

1990 BILL 4

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 4

LICENSING OF TRADES AND BUSINESSES
AMENDMENT ACT, 1990

MRS. MIROSH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 4
Mrs. Mirosh

BILL 4

1990

LICENSING OF TRADES AND BUSINESSES AMENDMENT ACT, 1990

(Assented to , 1990)

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

*1 The Licensing of Trades and Businesses Act is amended by this
Act.*

2 Section 1 is amended

(a) by adding the following after clause (a):

(a.1) "designated agent" means a person who is appointed as
a designated agent pursuant to the regulations;

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

(d) "regulatory board" means a regulatory board established
in respect of a business by the Minister in accordance with
the regulations.

3 Section 4(1) is amended

(a) by adding the following after clause (g):

(g.1) provide for the licensing of salespersons or other
persons acting on behalf of a licensed person referred to in
clause (d);

*(b) in clause (i) by striking out "and" at the end of subclause (i),
by adding "and" at the end of subclause (ii) and by adding the
following after subclause (ii):*

(iii) in respect of different types of licences;

Explanatory Notes

1 This Bill will amend chapter L-13 of the Revised Statutes of Alberta 1980.

2 Definitions.

3 Section 4(1) presently reads in part:

4(1) The Minister may

(d) provide for the licensing of all persons engaged or employed in a business or a description or class of business designated under clause (a) and prohibit the carrying on of that business or the engagement in that business by a person who is required to be licensed and who is not so licensed;

(i) in prescribing fees under clause (h), prescribe different fees

(c) by adding the following after clause (i):

(i.1) prescribe fees for examinations;

(i.2) prescribe fees payable by or in respect of designated agents;

(i.3) refund all or part of a fee in circumstances where he considers it appropriate to do so;

(d) by adding the following after clause (k)(i):

(i.1) respecting the eligibility requirements of applicants for licences, and the duties and obligations of licensed persons;

(i.2) requiring licensed persons referred to in clause (d) to appoint designated agents as their representatives and respecting the eligibility requirements of designated agents and their duties and obligations;

(e) by repealing clause (k)(ii) and (iii) and substituting the following:

(ii) prescribing or adopting, with or without modification, codes, standards or rules governing

(A) the manner of carrying on a business or a description or class of business to which this Act applies,

(B) experience and education requirements and requirements as to financial responsibility of persons carrying on or wishing to carry on such a business,

(C) the type and condition of premises and equipment used in such a business, and

(D) the conduct of persons engaged in carrying on such a business;

(f) by adding the following after clause (k)(v):

(v.1) requiring, in respect of any specified business or description or class of business, that security in addition to or instead of a bond be provided to protect the interests of persons dealing with the business, and respecting the kind of security that must be provided and the terms and conditions governing the provision of it,

(g) in clause (k)(vi) by striking out "in respect of the applicant for a licence";

(i) in respect of different businesses and different descriptions or classes of businesses, and

(ii) in respect of businesses

(A) that are owned or operated or controlled by corporations, the majority of the capital of which is owned by persons who are resident within Alberta, and

(B) that are owned or operated or controlled by corporations, the majority of the capital of which is not so owned;

(k) make regulations that the Minister considers necessary for carrying out this Act, and without limiting the generality of the foregoing, make regulations

(ii) prescribing standards as to the nature and condition of the premises to be occupied by the applicant for a licence in carrying on his business,

(iii) prescribing as to certain specified businesses the equipment and facilities for the proper accommodation of the public required to be provided by an applicant for a licence or for a renewal of a licence,

(vi) requiring in respect of any specified business or description or class of business that a bond be given in respect of the applicant for a licence in the form and on the conditions prescribed by the Minister,

(m) make regulations ...

(h) by repealing clause (k)(vii);

(i) in clause (m) by striking out “and” at the end of subclause (ii), by adding “and” at the end of subclause (iii) and by adding the following after subclause (iii):

(iv) providing for a system of resolving complaints against persons who carry on a business or a description or class of business to which this Act applies, including regulations respecting

(A) the kinds of complaints that the complaint resolution system may deal with,

(B) the procedure to be followed in making and attempting to resolve a complaint,

(C) the appointment of one or more arbitrators to deal with a complaint that cannot be resolved and the procedure to be followed in such an arbitration, and

(D) matters relating to the payment of any award made by an arbitrator;

4 The following is added after section 4:

4.1(1) The Minister may make regulations

(a) providing for the establishment of regulatory boards to exercise rights, obligations and functions delegated to them under subsection (5);

(b) providing for the appointment of the members of a regulatory board, including, without limitation, the number of members, the method of appointment of members, the terms of office of members and the filling of vacancies.

(2) A regulatory board may make by-laws

(a) respecting the conduct of the business and affairs of the board;

(b) respecting the calling of meetings of the members and the conduct of business at those meetings;

(c) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of members, officers and employees of the board;

4 Delegation to regulatory boards.

- (d) delegating to the officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make by-laws;
 - (e) respecting the establishment, membership, duties and functions of special, standing and other committees.
- (3) A by-law made by a regulatory board is not effective until it is approved by the Director.
- (4) The *Regulations Act* does not apply to a by-law of the board.
- (5) The Director may by notice in writing to a regulatory board
- (a) delegate to a regulatory board any or all of his rights, obligations or functions under this Act and the regulations respecting
 - (i) the issuing, cancellation and suspension of licences,
 - (ii) the making of an investigation or inquiry under section 17,
 - (iii) the administration of bonds given pursuant to the regulations, and
 - (iv) the administration of a fund established under section 8.1,
 - (b) impose any conditions on the regulatory board's exercise of the delegated rights, obligations or functions that he considers appropriate, and
 - (c) amend or revoke the notice.
- (6) Where the Director makes a delegation under subsection (5), a reference in this Act or the regulations to the Director with respect to the delegated right, obligation or function is to be read as if it were a reference to the regulatory board to whom the delegation was made.
- (7) The Minister may make regulations respecting
- (a) the collection of fees by a regulatory board on the Government's behalf and their remission to the Provincial Treasurer, and
 - (b) the payment of a commission to a regulatory board for its services under this section.

(8) Notwithstanding subsection (7)(b), a regulatory board may, with the approval of the Minister, collect money by the levy of assessments on persons licensed under this Act and designated agents for the purpose of enabling the board to carry out rights, obligations and functions delegated to it under subsection (5).

(9) A person may not, without the written consent of the Director, disclose any information that he has obtained in the course of exercising delegated authority under this section.

5 *The following is added after section 8:*

8.1(1) A regulatory board may create a fund to be used for the following purposes:

(a) to pay claims of persons who have suffered loss or damage arising out of the operation by a licensed person of a business or a description or class of business to which this Act applies;

(b) any other purposes authorized by the regulations.

(2) Subject to the regulations, the regulatory board may collect money by the levy of assessments on

(a) persons licensed under this Act, and

(b) designated agents

who are engaged or employed in the business in respect of which rights, obligations or functions have been delegated to the board under section 4.1(5).

(3) The money collected under subsection (2) and any income from the investment of that money shall be credited to the fund.

(4) A regulatory board is deemed to hold in trust all money credited to a fund and shall immediately deposit that money in a trust account in a bank, treasury branch, trust company or credit union in Alberta, separate and apart from any other money of the regulatory board.

(5) Notwithstanding subsections (3) and (4), a regulatory board may, from the income from the investment of the money in a fund, pay the administrative costs associated with the fund.

(6) If the income from the investment of the money in a fund is insufficient to pay the administrative costs associated with the fund, the regulatory board may collect money to pay those costs by the levy of assessments on persons licensed under this Act and designated agents in accordance with the regulations.

5 Establishment of fund by regulatory board.

(7) The Minister may make regulations

- (a) respecting purposes for which the money in a fund may be used, in addition to the purpose referred to in subsection (1)(a);
- (b) respecting the investment of money in a fund that is not currently required for disposition;
- (c) respecting the protection, by insurance or other means, of the money in a fund against claims or losses;
- (d) respecting the administration of a fund and the levy and collection of assessments for a fund;
- (e) requiring a regulatory board to make a report to the Minister and respecting the nature and contents of such a report and the times at which it must be made;
- (f) respecting the kinds of claims that may be paid from a fund and the conditions to be met before any claim is paid from a fund;
- (g) respecting the limits of liability of a fund;
- (h) respecting the time within which claims against a fund must be made;
- (i) providing for the recovery by the regulatory board from a licensed person of amounts paid from the fund to a claimant in respect of a claim against the licensed person for loss or damage arising out of the operation by the licensed person of a business or a description or class of business to which this Act applies;
- (j) respecting the winding-up of a fund.

6 *The following is added after section 9:*

9.1(1) When the Director cancels or suspends the licence of a person referred to in section 4(1)(d) he may by order prohibit any designated agent or salesperson or other licensed person acting on behalf of that person who committed the act or omission that resulted in the cancellation or suspension or who directed, authorized, assented to, acquiesced in or participated in the act or omission from being a designated agent or so acting, as the case may be, subject to any terms and conditions prescribed in the order.

(2) A designated agent, salesperson or other licensed person against whom an order is made under subsection (1) may appeal

6 Order against designated agent, salesperson.

the order as if it were a cancellation of a licence, and sections 10 and 10.1, with the necessary modifications, apply to the appeal.

7 Section 10 is amended

(a) by repealing subsection (1) and substituting the following:

10(1) A person

(a) who has been refused a licence or renewal of a licence by the Director under section 9,

(b) whose licence has been cancelled or suspended by the Director under section 9, or

(c) whose licence or renewal has been refused or whose licence has been cancelled as a result of a decision of the Director under section 10.1(3)

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

(b) by adding the following after subsection (8):

(9) Where the licence was refused, cancelled or suspended by a regulatory board instead of the Director, the regulatory board has the right of appeal under subsection (8) as if it were the Director.

8 The following is added after section 10:

10.1(1) Where a regulatory board makes a decision pursuant to a delegation made to it under section 4.1(5)(a), it must give written notice of the decision, together with reasons, to any person who it considers may be adversely affected by the decision.

(2) A person who is adversely affected by a decision of a regulatory board may, within 30 days after receiving notice under subsection (1), appeal the decision to the Director by serving a notice of appeal on him.

(3) The Director may confirm, modify or quash the decision appealed.

(4) The Director must give written notice of his decision, together with reasons, to the same persons to whom the regulatory board gave notice under subsection (1).

7 Section 10 presently reads in part:

10(1) A person

(a) who has been refused a licence or renewal of a licence under section 9, or

(b) whose licence has been cancelled or suspended under section 9,

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.

(8) 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 (4).

8 Appeal from decision of regulatory board.

(5) If the subject matter of an appeal is the cancellation or suspension of a licence, the cancellation or suspension is stayed pending final resolution of all appeals under this section and section 10.

9 Section 12 is repealed and the following is substituted:

12 A person who contravenes this Act or a regulation or order under this Act is guilty of an offence and is liable to a fine of

(a) not more than \$10 000 where the offender is a corporation, and

(b) not more than \$5000 where the offender is an individual.

10 Section 14(1) is repealed and the following is substituted:

14(1) When in a prosecution under this Act or a regulation or order under this Act it is alleged that the accused

(a) carried on a business or a description or class of business to which this Act applies, or

(b) acted as a salesperson or in some other capacity on behalf of a person carrying on a business or a description or class of business to which this Act applies

without being registered or holding a licence required under the regulations or while his licence was cancelled or suspended, evidence of one transaction is prima facie proof that the accused carried on the business or acted as a salesperson or in that other capacity, as the case may be.

11 Section 16 is repealed and the following is substituted:

16 If a person who is required

(a) to be registered or licensed in respect of the carrying on of a business or a description or class of business to which this Act applies, or

(b) to be licensed as a salesperson or in some other capacity while acting on behalf of a person referred to in clause (a)

carries on business or so acts without being registered or licensed or while his licence is cancelled or suspended, the Minister or any person authorized by the Minister may apply to the Court of Queen's Bench for an order restraining the person and his

9 Section 12 presently reads:

12 A person who contravenes this Act or a regulation or order passed pursuant to this Act is guilty of an offence and liable

(a) if the offender is a corporation to a fine of not less than \$200 and not more than \$5000, and

(b) in any other case to a fine of not less than \$50 and not more than \$1000, and in default of payment to imprisonment for a term not exceeding 90 days.

10 Section 14(1) presently reads:

14(1) When in a prosecution under this Act or a regulation or order passed pursuant to this Act it is alleged that the accused carried on or engaged in a business or a description or class of business designated pursuant to this Act without being the holder of a licence or while his licence was suspended, evidence of one transaction is prima facie proof that the accused carried on or engaged in that business or description or class of business.

11 Section 16 presently reads:

16 If a person who is required to be registered or to hold a licence in respect of a business or any description or class of business pursuant to an order of the Minister made under this Act carries on or engages in the business or the description or class of business without being so registered or licensed or while his licence is suspended, the Minister or any person authorized by the Minister, may apply to the Court of Queen's Bench for an order restraining the person, his employees or agents from carrying on that business within Alberta unless and until the person is so licensed or registered or the suspension is terminated.

employees and agents from carrying on business or so acting until he is registered or licensed or the suspension is terminated.

12 Section 17 is repealed and the following is substituted:

17(1) The Director or a person authorized by him in writing may investigate and inquire into any matter for any purpose related to the administration of this Act, and may, for the purposes of such an investigation or inquiry, at all reasonable times

(a) inspect, audit or examine the records of a person required to keep records under this Act and any document of that person or of any other person that relates or may relate to the information that is or should be in the records of the person required to keep records under this Act, and

(b) require the production for inspection, audit or examination of all records or documents that are or may be relevant to the investigation or inquiry.

(2) For the purposes of an investigation or inquiry under subsection (1) the Director or authorized person may, if he has reasonable grounds to believe that records or documents described in subsection (1)(a) or (b) are likely to be found in any premises or place,

(a) enter into the premises or place, subject to subsection (4), and

(b) require the owner or manager of the premises or place and any other person on the premises or at the place to give him all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and, for that purpose, require the owner or manager to attend at the premises or place with him.

(3) If, on an ex parte application by the Director, a judge of the Court of Queen's Bench is satisfied by information on oath that

(a) there are reasonable grounds to believe that there are in any premises or place, other than a dwelling-house, records or documents described in subsection (1)(a) or (b), and

(b) entry into the premises or place is necessary for the administration of this Act,

he may issue a warrant authorizing a person named in the warrant to enter the premises or place and to exercise any of the

12 Section 17 presently reads:

17(1) The Director, or a person authorized by him in writing, may

(a) on receipt of a complaint from a person interested, or when he considers it necessary, investigate and inquire into any matter concerning the administration of this Act,

(b) for the purpose of the investigation and inquiry, inquire into and examine any book, document, paper, correspondence or record of the person in respect of whom the investigation is being made, and

(c) seize and take possession of any thing described in clause (b).

(2) A person who has the custody, possession or control of any book, document, paper, correspondence or record referred to in subsection (1) shall on demand produce it and permit the inspection of it by the Director or the person authorized by him.

(3) A person who does not comply with subsection (2) is guilty of an offence and is liable to the penalty provided in section 12.

powers referred to in subsections (1) and (2), subject to the conditions specified in the warrant.

(4) If the premises or place referred to in subsection (2)(a) is a dwelling-house, the Director or authorized person may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (5).

(5) If, on an ex parte application by the Director, a judge is satisfied by information on oath

(a) that there are reasonable grounds to believe that a dwelling-house is the premises or a place referred to in subsection (2)(a),

(b) that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, and

(c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry into it will be refused,

he may issue a warrant authorizing a person named in the warrant to enter that dwelling-house subject to the conditions specified in the warrant.

(6) If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, he shall

(a) order the occupant of the dwelling-house to provide reasonable access to a person named in the order to any records or documents that are being or should be kept in the dwelling-house, and

(b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

(7) In executing a warrant issued under this section, the person named in the warrant may not use force unless he is specifically authorized to do so in the warrant.

(8) No person may interfere with any person doing anything that he is authorized to do by or pursuant to this section or prevent or attempt to prevent any person from doing that thing and, notwithstanding any other law to the contrary, a person must, unless he is unable to do so, do everything he is required to do by or pursuant to this section.

13 This Act comes into force on Proclamation.

13 Coming into force.

10

Explanatory Notes