

1991 BILL 39

Third Session, 22nd Legislature, 40 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 39

MOTOR VEHICLE ADMINISTRATION
AMENDMENT ACT, 1991

THE SOLICITOR GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 39

1991

MOTOR VEHICLE ADMINISTRATION AMENDMENT ACT, 1991

(Assented to _____, 1991)

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

1 The Motor Vehicle Administration Act is amended by this Act.

2 The following is added after section 1:

1.1 For the purposes of the following provisions, “operator’s licence” includes a licence or permit issued in a jurisdiction outside of Alberta under which a person may operate a motor vehicle in Alberta:

sections 1(v), 5 and 5.1;
sections 16 to 33;
sections 57, 57.1, 59(1)(f), 76 and 95(a);
Part 9.

3 Section 5.1(1) is repealed and the following is substituted:

5.1(1) In this section, “suspended person” means a person

- (a) whose operator’s licence is suspended, or
- (b) who is disqualified from holding an operator’s licence

under this Act.

Explanatory Notes

1 This Bill will amend chapter M-22 of the Revised Statutes of Alberta 1980.

2 Out of province operator's licences.

3 Section 5.1 presently reads:

5.1(1) In this section, "suspended person" means a person

(a) whose operator's licence is suspended, or

(b) who is disqualified from holding an operator's licence,

under this Act by reason of that person's being convicted under

(c) section 237, 238 or 242(4) of the Criminal Code (Canada), or

(d) section 120 of the National Defence Act (Canada) for contravening section 237 or 238 of the Criminal Code (Canada).

4 Section 18(3) is amended by striking out “The” and substituting “Subject to section 110, the”.

5 Section 19.1 is amended by striking out “237 or 238” and substituting “253 or 254”.

6 Section 22 is amended

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

22(1) The attendance of a person who is the subject of an inquiry or hearing before the Driver Control Board or a witness before the Board may be enforced by a notice issued by a member of the Board requiring that person or witness to attend and stating the time and place at which attendance is required.

(b) by repealing subsection (4).

7 Section 23(1) is amended by striking out “If the Board” and substituting “If the Driver Control Board”.

8 The following is added after section 23.1:

23.2(1) Where a motor vehicle is seized or immobilized under section 112, the owner of the vehicle or another interested person

(2) No person who has a motor vehicle in his possession or under his care or control shall knowingly or willingly permit a suspended person to operate that motor vehicle unless it is a vehicle that the person is permitted to operate under this Act.

4 Section 18(3) presently reads:

(3) The holder of any operator's licence which is suspended or cancelled shall forthwith return the operator's licence to the Registrar.

5 Updates a cross reference to the Criminal Code.

6 Section 22 presently reads:

22(1) The attendance of a licensee or witness before the Board may be enforced by a notice issued by a member of the Board requiring the licensee or witness to attend and stating the time and place at which attendance is required.

(2) Any member of the Board may administer an oath to any person who is to give evidence before it.

(3) A person

(a) who fails to attend before the Board in obedience to a notice to attend, or

(b) who, being a witness, refuses to be sworn or to answer any question directed to be answered by the person presiding at a hearing of the Board,

is liable to attachment on application to the Court of Queen's Bench and may be proceeded against as for a civil contempt of that court.

(4) Subject to the regulations, testimony may be adduced before the Board in any manner the Board considers proper and the Board is not bound by the rules of law concerning evidence applicable to judicial proceedings.

7 Corrects the reference to the Driver Control Board.

8 Regulations re applications to Driver Control Board.

may, subject to the regulations, apply to the Driver Control Board for a review of the seizure or immobilization of the vehicle.

(2) On considering an application under subsection (1), the Board may, subject to the regulations, revoke, vary or otherwise provide for the seizure or immobilization of a motor vehicle.

23.3 The Lieutenant Governor in Council may make regulations

- (a) with respect to the conduct of an inquiry or a hearing before the Driver Control Board,
 - (i) governing the making of applications for an inquiry or a hearing;
 - (ii) governing notices of an inquiry or hearing;
 - (iii) governing the procedure before the Board;
 - (iv) governing adjournments of matters before the Board;
 - (v) governing the taking of evidence under oath;
 - (vi) governing the applicability of the rules of evidence in judicial proceedings to matters before the Board;
 - (vii) governing the receiving and recording of evidence;
 - (viii) empowering the Board to proceed with a matter when a party to the matter fails to appear at or attend before the Board;
 - (ix) empowering the Board to grant interim relief and governing the interim relief that may be granted;
 - (x) empowering the Board to consider a matter without holding a hearing and governing the procedure to be used in those circumstances;
 - (xi) restricting the jurisdiction of the Board;

- (xii) governing the applicability of the Rules of Court;
- (xiii) providing for the issuing and publication of decisions of the Board;
- (xiv) empowering the Board to require the production of any record, object or thing;
- (xv) governing costs;
- (b) prescribing the grounds on which an application may be made under section 23.2;
- (c) governing the matters that may be considered by the Driver Control Board in hearing an application made under section 23.2;
- (d) governing the relief that may be granted by the Driver Control Board under section 23.2 including prescribing the circumstances under which the Driver Control Board may revoke or vary the seizure or immobilization of a vehicle.

9 *Section 59(1) is amended*

(a) *by repealing clause (c) and substituting the following:*

- (c) prescribing the terms and conditions under which operator's licences, certificates of registration, licence plates, documents and services may be sold or otherwise provided to the public by an agent on behalf of the Minister;

(b) *by repealing clause (e.1) and substituting the following:*

- (e.1) with respect to the seizure or immobilization of motor vehicles, governing
 - (i) the procedure to be followed with respect to seizures or immobilizations,
 - (ii) the documents and returns to be provided in respect of a person who is subject to a seizure or immobilization,
 - (iii) the storing of vehicles,

9 Section 59(1)(c) and (e.1) presently read:

59(1) The Lieutenant Governor in Council may make regulations

(c) prescribing the terms and conditions under which licence plates may be sold by an agent on behalf of the Minister;

(e.1) governing fees with respect to the seizing or immobilization of vehicles;

- (iv) the release of vehicles from seizure or immobilization,
 - (v) the release of personal property under section 112.02,
 - (vi) costs and expenses;
- (e.11) prescribing periods of time of less than 30 days for which a motor vehicle may be seized or immobilized under section 112;

10 Section 95(a) is amended by striking out “driver’s licence” and substituting “operator’s licence”.

11 Section 106 is amended

- (a) *in subsection (6)*
 - (i) *by striking out “242(4)” and substituting “259(4)”;*
 - (ii) *by striking out “or section 110(7) of this Act”;*
- (b) *in subsection (6.1)(a) by striking out “section 242(4)” and substituting “subsection 259(4)”.*

10 Section 95(a) presently reads:

95 Every peace officer who on reasonable and probable grounds believes that any person has committed an offence against any of the sections hereinafter enumerated may arrest the person without warrant:

(a) section 5 relating to the operation of a motor vehicle without having a subsisting driver's licence;

11 Section 106(6) and (6.1) presently read:

(6) If a person is found guilty under subsection 242(4) of the Criminal Code (Canada) anywhere in Canada or section 110(7) of this Act,

(a) that person is thereupon disqualified from holding an operator's licence for a period of 6 months, and

(b) if that person is under suspension or under a prohibition at the time of the finding of guilt, the period of disqualification shall run consecutively with that suspension or prohibition.

(6.1) Notwithstanding subsection (6), when a person

(a) is found guilty under section 242(4) of the Criminal Code (Canada) anywhere in Canada, and

(b) an order prohibiting that person from driving a motor vehicle on a highway in Canada is made as a result of that conviction and the period of prohibition is a period of time that is greater than that referred to in subsection (6),

any operator's licence held by that person thereupon becomes suspended and that person thereupon becomes disqualified from holding an operator's licence for that greater period of time.

12 *Section 108 is repealed.*

13 *Section 109 is amended*

- (a) *in subsections (1), (4), (5), (5.1), (6) and (8) by striking out "237" wherever it occurs and substituting "253";*
- (b) *in subsections (1), (4), (5), (5.1), (6) and (8) by striking out "238" wherever it occurs and substituting "254";*
- (c) *by adding the following after subsection (9):*

(10) For the purposes of subsections (4) and (5), a finding of guilt for an offence

- (a) under section 237 of the *Criminal Code* (Canada) as it read immediately prior to December 12, 1988 is deemed to be a finding of guilt for an offence under section 253 of the *Criminal Code* (Canada) as it read immediately after December 11, 1988, and
- (b) under section 238 of the *Criminal Code* (Canada) as it read immediately prior to December 12, 1988 is deemed to be a finding of guilt for an offence under section 254 of the *Criminal Code* (Canada) as it read immediately after December 11, 1988.

12 Section 108 presently reads:

108(1) When a person who is

(a) temporarily within Alberta, and

(b) licensed to drive by the law of the place at which he is a resident,

is convicted of an offence under any of the provisions mentioned in section 106(1), the judge making the conviction may by order prohibit that person from driving in Alberta for any period, not exceeding 3 months, stated in the order.

(2) When a person is convicted of an offence under section 90(1) or 110(7), the judge making the conviction may by order

(a) suspend the operator's licence of the convicted person, or

(b) disqualify him from holding an operator's licence for a period not exceeding 3 years.

13 Updates cross references to the Criminal Code and provides for transitional provisions.

(11) For the purposes of subsections (4) and (5), a finding of guilt for an offence under section 253 of the *Criminal Code* (Canada) as it read immediately prior to November 1, 1989 is deemed to be a finding of guilt for an offence under section 253 of the *Criminal Code* (Canada) as it read immediately after October 31, 1989.

14 *Section 110(7) is repealed.*

15 *Section 110.1 is repealed and the following is substituted:*

110.1 Where a person has been charged with an offence under

- (a) section 253 or 254 of the *Criminal Code* (Canada), or
- (b) section 130 of the *National Defence Act* (Canada) by reason of that person's contravening section 253 or 254 of the *Criminal Code* (Canada),

a peace officer or another person authorized by a peace officer may, for a period of time not exceeding 24 hours from the time that the person was charged, seize or otherwise immobilize the motor vehicle that was being operated by the person at the time that the person was charged.

16 *Section 111 is amended*

- (a) *in subsection (1) by striking out "section 233(1) or 236" and substituting "subsection 249(1) or section 252";*
- (b) *in subsection (1.1) by striking out "233(3) or (4) or 239(2) or (3)" and substituting "249(3) or (4) or 255(2) or (3)";*

14 Section 110(7) presently reads:

(7) Any person who drives a motor vehicle while he is under suspension or disqualification pursuant to this section is guilty of an offence.

15 Section 110.1 presently reads:

110.1 Where

(a) a person has been charged with an offence under

(i) section 237 or 238 of the Criminal Code (Canada), or

(ii) section 120 of the National Defence Act (Canada) by reason that the person contravened section 237 or 238 of the Criminal Code (Canada),

and

(b) a peace officer reasonably suspects that the person charged may within 24 hours of being charged again commit an offence under

(i) section 237 or 238 of the Criminal Code (Canada), or

(ii) section 120 of the National Defence Act (Canada) by reason of contravening section 237 or 238 of the Criminal Code (Canada),

the peace officer or another person authorized by the peace officer may, for a period of time not exceeding 24 hours from the time that the person was charged, seize or otherwise immobilize the motor vehicle that was being operated by the person charged.

16 Updates cross references to the Criminal Code.

- (c) *in subsection (2) by striking out “203, 204 or 219” and substituting “220, 221 or 236”;*
- (d) *in subsection (2.1)(a) by striking out “203, 204, 219, 233, 236 or 239(2) or (3)” and substituting “220, 221, 236, 249 or 252 or subsection 255(2) or (3)”.*

17 Section 112 is repealed and the following is substituted:

112(1) Where a person has been charged with an offence under

- (a) section 5(1.1),
- (b) subsection 259(4) of the *Criminal Code* (Canada),
or
- (c) section 130 of the *National Defence Act* (Canada)
by reason of that person’s contravening
subsection 259(4) of the *Criminal Code* (Canada),

a peace officer, the Registrar or a person authorized by a peace officer or the Registrar shall, for a period of 30 days, or a lesser period of time as prescribed by regulation, seize or immobilize the motor vehicle that was being operated by that person at the time that the person was charged.

(2) Subject to the regulations, no person shall release a motor vehicle from seizure or immobilization during the period of time that the seizure or immobilization of the motor vehicle is in effect.

112.01 Where

- (a) a motor vehicle has been seized or immobilized under section 110.1 or 112,
- (b) the person driving the vehicle at the time of the seizure or immobilization was not the owner of the vehicle, and
- (c) the owner of the vehicle incurs expenses in respect of the release of the vehicle,

the owner of the motor vehicle may claim against the person who was driving the vehicle at the time of the seizure or immobilization any expenses incurred by the owner with respect to the release of the vehicle from the seizure or immobilization.

17 Section 112 presently reads:

112(1) When a person

(a) is found guilty under section 242(4) of the Criminal Code (Canada), and

(b) has, at any time before, been found guilty under section 242(4) of the Criminal Code (Canada) anywhere in Canada,

the judge hearing the case may order one or both of the following:

(c) that the certificate of registration of the motor vehicle being driven at the time of the latest offence be suspended in accordance with this section for a period of time that is not greater than the period of time for which the person's operator's licence is suspended or for which the person is disqualified from holding an operator's licence;

(d) that the motor vehicle being driven at the time of the latest offence be seized or immobilized by a peace officer or other person as directed by the judge for a period of time that is not greater than the period of time for which that person's operator's licence is suspended or for which that person is disqualified from holding an operator's licence.

(2) When an order is made under subsection (1), the registered owner shall deliver the certificate of registration and the licence plates of the vehicle to the Registrar and the period of suspension commences

(a) in the case of personal delivery, from the date the certificate of registration and the licence plates are delivered to the Registrar, or

(b) in the case of delivery by mail, from the date on the postmark of the post office of origin.

(3) A registered owner who does not within 14 days from the date of the order deliver both the certificate of registration and licence plates to the Registrar in accordance with subsection (2) is guilty of an offence.

112.02(1) In this section, “personal property” means personal property other than personal property that is a part of a motor vehicle.

(2) Where personal property is in or on a motor vehicle that is seized or immobilized under section 110.1 or 112, that personal property is not subject to the seizure or immobilization and, subject to the regulations, shall, on request, be returned to the person having claim to that personal property.

(4) Subject to section 64, the certificate of registration and licence plates shall be returned by the Registrar to the registered owner on the expiry of the suspension period.

(5) Notwithstanding anything in this section, if the person who was found guilty was not the registered owner of the motor vehicle at the time the offence was committed

(a) the registered owner may apply to the Registrar for subsection (1) to be waived, and

(b) the Registrar, if he is of the opinion that the registered owner's application is a proper case for relief, may waive subsection (1).

(6) The owner of a motor vehicle for which the registration has been suspended pursuant to this section who

(a) re-registers or attempts to re-register the motor vehicle, or

(b) registers or attempts to register any other motor vehicle in his name,

before the period of suspension prescribed by this section has expired is guilty of an offence.

(7) Notwithstanding that the registration of a motor vehicle is suspended pursuant to this section, the Registrar may re-register the vehicle

(a) on the application of, and

(b) in the name of,

a person who is a member of the family of the owner residing at the same address as the owner.

(8) Notwithstanding that an order is made under subsection (1)(c) or (d), the Registrar shall, where the motor vehicle

(a) is transferred to or registered in the name of a person other than the person who was found guilty of the offence, or

(b) is being seized under a seizure to which the Seizures Act applies,

order that the vehicle is no longer subject to the order made by a judge under subsection (1).

(9) Notwithstanding that a motor vehicle

18 Section 112.1 is amended

(a) in subsection (1)

(i) by striking out “120” and substituting “130”;

*(ii) by striking out “237 or 238” and substituting
“253 or 254”;*

(b) in subsection (2)

*(i) by striking out “120” wherever it occurs and
substituting “130”;*

(a) has been seized or immobilized under subsection (1)(d), and

(b) remains registered in the name of the person found guilty of the offence,

the Registrar may, for the purposes of permitting another person to use the vehicle, order, subject to any terms or conditions that the Registrar considers appropriate in the circumstances, that the seizure or immobilization of the vehicle be removed.

(10) Where the terms or conditions prescribed under subsection (9) are not complied with,

(a) the Registrar may order that the motor vehicle be again seized or immobilized by a peace officer or other person as directed by the Registrar, and

(b) the motor vehicle on being seized or immobilized under clause (a) shall be treated as if the Registrar had not made an order under subsection (9) removing the seizure or immobilization of the vehicle.

(11) Where

(a) the motor vehicle being driven at the time of the latest offence referred to in subsection (1)(a) is registered in the name of a person other than the person who was found guilty of the offence, the judge hearing the case may, or

(b) the Registrar makes an order under subsection (8), the Registrar may,

order that a vehicle that is registered in the name of the person found guilty of the offence referred to in subsection (1)(a) be subject to the order made under subsection (1), and that vehicle shall be treated as if it had been the vehicle driven at the time of the latest offence.

18 Updates cross references to the National Defence Act and the Criminal Code and provides for transitional provisions.

- (ii) *by striking out “237 or 238” wherever it occurs and substituting “253 or 254”;*
- (c) *in subsection (3)*
 - (i) *by striking out “120” and substituting “130”;*
 - (ii) *by striking out “237” wherever it occurs and substituting “253”;*
 - (iii) *by striking out “238” wherever it occurs and substituting “254”;*
- (d) *in subsection (4)*
 - (i) *by striking out “120” and substituting “130”;*
 - (ii) *by striking out “237 or 238” and substituting “253 or 254”;*
- (e) *in subsection (5) by adding “as the National Defence Act (Canada) read immediately prior to December 12, 1988” after “National Defence Act (Canada)” wherever it occurs;*
- (f) *by adding the following after subsection (5):*

(5.1) For the purposes of subsections (2) and (3), a finding of guilt for an offence under section 120 of the *National Defence Act (Canada)* as the *National Defence Act (Canada)* read immediately prior to December 12, 1988 by reason that a person contravened

- (a) section 237 of the *Criminal Code (Canada)* as the *Criminal Code (Canada)* read immediately prior to December 12, 1988 is deemed to be a finding of guilt under section 130 of the *National Defence Act (Canada)* by reason that the person contravened section 253 of the *Criminal Code (Canada)* as the *Criminal Code (Canada)* and the *National Defence Act (Canada)* read immediately after December 11, 1988, and
- (b) section 238 of the *Criminal Code (Canada)* as the *Criminal Code (Canada)* read immediately prior to December 12, 1988 is deemed to be a finding of guilt under section 130 of the *National*

Defence Act (Canada) by reason that the person contravened section 254 of the *Criminal Code (Canada)* as the *Criminal Code (Canada)* and the *National Defence Act (Canada)* read immediately after December 11, 1988.

(5.2) For the purposes of subsections (2) and (3), a finding of guilt for an offence under section 130 of the *National Defence Act (Canada)* by reason that a person contravened section 253 of the *Criminal Code (Canada)* as the *Criminal Code (Canada)* read immediately prior to November 1, 1989 is deemed to be a finding of guilt under section 130 of the *National Defence Act (Canada)* by reason that the person contravened section 253 of the *Criminal Code (Canada)* as the *Criminal Code (Canada)* read immediately after October 31, 1989.

(g) *in subsection (6)*

- (i) *by striking out “120” and substituting “130”;*
- (ii) *by striking out “section 233(1) or 236” and substituting “subsection 249(1) or section 252”;*

(h) *in subsection (6.1)*

- (i) *by striking out “120” and substituting “130”;*
- (ii) *by striking out “section 233(3) or (4) or 239(2) or (3)” and substituting “subsection 249(3) or (4) or 255(2) or (3)”;*

(i) *in subsection (7)*

- (i) *by striking out “120” and substituting “130”;*
- (ii) *by striking out “203, 204 or 219” and substituting “220, 221 or 236”;*

(j) *in subsection (8)*

- (i) *by striking out “120” and substituting “130”;*
- (ii) *by striking out “section 242(4)” and substituting “subsection 259(4)”;*

(k) *in subsection (9)(a)*

- (i) *by striking out “120” and substituting “130”;*

- (ii) *by striking out “203, 204, 219, 233, 236, 237, 238, 239(2) or (3) or 242(4)” and substituting “220, 221, 236, 249, 252, 253 or 254 or subsection 255(2) or (3) or 259(4)”.*

19 Section 116 is repealed.

20 This Act comes into force on Proclamation.

19 Section 116 presently reads:

116 For the purposes of this Part "operator's licence" means a licence to operate a motor vehicle, regardless of its place of issue.

20 Coming into force.