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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 20

FAIR TRADING ACT

MR. DUCHARME

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Committee of the Whole /

Third Reading /

Royal Assent

Bill 20
Mr. Ducharme

BILL 20

1998

FAIR TRADING ACT

(Assented to , 1998)

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

Interpretation

1(1) In this Act,

- (a) “advertiser” means a person who prints, publishes, distributes, broadcasts or telecasts other people’s advertisements;
- (b) “consumer” means, subject to the regulations under subsection (2), an individual who
 - (i) receives or has the right to receive goods or services from a supplier as a result of a purchase, lease, gift, contest or other arrangement, but does not include an individual who intends to sell the goods after receiving them,
 - (ii) has a legal obligation to compensate a supplier for goods that have been or are to be supplied to another individual and the other individual does not intend to sell the goods after receiving them, or
 - (iii) has a legal obligation to compensate a supplier for services that have been or are to be supplied to another individual;
- (c) “consumer transaction” means, subject to the regulations under subsection (2),

- (i) the supply of goods or services by a supplier to a consumer as a result of a purchase, lease, gift, contest or other arrangement, or
 - (ii) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement;
- (d) “Director” means the Director of Fair Trading appointed under section 174;
- (e) “goods”, except in Parts 9 and 12, means, subject to the regulations under subsection (2),
 - (i) any personal property that is used or ordinarily used primarily for personal, family or household purposes,
 - (ii) a voucher, or
 - (iii) a new residential dwelling whether or not the dwelling is affixed to land;
- (f) “inspector” means an inspector appointed under section 174;
- (g) “loan broker” means a person who, for compensation, assists a person in obtaining credit;
- (h) “licence” means a licence issued or renewed under this Act;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (j) “regulatory board” means a regulatory board established in accordance with the regulations in respect of a designated business as defined in Part 10;
- (k) “services”, except in Part 9, means, subject to the regulations under subsection (2), any service offered or provided primarily for personal, family or household purposes, including
 - (i) a service offered or provided that involves the addition to or maintenance, repair or alteration of goods or any residential dwelling,

- (ii) a membership in any club or organization if the club or organization is a business formed to make a profit for its owners, and
 - (iii) the right to use property under a time share contract;
- (l) “supplier” means, subject to the regulations under subsection (2), a person who, in the course of the person’s business,
 - (i) provides goods or services to consumers,
 - (ii) manufactures, assembles or produces goods,
 - (iii) promotes the use or purchase of goods or services, or
 - (iv) receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers,
 and includes any salesperson, employee, representative or agent of the person, but does not include an advertiser;
- (m) “time share contract” means a contract in which an individual acquires the right to use any type of real or personal property that can be used as accommodation, whether or not it is located in Alberta,
 - (i) for a period of time of less than one year during an interval specified in the contract, and
 - (ii) as part of a plan that provides for the use of the property to circulate among persons participating in the plan;
- (n) “voucher” means any document that purports to give the holder of the document the right to obtain goods or a service or the right to obtain goods or a service at a discounted or reduced price.

(2) The Minister may make regulations that restrict or broaden the definitions of consumer, consumer transaction, goods, services and supplier, and the restricting or broadening of the definitions may apply to one or more Parts of this Act and to one or more regulations under this Act.

PART 1

GENERAL PRINCIPLES

- Act prevails **2(1)** Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.
- (2)** Subsection (1) does not apply to a release made by a person in the settlement of a dispute.
- Other rights unaffected **3** None of the rights or remedies under this Act or the regulations restrict, limit or derogate from any legal, equitable or statutory right or remedy that the following may have:
- (a) a consumer;
- (b) a person dealing with a reporting agency as defined in Part 5, licensee or loan broker;
- (c) a borrower or lessee to which Part 9 applies.
- Interpretation of documents **4** If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and
- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,
- the provision must be interpreted against the supplier or licensee, as the case may be.

PART 2

UNFAIR AND NEGATIVE OPTION PRACTICES

Division 1 Unfair Practices

- Application **5** This Act applies to the following unfair practices:
- (a) an unfair practice in which the supplier or consumer is a resident of Alberta;

- (b) an unfair practice involving a consumer transaction in which the offer or acceptance is made in or is sent from Alberta;
- (c) an unfair practice made or received in Alberta involving a supplier's representative;
- (d) an unfair practice specified in the regulations.

Unfair
practices

6(1) In this section, “material fact” means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

(2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,

- (a) to exert undue pressure or influence on the consumer to enter into the consumer transaction;
- (b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;
- (c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
- (d) to charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;
- (e) to charge a price for goods or services that is materially higher than the estimate given for those goods or services unless the consumer has expressly consented to the higher price before the goods or services are supplied.

(3) It is an unfair practice for a supplier

- (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
- (b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;
- (c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;

- (d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.
- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
 - (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
 - (c) a supplier's representation that goods or services have sponsorship, approval, performance, characteristics, accessories, ingredients, quantities, components, uses, benefits or other attributes that they do not have;
 - (d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;
 - (e) a supplier's representation that goods or services are of a particular standard, quality, grade, style or model if they are not;
 - (f) a supplier's representation that goods have or have not been used to an extent that is different from the fact;
 - (g) a supplier's representation that goods are new if they are used, deteriorated, altered or reconditioned;
 - (h) a supplier's representation that goods have or do not have a particular prior history or usage if that is different from the fact;
 - (i) a supplier's representation that goods or services are available for a reason that is different from the fact;
 - (j) a supplier's representation that goods or services have been made available in accordance with a previous representation if they have not;
 - (k) a supplier's representation that the supplier can supply goods or services if the supplier cannot;
 - (l) a supplier's representation involving a voucher that another supplier will provide goods or a service or will provide goods or a service at a discounted or reduced price if the

first-mentioned supplier knows or ought to know that the second-mentioned supplier will not;

- (m) a supplier's representation that goods are available in a particular quantity if they are not;
- (n) a supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not;
- (o) a supplier's representation that a specific price benefit or advantage exists if it does not;
- (p) a supplier's representation that a part, replacement, repair or adjustment is needed or desirable if it is not;
- (q) a supplier's representation that the supplier is requesting information, conducting a survey or making a solicitation for a particular purpose if that is not the case;
- (r) a supplier's representation that a person does or does not have the authority to negotiate the terms of a consumer transaction if the representation is different from the fact;
- (s) when the price of any part of goods or services is given in any representation by a supplier,
 - (i) failure to give the total price of the goods or services, or
 - (ii) giving less prominence to the total price of the goods or services than to the price of the part;
- (t) when the amount of any instalment to be paid in respect of goods or services is given in any representation by a supplier,
 - (i) failure to give the total price of the goods or services, or
 - (ii) giving less prominence to the total price of the goods and services than to the amount of the instalment;
- (u) a supplier's giving an estimate of the price of goods or services if the goods or services cannot be provided for that price;
- (v) a supplier's representation of the price of goods or services in such a way that a consumer might reasonably believe

that the price refers to a larger package of goods or services than is the case;

(w) a supplier's representation that a consumer will obtain a benefit for helping the supplier to find other potential customers if it is unlikely that the consumer will obtain such a benefit;

(x) a supplier's representation about the performance, capability or length of life of goods or services unless

(i) the representation is based on adequate and proper independent testing that was done before the representation is made,

(ii) the testing substantiates the claim, and

(iii) the representation accurately and fairly reflects the results of the testing;

(y) a supplier's representation that goods or services are available at an advantageous price if reasonable quantities of them are not available at such a price, unless it is made clear that quantities are limited;

(z) a supplier's representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or promotion;

(aa) anything specified in the regulations.

Unfair
practices
prohibited

7 No supplier may commit an unfair practice.

Time of
occurrence

8 An unfair practice may occur before, during or after a consumer transaction, and is an unfair practice for all the purposes of this Part even if no consumer transaction is entered into or concluded.

Advertising

9(1) No advertiser may print, publish, distribute, broadcast or telecast a supplier's advertisement for goods or a service if the advertisement contains an unfair practice.

(2) Subsection (1) does not apply to an advertiser who prints, publishes, distributes, broadcasts or telecasts a supplier's advertisement in good faith and in the ordinary course of business.

Trust accounts **10** Every supplier must comply with the requirements respecting trust accounts established by the regulations under section 144.

Information in representations **11** If a regulation is made pursuant to section 12(d), every supplier who makes a representation to which the regulation applies must ensure that the representation contains the information prescribed by the regulation.

Regulations **12** The Minister may make regulations

- (a) specifying unfair practices to which this Part applies;
- (b) specifying activities or things to be unfair practices;
- (c) respecting the records to be maintained by an advertiser, including where the records are to be maintained and the time period for which they must be maintained;
- (d) prescribing information that must be given in a representation made by a supplier or class of supplier in respect of any consumer transaction or class of consumer transaction.

Division 2

Civil Remedies Against Suppliers

Court action by consumer **13(1)** When a consumer

- (a) has entered into a consumer transaction, and
- (b) in respect of that consumer transaction, has suffered damage or loss due to an unfair practice,

that consumer may commence an action in the Court of Queen's Bench for relief from that damage or loss against any supplier who engaged in or acquiesced in the unfair practice that caused that damage or loss.

(2) In an action under this section, the Court of Queen's Bench may

- (a) declare that the practice is an unfair practice;
- (b) award damages for damage or loss suffered;
- (c) award punitive or exemplary damages;
- (d) make an order for

- (i) specific performance of the consumer transaction,
- (ii) restitution of property or funds, or
- (iii) rescission of the consumer transaction;
- (e) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair practice;
- (f) make any directions and grant any other relief the Court considers proper.

(3) In determining whether to grant any relief under this section and the nature and extent of the relief, the Court of Queen's Bench must consider whether or not the consumer made a reasonable effort to minimize any damage resulting from the unfair practice and to resolve the dispute with the supplier before commencing the action in the Court.

(4) The Court of Queen's Bench may award party and party costs and solicitor and client costs or either of them.

Provincial
Court

14(1) Subject to the jurisdiction of the Provincial Court, an action under section 13(1) may be commenced under Part 4 of the *Provincial Court Act*.

(2) Section 18 does not apply to an action commenced under this section.

Actions by the
Director on
behalf of
consumers

15(1) Subject to this section, the Director may, when in the opinion of the Director it is in the public interest to do so,

- (a) commence and maintain an action under section 13 if a consumer has a cause of action under that section,
- (b) maintain an action under section 13 after it has been commenced, or
- (c) bring and maintain an appeal of an action under section 13.

(2) When, pursuant to subsection (1), the Director brings or maintains an action or an appeal under section 13, the Director must do so in the name of and on behalf of that consumer, and the Director is entitled to take the same steps in and have the same control over the action or appeal, including the right to settle the action or appeal or any part of it, that the consumer would have had in respect of that action or appeal.

(3) The Director may not bring or maintain an action or an appeal under this section without first obtaining the written consent of the consumer in whose name the action is brought.

(4) On the consumer's giving written consent, the Director may, without consulting or seeking any further consent of the consumer, conduct the action or appeal in any manner the Director considers appropriate.

(5) In an action or appeal commenced, brought or maintained by the Director pursuant to subsection (1),

(a) any money recovered, excluding costs of the action or appeal, must be paid to the consumer;

(b) any money payable by the consumer, excluding costs of the action or appeal, is not recoverable from the Director or the Government;

(c) the costs of the action or appeal are to be paid to or borne by the Government.

(6) Nothing in this section abrogates or restricts any right of set-off that a person has or may have against a consumer on whose behalf the Director is acting under this section.

(7) When the Director, while acting on behalf of a consumer under this section, releases a supplier from a liability or an obligation arising out of the cause of action, that release extinguishes the claim to the liability or obligation referred to in that release that the consumer may have against that supplier.

Arbitration

16 Despite any provision of this Act, neither a consumer nor the Director may commence or maintain an action or appeal under sections 13 to 15 if the consumer's cause of action under those sections is based on a matter that the consumer has agreed in writing to submit to arbitration and the arbitration agreement governing the arbitration has been approved by the Minister.

Court action
by consumer
organizations

17(1) A consumer organization or a group of consumers may commence and maintain an action in the Court of Queen's Bench against a supplier who is engaging in or has engaged in an unfair practice.

(2) In an action under this section, the Court of Queen's Bench may

(a) make an order declaring that the act or practice is an unfair practice, and

(b) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair practice.

(3) A consumer organization bringing an action under this section is not required to have an interest in or be affected by the matter in issue in order to commence and maintain the action.

(4) When an action is commenced under this section, the Court of Queen's Bench may order the consumer organization that commenced the action to furnish security for costs in any amount the Court considers proper.

Director to be notified

18(1) A party that commences an action under section 13 or 17 must serve the Director with a copy of the statement of claim.

(2) The party commencing the action may not take the next step in the action until the Director has been served under subsection (1).

(3) On being served under subsection (1), the Director may, on notice to all parties to the action, make application to the Court to be added as a party and on the making of the order the Director may take any of the steps under section 15.

Advertisement of judicial decision

19(1) When a court grants relief under section 13, 15 or 17, the court may make a further order requiring the supplier to advertise to the public the particulars of any order, judgment or other relief granted by the court.

(2) In making an order under subsection (1), the court may prescribe

(a) the methods of making the advertisement so that it will assure prompt and reasonable communication to consumers;

(b) the contents or form or both of the advertisement;

(c) the number of times the advertisement is to be made;

(d) any other conditions the court considers proper.

Division 3 Negative Option Practices

Definition

20 In this Division, "negative option practice" means a consumer transaction in which a supplier

- (a) provides goods or services to a consumer, including the enhancement of a service that a consumer is already receiving, that the consumer did not request, and
- (b) requires the consumer to pay for the goods or services unless the consumer informs the supplier that the consumer does not want the goods or services.

Application **21** This Division applies to a negative option practice if

- (a) the supplier or consumer is a resident of Alberta, or
- (b) the goods or services are provided from or received in Alberta.

No consumer liability **22** A consumer is not liable to pay for any goods or services received under a negative option practice unless the consumer agrees in writing to pay for the goods or services.

Negative option practices prohibited **23** No supplier may supply goods or services to a consumer through a negative option practice.

PART 3

CANCELLATION OF DIRECT SALES CONTRACTS AND TIME SHARE CONTRACTS

Definitions **24** In this Part,

- (a) “direct sales contract” means a consumer transaction that is a contract, other than a time share contract, in which
 - (i) the consideration for the goods or services exceeds an amount specified in the regulations, and
 - (ii) the contract is negotiated or concluded in person at a place other than the supplier’s place of business or at a place other than a market place, trade fair, agricultural fair or exhibition,
 and includes an offer to buy goods or services or to enter into a contract mentioned in subclause (i) or (ii);
- (b) “trade-in allowance” means the greater of
 - (i) the price or value of the consumer’s goods as set out in a trade-in arrangement, or

(ii) the market value of the consumer's goods when taken in trade under a trade-in arrangement;

(c) "trade-in arrangement" means an agreement or arrangement, contained in a direct sales contract or forming the whole or part of a related agreement, under which the consumer sells or agrees to sell the consumer's own goods to the supplier or any other person and the goods are accepted as the whole or part of the consideration under the direct sales contract.

Application **25(1)** This Part applies to the following direct sales contracts and time share contracts:

(a) a contract in which the supplier or consumer is a resident of Alberta;

(b) a contract in which the offer or acceptance is made in or is sent from Alberta;

(c) a contract specified in the regulations.

(2) This Part or a Division of this Part does not apply to classes of business specified in the regulations.

(3) The Minister may make regulations for the purposes of subsections (1)(c) and (2).

Division 1 Direct Sales Contracts

Salesperson's representations **26** An oral or written representation, statement or undertaking, whether constituting a condition or warranty or not, made to a consumer by a salesperson with respect to goods covered by a direct sales contract or a related sale is deemed to have been made by the salesperson as agent of the supplier, but nothing in this section exonerates any person from any liability to which the person would be subject apart from this section.

Absolute cancellation right **27** A consumer may, without any reason, cancel a direct sales contract at any time from the date the sales contract is entered into until, subject to the regulations, 10 days after the consumer receives a copy of the written sales contract.

Extended
cancellation in
certain
circumstances

28(1) In addition to the right of cancellation under section 27, a consumer may cancel a direct sales contract in the circumstances set out in this section.

(2) A consumer may cancel a direct sales contract within one year of the date the sales contract is entered into,

- (a) if the supplier was required to be licensed under Part 10 and was not licensed at the time the direct sales contract was concluded, or
- (b) if the direct sales contract does not include all the information required under section 35.

(3) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into if the supplier

- (a) does not deliver the goods within 30 days of the delivery date specified in the direct sales contract or an amended delivery date agreed on in writing by the consumer and the supplier, or
- (b) does not begin the services within 30 days of the commencement date specified in the direct sales contract or an amended commencement date agreed on in writing by the consumer and the supplier.

(4) If, after the period mentioned in subsection (3) has expired, the consumer accepts delivery of the goods or the consumer authorizes the services to begin, the consumer may not cancel the direct sales contract pursuant to subsection (3).

(5) Subject to subsection (6), a consumer may cancel a direct sales contract in which the goods purchased are a voucher if, within one year from the date that the direct sales contract is entered into or within the date specified in the voucher for exercising the rights granted by the voucher, whichever occurs first, the supplier that is to provide the goods or services under the voucher or is to provide goods or services at a discounted or reduced price under the voucher

- (a) refuses to do so for a reason that is not specified in the voucher, or
- (b) no longer exists.

(6) Subsection (5) does not apply to a direct sales contract in which the goods purchased are a voucher if the consumer has received

- (a) goods or services under the voucher having a value that is at least the price paid for the voucher,
- (b) discounts or price reductions under the voucher having a value that is at least the price paid for the voucher, or
- (c) a combination of the values referred to in clauses (a) and (b) that is at least the price paid for the voucher.

**Method of
cancellation**

29(1) A direct sales contract is cancelled on the giving of a notice of cancellation in accordance with this section.

(2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the direct sales contract.

(3) The notice of cancellation may be given by any means, including, but not limited to, personal service, registered mail, courier or telecopier or by any other method, including orally, by which the consumer can provide evidence of the date that the consumer cancelled the direct sales contract.

(4) Where the notice is given other than by personal service or orally, the notice of cancellation is deemed to be given when sent.

(5) The notice of cancellation may be sent or delivered to the supplier at the address set out in the direct sales contract or, if the consumer did not receive a copy of the direct sales contract or the address of the supplier was not set out in the direct sales contract, the consumer may send or deliver the cancellation notice

(a) to any address of the supplier on record with the Government of Alberta,

(b) to an address of the supplier known by the consumer, or

(c) to the salesperson of the supplier at an address known by the consumer.

(6) If the consumer is unable to find an address referred to in subsection (5), the consumer may send or deliver the notice to any office of the Housing and Consumer Affairs Division of the Department of Municipal Affairs or to any other place designated by the regulations.

**Effect of
cancellation of
contract**

30(1) A cancellation of a direct sales contract in accordance with this Division operates

(a) to cancel the direct sales contract, or

- (b) when the direct sales contract is an offer to buy, to withdraw the offer,

as if the direct sales contract never existed.

(2) A cancellation of a direct sales contract in accordance with this Division also operates to cancel

- (a) any related sale,
- (b) any guarantee given in respect of money payable under the direct sales contract, and
- (c) any security given by the consumer or a guarantor in respect of money payable under the direct sales contract,

as if it never existed.

(3) Where credit is extended or arranged by the supplier, the credit contract is conditional on the direct sales contract whether or not the credit contract is a part of or attached to the direct sales contract, and if the direct sales contract is cancelled, that cancellation has the effect of cancelling the credit contract as if the direct sales contract had never existed.

Responsi-
bilities on
cancellation

31(1) In this section,

- (a) “authorized person” means
 - (i) the supplier,
 - (ii) the person for the time being entitled to possession of the goods, or
 - (iii) a person specified in the direct sales contract as a person to whom a notice of cancellation may be given;
- (b) “consumer’s premises” means the place specified in the sales contract as the consumer’s address or, if the address shown does not specifically identify that place by a municipal address, land description or other description sufficient to distinguish that place from any other, the place where the consumer actually resided at the time the sales contract was made.

(2) Within 15 days after a direct sales contract is cancelled, the supplier must refund to the consumer all money paid by the consumer and return to the consumer’s premises any trade-in or an amount equal to the trade-in allowance.

(3) In the case of a direct sales contract for goods, the consumer must, on receiving the refund and return of the trade-in or an amount equal to the trade-in allowance, return the goods to the supplier.

(4) Where a direct sales contract has been cancelled but the consumer solicited the services of a supplier and requested that the service be provided within 10 days from the date that the direct sales contract was entered into, the supplier is entitled to reasonable compensation for the services performed by the supplier, but the supplier's rights under this subsection do not arise until the supplier complies with subsection (2).

(5) When a notice of cancellation is given in accordance with section 29, the consumer must return to an authorized person goods that came into the consumer's possession under the direct sales contract or a related sale or pre-existing contract if an authorized person gives the consumer a written request that is signed or purports to be signed by or on behalf of the supplier, but the obligation of the consumer under this subsection is subject to any lien or right to retain the goods that the consumer may have under section 32 and the consumer's right to enforce the lien.

(6) The consumer may

- (a) return the goods to an authorized person or to a person designated for the purpose by an authorized person, at a place elsewhere than at the consumer's premises, or
- (b) return the goods at the consumer's expense to the supplier or to a person specified in the direct sales contract as a person to whom a notice of cancellation may be given.

(7) A return of the goods in accordance with subsection (5) or (6) is deemed to be made with the consent of the supplier or, if the supplier is not entitled to possession of the goods, with the consent of the person so entitled, and operates to discharge the consumer from any obligation to retain the goods or deliver them to the person so entitled.

(8) The consumer is under an obligation to take reasonable care of goods delivered to the consumer under a direct sales contract or related agreement until

- (a) the return of the goods in accordance with subsection (5) or (6), or
- (b) the expiration of the period of 21 days after the giving of the notice of cancellation,

whichever event occurs first, and if the consumer sends the goods to the supplier or other person in accordance with subsection (6)(b), the consumer is under an obligation to take reasonable care to see that they are received by the person to whom they are sent and are not damaged in transit.

(9) Any obligation under subsection (8) is owed to the person for the time being entitled to possession of the goods and any breach of that obligation is actionable, at the suit of that person, as a breach of statutory duty.

(10) The consumer is under no obligation under this section to return the goods elsewhere than at the consumer's premises.

(11) Except as provided by this section, the consumer is not under any obligation, whether arising by contract or otherwise, to take care of the goods.

Consumer's
right to retain
goods

32 When a notice of cancellation is served in accordance with section 29, the consumer is entitled to retain possession of goods delivered to the consumer under a direct sales contract, related sale or pre-existing contract

(a) until all money paid under the direct sales contract, related sale or pre-existing contract is refunded, and

(b) in the case of a trade-in arrangement, until either

(i) the goods delivered by the consumer under the trade-in arrangement are returned to the consumer in a condition substantially the same as when they were delivered by the consumer, or

(ii) a sum equal to the trade-in allowance is paid to the consumer,

and the consumer, while in possession, has a lien on those goods for any money so owing to the consumer.

Recovery of
refund and
trade-in
allowance

33(1) If the supplier fails to refund to the consumer all money paid under the direct sales contract, any related sale and any pre-existing contract under section 31, the consumer may recover that money from the supplier.

(2) In the case of a trade-in arrangement, unless

(a) the supplier returns the consumer's goods to the consumer in accordance with section 31(1), and

- (b) the goods are then in a condition substantially the same as when they were delivered by the consumer,

the consumer may recover from the supplier an amount equal to the trade-in allowance for the goods.

(3) An amount recoverable under subsection (1) or (2) may be recovered as a simple contract debt.

(4) When the consumer recovers an amount equal to the trade-in allowance, then, if the title of the consumer to goods delivered by the consumer under the trade-in arrangement did not pass from the consumer, the title vests in the person entitled to the title under the trade-in arrangement.

Proceeds of
bond

34 When, pursuant to regulations under Part 13, the proceeds of a security are used for the benefit of consumers who have not recovered money owing to them following the cancellation of direct sales contracts, any money paid to a consumer from the proceeds of the security is deemed to have been recovered from the supplier.

Contents of
sales contract

35 A written direct sales contract must include

- (a) the consumer's name and address;
- (b) the supplier's name, business address, telephone number and, where applicable, fax number;
- (c) where applicable, the salesperson's name;
- (d) the date and place at which the direct sales contract is entered into;
- (e) a description of the goods or services, sufficient to identify them;
- (f) a statement of cancellation rights that conforms with the requirements set out in the regulations;
- (g) the itemized price of the goods or services, or both;
- (h) the total amount of the direct sales contract;
- (i) the terms of payment;
- (j) in the case of a sales contract for the future delivery of goods, future provision of services or future delivery of goods together with services, the delivery date for the goods or start date for the services or both;

- (k) in the case of a sales contract for the future provision of services or the delivery of goods together with services, the completion date for providing the services or the goods together with services;
- (l) where credit is extended,
 - (i) a statement of any security taken for payment, and
 - (ii) the disclosure statement required under Part 9;
- (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
- (n) the signatures of the consumer and the supplier.

Regulations

36 The Minister may make regulations

- (a) specifying amounts for the purposes of section 24(a)(i);
- (b) respecting the form and contents of the statement of cancellation rights that must be included in a direct sales contract and the form of the contract;
- (c) designating places where notices of cancellation may be sent or delivered for the purposes of section 29.

Division 2 Time Share Contracts

Absolute
cancellation
right

37(1) A consumer may, without any reason, cancel a time share contract at any time from the date the contract is entered into until 7 days after the consumer receives a copy of the contract.

(2) In addition to the right of cancellation under subsection (1), a consumer may cancel a time share contract within one year of the date the contract is entered into if the time share contract does not set out

- (a) the consumer's right of cancellation under subsection (1),
or
- (b) the consumer's right to receive a refund of money paid under section 39.

Method of cancellation	38 A time share contract is cancelled on the giving of a notice of cancellation in accordance with the regulations.
Responsibilities on cancellation	<p>39(1) Within 15 days after a time share contract is cancelled, the supplier must refund to the consumer all money paid by the consumer.</p> <p>(2) Where a time share contract has been cancelled and the consumer has used the property under the time share contract, the supplier is entitled to reasonable compensation for the use of the property, but the supplier's rights under this section do not arise until the supplier complies with subsection (1).</p>
Recovery of refund	40 If the supplier fails to refund to the consumer all money paid under the time share contract under section 39, the consumer may recover the money from the supplier as a simple contract debt.
Regulations	<p>41 The Minister may make regulations</p> <ul style="list-style-type: none"> (a) respecting the form and contents of time share contracts; (b) respecting the giving of a notice of cancellation of a time share contract, including specifying when notice is deemed to be received.

PART 4

MARKETING THROUGH ELECTRONIC MEDIA

Regulations	<p>42(1) The Minister may make regulations respecting the marketing of goods and services through forms of electronic media, such as telephone, television or the Internet, that are specified in the regulations.</p> <p>(2) Without limiting subsection (1), the Minister may make regulations</p> <ul style="list-style-type: none"> (a) specifying the forms of electronic media and the types of marketing to which the regulation applies; (b) regulating and prohibiting specified activities involved in marketing of goods and services through electronic media; (c) setting out the rights and remedies of consumers who enter into consumer transactions wholly or partly through a form of electronic media.
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PART 5

CREDIT AND PERSONAL REPORTS

Definitions

43 In this Part,

- (a) “credit information” means information about an individual’s name, age, occupation, previous employers, place of residence, previous places of residence, marital status, spouse’s name and age, number of dependants, educational or professional qualifications, places of employment, estimated income, paying habits, outstanding debt obligations, cost of living obligations and assets;
- (b) “file”, when used as a noun, means all of the information pertaining to an individual that is recorded and retained by a reporting agency, regardless of the manner or form in which the information is stored;
- (c) “personal information” means information other than credit information about an individual’s character, reputation, health, physical or personal characteristics or mode of living or about any other matter concerning the individual;
- (d) “report” means a written, oral or other communication of credit information or personal information, or both, pertaining to an individual;
- (e) “reporting agency” means a person who
 - (i) furnishes reports for gain or profit or on a reciprocal non-profit basis, and
 - (ii) is designated by the regulations.

Furnishing reports

44(1) A reporting agency, and an officer or employee of a reporting agency, may furnish a report to a person only in the following circumstances:

- (a) if there are reasonable grounds to believe that the person intends to use the information in the report
 - (i) in connection with the extension of credit to or the collection of a debt from the individual to whom the report pertains,
 - (ii) in connection with the entering into or the renewal of a tenancy agreement by the individual to whom the report pertains,

- (iii) for employment purposes,
 - (iv) in connection with the underwriting of insurance involving the individual to whom the report pertains, or
 - (v) to determine the eligibility of an individual to whom the report pertains under a law, if the information is relevant to the eligibility requirement;
 - (b) if there are reasonable grounds to believe that the person has a direct business requirement for information in the report as a result of a business transaction respecting the individual to whom the report pertains;
 - (c) if the report is furnished to the Director or an inspector, the government of Canada or of a province, a municipality in Canada or any of their agencies;
 - (d) if the person is the individual to whom the report pertains or if the person has the written consent of the individual to obtain the report;
 - (e) in response to the order of a court.
- (2) No person may obtain a report from a reporting agency except in the circumstances referred to in subsection (1).
- (3) Despite subsections (1) and (2), a reporting agency may sell, lease or transfer title to all or part of its files to another reporting agency.

Contents of
reports

- 45(1)** Every reporting agency must adopt all reasonable procedures to ensure accuracy and fairness in the contents of its reports.
- (2) A reporting agency may include information in its reports only if
- (a) the information is stored in a form capable of being provided under section 46,
 - (b) the information is extracted from information appearing in files stored or collected in a repository located in Canada, regardless of whether or not the information was obtained from a source outside of Canada,
 - (c) the name and address of the source of the information is recorded or retained in its files, or can be readily ascertained by the individual who is the subject of the information, and

- (d) the information is based on the most reliable evidence reasonably available.
- (3) A reporting agency must not include the following information about an individual in a report:
- (a) unfavourable personal information, unless the reporting agency has corroborating evidence of the unfavourable personal information, and the corroborating evidence is noted with and accompanies the unfavourable personal information;
 - (b) information about actions, accounts or debts that, on their face, cannot be pursued because of the expiration of limitation periods;
 - (c) information about a judgment 6 years after the judgment was given, unless the creditor or the creditor's agent confirms that the judgment remains unpaid in whole or in part, and the confirmation appears in the file;
 - (d) information about the bankruptcy of an individual 6 years after the date the individual was last discharged from bankruptcy, unless the individual has been bankrupt more than once;
 - (e) information about charges against the individual under any federal or provincial law unless the charges resulted in conviction;
 - (f) information about a conviction of the individual for offences against a law of any jurisdiction 6 years after the date of conviction or, where the conviction resulted in imprisonment, after the date of release or parole, and in no case may information about a conviction be reported if the individual has been granted a pardon;
 - (g) information given orally, unless the content of the oral report is noted in writing in the file;
 - (h) any other information adverse to the individual's interest that is more than 6 years old, unless the information is voluntarily supplied by the individual to the reporting agency;
 - (i) information about the race, creed, colour, ancestry, ethnic origin, religion or political affiliation of an individual;
 - (j) information about the payment or non-payment of a lawfully imposed fine 6 years after the fine was imposed;

- (k) information about a court action or court proceeding 12 months after the commencement of the court action or court proceeding unless the current status of the action or proceeding has been ascertained and is included in the report;
- (l) any other information prescribed by regulation.

Disclosure to
individual

46(1) Subject to subsections (2), (6) and (7), a reporting agency must,

- (a) at the request of an individual or the individual's representative and during normal business hours, clearly and accurately disclose to the individual or representative
 - (i) the nature and substance of all information in the file respecting that individual at the date of the request,
 - (ii) the sources of its information, unless the sources are readily ascertainable, and
 - (iii) the names of the recipients of any report respecting the individual that it has furnished within the preceding 6 months;
- (b) at the request of an individual or the individual's representative, provide copies of any written report furnished within the preceding 6 months respecting that individual or, where the report was oral, written particulars of the contents of the oral report.

(2) A reporting agency may refuse to disclose or supply information referred to in subsection (1) to an individual or the individual's representative if

- (a) the agency does not receive the fee established under the regulations, or
- (b) in the case that no fee is established under the regulations, the agency does not receive a reasonable fee established by the agency.

(3) When a reporting agency makes a disclosure or provides copies or particulars under subsection (1), the reporting agency must inform the individual or the individual's representative of the individual's right to explain or protest any information contained in the reporting agency's file and the manner in which an explanation or protest may be made.

(4) Every reporting agency must provide properly trained staff to explain to the individual any information furnished to the individual or the individual's representative under this section.

(5) The reporting agency must permit the individual or the individual's representative to make an abstract of any information disclosed under the section.

(6) Before disclosing an individual's file to the individual, the reporting agency must require the individual to submit identification, and the reporting agency must

(a) disclose the file if reasonable identification is submitted, and

(b) refuse to disclose the file if reasonable identification is not provided.

(7) Before disclosing an individual's file to the individual's representative, the reporting agency must require the representative to submit identification and proof that the person is the individual's representative, and the reporting agency must

(a) disclose the file if reasonable identification and proof are submitted, and

(b) refuse to disclose the file if reasonable identification or proof is not provided.

(8) No reporting agency may require an individual or the individual's representative to give any undertaking or waive or release any right as a condition of obtaining access to the individual's file and the disclosure of information under this section.

Explanation by
individual

47 An individual may deliver to a reporting agency, in writing of not more than 500 words, an explanation, or additional information, about the circumstances surrounding any item of information referring to the individual in the individual's file, and the reporting agency must maintain the explanation or additional information in the file accompanying the item and include it in any report given containing the item.

Correction of
errors

48(1) When an individual disputes the accuracy or completeness of any information referring to the individual in the individual's file maintained by a reporting agency, the individual may file with the reporting agency a written statement of protest of not more than 500 words.

(2) When a statement of protest is filed, the reporting agency must use its best efforts to check the accuracy or complete the information and must, within 90 days of the filing of the statement, confirm, correct, supplement or delete the information in the individual's file in accordance with good practice.

(3) When a reporting agency corrects, supplements or deletes information under subsection (2), the reporting agency must give notification of the correction, supplement or deletion to

(a) the individual, and

(b) unless otherwise requested by the individual, every person to whom a report based on the unamended file was given within 6 months before the correction, supplement or deletion is made.

False
information

49 No person may give false or misleading information to a reporting agency.

Civil remedy

50(1) If an individual has suffered loss, damage or inconvenience as a result of a contravention of this Part or the regulations made under this Part, the individual has a cause of action against the person who contravened this Part or the regulations made under this Part and is entitled, if the court finds the individual has suffered loss, damage or inconvenience, to a judgment for the damages suffered.

(2) In this section, "court" includes the Provincial Court, even though a contravention may also constitute a libel or slander.

Regulations

51 The Minister may make regulations

(a) designating persons as reporting agencies;

(b) requiring and governing the books, accounts and records to be kept and maintained by reporting agencies;

(c) prescribing information that may not be reported by a reporting agency or contained in its files;

(d) respecting fees that a reporting agency may charge an individual before disclosing or supplying information to the individual under section 46.

PART 6

WAGE ASSIGNMENTS

- Definitions **52** In this Part,
- (a) “lending institution” means a person who lends money in the ordinary course of the person’s business or operations;
 - (b) “wages” includes any salary, pay, overtime pay and other remuneration for work or services however computed, but does not include tips or other gratuities.
- Assignments **53** Any assignment by any person of all or any part of the person’s wages to secure the payment of an existing or future indebtedness
- (a) is against public policy and void if it is made in favour of a lending institution;
 - (b) is unenforceable by a lending institution if it is originally made in favour of a person other than a lending institution and is later acquired by a lending institution.

PART 7

FEES CHARGED BY LOAN BROKERS

- Charging and collecting fees **54(1)** No loan broker may charge or collect a fee for assisting a person in obtaining a loan until the person has received the proceeds of the loan.
- (2)** This section does not apply to a loan broker who assists a person in obtaining a loan if the loan broker is authorized to deal as a mortgage broker under the *Real Estate Act* and the loan is part of a mortgage as defined in the *Real Estate Act*.

PART 8

CONSIGNMENT SALES, MOBILE HOMES AND MOTOR FUEL

- Consignment sales **55(1)** An agreement is deemed to contain the terms set out in the regulations if
- (a) the agreement is between an individual and another person in which the person agrees to sell goods of the individual on consignment, and

- (b) the agreement falls within a class of agreement specified in the regulations.
- (2) Every person referred to in subsection (1) who agrees to sell goods of an individual must ensure that the agreement meets the requirements of the regulations.
- (3) The Minister may make regulations
- (a) specifying the classes of agreements to which this section applies;
 - (b) setting out the terms that are deemed to be contained in one or more classes of agreements to which this section applies;
 - (c) respecting the requirements that agreements to which this section applies must meet;
 - (d) respecting the rights and remedies of the individual referred to in subsection (1) if the terms of the agreement are not met;
 - (e) requiring the person who agrees to sell goods of an individual to deposit money that the person receives from the sale of the goods into a trust account in the situations described in the regulations;
 - (f) respecting the trust account referred to in clause (e), including where the trust account may be established and maintained and when the money must be deposited;
 - (g) respecting who is entitled to the money in the trust account referred to in clause (e), the duties and responsibilities of the trustee, the disbursement of funds from the trust account and what happens if the person entitled to the money in the trust account cannot be located;
 - (h) respecting the records to be kept respecting the trust account referred to in clause (e), the period of time that those records are to be maintained and the audit of the trust account.

Mobile homes

56(1) No person may sell a new mobile home unless the mobile home is constructed in accordance with the standards contained in or referred to in the regulations.

(2) The Minister may make regulations respecting construction standards for new mobile homes.

Motor fuel

57(1) No person may sell motor fuel that does not meet the requirements of the regulations.

(2) The Minister may make regulations

- (a) defining “motor fuel” for the purposes of this section;
- (b) respecting standards specifications for motor fuel or any specified class of motor fuel;
- (c) respecting the information to be furnished to a purchaser on the sale of any motor fuel in respect of which a standards specification is prescribed;
- (d) respecting the grade, quality or specifications of motor fuel to be sold in Alberta, and the securing of samples and the methods of testing motor fuel;
- (e) respecting advertising standards for selling motor fuel.

PART 9

COST OF CREDIT DISCLOSURE

Division 1

Interpretation and Application

Definitions

58 In this Part,

- (a) “advance” means value received by the borrower within the meaning of section 59(3);
- (b) “APR” means the annual percentage rate determined in accordance with the regulations;
- (c) “borrower” means the party to a credit agreement or prospective credit agreement who receives or will receive credit from the other party, but does not include a guarantor;
- (d) “brokerage fee” means an amount that a borrower pays or agrees to pay to a loan broker in consideration of the loan broker’s services in arranging or attempting to arrange a credit agreement, and includes an amount deducted from an advance and paid to the loan broker by the credit grantor;
- (e) “business day” means a day on which the credit grantor is open for business;

- (f) “capitalized amount” means, subject to the regulations, the cash value of the leased goods plus the amount of any other advances made to the lessee at or before the beginning of the term, minus the total amount of all payments made by the lessee at or before the beginning of the term;
- (g) “cash customer” means a person who buys a product and pays for it in full before or at the time of receiving the product;
- (h) “cash price” of a product means,
 - (i) for a sale by a credit grantor or an associate of the credit grantor who sells the product to cash customers in the ordinary course of business, an amount that fairly represents the price for which the credit grantor or associate sells the product to cash customers, unless the parties agree on a lower price,
 - (ii) for a sale where subclause (i) does not apply, the price agreed on by the parties, and
 - (iii) for an advertisement, the price for which the advertiser currently offers to sell the product to cash customers or, if the advertiser does not currently offer the product to cash customers, the price stated in the advertisement,

and, for the purpose of determining the amount advanced under a credit agreement, includes taxes and any other charges payable by a cash customer;

- (i) “cash value” of leased goods means,
 - (i) where the lessor offers like goods to cash customers in the ordinary course of business, an amount that fairly represents the price for which the credit grantor sells such goods to cash customers, unless the parties agree on a lower cash value, and
 - (ii) where the lessor does not in the ordinary course of business offer like goods to cash customers, the lessor’s reasonable estimate of the amount that cash customers would pay to buy such goods, unless the parties agree on a lower cash value;
- (j) “Court” means the Court of Queen’s Bench or, subject to the jurisdiction of the Provincial Court, the Provincial Court;

- (k) “credit agreement” means an agreement under which credit is extended and, without limitation, includes
 - (i) a loan of money,
 - (ii) a credit sale, and
 - (iii) an agreement under which a loan of money or a credit sale may occur in the future;
- (l) “credit card” means a card or device that can be used to obtain advances under a credit agreement for open credit;
- (m) “credit grantor” means
 - (i) the party to a credit agreement or prospective credit agreement who extends or will extend credit to the other party, or
 - (ii) an assignee of the rights of the original credit grantor, if the borrower has been given notice of the assignment,and includes a credit card issuer;
- (n) “credit sale” means a transaction under which the purchase of a product is financed by the seller or manufacturer of the product or by an associate of the seller or manufacturer;
- (o) “default charge” means a charge imposed on a borrower who fails to make a payment as it comes due under a credit agreement or who fails to comply with any other obligation under a credit agreement, but does not include interest on an overdue payment;
- (p) “fixed credit” means credit under a credit agreement that is not for open credit;
- (q) “floating rate” means an interest rate that bears a specified mathematical relationship to an index rate, and includes an interest rate that
 - (i) is subject to a minimum or maximum, or
 - (ii) is determined at the beginning of a period for the whole period, regardless of changes in the index rate during the period;
- (r) “grace period” means a period in which interest accrues but will be forgiven if the borrower satisfies conditions specified in the credit agreement;

- (s) “index rate” means a rate that meets criteria prescribed by the regulations;
- (t) “initial disclosure statement” means a disclosure statement referred to in section 77, 84 or 93;
- (u) “interest” means charges that accrue over time and are determined by applying a rate to an amount owing from time to time under a credit agreement;
- (v) “interest-free period” means a period following the making of an advance during which interest does not accrue on the advance;
- (w) “lease” means any agreement for the hire of goods, except an agreement for the hire of goods in connection with a residential tenancy agreement;
- (x) “lessee” means a party to a lease or prospective lease;
- (y) “mortgage loan” means a loan of money secured by an interest in real property;
- (z) “non-interest finance charge” means any charge that a borrower is required to pay in connection with a credit agreement other than
 - (i) interest,
 - (ii) a prepayment or default charge,
 - (iii) a charge for an optional service,
 - (iv) a charge referred to in section 59(3)(f) or (g) or anything designated under section 59(3)(h), or
 - (v) for a credit sale, any charge that would also be payable by a cash customer;
- (aa) “open credit” means credit under a credit agreement that
 - (i) anticipates multiple advances, to be made when requested by the borrower in accordance with the agreement, and
 - (ii) does not establish the total amount to be advanced to the borrower under the agreement, although it may impose a credit limit;
- (bb) “optional service” means a service that is offered to a borrower in connection with a credit agreement and that the

borrower does not have to accept in order to enter into the credit agreement;

- (cc) “outstanding balance” means the total amount owing at a particular time under a credit agreement;
- (dd) “payment” means value given by a borrower within the meaning of section 59(5);
- (ee) “product” means goods, services or goods and services, but does not include the extension of credit;
- (ff) “scheduled-payments credit agreement” means a credit agreement for fixed credit under which the amount advanced is to be repaid in accordance with a specified schedule of payments, which may be subject to adjustment to accommodate contingencies, including, but not limited to, the possibility of changes in the interest rate;
- (gg) “security interest” means any interest in property that secures the borrower’s obligations under a credit agreement;
- (hh) “term”, in relation to the duration of a credit agreement, means the period between the first advance and the last payment anticipated by the agreement;
- (ii) “total cost of credit” has the meaning set out in section 59(2).

Determination
of cost of
credit

59(1) In subsections (3), (4) and (5), except subsection (3)(b), (e) and (g), “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively.

(2) The total cost of credit is the difference between the value received or to be received by the borrower in connection with a credit agreement and the value given or to be given by the borrower in connection with the credit agreement, disregarding the possibility of prepayment or default.

(3) Subject to subsection (4), the following constitute value received or to be received by a borrower in connection with a credit agreement:

- (a) money transferred by the credit grantor to the borrower or to the order of the borrower;
- (b) the cash price of a product purchased under the credit agreement;

- (c) the cash value of leased goods under a lease;
 - (d) the payment, discharge or consolidation by the credit grantor of a pre-existing monetary obligation of the borrower, the value received by the borrower being the amount of the obligation so paid, discharged or consolidated;
 - (e) the use of a credit card to obtain money or a product, the value received by the borrower being the money obtained or the cash price of the product;
 - (f) a charge for any of the following expenses, if the credit grantor incurs the expense for the purpose of arranging, documenting, insuring or securing a credit agreement and then charges the expense to the borrower:
 - (i) a fee paid to a third party to record or register a document or information in, or to obtain a document or information from, a public registry of interests in real or personal property;
 - (ii) a fee for professional services required for the purpose of confirming the value, condition, location or conformity to law of property that serves as security for a credit agreement, if the borrower is given a report signed by the person providing the professional services and is free to give the report to third persons;
 - (iii) a premium for insurance that protects the credit grantor against the risk of default on a high-ratio mortgage, as defined by regulation;
 - (iv) a premium for casualty insurance on the subject-matter of a security interest, if the borrower is a beneficiary of the insurance and the insured amount is the full insurable value of the subject-matter;
 - (g) a fee charged by the credit grantor for maintenance of a tax account on a high-ratio mortgage, as defined by regulation;
 - (h) anything designated by the regulations as value received by the borrower for the purposes of this subsection.
- (4) The following do not constitute value received or to be received by the borrower unless they relate to an optional service, an expense or fee referred to in subsection (3)(f) or (g) or something designated under subsection (3)(h):

- (a) insurance provided or paid for by the credit grantor in connection with a credit agreement;
- (b) money paid, an expense incurred or anything done by the credit grantor for the purpose of arranging, documenting, securing, administering or renewing a credit agreement.

(5) The following constitute value given or to be given by a borrower in connection with a credit agreement:

- (a) money or property transferred from the borrower to the credit grantor for any purpose in connection with the credit agreement;
- (b) money or property transferred from the borrower to a person other than the credit grantor in respect of a charge for services that the credit grantor requires the borrower to obtain or pay for in connection with the credit agreement, unless the charge
 - (i) is for an expense to which subsection (3)(f) or regulations under subsection (3)(h) would have applied if it had been incurred initially by the credit grantor and then charged by the credit grantor to the borrower,
 - (ii) is for services provided by a lawyer chosen by the borrower, or
 - (iii) is for title insurance provided by an insurer chosen by the borrower.

(6) Despite subsections (3) and (5), amounts paid into or out of a tax account for a mortgage loan are ignored when calculating the APR and total cost of credit.

Application

60(1) In this section, “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively.

(2) This Part applies to a loan or lease made by Alberta Treasury Branches and to a loan made by the Alberta Social Housing Corporation or its predecessors.

(3) Subject to subsections (4) and (5) and the regulations, this Part applies to a credit agreement if

- (a) the borrower is an individual who enters into the credit agreement primarily for personal, family, household or farming purposes, and

(b) either,

(i) the credit grantor enters into the agreement in the course of carrying on a business, or

(ii) the credit agreement is arranged by a loan broker.

(4) For the purposes of subsection (3)(a), a credit grantor is entitled to rely on a statement in a credit agreement or other document regarding the purpose for which a borrower enters into a credit agreement, if the statement is signed by the borrower and the credit grantor believes in good faith that the statement is true.

(5) This Part does not apply to a credit sale where all of the following occur:

(a) the credit sale anticipates payment in full for the product in a single payment within a certain period after a written invoice or statement of account is delivered to the buyer,

(b) the credit sale is unconditionally interest-free during the period for payment referred to in clause (a),

(c) the credit sale is unsecured, apart from any lien on the product that may arise by operation of law,

(d) the credit sale is not assigned in the ordinary course of the credit grantor's business otherwise than as security, and

(e) the credit sale does not provide for any non-interest finance charges.

Division 2 Disclosure

Definition **61** In sections 62 to 67 "borrower", "credit grantor" and "credit agreement" include a lessee, lessor and lease, respectively.

Requirement to disclose **62(1)** Every credit grantor must, in the form and manner provided by this Part and the regulations, disclose to borrowers the information that this Part and the regulations require to be disclosed.

(2) Every credit grantor must, with respect to any advertisement published or made by or on behalf of the credit grantor, disclose in the advertisement, in the form and manner provided by this Part and the regulations, the information that this Part and the regulations require to be disclosed.

Form of
disclosure
statements

63(1) Where this Part or the regulations require a disclosure to be made in a disclosure statement, the disclosure statement

- (a) must be in writing or, with the borrower's consent, in any form that will allow the borrower to retain the disclosure statement for future reference, and
- (b) must express the required information clearly, concisely, in a logical order and in a manner that is likely to bring the information to the borrower's attention.

(2) A disclosure statement may be a separate document or part of another document.

Time at which
disclosure
statement to
be delivered

64(1) The credit grantor must deliver the initial disclosure statement for a credit agreement other than a mortgage loan to the borrower before the earlier of the following occurs:

- (a) the borrower enters into the credit agreement;
- (b) the borrower makes any payment in connection with the credit agreement.

(2) The credit grantor must deliver the initial disclosure statement for a mortgage loan to the borrower at least 2 business days before the earlier of the following occurs:

- (a) the borrower incurs any obligation to the credit grantor in connection with the mortgage loan, other than an obligation in respect of a charge referred to in section 59(3)(f) or prescribed by regulation for the purposes of this clause;
- (b) the borrower makes any payment to the credit grantor in connection with the mortgage loan, other than a payment in respect of a charge referred to in section 59(3)(f) or prescribed by regulation for the purposes of this clause.

(3) When authorized by the regulations, the time period referred to in subsection (2) may be waived in accordance with terms and conditions set out in the regulations.

Delivery of
disclosure
statements

65(1) Where there is more than one borrower under a credit agreement, a disclosure statement or other document that is required to be delivered to the borrowers may be delivered to any of the borrowers, and it is unnecessary to deliver a separate copy to each borrower.

(2) A document sent by ordinary mail to a borrower at the mailing address provided by the borrower to the credit grantor is considered, in the absence of evidence to the contrary, to have been delivered to the borrower 7 days after it was sent.

Fees, Charges and Optional Services

Required
insurance

66(1) A borrower who is required by a credit grantor to purchase any insurance may purchase it from any insurer who may lawfully provide that type of insurance, except that the credit grantor may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

(2) A credit grantor who offers to provide or to arrange insurance referred to in subsection (1) must at the same time clearly disclose to the borrower in writing that the borrower may purchase the required insurance through an agent and from an insurer of the borrower's choice.

Cancellation of
optional
services

67(1) A borrower may cancel an optional service of a continuing nature that is provided by the credit grantor or an associate of the credit grantor on giving 30 days' notice, or such shorter period of notice as is provided for by the agreement under which the service is provided.

(2) A borrower who cancels an optional service in accordance with subsection (1)

(a) is not liable, and

(b) is entitled to a refund of any amount already paid,

for charges relating to any portion of the service that has not been provided at the time of cancellation.

Prepayment of
non-mortgage
credit

68(1) This section does not apply to mortgage loans.

(2) A borrower is entitled to pay the full outstanding balance under a credit agreement at any time without any prepayment charge or penalty.

(3) Where a borrower prepays the full outstanding balance under a credit agreement for fixed credit, the credit grantor must refund or credit the borrower with a portion of any non-interest finance charge that was paid by the borrower or was added to the outstanding balance of the credit agreement.

(4) The portion of each non-interest finance charge that must be refunded or credited to the borrower under subsection (3) is to be determined in accordance with the regulations.

(5) A borrower is entitled to prepay a portion of the outstanding balance of a credit agreement for fixed credit on any scheduled payment date or at least monthly without any prepayment charge or penalty, but is not entitled by reason of the payment to a credit for any non-interest finance charges.

Default
charges

69 The only default charges that may be provided for by a credit agreement are

- (a) reasonable charges in respect of legal costs incurred in collecting or attempting to collect a payment under a credit agreement,
- (b) reasonable charges in respect of costs, including legal costs, incurred in realizing a security interest or protecting the subject-matter of a security interest after default, and
- (c) reasonable charges that reflect charges incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonoured.

Invitation to
defer payment

70(1) Where a credit grantor invites a borrower to defer making a payment that would otherwise be due under a credit agreement, the invitation must clearly disclose whether or not interest will accrue on the unpaid amount during the period during which payment is deferred.

(2) Where an invitation referred to in subsection (1) does not disclose whether or not interest will accrue on the unpaid amount during the period during which payment is deferred, the credit grantor is deemed to waive the interest that would otherwise accrue during that period.

Acceleration
clauses

71(1) Despite anything in a credit agreement, where the credit agreement contains a provision to the effect that on default by the borrower or on the occurrence of any other event, and whether or not at the option of the credit grantor, the whole or part of the outstanding balance becomes immediately payable or is otherwise accelerated,

- (a) the whole or part of the outstanding balance does not become payable or otherwise accelerated, and

- (b) any rate of interest made specially applicable to the outstanding balance does not become effective,
- until written notice of the default or other event
- (c) is served personally on the borrower, or
 - (d) is sent by registered mail to the borrower at the borrower's latest address as shown on the records of the credit grantor.
- (2) Despite subsection (1), where the credit grantor sends a notice under subsection (1)(d),
- (a) the whole or part of the outstanding balance does not become payable or otherwise accelerated, and
 - (b) any rate of interest made specially applicable to the outstanding balance does not become effective,
- until 10 days has elapsed from the date that the notice was sent to the borrower.

Credit Arranged by Loan Brokers

Non-business
credit grantors

- 72(1)** This section applies where a loan broker arranges a credit agreement involving a credit grantor who does not enter into the credit agreement in the course of carrying on a business.
- (2) Any provision of this Part or the regulations that imposes a duty on a credit grantor is to be read as imposing the duty on the loan broker, rather than on the credit grantor.
- (3) Where the borrower pays or is liable to pay a brokerage fee, the initial disclosure statement for the credit agreement must
- (a) disclose the amount of the brokerage fee, and
 - (b) account for the brokerage fee in the APR and total cost of credit.

Business
credit grantors

- 73(1)** This section applies where a loan broker arranges a credit agreement involving a credit grantor who enters into the credit agreement in the course of carrying on a business.
- (2) Where the credit grantor deducts a brokerage fee from an advance, the credit grantor's initial disclosure statement must
- (a) disclose the amount of the brokerage fee, and

(b) account for the brokerage fee in the APR and the total cost of credit.

(3) A loan broker who takes a loan application from a borrower and forwards it to a credit grantor must give the borrower a disclosure statement containing the information referred to in subsection (2) and any other information required by this Part and the regulations to be disclosed in an initial disclosure statement.

(4) Where a loan broker is required by subsection (3) to give the borrower a disclosure statement, the credit grantor may adopt the disclosure statement given by the loan broker as its own disclosure statement or may elect to deliver a separate disclosure statement to the borrower that contains the required information.

Division 3 Fixed Credit

General

Application **74** This Division applies only to credit agreements that extend fixed credit.

Credit sales **75** A credit grantor may not enter into a credit sale unless the credit sale is a scheduled-payments credit agreement.

Advertising for fixed credit **76(1)** Every advertisement that offers credit and that states the interest rate or amount of any payment must disclose the information provided by the regulations.

(2) An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

(3) An advertisement to which subsection (2) applies that does not, in the form and manner referred to in the regulations, disclose the information required under subsection (2) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

Disclosure Statements

Initial disclosure statement for fixed credit **77** The initial disclosure statement for a credit agreement must disclose the information prescribed by the regulations.

Changes in
interest rate

78(1) Where the interest rate under a credit agreement is a floating rate, the credit grantor must, at least once every 12 months, deliver to the borrower a disclosure statement containing the information prescribed by the regulations for the period covered by the statement.

(2) Where the interest rate may be changed but is not a floating rate, the credit grantor must, within 30 days after increasing the annual interest rate to a rate that is at least 1% higher than the rate most recently disclosed to the borrower, deliver to the borrower a disclosure statement containing the information prescribed by the regulations.

(3) Where, as a result of an increase in the outstanding principal because of a missed or late payment or the imposition of a default charge, the scheduled payments under a scheduled-payments credit agreement will not cover interest that will accrue between payments, the credit grantor must give the borrower notice in writing to that effect within 30 days after the outstanding principal increases.

Disclosure
regarding
amendments

79(1) If information disclosed in an earlier disclosure statement changes because of an amendment to a credit agreement, the credit grantor must deliver a supplementary disclosure statement to the borrower within 14 days after the amendment is made.

(2) The supplementary disclosure statement must provide the changed information but need not repeat any information that is unchanged from the earlier disclosure statement.

(3) Where an amendment consists only of a revision to the schedule of payments, the supplementary disclosure statement need not disclose any change to the APR or total payments or any decrease in the total cost of credit.

(4) This section does not apply to changes effected by a renewal agreement to which section 80 or 81 applies.

Disclosure
where
mortgage loan
renewed

80(1) Where the amortization period for a mortgage loan under a scheduled-payments credit agreement is longer than its term, the credit grantor must, at least 21 days before the end of the term, deliver to the borrower a written notice stating whether or not the credit grantor is willing to renew the loan for a further term.

(2) A credit grantor who is willing to renew a mortgage loan must include with the notice referred to in subsection (1) a disclosure statement that contains the information prescribed by the regulations.

(3) Where the terms of the renewal agreement differ from the terms contemplated in the disclosure statement because

- (a) the outstanding balance on the renewal date differs from what was stated in the disclosure statement because of one or more missed, late, early or extra payments,
- (b) the interest rate under the renewal agreement is lower than was stated in the disclosure statement, or
- (c) the amortization period or frequency of payments under the renewal agreement differs from what was stated or assumed,

or because of any combination of such events, the credit grantor must deliver a revised disclosure statement to the borrower within 30 days after the effective date of the renewal agreement.

(4) Subject to subsection (3), where a credit grantor does not provide a disclosure statement that reflects the actual terms of the renewal agreement to the borrower at least 21 days before the effective date of a renewal agreement, the borrower

- (a) is entitled to prepay the outstanding balance of the renewed mortgage loan without penalty at any time within 21 days after receiving the disclosure statement, and
- (b) on exercising that right, is entitled to a refund of any non-interest finance charges imposed in connection with the renewal.

Renewal of
non-mortgage
loan

81 When fixed credit other than a mortgage loan is renewed, the credit grantor must deliver to the borrower on or before the renewal date a disclosure statement containing the information prescribed by the regulations.

Division 4 Open Credit

General

Application

82 This Division applies only to credit agreements that extend open credit.

Advertising for
open credit

83(1) An advertisement that gives any specific information about the cost of credit must disclose the information prescribed by the regulations.

(2) An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction under a credit agreement must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

(3) An advertisement to which subsection (2) applies that does not, in the form and manner referred to in the regulations, disclose the information required under subsection (2) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

Initial
disclosure
statement

84 The initial disclosure statement for a credit agreement must disclose the information prescribed by the regulations.

Statement of
account

85(1) Subject to subsection (2), the credit grantor must deliver a statement of account to the borrower at least monthly.

(2) A credit grantor is not required to send a statement of account to a borrower at the end of any period during which there have been no advances or payments where

(a) the outstanding balance is zero, or

(b) the borrower is in default and has been notified that the privilege of obtaining advances under the agreement has been cancelled or suspended and the credit grantor has demanded payment of the outstanding balance.

(3) The credit grantor must provide a telephone number at which the borrower can make inquiries about the borrower's account during the credit grantor's ordinary business hours without incurring any charges for the call.

(4) A statement of account must disclose the information prescribed by the regulations.

Credit Cards

No unsolicited
credit cards

86(1) A credit card issuer must not issue a credit card to a person who has not applied for the card.

(2) Subsection (1) does not apply to a credit card that is issued to a person to replace or renew a card that was applied for and issued to that person.

Application for credit card	<p>87(1) A credit card issuer must disclose in an application form for a credit card the information prescribed by the regulations.</p> <p>(2) A person who applies for a credit card without signing an application form is considered to enter into a credit agreement in relation to that card on using the card for the first time.</p> <p>(3) Nothing in this section relieves the credit card issuer from the requirement to deliver an initial disclosure statement in accordance with sections 64(1) and 84.</p>
Additional disclosure for credit card	<p>88(1) In addition to the applicable information required to be disclosed under section 84, a credit card issuer must disclose in the initial disclosure statement for open credit associated with a credit card the card holder's maximum liability for unauthorized use of the credit card if it is lost or stolen.</p> <p>(2) The credit card issuer must give the card holder at least 30 days' notice of any change in the information disclosed in a disclosure statement.</p> <p>(3) Subsection (2) does not apply to</p> <ul style="list-style-type: none"> (a) a change in the credit limit, (b) a decrease in the interest rate or the amount of any other charge, (c) an increase in the length of an interest-free period or grace period, or (d) a change in a floating rate, <p>but the relevant information must be disclosed in the next statement of account following the change or in a document that is given to the borrower with the next statement of account.</p>
Limitation of liability	<p>89(1) A card holder is not liable for a debt incurred through the unauthorized use of a lost or stolen credit card after the credit card issuer receives notice of the loss or theft.</p> <p>(2) A notice under subsection (1) may be oral or in writing.</p> <p>(3) The maximum total liability of a card holder arising from unauthorized use of a lost or stolen credit card before the issuer receives notice under subsection (1) is the lesser of</p> <ul style="list-style-type: none"> (a) \$50, and

- (b) the amount fixed or agreed to by the credit card issuer as the maximum amount for which the card holder is liable in the event of the unauthorized use of the card after its loss or theft.
- (4) Subsection (3) does not apply to a transaction prescribed by regulation.

Division 5 Leases of Goods

Definitions

90 In this Division,

- (a) “estimated residual value” means the lessor’s reasonable estimate of the wholesale value of the leased goods at the end of the lease term;
- (b) “residual obligation lease” means a lease under which the lessee may be required at the end of the lease term to pay the lessor an amount based wholly or partly on the difference, if any, between the estimated residual value and the realizable value of the leased goods;
- (c) “term”, in relation to the duration of a lease, means the period during which the lessee is entitled to retain possession of the leased goods.

Application of Division

91 This Division applies to a lease if the lease

- (a) is for a fixed term of 4 months or more,
- (b) is for an indefinite term or is renewed automatically until one of the parties takes positive steps to terminate it, or
- (c) is a residual obligation lease.

Advertisements

92 An advertisement that gives any specific information about the cost of a lease must disclose the information prescribed by the regulations.

Disclosure statement for lease

93 The initial disclosure statement for a lease must disclose the information prescribed by the regulations.

Residual
obligation
leases

94 The lessee's maximum liability at the end of the term of a residual obligation lease after returning the leased goods to the lessor is to be calculated in accordance with the regulations.

Division 6 Compliance

Interpretation

95(1) In this Division, "borrower", "credit grantor" and "credit agreement" include a lessee, lessor and lease, respectively, and "credit grantor" also includes a loan broker.

(2) For the purposes of this Division, a credit grantor is considered to have a compliance procedure if the credit grantor

- (a) requires its employees and agents to follow procedures, or has implemented automated procedures, designed to ensure that borrowers receive the information to which they are entitled at the time and in the form required by this Part, and
- (b) monitors the effectiveness of the measures referred to in clause (a) and promptly remedies any deficiencies it discovers in their design or implementation.

Recovery of
payments and
compensation

96(1) Despite any agreement to the contrary, where a borrower makes a payment to a credit grantor that by virtue of this Part the credit grantor is not entitled to receive, the credit grantor must refund the payment to the borrower or, if the parties agree, credit the payment against the outstanding balance of the relevant credit agreement as of the time the payment was made.

(2) A credit grantor who contravenes this Part or the regulations must compensate a borrower for any loss the borrower suffers because of the contravention, and the compensation to which the borrower is entitled may be set off against the outstanding balance of the relevant credit agreement or may be recovered in an action.

Inconsistency
between
disclosure
statement and
contract

97 If information in a disclosure statement is inconsistent with any information or term set out in the credit agreement, the credit agreement is presumed to incorporate the information or term that is more favourable to the borrower, unless it is proved that the less favourable information or term reflects the borrower's actual understanding of the terms of the agreement.

Statutory
damages

98(1) A contravention of this Part or the regulations by a credit grantor is an excusable error for the purposes of this section if

- (a) the credit grantor had a compliance procedure when the contravention occurred,
- (b) the contravention was accidental or the result of an employee's or agent's failure to follow the compliance procedure, and
- (c) on discovering the contravention, the credit grantor promptly took steps to minimize its effect on any affected borrower.

(2) Where a credit grantor contravenes this Part or the regulations in relation to a credit agreement and the contravention is not an excusable error, the borrower is entitled, in addition to any other remedy to which the borrower may be entitled under this Part, to recover from the credit grantor in an action the statutory damages provided for by this section.

(3) Subject to subsection (4), the statutory damages for a contravention of this Part or the regulations are the lesser of \$500 and 5% of whichever of the following is applicable:

- (a) for a credit agreement for fixed credit, the maximum outstanding balance;
- (b) for a lease, the capitalized amount;
- (c) for a credit agreement for open credit, the credit limit,

except that the statutory damages are \$500 for open credit that does not specify a credit limit.

(4) Where a contravention of this Part or the regulations relates to a statement of account for open credit, the statutory damages are equal to the interest and any non-interest finance charges for the period covered by the statement of account.

(5) The Court may reduce the statutory damages to which a borrower would otherwise be entitled under this section if the Court is satisfied in view of all the circumstances, including any undertakings as to future compliance with this Part or the regulations that are given by the credit grantor, that it would be just and equitable to do so.

(6) Statutory damages to which a borrower is entitled may be set off against any amount otherwise payable by the borrower to the credit grantor.

Exemplary damages **99** The Court may award exemplary damages to a borrower against a person who has deliberately contravened this Part or the regulations or in any case where the Court considers that the conduct of a person who has contravened this Part or the regulations justifies an award of exemplary damages against that person.

Assignee **100(1)** Except as otherwise provided in this section, a borrower may assert against a person to whom the rights of a credit grantor have been assigned any rights or remedies under section 96, 97 or 98 that the borrower could have asserted against the original credit grantor immediately before receiving notice of the assignment.

(2) The assignee's maximum liability under any of the provisions referred to in subsection (1) is limited to the outstanding balance at the time of the assignment, or the proportion of the outstanding balance that is assigned to the assignee.

(3) An assignee incurs no liability under this section for a credit grantor's contravention of this Part or the regulations unless

- (a) the assignee knew of the contravention before the borrower received notice of the assignment,
- (b) the contravention consists of the credit grantor's failure to deliver a disclosure statement to the borrower when required by this Part or the regulations, or
- (c) the contravention is apparent on the face of a disclosure statement, or by comparing the disclosure statement with the written terms of the credit agreement.

(4) An assignee is entitled to rely in good faith on a borrower's signed acknowledgment of receipt of a disclosure statement.

Division 7 Regulations

Regulations **101(1)** The Minister may make regulations

- (a) respecting the criteria in determining what constitutes an index rate;
- (b) respecting the calculation of the APR for the purposes of credit agreements and leases;
- (c) defining "high-ratio mortgage" for the purposes of section 59(3)(f)(iii) and (g);

- (d) designating what is value received by a borrower for the purposes of section 59(3)(h);
- (e) respecting terms and conditions for the waiver of the time period referred to in section 64(2);
- (f) respecting, in addition to the requirements set out in this Part,
 - (i) the form of disclosure statements and the form of disclosure in advertisements,
 - (ii) information to be disclosed in a disclosure statement or advertisement, and
 - (iii) the manner in which information may be disclosed under this Act and the regulations;
- (g) respecting the form and manner in which information referred to in sections 76 and 83 must be disclosed in an advertisement;
- (h) respecting the manner in which a refund referred to in section 67(2)(b) may be determined;
- (i) determining the portion of each non-interest finance charge that must be refunded or credited to the borrower under section 68(4);
- (j) respecting what constitutes reasonable charges for the purpose of section 69;
- (k) respecting the information that must be disclosed for the purposes of sections 76(1) and (2), 77, 78(1) and (2), 80(2), 81, 83(1) and (2), 84, 85(4), 87(1) and (3), 92 and 93;
- (l) respecting the transactions to which section 89(3) does not apply;
- (m) respecting, for the purposes of section 94, the calculation of a lessee's maximum liability at the end of the term of a residual obligation lease after returning the leased goods to the lessor;
- (n) restricting or broadening the definition of "capitalized amount";
- (o) defining any term or expression not otherwise defined in this Part;

- (p) respecting the early termination of leases, including the early exercise of purchase options, and, in particular, limiting the compensation or penalties payable by a lessee on the early termination of a lease.

(2) The Lieutenant Governor in Council may make regulations respecting the exemption of any class of advertisement, credit agreement, credit grantor, loan broker, lease or lessor from the application of this Part or the regulations or of any provision of this Part or the regulations.

PART 10

DESIGNATED TRADES AND BUSINESSES

Definitions

102 In this Part,

- (a) “designated agent” means a person who is appointed as a designated agent pursuant to the regulations;
- (b) “designated business” means a trade, business, industry, employment or occupation to which this Part is made applicable by regulation under section 103.

Application of Part

103(1) The Lieutenant Governor in Council may, by regulation, provide that this Part applies to the whole or a part of a trade, business, industry, employment or occupation designated in the regulations.

(2) The Lieutenant Governor in Council may not designate the following:

- (a) trades, businesses, industries, employments and occupations that are licensed pursuant to the *Gaming and Liquor Act* or the *Amusements Act*;
- (b) professions or callings to which the *Apprenticeship and Industry Training Act*, *Architects Act*, *Certified General Accountants Act*, *Certified Management Accountants Act*, *Chartered Accountants Act*, *Chiropractic Profession Act*, *Dental Profession Act*, *Engineering, Geological and Geophysical Professions Act*, *Land Surveyors Act*, *Legal Profession Act*, *Medical Profession Act*, *Nursing Profession Act*, *Optometry Profession Act*, *Pharmaceutical Profession Act*, *Real Estate Act*, *Teaching Profession Act* or *Veterinary Profession Act* applies;
- (c) a trade, business, industry, employment or occupation that is subject to the control of the Public Utilities Board;

- (d) the occupation of a farmer, a rancher, a farm labourer, a domestic servant or an unskilled labourer.

Licence
required -
designated
businesses

104(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

(2) If a person engages in a designated business at more than one location, the person must hold a separate licence issued under this Act that authorizes the person to engage in that business for each location.

Regulations

105(1) The Minister may make regulations

- (a) specifying activities that constitute engaging in a designated business for the purposes of this Act;
- (b) prescribing fees payable by or in respect of designated agents;
- (c) respecting the duties and obligations of persons engaged or employed in a designated business;
- (d) requiring persons engaged or employed in a designated business to appoint designated agents as their representatives and respecting the eligibility requirements, duties and obligations of designated agents;
- (e) prescribing or adopting, with or without modification, codes, standards or rules governing
 - (i) the manner of carrying on a designated business or class of designated business,
 - (ii) experience and education requirements and requirements as to financial responsibility of persons carrying on or wishing to carry on a designated business,
 - (iii) the type and condition of premises and equipment used in a designated business, and
 - (iv) the conduct of persons engaged in carrying on a designated business;
- (f) respecting the manner of informing members of the public of

- (i) any sale of or dealing with goods, products or services of a designated business, and
- (ii) contraventions of this Part;
- (g) respecting terms and conditions for a designated business or class of designated business that has contravened this Part or the regulations made under this Part to continue operating as a business under this Part;
- (h) prescribing in respect of any designated business or class of designated business that the approval of any authority specified by the Minister is required for the obtaining of a licence or the renewal of a licence or the establishment of that business or class of business;
- (i) prescribing as to any designated business or class of designated business the information to be contained in agreements used by persons carrying on or engaged in that business in their dealings with the public;
- (j) requiring in respect of any designated business or class of designated business that specified accounts and records be maintained by persons carrying on or engaged in that business.

(2) The Minister may, by order, delegate in whole or in part to any other head of a department of the Public Service the power to make any regulations under this Part that the Minister is empowered to make, and the Minister may, by order, authorize another department to make any inspections of any business for the purposes of this Part.

Delegation to
regulatory
boards

106(1) The Minister may make regulations

- (a) providing for the establishment of regulatory boards to exercise the powers, duties and functions delegated to them under subsection (5);
- (b) providing for the appointment of the members of a regulatory board, including, without limitation, providing for 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;
 - (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 a regulatory board.
- (5) The Director may by notice in writing to a regulatory board
- (a) delegate to a regulatory board any or all of the Director's powers, duties or functions under this Act and the regulations, except the power to approve by-laws,
 - (b) impose any conditions on the regulatory board's exercise of the delegated powers, duties or functions that the Director considers appropriate, and
 - (c) amend or revoke the notice.
- (6) Where the Director makes a delegation under subsection (5), a reference in this Part or the regulations made under this Part to the Director with respect to the delegated power, duty 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 subsection.
- (8) 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 the powers, duties and functions delegated to it under subsection (5).

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

Establishment
of fund by
regulatory
board

107(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 of a designated business by a licensee;

(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 Part, and

(b) designated agents

who are engaged or employed in the designated business in respect of which powers, duties or functions have been delegated to the board under section 106(5).

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

(4) A regulatory board is deemed to hold in trust all money credited to a fund and must 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) Despite 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 Part and designated agents in accordance with the regulations.

(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 the 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 period within which claims against a fund must be made;
- (i) providing for the recovery by the regulatory board from a licensee of amounts paid from the fund to a claimant in respect of a claim against the licensee for loss or damage arising out of the operation of a designated business by the licensee;
- (j) respecting the winding-up of a fund.

Codes
respecting
competitive
practices

108(1) The Minister may establish or adopt codes that establish standards of ethics, methods, practices and systems applicable to any designated business or class of designated business to effect an end to or to prevent competitive practices that are, by their nature, detrimental either to the business, to persons employed in the business or to the public.

(2) The Minister must ensure that any code established or adopted under subsection (1) is published in *The Alberta Gazette*.

(3) The *Regulations Act* does not apply to a code established or adopted under subsection (1).

Compliance
with code

109 The principals, directors, managers and employees of a

designated business that is subject to a code under section 108 must comply with the code.

Municipal
licences

110 No municipality or Metis settlement may issue a licence for the carrying on of a designated business unless the applicant for the licence holds a licence issued under this Act in respect of that business.

PART 11

COLLECTION PRACTICES

Definitions

111 In this Part,

- (a) “collection agency” means a person, other than a collector, who carries on the business
 - (i) of collecting or attempting to collect debts for other persons,
 - (ii) of collecting or attempting to collect debts under any name that differs from that of the creditor to whom the debt is owed,
 - (iii) of offering or undertaking to act for a debtor in arrangements or negotiations with the debtor’s creditors or receiving money from a debtor for distribution to the debtor’s creditors in consideration of a fee, commission or other remuneration that is payable by the debtor,
 - (iv) of offering or undertaking to act for a creditor in realizing on any security given to the creditor for a debt, or
 - (v) of selling or offering to sell any collection system, device or scheme intended or calculated to be used to collect debts;
- (b) “collector” means a person employed or authorized by a collection agency to do the following for the collection agency:
 - (i) collect or attempt to collect money;
 - (ii) solicit business;
 - (iii) realize on a security;

- (iv) deal with or locate debtors.

Exemptions **112(1)** This Part, except section 119, does not apply

- (a) to an insurer, agent, adjuster or broker licensed under the *Insurance Act* or to the employees of any of them who are acting in the regular course of their employment,
 - (b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Act*, the *Business Corporations Act*, the *Judicature Act* or the *Winding-up and Restructuring Act* (Canada) or to a person acting under a debenture or the order of any court, or
 - (c) to an industry member within the meaning of the *Real Estate Act* or to the employees of an industry member acting in the regular course of their employment.
- (2) This Part does not apply to lawyers who are acting in the practice of their profession or to a civil enforcement bailiff or civil enforcement agency while realizing on a security.
- (3) This Part or any provision of this Part does not apply to any person or class of persons designated by the regulations as a person or class of persons exempt from the operation of this Part or that provision.

Licence
required

- 113(1)** No person may engage in the business of a collection agency unless the person is the holder of a collection agency licence issued under this Act.
- (2) No person may act as a collector for a collection agency unless the person is the holder of a collector's licence issued under this Act.
- (3) No collection agency may employ or authorize any person to be a collector unless that person is the holder of a collector's licence.
- (4) No person may claim or advertise that the person is a collector or carries on the business of a collection agency unless the person holds a collector's licence or a collection agency licence, as the case may be.

Suspension and cancellation of licence	<p>114 The licence of a collector</p> <ul style="list-style-type: none"> (a) is cancelled when the person who holds the licence ceases to be employed or authorized by a collection agency to act as a collector, and (b) is suspended or cancelled, as the case may be, on the suspension or cancellation of the collection agency licence of the collection agency that employed or authorized the person to act as a collector.
Receipts	<p>115 Every collection agency must acknowledge the receipt of any money that the collection agency or the agency's collector or the employee of either of them collects or receives from a debtor for distribution to the debtor's creditors by means of receipts that meet the requirements of the regulations.</p>
Statement of account	<p>116(1) Every collection agency must, on the written request of a debtor, provide to the debtor a statement of account that shows the amounts received and paid out by the agency in respect of the debtor and the amount owing by the debtor at the date of the statement.</p> <p>(2) A collection agency does not have to provide the statement of account more frequently than once every 6 months.</p>
Audit	<p>117(1) A collection agency must</p> <ul style="list-style-type: none"> (a) within 120 days after the end of its fiscal year, provide the Director with a report of its financial affairs in the form established by the Director and signed by an auditor acceptable to the Director, and (b) provide the auditor with access to every book and record of the collection agency that, in the opinion of the auditor, is necessary to carry out the examination. <p>(2) The Director may order a collection agency to correct, within a specified time, any defect or deficiency in the form or maintenance of any book or record.</p>
Prohibited practices	<p>118(1) No collection agency or collector may</p> <ul style="list-style-type: none"> (a) collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the debtor to the creditor;

- (b) charge any fee to a person for whom the collection agency or collector acts in addition to those fees provided for in the agreement with that person;
- (c) if a collection agency, carry on the business of a collection agency in a name other than the name in which it is licensed, or invite the public to deal anywhere other than at a place authorized by the licence;
- (d) if a collector, collect or attempt to collect a debt without using the name as shown on the collector's licence and the name of the collection agency that employs or authorizes the person to act as a collector, as that collection agency's name is shown on the collection agency licence;
- (e) collect from a debtor any amount greater than that prescribed by the regulations for acting for the debtor in making arrangements or negotiating with the debtor's creditors on behalf of the debtor or receiving money from the debtor for distribution to the debtor's creditors;
- (f) make any arrangement with a debtor to accept a sum of money that is less than the amount of the balance due and owing to a creditor as full and final settlement without the prior written approval of the creditor;
- (g) fail to provide any person for whom the collection agency or collector acts with a written report on the status of that person's account in accordance with the regulations;
- (h) make any personal call or telephone call for the purpose of demanding payment of a debt on any day except between 7 a.m. and 10 p.m.;
- (i) directly or indirectly threaten or state an intention to proceed with any action for which the collection agency or the collector does not have lawful authority;
- (j) make telephone calls or personal calls of such nature or with such frequency as to constitute harassment of the debtor, the debtor's spouse or any member of the debtor's family or household;
- (k) give any person, directly or indirectly, by implication or otherwise, any false or misleading information;
- (l) where a person has informed the collection agency or the collector that the person is not in fact the debtor, continue to communicate with that person in respect of the collection of the debt unless the collection agency or the

collector first takes all reasonable precautions to ensure that the person is in fact the debtor;

(m) contact a debtor's employer, spouse, relatives, neighbours or friends unless

(i) the person contacted is the employer of the debtor and the collection agency or collector is contacting the employer for the purpose of verifying the employment of the debtor, or

(ii) the contact is made for the purpose of obtaining the debtor's address or telephone number;

(n) contact a debtor at the debtor's place of employment if the debtor

(i) requests the collection agency or the collector not to contact the debtor there,

(ii) makes reasonable arrangements to discuss the debt with the collection agency or collector, and

(iii) discusses the debt with the collection agency or collector in accordance with the arrangements;

(o) discuss the debt of a debtor with any person except

(i) the debtor or creditor of that debt, or

(ii) for the purposes of obtaining information respecting the debtor;

(p) indicate to a debtor or any person contacted for the purpose of collecting the debtor's debt that the collection agency or collector is part of a law firm or the legal department of a business;

(q) do anything that is prohibited by the regulations.

(2) Subsection (1) applies to a collection agency or collector even though the collection agency or collector is collecting or attempting to collect a debt that has been assigned to the collection agency or collector by a creditor.

(3) A term of an agreement entered into by a collection agency or collector is void if that term

(a) misrepresents the rights and powers of a person collecting or attempting to collect a debt,

- (b) misrepresents the obligations or legal liabilities of a debtor,
- (c) is misleading as to its true nature and purpose, or
- (d) otherwise contravenes this Act or the regulations.

Withdrawal of
accounts

119 No person may place an account for collection with a collection agency without first withdrawing in writing any previous placement of that account with any other collection agency.

Regulations

120 The Minister may make regulations

- (a) designating any person or any class of persons as exempt persons for the purpose of section 112(3);
- (b) specifying activities that constitute engaging in the business of a collection agency for the purposes of this Act;
- (c) respecting receipts under section 115;
- (d) governing reports under section 118(1)(g);
- (e) respecting advertising by collection agencies and collectors;
- (f) governing the fees, commissions or disbursements charged by any collection agency or class of collection agency in performing its services;
- (g) prohibiting a collection agency or collector from doing specified things.

PART 12

PUBLIC AUCTIONS

Definitions

121 In this Part,

- (a) “auction sales business” means an individual, partnership or corporation that engages in any activity referred to in section 123(1)(a) to (c) or the regulations under section 128(b);
- (b) “auctioneer” means an individual who conducts the bidding at a sale by public auction;
- (c) “consignor” means a person who consigns to an auction sales business goods to be sold by the business at a sale by public auction;

- (d) “licence” means an auction sales business licence issued under this Act;
- (e) “sale by public auction” means a sale of goods by public auction and includes a sale of goods in lots by public auction.

Application **122(1)** Subject to subsections (2) and (3), this Part does not apply to a sale by public auction

- (a) to which the *Civil Enforcement Act* applies, or that is held pursuant to an order of a court,
- (b) of goods taken in distress under the authority of an enactment for the recovery of a tax, rate or imposition made or levied pursuant to that enactment,
- (c) of livestock by an auction sales business that is licensed as a livestock dealer and bonded pursuant to regulations under the *Livestock and Livestock Products Act*,
- (d) held by a religious, charitable or non-profit organization, or
- (e) held by an educational institution as part of a course of instruction in auctioneering offered by it.

(2) No person may conduct the bidding at a sale by public auction referred to in subsection (1)(a) to (d) unless the person meets the qualifications for an auctioneer under the regulations.

(3) No person may conduct the bidding at a sale by public auction referred to in subsection (1)(e) unless the person is a student registered in a course for the training of auctioneers at an educational institution and the student is supervised by officials from the institution.

(4) If a licensee holds a sale by public auction referred to in subsection (1), the provisions in the regulations under Part 13 dealing with claims against the licensee’s security apply in respect of that sale, even though the auction sales business does not have to be licensed or to provide security in respect of it.

Licence required **123(1)** No person may

- (a) engage in the business of holding sales by public auction,
- (b) hold a sale by public auction, or
- (c) advertise a sale by public auction,

unless the person is the holder of a subsisting licence.

(2) No auctioneer may conduct the bidding at a sale by public auction unless the auction sales business holding the sale is the holder of a subsisting licence.

(3) No auction sales business may

- (a) authorize, permit or direct any of its employees, or
- (b) engage, permit or authorize any other individual

to conduct the bidding at a sale by public auction held by the auction sales business unless the employee or individual meets the qualifications for an auctioneer under the regulations.

Conditions of
sale

124(1) An auctioneer conducting the bidding at a sale by public auction must

- (a) at the commencement of the sale, or
- (b) at the recommencement of the sale if it is adjourned,

and before any goods are offered for sale, read the conditions of sale or cause them to be read to those present at the sale and announce the name of the auction sales business holding the sale and its licence number.

(2) An auction sales business must

- (a) provide the conditions of sale to bidders who will not be attending the auction in person when those bidders register to take part in the auction,
- (b) post the conditions of sale in a prominent place at the auction, and
- (c) have the conditions of sale prominently displayed on the bid cards.

(3) No auctioneer or auction sales business may

- (a) in any form of advertising or when holding or conducting a sale by public auction make statements or announcements that
 - (i) are inaccurate or misleading or that misrepresent in any way the quality, quantity, use, size, origin or content of any goods intended for sale by public auction,

- (ii) misrepresent the terms of any sale by public auction,
- (iii) misrepresent the value of any goods being offered for sale by public auction, or
- (iv) misrepresent the policies or services of the auctioneer or auction sales business,

or

- (b) use or permit any employee or agent to use any form or manner of salesmanship that might deceive or mislead the public.

Announcements by auctioneer

125 An auction sales business must ensure that an auctioneer conducting the bidding on its behalf at a sale by public auction

- (a) announces at the commencement of the sale, and at the recommencement of the sale if it is adjourned, that the sale of each item is complete when the auctioneer announces its completion by the fall of the hammer or by any other customary manner and that, until that announcement is made, any bidder may retract a bid made by the bidder,
- (b) announces the items, if any, that are subject to a right to bid on behalf of the seller at the commencement of the sale or at the recommencement of the sale if it is adjourned, or immediately before the sale of each item, and
- (c) immediately before the sale of an item that is subject to a reserve or upset price, announces that the item is subject to a reserve or upset price.

Removal of goods purchased

126 When a sale by public auction is held,

- (a) no purchaser may remove, and
- (b) no auctioneer and no auction sales business or its employees may permit to be removed

from the place at which the sale is held any goods purchased at the sale unless the purchase price of the goods is first paid to the auction sales business or other arrangements satisfactory to the auction sales business are made for payment of the purchase price.

Statement by owner

127(1) In this section, "goods" means goods valued at more than \$1000.

(2) When a person causes goods to be offered for sale by public auction, the auction sales business must, before the sale is held, obtain from that person a statutory declaration in writing made or signed by that person, or by an agent who is authorized by that person and who has knowledge of the facts, setting out

(a) that the person is the owner of the goods, and

(b) whether or not the goods offered for sale are subject to a mortgage, charge, lien or encumbrance and, if so, full particulars of the mortgage, charge, lien or encumbrance.

(3) No auction sales business may sell by public auction any goods without first obtaining the statutory declaration.

(4) If an auction sales business sells goods subject to any mortgage, charge, lien or encumbrance at the time of sale, the auction sales business

(a) must ensure that the purchase price of the goods is applied to the amount owing under the mortgage, charge, lien or encumbrance reported in the statutory declaration or any other mortgage, charge, lien or encumbrance of which the auction sales business has actual knowledge before the purchase price is paid out, and

(b) is liable for any loss that a person who bought the goods at the auction suffered because the auction sales business did not comply with clause (a).

(5) An auction sales business must

(a) retain in Alberta a statutory declaration provided to it under subsection (2) for at least 3 years after the day on which the goods to which the declaration relates are sold, and

(b) produce the statutory declaration on demand to a person having an interest in the goods to which the declaration relates.

Regulations

128 The Minister may make regulations

(a) respecting the qualifications of auctioneers;

(b) specifying activities that constitute engaging in the business of holding sales by public auction for the purposes of this Act;

(c) respecting standards of conduct to be followed and requirements to be met by auction sales businesses and

auctioneers in connection with any activities referred to in section 123(1)(a) to (c) or the regulations under clause (b).

PART 13

LICENSING

Definition	129 In this Part, “conviction” means a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Director’s opinion, indicates that the person convicted is unsuitable to be licensed under this Act.
Application for licence	130(1) A person who wishes to be licensed or to have a licence renewed under this Act must submit to the Director <ul style="list-style-type: none">(a) an application on a form established by the Director,(b) any additional information that is requested by the Director,(c) the fee established under the regulations, and(d) if the regulations require a security to be submitted in respect of the class of licence applied for, a security that meets the requirements of the regulations. (2) The application and other information submitted under subsection (1) must, on the request of the Director, be verified by affidavit or in another manner that is satisfactory to the Director.
Refusal, suspension, cancellation, terms	131 The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons: <ul style="list-style-type: none">(a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;(b) the applicant or licensee or any of its officers or employees<ul style="list-style-type: none">(i) fails to comply with an order of the Director under section 117, 133 or 158, unless, in the case of an order under section 133 or 158, the order has been stayed,(ii) fails to comply with a direction of the Director under section 152(5),

- (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,
 - (iv) fails to comply with an undertaking under this Act,
 - (v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,
 - (vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or
 - (vii) is convicted of an offence referred to in section 129 or is serving a sentence imposed under a conviction;
- (c) in the opinion of the Director, it is in the public interest to do so.

Notice

132(1) Before refusing to issue or renew a licence and before a licence is suspended or cancelled or terms or conditions are imposed, the applicant or licensee must be given

- (a) written notice of the proposed refusal, suspension or cancellation or the proposed terms and conditions with reasons, and
- (b) an opportunity to make representations to the Director.

(2) Despite subsection (1), the Director may suspend the licence of a licensee without notice or an opportunity to make representations if the licensee is being investigated under this Act and the Director is of the opinion that the licensee has misappropriated or will misappropriate funds that the licensee is required to hold in trust.

Order against
agents and
others

133 When the Director cancels or suspends the licence of a person, the Director may by order prohibit any designated agent, salesperson or anyone else who is acting on behalf of that person from engaging in the business or carrying out an activity that was authorized by the licence, and the order may contain any terms or conditions that the Director considers appropriate.

Security

134(1) When a security submitted by a licensee is no longer in force, the licence is suspended and remains suspended until the licensee submits to the Director a new security that meets the requirements of the regulations.

(2) When the Director increases, in accordance with the regulations, the amount of security that is to be provided by a licensee before the term of the licence ends and the licensee does not provide a security in the increased amount by the time specified by the Director, the licence is suspended and remains suspended until the licensee submits to the Director a security in the increased amount.

Term of
licence

135 The length of the term of a licence is specified in the regulations.

Duty to
maintain
records

136(1) Every licensee and former licensee must maintain

- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
- (b) other records and documents described in the regulations for the period specified in the regulations.

(2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

Trust accounts

137 Every licensee must comply with the requirements respecting trust accounts established by the regulations under section 144.

Notification of
changes

138(1) Every licensee must immediately notify the Director in writing of

- (a) a change in the address of the licensee's business office,
- (b) a change in the partners of the business if the licence is issued to a partnership, or
- (c) a change in the officers or directors of the corporation if the licence is issued to a corporation.

(2) A person issued a licence who ceases to carry on the business for which the licence was issued must immediately notify the Director and return the licence with the notification.

Appeal

139 A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,

- (c) whose licence has been cancelled or suspended under section 131, or
 - (d) who has been issued an order under section 133,
- may appeal under section 180.

Regulations

140 The Minister may make regulations

- (a) establishing different classes of licences;
- (b) respecting the classes of licences and circumstances in which an applicant for a licence or a renewal of a licence is required to submit a security;
- (c) respecting the form, amount and terms and conditions of a security;
- (d) respecting the terms and conditions under which a security is forfeited, the persons who are entitled to the proceeds under the security and the procedures to be followed for claiming on a security;
- (e) respecting a system of resolving disputes involving claims against a security that claimants and licensees are required to participate in and providing that decisions under the system are binding;
- (f) respecting conditions and requirements that must be met before a licence is issued or renewed;
- (g) respecting fees for licences and renewals, including
 - (i) establishing different fees for different businesses or classes of businesses, and
 - (ii) establishing different fees for different types of licences;
- (h) respecting the length of terms of licences;
- (i) respecting the transfer of licences;
- (j) respecting the refund of fees;
- (k) respecting the records and documents to be maintained by licensees and former licensees, including where the records and documents are to be maintained and the time period for which they must be maintained.

- Registration **141(1)** In this section, “licensee” means a person who is required to be licensed under this Act.
- (2)** When the Minister specifies in the regulations under subsection (3) that a person who falls within a specified class is required to be registered before acting on behalf of a licensee,
- (a) a person who falls within that class may not act on behalf of the licensee unless the person is registered, and
 - (b) the licensee may not authorize a person who falls within that class to act on the licensee’s behalf unless the person is registered.
- (3)** The Minister may make regulations
- (a) specifying that salespersons or other classes of people are required to be registered before they act on behalf of a licensee;
 - (b) establishing a registration scheme for those classes of people required to be registered;
 - (c) adopting with or without modification the provisions of this Act relating to licensing for the purposes of the registration scheme;
 - (d) dealing with any matter on which the Minister may make regulations under section 140 for the purposes of the registration scheme.

PART 14

REMEDIES AND ENFORCEMENT

- Definition **142** In this Part, “regulated person” means
- (a) a supplier,
 - (b) a reporting agency as defined in Part 5,
 - (c) a loan broker,
 - (d) a credit grantor or lessor to which Part 9 applies, or
 - (e) a person who is required to be licensed under this Act.

Dispute Resolution

Dispute
resolution

143 The Director may provide any person who is involved in a dispute respecting a matter under this Act with information on dispute resolution processes, such as arbitration and mediation, and may establish dispute resolution processes that the parties to the dispute may choose to use.

Trust Accounts

Regulations

144 The Minister may make regulations

- (a) requiring a supplier or licensee, in the situations described in the regulations, to deposit into a trust account money that is received in the course of the supplier's or licensee's business;
- (b) respecting trust accounts, including where trust accounts may be established and maintained and when the money has to be deposited;
- (c) respecting who is entitled to the money in a trust account, the duties and responsibilities of the trustee, the disbursement of funds from the trust accounts and what happens if the person entitled to the money in a trust account cannot be located;
- (d) respecting the records to be kept respecting trust accounts, the period of time that those records are to be maintained and the audit of trust accounts.

Inspections and Investigations

Identification
of inspectors

145 An inspector who enters any place under the authority of this Act must, on request,

- (a) produce a document that identifies the person as an inspector under this Act, and
- (b) explain the inspector's purpose for entering the place.

Inspection

146(1) An inspector may enter the business premises of a regulated person at any reasonable time to conduct an inspection to determine if there is compliance with this Act and the regulations.

(2) If an inspector has reasonable grounds to believe that

- (a) books, records or documents of a regulated person are located in another person's business premises, and
- (b) those books, records or documents are relevant to determine if there is compliance with this Act or the regulations,

the inspector may enter those other business premises at any reasonable time.

(3) An inspector may in the course of an inspection request a person who is working in business premises referred to in subsection (1) or (2)

- (a) to give written or oral replies to questions,
- (b) to produce any books, records, documents or other things and to provide copies of them, and
- (c) to provide any other information

to determine if there is compliance with this Act and the regulations.

(4) An inspector may in the course of an inspection inspect, examine and make copies of or temporarily remove books, records or documents or other things that are relevant to determine if there is compliance with this Act and the regulations.

(5) When an inspector removes any books, records, documents or other things under subsection (4), the inspector

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

(6) A licensee and any person working in the business premises of a licensee must co-operate with an inspector acting under the authority of this section.

(7) A regulated person who is neither a licensee nor a worker in the business premises of a licensee may refuse to co-operate with an inspector who is acting under the authority of this section.

Order
compelling
assistance in
inspections

147(1) For the purpose of enabling an inspector to conduct an inspection to determine if there is compliance with this Act and the regulations, the Director may apply to the Court of Queen's Bench by originating notice for an order

- (a) compelling a regulated person or an employee or agent of a regulated person to allow an inspector to enter the business premises, private dwelling or other place occupied or controlled by the regulated person, employee or agent and requiring the regulated person, employee or agent to produce for the inspector's examination books, records, documents or other things relevant to the inspection;
- (b) authorizing the inspector to copy or remove the books, records, documents or other things on such terms as the Court considers appropriate;
- (c) requiring a regulated person or an employee or agent of a regulated person to co-operate with the inspection on such terms as the Court considers appropriate.

(2) The Court of Queen's Bench may grant an order under subsection (1) if satisfied on evidence under oath by the Director that there are reasonable grounds to believe that

- (a) the inspection is reasonable,
- (b) the regulated person or agent or employee of the regulated person has not co-operated or likely will not co-operate with the investigation, and
- (c) the order is appropriate in the circumstances.

(3) An application under this section may be made ex parte if the Court of Queen's Bench considers it proper to do so.

(4) No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized to use force.

Investigation

148(1) An inspector who has reasonable grounds to believe that a person has committed an offence under this Act or the regulations may, after explaining to the person or to the person's agent that the inspector wishes to enter the person's business premises for the purposes of carrying out an investigation, request permission to enter the business premises.

(2) If a person permits an inspector to enter business premises for the purposes of an investigation, the inspector may, with the permission of the person, inspect, examine and make copies of or

temporarily remove books, records, documents or other things that are relevant to determine if an offence has been committed under this Act or the regulations.

(3) When an inspector removes any books, records, documents or other things under subsection (2), the inspector

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them,
- (c) must, within a reasonable time, return anything that has been copied to the person to whom the receipt was given, and
- (d) must return everything else that was removed to the person to whom the receipt was given within a reasonable time after the investigation and any prosecution resulting from the investigation is concluded.

Order
compelling
assistance in
investigations

149(1) For the purpose of determining if an offence has been committed under this Act or the regulations, the Director may apply to the Court of Queen's Bench by originating notice for an order

- (a) compelling a person to allow an inspector to enter the person's business premises, private dwelling or other place occupied or controlled by the person and requiring the person to produce for the inspector's examination the person's books, records, documents or other things relevant to the investigation;
- (b) authorizing the inspector to copy or remove the books, records, documents or other things on such terms as the Court considers appropriate;
- (c) requiring a person to co-operate with the investigation on such terms as the Court considers appropriate.

(2) The Court of Queen's Bench may grant an order under subsection (1) if satisfied on evidence under oath by the Director that there are reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed, and
- (b) the order is appropriate in the circumstances.

(3) An application under this section may be made ex parte if the Court of Queen's Bench considers it proper to do so.

(4) No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized to use force.

Special
circumstances

150(1) Despite any provision of this Act, an inspector may during an inspection or investigation under this Act seize or make copies of any books, records, documents or other things if the inspector has reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed,
- (b) the books, records, documents or other things will provide evidence of the commission of the offence, and
- (c) the delay involved in obtaining an order under section 149 or a search warrant could result in the loss or destruction of evidence.

(2) An inspector, on seizing anything under this section,

- (a) must inform the person, if any, from whom the thing is seized of the reason for the seizure,
- (b) must give a receipt for the thing to the person, if any, having physical possession of it when it is seized, and
- (c) may make copies of, take photographs of or otherwise record them.

(3) An inspector who seizes anything pursuant to this section must deal with it in the same manner as if it were seized pursuant to a search warrant.

Disclosing
results of
investigation

151 The Minister may publish any information obtained under an investigation under this Act for the purpose of assisting the public in choosing who to do business with, and no liability results from the publication so long as it was made in good faith.

Protecting
property

152(1) In this section,

- (a) "collection agency" means a collection agency as defined in Part 11;
- (b) "collector" means a collector as defined in Part 11;

(c) “investigated person” means

- (i) the licensee referred to in subsection (2)(a),
- (ii) the person who is or is about to be subject to proceedings referred to in subsection (2)(b),
- (iii) the supplier, collection agency or collector referred to in subsection (2)(c), and
- (iv) the licensee or other person referred to in subsection (2)(d);

(d) “personal property” includes money, money in a trust account, securities and debts.

(2) The Director may apply for an order under subsection (3) or issue a direction under subsection (5) or do both in the following circumstances:

(a) where the Director is about to cancel or suspend or has cancelled or suspended a licence of a licensee;

(b) where

- (i) criminal proceedings that, in the opinion of the Director, are connected with or arise out of matters under this Act, or
- (ii) proceedings in respect of a contravention of this Act or the regulations,

are about to be or have been initiated against any person;

(c) where a supplier has been paid money or been given security by a person in respect of a consumer transaction or where a collection agency or collector has been paid money by a debtor in respect of a debt and

- (i) the supplier, collection agency or collector has absconded from Alberta, or
- (ii) the Director has reasonable and probable grounds to believe that the supplier, collection agency or collector

(A) is about to abscond from Alberta,

(B) has removed or has attempted to remove personal property from Alberta to avoid legal liabilities,

- (C) has sold or disposed of or has attempted to sell or dispose of real or personal property to avoid legal liabilities, or
 - (D) is misusing money paid or any assets delivered to the supplier, collection agency or collector;
- (d) where the Director has reason to believe that the trust funds that are required to be held by a licensee or other person under this Act or the regulations are less than the amount for which the licensee or other person is accountable.
- (3) In the circumstances referred to in subsection (2), the Director may apply to the Court of Queen's Bench by way of originating notice for the appointment of a receiver, receiver-manager or trustee to hold or manage, as the case may be, all or part of the real and personal property of the investigated person on any terms or conditions that the Court approves.
- (4) An application to the Court of Queen's Bench may be made ex parte if the Court considers it proper to do so.
- (5) In the circumstances referred to in subsection (2), the Director may, in writing, issue one or more of the following directions:
- (a) direct any person having on deposit or under that person's control or for safekeeping any real or personal property of the investigated party to hold the real or personal property and not disperse or otherwise deal with it;
 - (b) direct the investigated person to refrain from dealing with property referred to in clause (a);
 - (c) direct the investigated person to hold any personal property of clients or others that is in the person's possession or under the person's control in trust for a receiver appointed under subsection (3) or for an interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed under the *Bankruptcy and Insolvency Act* (Canada), the *Judicature Act*, the *Companies Act*, the *Business Corporations Act* or the *Winding-up and Restructuring Act* (Canada), as the case may be.
- (6) The Director may in writing amend or cancel a direction under subsection (5).
- (7) A direction of the Director under subsection (5) and any amendments or cancellation must be served on the person to whom they are directed.

Undertakings

Supplier's
undertakings

153(1) When

- (a) the Director is of the opinion that a person has contravened this Act or the regulations, and
- (b) the Director is satisfied that the person has ceased the contravention,

the person may enter into an undertaking with the Director in the form and containing the provisions that the Director, on negotiation with that person, considers proper.

(2) Without limiting subsection (1), an undertaking may include any of the following specific undertakings:

- (a) to stop engaging in a practice or to change a practice described in the undertaking;
- (b) to provide compensation to anyone who has suffered a loss;
- (c) to publicize the undertaking or the action being taken;
- (d) to pay the costs of investigating the person's activities and any costs associated with the undertaking.

(3) The Director must maintain a public record of all undertakings entered into under this section.

Change in
undertaking by
Director

154(1) A person who enters into an undertaking may apply to the Director to vary or cancel that undertaking.

(2) On considering the application, the Director may

- (a) refuse the application, or
- (b) vary or cancel the undertaking.

Change in
undertaking by
Court

155(1) Despite section 154, a person who enters into an undertaking may, by originating notice, apply to the Court of Queen's Bench for an order to vary or cancel the undertaking.

(2) On considering an application, the Court of Queen's Bench may

- (a) refuse the application, or

- (b) vary or cancel the undertaking and impose whatever terms or conditions the Court considers proper.

Effect of
varying or
cancelling an
undertaking

156 When an undertaking is varied or cancelled, that variance or cancellation does not invalidate anything done under that undertaking prior to the variance or cancellation.

Injunctions and Compliance Orders

Injunction

157(1) Where, on the application of the Director by originating notice to the Court of Queen's Bench, it appears to the Court that a person has done, is doing or is about to do anything that constitutes or is directed toward a contravention of this Act or the regulations or that involves the misappropriation of funds held in trust under this Act, the Court may issue an injunction ordering any person named in the application

- (a) to refrain from doing that thing, or
- (b) to do anything that in the opinion of the Court may prevent the contravention of this Act or the regulations or the misappropriation of funds held in trust.

(2) The Court of Queen's Bench may, if it considers it necessary in the circumstances, issue an interim injunction granting the relief that the Court considers appropriate pending the determination of the application.

(3) An interim injunction under subsection (2) may be made ex parte if the Court of Queen's Bench considers it appropriate in the circumstances.

Director's
order

158(1) If, in the opinion of the Director,

- (a) any person is contravening or has contravened this Act or the regulations, or
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations,

the Director may issue an order directed to the person.

(2) An order may direct the person

- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and

- (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

(3) A person who is subject to an order under this section may appeal under section 180.

Enforcement
of Director's
order

159(1) If the Director is of the opinion that a person is not complying or has not complied with an order of the Director under section 158, the Director may apply by originating notice to the Court of Queen's Bench for an order directing that person to comply with the order.

(2) The Director may not bring an application under this section

- (a) until the time for appealing the Director's order has passed without an appeal's being made, or
- (b) if an appeal has been made, the Director's order has been confirmed by the appeal board.

(3) After receiving an application under subsection (1), the Court of Queen's Bench may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court of Queen's Bench considers it appropriate in the circumstances.

(5) On hearing an application, the Court of Queen's Bench may,

- (a) if it is of the opinion that there were insufficient grounds for the Director to have issued an order under section 158, quash the order;
- (b) if it is of the opinion that the Director had sufficient grounds for issuing the order and that the person is not complying or has not complied with the Director's order, grant an order, subject to any terms and conditions the Court considers appropriate in the circumstances, doing one or more of the following:
 - (i) directing the person to comply with the order of the Director;
 - (ii) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;

- (iii) awarding costs in respect of the matter.

Court actions
by the Director

160(1) In addition to any other remedy in this Act, the Director may commence and maintain an action in the Court of Queen's Bench against a person if the Director is of the opinion that a person

- (a) has contravened this Act or the regulations under this Act, or
- (b) has not complied with the terms of an undertaking that the person has entered into.

(2) In an action brought under subsection (1), the Court of Queen's Bench may

- (a) declare that this Act or the regulations under this Act have been contravened;
- (b) grant an order requiring the person to provide any redress the Court considers proper to those persons who suffered damage or loss arising from the contravention of this Act or the regulations;
- (c) grant an order in the nature of an injunction restraining the person from engaging in the practice that gave rise to the contravention of this Act or the regulations;
- (d) if the person who is the subject of the order had entered into a consumer transaction, grant an order for specific performance of the consumer transaction or grant an order for rescission of the consumer transaction;
- (e) grant an order for the restitution of property or funds;
- (f) award punitive or exemplary damages;
- (g) grant any other relief the Court considers proper.

(3) Damages awarded under this section are a debt owing to the Crown in right of Alberta.

Advertisement
of judicial
decision

161(1) When the Court of Queen's Bench grants relief under section 160, the Court may make a further order requiring the supplier to advertise to the public particulars of any order, judgment or other relief granted by the Court.

(2) In making an order under subsection (1), the Court of Queen's Bench may prescribe

- (a) the methods of making the advertisement so that it will assure prompt and reasonable communication to consumers;
- (b) the contents or form or both of the advertisement;
- (c) the number of times the advertisement is to be made;
- (d) any other conditions the court considers proper.

Offences

Non-compliance with Act

162 Any person who contravenes any of the following provisions is guilty of an offence:

- (a) in Part 2, sections 7, 9, 10, 11, 23;
- (b) in Part 3, section 31(2), 39(1);
- (c) in Part 5, sections 44(1) and (2), 45, 46(1), (3), (4), (6) and (7), 48(2) and (3), 49;
- (d) in Part 7, section 54;
- (e) in Part 8, sections 55(2); 56(1); 57(1);
- (f) in Part 9, sections 62, 64(1) and (2), 66(2), 68(3), 73(3), 78, 79(1), 80, 81, 85, 86, 87, 88;
- (g) in Part 10, sections 104, 109;
- (h) in Part 11, sections 113, 115, 116(1), 117(1), 118(1), 119;
- (i) in Part 12, sections 122(2) and (3), 123, 124, 125, 126, 127(2), (3) and (5);
- (j) in Part 13, sections 136, 137, 138;
- (k) in Part 14, sections 146(6), 169(3).

Non-compliance with regulations

163(1) A person who contravenes a section in the regulations the contravention of which is designated by the regulations to be an offence is guilty of an offence.

(2) The Minister may make regulations designating provisions in the regulations the contravention of which is an offence.

Non-compliance with orders, etc.

164 Any person who

- (a) fails to comply with an order of the Director under section 117, 133 or 158, unless, in the case of an order under section 133 or 158, the order has been stayed,
- (b) fails to comply with a direction of the Director under section 152(5),
- (c) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director, or
- (d) fails to comply with an undertaking under this Act

contravenes this Act and is guilty of an offence.

Penalty

165(1) Any person who is convicted of an offence under this Act or the regulations is liable to a fine of not more than

- (a) \$100 000, or
- (b) 3 times the amount obtained by the defendant as a result of the offence,

whichever is greater, or to imprisonment for not more than 2 years, or both.

(2) Each day that an offence continues constitutes a separate offence, but the total term of imprisonment that may be imposed on a person in respect of a continuing offence may not exceed 2 years.

Corporations and partnerships

166(1) When a corporation commits an offence under this Act or the regulations, every principal, director, manager, employee or agent of the corporation who authorized the act or omission that constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the corporation has been prosecuted for the offence.

(2) If a partner in a partnership is convicted of an offence under this Act or the regulations, each partner in that partnership who authorized the act or omission that constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence.

Vicarious liability

167 For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

Time limit for prosecution

168 A prosecution of an offence under this Act or the regulations may not be commenced more than 3 years after the commission of the offence.

Restitution

169(1) A justice that convicts a defendant of an offence under this Act or the regulations may, on the application of the Minister of Justice and Attorney General or of a person aggrieved or that person's representative, at the time sentence is imposed, order the defendant to pay to the applicant an amount as restitution to a maximum of \$100 000 for loss of or damage to property suffered by the applicant as a result of the commission of the offence where the amount is readily ascertainable.

(2) If an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment in the Court of Queen's Bench the amount ordered to be paid, and that judgment is enforceable against the defendant in the same manner as if it were a judgment rendered against the defendant in the Court of Queen's Bench in civil proceedings.

(3) Every person who is ordered to pay an amount under this section must make the payments in accordance with the order.

Evidence

Carrying on business

170 Evidence that

- (a) a person entered into one transaction in a business or activity, or
- (b) a person set out in a letter, advertisement, card or other document issued by or under the authority of the person that the person is carrying on a business or activity

is prima facie proof that the person was carrying on that business or activity.

Loan brokers

171(1) In this section, “claimant” means a person who claims to have been charged a fee by or paid a fee to a loan broker for assisting the person in obtaining a loan.

(2) In a prosecution for a contravention of section 54, an affidavit of a claimant that contains the statements referred to in subsection (3) is admissible in evidence as prima facie proof of the statements contained in the affidavit.

(3) For the purposes of subsection (2), the affidavit of the claimant must

- (a) identify the loan broker,
- (b) state that the loan broker agreed to assist the claimant in obtaining a loan,
- (c) state that, before the claimant received the proceeds of the loan, either the loan broker charged the claimant for assisting the claimant in obtaining the loan or the claimant paid for the assistance, and
- (d) include, as an exhibit, the bill charging the claimant or proof of the amount paid.

(4) An affidavit referred to in subsection (2) is admissible in evidence without proof of the signature of the claimant purporting to have signed the affidavit.

(5) Unless the court orders otherwise, an affidavit referred to in subsection (2) is not admissible in evidence unless the prosecutor has, before the trial or other proceeding, given to the accused a copy of the affidavit and reasonable notice of intention to provide it in evidence.

(6) Despite subsection (1), the court may require a claimant who has purported to have signed an affidavit referred to in subsection (2) to appear before it for examination or cross-examination in respect of the statements contained in the affidavit.

Status of
licensee and
nature of
substances,
etc.

172(1) A certificate of the Director stating that on a specified day or during a specified period

- (a) a person named in the certificate was or was not licensed under this Act, or

(b) the licence of a person named in the certificate had been suspended under this Act,

is prima facie proof of the facts stated in the certificate.

(2) A certificate of an expert defining or stating the nature of any substance, goods or services examined is prima facie proof of the facts set out in the certificate.

(3) A certificate referred to in subsection (1) or (2) is admissible in evidence without proof of the signature, authority or office of the person purporting to have signed the certificate.

Copies

173 A copy of a document made during an inspection or investigation under this Act and certified to be a true copy by the person who conducted the inspection or investigation is admissible in evidence without proof of the signature or appointment of the person who signed the certificate and, in the absence of evidence to the contrary, the copy has the same probative force as the original.

PART 15

ADMINISTRATION AND APPEALS

Administration

Director and
inspectors

174(1) The Minister may appoint an individual as the Director of Fair Trading.

(2) The Director may appoint individuals as inspectors.

(3) The Director may exercise the powers and perform the duties of an inspector.

(4) Every police officer as defined in the *Police Act* is an inspector for the purposes of this Act.

Delegation

175 In addition to the delegation referred to in section 106, the Director may delegate any of the Director's powers, duties or functions under this Act or the regulations to any person and may authorize the person to further delegate the power or duty.

Co-operative
enforcement

176(1) If the Minister has, on behalf of the Government of Alberta, entered into an agreement with another jurisdiction respecting the co-operative enforcement of consumer legislation,

- (a) the Director may appoint an official from that jurisdiction as an inspector under this Act to enable the official to exercise in Alberta the powers of an inspector, and
 - (b) the Director may, on the written request of that jurisdiction by an official specified in the agreement, disclose information in the records of the Director obtained through any inspection or investigation under this Act or in the administration of this Act, if the Director is satisfied that the information will be used only for the purpose of enforcing or administering a law of that jurisdiction.
- (2) If the Minister has entered into an agreement referred to in subsection (1) with a jurisdiction, the Director may request information in the records of the jurisdiction for the purposes of enforcing or administering this Act.
- (3) Information obtained in a request under subsection (2) must not be disclosed except for the purposes of enforcing or administering this Act.

Government's
costs

177(1) The Director may require a person who

- (a) is investigated under this Act,
- (b) is the subject of an order of the Director under section 117, 133 or 158, or
- (c) has entered into an undertaking

to pay the costs that the Government incurs in the investigation or that arose in the process leading up to the issuance of the order of the Director or the entering into of the undertaking.

(2) The Director must notify the person of the amount of the costs, and the person has 30 days from receiving the notice to file an objection with the Director respecting the amount of the costs.

(3) On receiving an objection within the 30-day time limit, the Director must submit the matter to an arbitration process approved by the Minister.

(4) The person who is required to pay the costs under subsection (1) is liable to pay

- (a) the amount specified in the Director's notice, if no objection is filed within the time period specified in subsection (2), or

(b) the amount specified in the decision of the arbitrator,
and the Director may collect the amount by civil action for debt.

Service of
documents

178(1) If this Act requires the Minister or the Director to serve a person with a document or to give notice of a document to a person, the service or notice may be given

- (a) personally,
- (b) by ordinary mail, or
- (c) if the person requests that service or notice be given by electronic means that results in a printed copy of the document being received by the person, by the electronic means.

(2) If service or notice is given to a person by ordinary mail, it must be sent to the last address for the person on the Director's records, and any service or notice given by ordinary mail is deemed to have been received 7 days after it is mailed unless

- (a) the document is returned by a person who is not the addressee, or
- (b) the document was not received by the addressee, the proof of which lies on the addressee.

Forms

179 The Director may establish forms for the purposes of this Act.

Appeals

Appeal

180(1) A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence has been cancelled or suspended under section 131, or
- (d) who has been issued an order under section 133 or 158,

may appeal the decision or order by serving the Minister with a notice of appeal within 30 days of being notified in writing of the decision or order.

(2) The Minister must, within 30 days of being served with a notice of appeal under subsection (2) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed in accordance with the regulations or to an appeal board designated under subsection (4).

(3) The Minister may appoint an individual as the chair of the appeal board who serves as the chair whether or not an appeal is being considered by the appeal board.

(4) The Minister may designate a board or commission established by or under an Act of the Legislature to be an appeal board for the appeals specified in the designation.

(5) The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.

(6) An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed.

(7) The Minister may pay reasonable living and travelling expenses to the members of an appeal board.

Effect of
appeal

181(1) Subject to subsection (2), an appeal under section 180 does not affect the status or enforceability of the decision or order being appealed.

(2) A person who is appealing a decision or order under section 180(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision or order being appealed until the appeal board renders its decision on the appeal.

(3) On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision or order being appealed until the appeal board renders its decision on the appeal.

Court of
Queen's
Bench

182 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 section 180(6).

Powers of
appeal board

183 For the purposes of conducting appeals before an appeal board,

- (a) the chair and the other members of the appeal board have the same power as is vested in the Court of Queen's Bench for the trial of civil actions
 - (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence on oath or otherwise,
 - (iii) to compel witnesses to give evidence in person or otherwise, and
 - (iv) to compel witnesses to produce any record, object or thing that relates to the matter being heard;
- (b) the appeal board may take evidence under oath;
- (c) any member of the appeal board may administer oaths for the purpose of taking evidence;
- (d) the appeal board may reconsider a previous decision made by the appeal board.

Regulations

184 The Minister may make regulations

- (a) respecting fees for filing appeals under this Division;
- (b) respecting the formation of an appeal board, including the term and manner of appointment of members;
- (c) establishing rules respecting appeals before the appeal board, including rules that deal with the following matters:
 - (i) notices of appeal;
 - (ii) the procedure before the appeal board;
 - (iii) adjournments of matters before the appeal board;
 - (iv) the attendance of witnesses;
 - (v) the applicability of the rules of evidence in judicial proceedings to hearings before the appeal board;
 - (vi) the receiving and recording of evidence;

- (vii) empowering the appeal board to proceed when a party to the appeal fails to appear at or attend a hearing;
- (viii) providing for majority and minority decisions;
- (ix) empowering the appeal board to consider an appeal without holding a hearing and the procedure to be used in those circumstances;
- (x) the applicability of the *Alberta Rules of Court*;
- (xi) the issuing and publication of decisions of the appeal board;
- (xii) empowering the appeal board to require the production of any record, object or thing;
- (xiii) the reconsideration of decisions made by the appeal board;
- (xiv) costs.

PART 16

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS, REPEALS AND COMING INTO FORCE

Division 1

Transition from Former Acts to This Act

Definitions

185 In this Division,

- (a) “former Acts” means the former Acts referred to in clauses (b) to (h);
- (b) “former *Collection Practices Act*” means the *Collection Practices Act*, RSA 1980 cC-17;
- (c) “former *Consumer Credit Transactions Act*” means the *Consumer Credit Transactions Act*, SA 1985 cC 22-5;
- (d) “former *Direct Sales Cancellation Act*” means the *Direct Sales Cancellation Act*, RSA 1980 cD-35;
- (e) “former *Licensing of Trades and Businesses Act*” means the *Licensing of Trades and Businesses Act*, RSA 1980 cL-13;

- (f) “former *Public Auctions Act*” means the *Public Auctions Act*, SA 1981 cP-25.1;
- (g) “former *Unfair Trade Practices Act*” means the *Unfair Trade Practices Act*, RSA 1980 cU-3;
- (h) “former *Wage Assignments Act*” means the *Wage Assignments Act*, RSA 1980 cW-1.

Regulations

186 The Minister may make regulations respecting the transition of matters under the former Acts to this Act, including

- (a) converting a licence, registration or other authorization under a former Act to a class of licence or registration under this Act;
- (b) dealing with the length of the terms of licences, registrations or other authorizations that have been converted.

Director

187 The appointment of the Director of Trade Practices under the former *Unfair Trade Practices Act* is continued as the Director of Fair Trading.

Consumer transactions and unfair practices

188(1) This Act applies to consumer transactions and unfair practices that occur after September 1, 1999.

(2) The former *Unfair Trade Practices Act* continues to apply to consumer transactions and unfair practices that occur before September 1, 1999 and to any action or proceeding commenced or taken under the former *Unfair Trade Practices Act* before September 1, 1999.

(3) Despite subsections (1) and (2),

- (a) an undertaking given under the former *Unfair Trade Practices Act* is continued as an undertaking under this Act;
- (b) an order given under section 9 of the former *Unfair Trade Practices Act* is continued as an order under section 152 of this Act;
- (c) an order in the nature of an interim injunction under section 16 of the former *Unfair Trade Practices Act* is continued as an interim injunction under section 157 of this Act.

Credit
agreements
and leases

189(1) The definitions in Part 9 apply to this section.

(2) Subject to subsections (3) to (5), Part 9 applies only to credit agreements and leases entered into on or after September 1, 1999.

(3) Part 9 applies to all credit agreements for open credit, whether they are entered into before, on or after September 1, 1999.

(4) Part 9 applies to credit agreements for fixed credit and leases that are renewed or amended on or after September 1, 1999.

(5) The former *Consumer Credit Transactions Act* does not apply to any credit agreement or lease to which Part 9 applies.

Appeals

190 An appeal of a decision respecting a licence or registration made under the former *Collection Practices Act*, former *Licensing of Trades and Businesses Act* or former *Public Auctions Act* that has been filed before September 1, 1999 is not continued under this Act and must be decided under the former Act under which the appeal was made.

Claims against
security

191 Any claim that has been filed against a security of a person who was licensed or registered under the former *Licensing of Trades and Businesses Act*, former *Collection Practices Act* or former *Public Auctions Act* before September 1, 1999 is not continued under this Act and must be decided under the former Act under which the claim was made.

Division 2 Consequential Amendments, Repeals and Coming into Force

Consequential Amendments

Amends SA
1993 cA-12.5

192 The *Agriculture Financial Services Act* is amended by repealing section 16(a) and substituting the following:

(a) the *Fair Trading Act*;

Amends SA
1995 cC-4.5

193 The *Charitable Fund-raising Act* is amended in sections 15(2)(c), 23(2)(c) and 42(2)(d) by striking out “*Unfair Trade Practices Act*” and substituting “*Fair Trading Act* or a predecessor or successor of the *Fair Trading Act*”.

- Amends SA
1982 cF-4.1 **194 The *Farm Implement Act* is amended in section 2(3) by striking out “The *Direct Sales Cancellation Act*” and substituting “Part 3 of the *Fair Trading Act*”.**
- Amends SA
1990 cF-9.5 **195(1) The *Financial Consumers Act* is amended by this section.**
- (2) Section 18(3)(a) is amended by striking out “the *Consumer Credit Transactions Act*” and substituting “Part 9 of the *Fair Trading Act*”.**
- (3) Section 21 is amended by striking out “*Licensing of Trades and Businesses Act*” and substituting “*Fair Trading Act*”.**
- Amends RSA
1980 cM-20 **196 The *Motor Transport Act* (RSA 1980 cM-20) is amended in section 24(1)**
- (a) by striking out “*Unfair Trade Practices Act*” and substituting “*Fair Trading Act*”;**
- (b) by striking out “or the regulations under the *Licensing of Trades and Businesses Act* relating to the sale of motor fuel”.**
- Amends SA
1992 cM-20.1 **197 The *Motor Transport Act* (SA 1992 cM-20.1) is amended in section 20(1)(g)**
- (a) by striking out “*Unfair Trade Practices Act*” and substituting “*Fair Trading Act*”;**
- (b) by adding “licence,” before “certificate”.**

Repeals

- Repeals **198 The following Acts are repealed:**
- (a) *Collection Practices Act*;
- (b) *Consumer Credit Transactions Act*;
- (c) *Direct Sales Cancellation Act*;
- (d) *Licensing of Trades and Businesses Act*;
- (e) *Public Auctions Act*;

(f) *Unfair Trade Practices Act*;

(g) *Wage Assignments Act*.

Coming into Force

Coming into
force

199 This Act comes into force on September 1, 1999.