

1999 BILL 209

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Third Session, 24th Legislature, 48 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 209

ALBERTA WHEAT AND BARLEY BOARD ACT

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MR. HLADY

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 209*  
*Mr. Hlady*

## **BILL 209**

1999

### **ALBERTA WHEAT AND BARLEY BOARD ACT**

*(Assented to \_\_\_\_\_, 1999)*

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

Definitions

**1** In this Act,

- (a) “agent” means a person appointed by the Board under section 9 as its agent to purchase or receive grain from producers on its behalf;
- (b) “barley” means any grain that
  - (i) is classified as *HORDEUM VULGARE* L, and
  - (ii) is identified as the seed or grain of a cereal grass grown in Alberta and used for human or animal consumption for malt, commercial purposes or seed;
- (c) “Board” means the Alberta Wheat and Barley Board established under section 4;
- (d) “crop year” means a 12-month period commencing on August 1 and terminating on the following July 31;
- (e) “eligible producer” means a producer who holds a licence under section 18;
- (f) “grain” means wheat and barley;
- (g) “marketing”

- (i) means buying, owning, selling, offering for sale, storing, grading, assembling, packing, transporting or advertising, and
- (ii) includes any other function or activity designated as marketing by the Lieutenant Governor in Council;
- (h) “Minister” means the Minister of Agriculture, Food and Rural Development;
- (i) “person” means a person as defined in the *Interpretation Act* and includes
  - (i) a partnership as defined in the *Partnership Act*,
  - (ii) any unincorporated organization that is not a partnership referred to in subclause (i), and
  - (iii) any group of individuals who are carrying on an activity for a common purpose and are neither a partnership referred to in subclause (i) nor an unincorporated organization referred to in subclause (ii);
- (j) “producer” means a person engaged in the production of grain;
- (k) “wheat” means wheat of every variety produced in Alberta.

Application **2** This Act does not apply to grain sold by a producer directly to another producer for personal use on that other producer's farm.

Administration of Act **3** The Minister is charged with the administration of this Act.

Wheat and Barley Board established **4(1)** There is hereby established the Alberta Wheat and Barley Board consisting of 10 members, with one member being elected from each of the regions established in accordance with the regulations.

**(2)** The Board is a body corporate having capacity to contract in the name of the Board.

**(3)** The members of the Board must be elected in accordance with

the regulations.

(4) The members of the Board hold office for a term of 3 years commencing on January 1 in the year next following the year in which an election of members of the Board is held.

(5) When a member of the Board ceases to be a member before the end of the term for which that member was elected, whether by reason of ceasing to have the qualifications prescribed by regulation or otherwise, the Minister may appoint a person to be a member for the remainder of the term.

(6) Members of the Board are entitled to be paid remuneration and reasonable expenses for carrying out their duties as members in the amount prescribed by the Lieutenant Governor in Council.

By-laws

**5(1)** The Board may, with the approval of the Minister, make by-laws respecting

- (a) the conduct of the business and affairs of the Board, and
- (b) the calling and conducting of meetings of the Board.

(2) The *Regulations Act* does not apply to a by-law made under this section.

Auditor

**6** The Board shall with the approval of the Minister appoint a firm of chartered accountants as auditor of the Board.

Fiscal year

**7** The fiscal year of the Board is April 1 to the following March 31.

Staff

**8(1)** The Board may employ officers and such other persons as it considers necessary and may prescribe their duties and conditions of employment and pay their fees, salary, remuneration and expenses.

(2) The Board may enter into agreements to engage the services of advisors or persons providing special, technical or professional services of a kind required by the Board in connection with its business and affairs and may pay their remuneration, fees and expenses.

Agents	<b>9</b> The Board may appoint agents and prescribe their duties and terms and conditions of employment and remuneration.
Protection of employees	<b>10</b> Neither a member of the Board nor an officer or employee of the Board is personally liable for anything done by the Board or by the member, officer or employee, as the case may be, under the authority of this Act or the regulations.
Object of the Board	<b>11</b> The Board is incorporated with the object of marketing in an orderly manner grain grown in Alberta.
Powers of the Board	<p><b>12</b> Without limiting the generality of section 16 of the <i>Interpretation Act</i>, but subject to this Act and the regulations, the Board has the following powers:</p> <ul style="list-style-type: none"> <li>(a) to direct and control, by order or direction, the marketing of grain, including the times and places at which grain may be marketed;</li> <li>(b) to buy, take delivery of, store, transfer, sell, ship or otherwise dispose of grain;</li> <li>(c) to enter into contracts or agreements for the purchase, sale, handling, storage, transportation or disposition of grain;</li> <li>(d) to determine from time to time the price or prices to be paid to producers or to the Board, as the case may be, for grain;</li> <li>(e) to require the price or prices payable to a producer for grain to be paid to or through the Board;</li> <li>(f) to purchase or otherwise acquire such quantity or quantities of grain as the Board considers advisable and to sell or otherwise dispose of any grain as purchased or acquired;</li> <li>(g) to open and maintain one or more accounts in a bank, trust company, credit union, treasury branch or other depository;</li> <li>(h) to fix and impose service charges from time to time for the marketing of grain;</li> </ul>

- (i) to pay to the producers the price or prices for grain and to fix the times at which or within which the payments must be made;
- (j) to co-operate with a marketing board, local board, marketing commission or marketing agency of Canada or of any province of Canada for the purpose of marketing grain;
- (k) to authorize any officer or employee of the Board or any other person to act on behalf of the Board in the conduct of its operations under this Act or the regulations;
- (l) to act as agent for or on behalf of the Minister or the Crown in right of Alberta in respect of any operations that it may be directed to carry out by the Lieutenant Governor in Council;
- (m) to recommend any person for a licence under the *Canadian Wheat Board Act* (Canada) to export from Canada grain produced in Alberta;
- (n) generally to do all such acts and things as may be necessary or incidental to carrying on its operations under this Act and the regulations.

Acceptance of federal regulatory powers

**13** The Board may, with the approval of the Lieutenant Governor in Council, accept and exercise any authority or powers granted to the Board pursuant to any Act of the Parliament of Canada enacted before or after the coming into force of this Act.

Duties of the Board

**14(1)** The Board shall

- (a) keep proper books and accounts of its operations under this Act, showing such particulars as may be required for proper accounting in accordance with established accounting practices;
- (b) report in writing to the Minister as soon as possible after the end of each month, as at the close of business on the last day of that month,
  - (i) its purchases and sales of all grain during the month and the quantities of grain then held by it,

- (ii) the contracts to take delivery of grain to which it is then a party,
  - (iii) all securities then held by it, and
  - (iv) the financial result of the Board's operations as at the end of that month;
- (c) make such reports and furnish such information as the Minister may from time to time require;
- (d) in each year, on or before March 31 or such other date as the Lieutenant Governor in Council may fix, report to the Minister in writing, as at the close of business on the last day of the preceding crop year,
- (i) its purchases and sales of all grain during that crop year,
  - (ii) the quantities of grain then held by it,
  - (iii) the contracts to take delivery of grain to which it is then a party,
  - (iv) all securities then held by it,
  - (v) the financial result of the Board's operations as at the end of that crop year, and
  - (vi) such further information as the Minister may require.

(2) A report made by the Board under subsection (1)(b) or (d) must be certified by the auditor of the Board.

(3) The Minister shall lay a copy of each report of the Board made under subsection (1)(d) before the Legislative Assembly if it is then sitting, and if it is not then sitting, within 15 days of the commencement of the next ensuing sitting.

Direction to the Board

**15** The Minister may, by order, direct the Board with respect to the manner in which any of its operations, powers and duties under this Act must be conducted, exercised or performed.

Annual general meetings

**16(1)** The Board shall hold an annual general meeting of the eligible producers once in each calendar year.

(2) Not more than 15 months may elapse between annual general meetings of the producers.

(3) Despite subsections (1) and (2), the first annual general meeting shall be held within 6 months from the date this Act comes into force.

(4) Subject to subsections (1) and (2), the time, date and location of an annual general meeting shall be fixed by the Board.

(5) The quorum necessary for the conduct of business at an annual general meeting is 50 eligible producers.

General rights  
of eligible  
producers

**17** An eligible producer is entitled, as a matter of right,

- (a) to attend annual general meetings;
- (b) to make representations on any matter pertaining to the Board;
- (c) to vote in any election for members.

Licences

**18(1)** No person shall commence or continue producing grain except under the authority of a licence.

(2) Every producer while not in default of payment of the licence fees prescribed by the Board is deemed to be the holder of a licence.

(3) Every producer shall pay to the Board the licence fees prescribed by the Board from time to time.

Use of licence  
fees

**19** In accordance with the regulations, the Board may use the licence fees and service charges payable to it for the purpose of paying the Board's expenses and carrying out this Act and the regulations.

Report on  
operations

**20** The Board may

- (a) require persons engaged in producing or marketing grain to furnish such information relating to the production or marketing of grain, including completing and filing returns, as the Board determines;
- (b) appoint persons to inspect the books, records,



documents, lands and premises and any grain of persons engaged in the marketing of grain;

- (c) do such acts and make such orders and issue such directions as are necessary to enforce the due observance and carrying out of the Act and regulations.

Marketing grain

**21(1)** Subject to subsection (2), no person shall market grain except by or through the Board or an agent of the Board.

**(2)** Nothing in this Act prohibits a person from marketing grain through the Canadian Wheat Board pursuant to the *Canadian Wheat Board Act (Canada)*.

Profits of the Board

**22** In accordance with the regulations, the Board shall, at the time of realization, use every profit realized by the Board from its operations in grain under this Act for the purpose of paying the Board's expenses and carrying out the Act and regulations.

Pooling of funds

**23(1)** The Board may conduct a pool or pools for the distribution of all money received from the sale of grain, and after deducting all necessary and proper disbursements and expenses, distribute the remainder of the money received from the sale in such manner that every producer receives a share of the remainder of the money received from the sale in relation to the amount, class, variety, grade or size of grain delivered by the producer.

**(2)** The Board may make an initial payment on delivery of the grain and subsequent payments until all of the remainder of the money received from the sale of grain is distributed to the producers under subsection (1).

Inquiry by Board

**24** Except as provided in this or any other Act, the Board has jurisdiction to inquire into, examine and investigate any matter relating to the production and marketing of grain within Alberta.

Seizure of grain

**25(1)** If the Board is of the opinion that a person is producing or marketing grain in contravention of this Act or the regulations or an order or direction of the Board, the Board may apply to the Court of Queen's Bench for an order directing a civil enforcement agency to seize, detain or dispose of the grain in accordance with the order.

(2) An application under this section shall be by way of an originating notice.

(3) On an originating notice being filed with the clerk of the Court, the Court may, if it considers it necessary under the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as 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 considers it appropriate to do so in the circumstances.

(5) On hearing an application, the Court may do one or more of the following:

- (a) direct a civil enforcement agency to seize and detain the grain;
- (b) direct a civil enforcement agency to dispose of all of the grain;
- (c) give directions respecting the seizure, detention or disposal of the grain;
- (d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

Offence and  
penalty

**26** A person who contravenes this Act or the regulations or an order or direction of the Board is guilty of an offence and liable

- (a) for a first offence to a fine of not more than \$2000, and
- (b) for a subsequent offence to a fine of not more than \$5000.

Regulations by  
the Board

**27(1)** The Board may, with the approval of the Minister, make regulations it considers necessary in the public interest governing and controlling the production and marketing of grain in Alberta.

(2) Without limiting the generality of subsection (1), the Board may make regulations

- (a) prescribing fees to be paid to the Board for the issue of licences;

- (b) prescribing the information and documents that the Board may require in connection with applications for licences;
- (c) prescribing the conditions under which the Board may suspend or revoke a licence;
- (d) prescribing the books, records and accounts to be kept by licencees;
- (e) prescribing the form of licences;
- (f) regulating the manner and time of payments to producers.

Regulations governing elections

**28(1)** The Lieutenant Governor in Council may make regulations respecting the conduct of an election of members to the Board.

**(2)** Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations

- (a) prescribing the composition of the Board;
- (b) prescribing the method of electing members to the Board;
- (c) establishing the boundaries and names of 10 regions;
- (d) prescribing the qualifications of members of the Board;
- (e) providing for the preparation and revision of lists of eligible producers qualified to vote in the election of the members of the Board;
- (f) governing the making and withdrawing of nominations;
- (g) respecting the amount, filing and forfeiture of deposits;
- (h) respecting acclamations;
- (i) prescribing the form of ballots;
- (j) providing for the appointment of returning officers and prescribing their duties;

- (k) respecting the casting, counting, recounting, disqualification and reporting of votes and the making of returns;
- (l) respecting any other matter related to the election of members to the Board.

General regulations by Lieutenant Governor in Council

**29** The Lieutenant Governor in Council may make regulations

- (a) governing the borrowing or otherwise raising of money by the Board;
- (b) prescribing the remuneration and expenses payable to members of the Board;
- (c) prescribing the powers of inspectors appointed by the Board under section 20;
- (d) providing for the use of service charges, licence fees and other money payable to or received by the Board for the purpose of paying its expenses;
- (e) providing for the method by which an eligible producer who is not an individual may exercise the rights of an eligible producer;
- (f) respecting an appeal from a decision or action of the Board.

Copies of documents

**30** A copy of any rule, resolution, determination, minute or direction of the Board certified by a member or officer of the Board as a true copy shall, without proof of the signature of the person signing the certificate, be accepted in evidence in place of the original.

**Consequential Amendment, Expiry and Coming into Force**

Amends SA 1994 cF-18.5

**31** The *Freedom of Information and Protection of Privacy Act* is amended in section 1(p) by adding the following after clause (iii.1):

- (iii.2) the Alberta Wheat and Barley Board;

Expiry           **32** This Act expires on the date the *Canadian Wheat Board Act* (Canada) is repealed or amended such that grain produced in Alberta can be freely marketed outside the jurisdiction of the Canadian Wheat Board.

Coming into  
force           **33** This Act comes into force on Proclamation.