage, charge or lien, or crop share lease or crop share agreement affecting the crop or any mortgage, charge or lien upon livestock except a mortgage charge of lien for securing the payment of the purchase price thereof, in such manner and at such times as to the Board seems proper, and that the proceeds thereof be paid to it, and the Board may, and it is hereby authorized and empowered to, appropriate and deal with the proceeds paid to it in accordance with the following priorities:

Firstly: In payment of any sums necessarily borrowed, or debts necessarily incurred by the farmer in growing and harvesting the crop, or any sums necessarily borrowed or debts necessarily incurred by the farmer during the period of 6 months before the sale of any livestock for the purpose of feeding and preparing his livestock for the market, together with a sufficient amount of money to provide for the necessary subsistence of the farmer and his family and for the continuance of his operations for a period of not longer than until the next ensuing harvest;

Secondly: In paying any current taxes and any installment of consolidated arrears payable in respect of the farmer's property for the year in which the direction is given; and

Thirdly: To distribute the balance which shall then remain amongst the persons lawfully entitled thereto in such priority and in the same manner as if the balance represented the gross proceeds of all the crop or livestock sold pursuant to a direction given pursuant to this section.

4.8(1) Any person who deems himself aggrieved by any action of the Board in giving or refusing to give any consent to the taking of any action or other proceedings, or in cancelling any consent previously given, or in giving any directions to a debtor as to the conduct of his affairs or the disposition of his property, or in determining any basis for the payment by a farmer of his indebtedness, or the granting of a certificate or its subsequent cancellation, may, upon notice in writing to the Board within 15 days of the action of the Board then in question, appeal from such action to the Court of Queen's Bench for the time being designated as a judge for the purpose of hearing appeals under this Act.

(2) The Court may at any time after making any order thereafter from time to time upon the application of the Board or any person affected thereby by order, vary, amend or alter the same or may rescind any previous order and make any new order in lieu of the rescinded order which appears to the Court in the circumstances of the case to be just and convenient having regard to the intents and purposes of this Act.

(3) Upon any notice of appeal being given to the Board in the manner and within the time prescribed by this Act, the Board shall, with all reasonable expedition, and in any event within 7 days thereafter, transmit to the Court a copy of the notice and shall apply to the Court to fix a day and time for the hearing of the appeal and for directions as to the persons to be given notice of the appeal, and upon the day so fixed or any adjourned date the Court shall proceed to hear and determine the appeal, and for that purpose may make such inquiries and may take evidence in such manner as the Court in its absolute direction deems proper, and thereupon the Court may either make an order confirming the action of the Board or may order the Board to take such other action in the premises as the Board is empowered to take by this Act as to the Court may seem proper and convenient in the circumstances, and every order so made shall be binding and conclusive and there shall be no appeal therefrom, and no proceedings in relation to any appeal or any order made thereon shall be restrained by injunction, prohibition or any other process or proceedings in any court, nor be removable by certiorari or similar proceedings in any court.

(4) In any case where any application by way of appeal has been refused by the Court, the applicant may, at the expiration of 6 months from the date of such refusal or at any time if such new circumstances arise as in the opinion of the Court make it proper so to do, renew the application in the same manner as in the case of an original application, and thereupon any order may be made which may have been made upon an original application.

(5) A copy of every order made by the Court upon any appeal and all directions given by the Court thereon shall be kept on file at the office of the Board.

(6) Subject to the provisions of this Act the procedure with respect to appeals shall be governed by the Rules of Court.

4.9(1) If any person resident in the Province, not being a farmer, satisfies the Board that he has been detrimentally affected to a substantial extent by reason of the operation of this Act, the Board may issue and file a certificate in respect of such person in the same manner as if that person were a farmer, and thereupon all the provisions of section 4.3(3) to (6), and sections 4.4 to 4.8 shall, so far as the same are applicable to a person who is not a farmer, apply to that certificate and the person in respect of whom it is issued as if such person were a farmer.

(2) The Board shall, immediately on receipt of an order of the Court made pursuant to this Act to that effect, issue a certificate in the terms of the order, or, if so required, cancel any certificate issued in whole or in part.

(3) If any person makes willful default in complying with any order, direction or condition given by the Board or the Court, or willfully takes or continues any action or proceeding or makes or continues any seizure, or sells or disposes of a chattel in violation of the provisions of this Act, or the regulations, or if any resident in respect of whom directions have been given in pursuance of this Act makes any disposition of anything, either real or personal property in contravention of the provisions of this Act, or makes default in complying with any directions given by the Board under the provisions of this Act, or in complying with any order, direction or condition given or imposed by the Board or the Court, then he shall be liable upon summary conviction to a fine not exceeding $10 000 or a term of imprisonment not exceeding 3 months, or to both.

(4) All documents purporting to be issued in pursuance to this Act, by the Board and signed by the Chairman or any member of the Board, shall be receivable in evidence, and shall, unless the contrary is shown, be deemed to have been so issued and signed, and it shall not be necessary to prove the handwriting or official position of the Chairman or member of the Board.

3 The following is added after section 7:

7.1(1) In case the Parliament of Canada enacts legislation as to the adjustment of debts, the Lieutenant Governor in Council may for the purpose of preventing conflict between that legislation and this Act, from time to time by Proclamation published in The Alberta Gazette

(a) suspend the operation of this Act or any specified provision or provisions thereof for a specified period or until further Proclamation;

(b) declare that this Act or any specified provision or provisions thereof shall be no longer applicable to any specified class or classes of persons for a specified period or until further Proclamation; or

(c) cancel or vary any previous suspension or declaration.

(2) Every Proclamation shall take effect upon the publication thereof in The Alberta Gazette or upon such later date as may be named in the Proclamation for that purpose.

7.2 This Act binds the Crown.

4 This Act shall come into force on Proclamation, and shall remain in force only until the first day of January, 1988.

3 New sections to provide for suspension if equivalent federal legislation is passed, and to bind the Crown.

4 Coming into force.