

Bill 55
Mr. Marz

BILL 55

2003

FARM IMPLEMENT AMENDMENT ACT, 2003

(Assented to , 2003)

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

Amends RSA 2000 cF-7

1 The *Farm Implement Act* is amended by this Act.

2 Section 1 is amended

(a) by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):

(a) “Board” means the Farm Implement Board pursuant to this Act;

(b) by repealing clause (b) and substituting the following:

(b) “dealer” means a person who

(i) sells or offers for sale farm implements on that person’s own account or on account of a distributor,
or

(ii) leases or offers for lease, with or without the right to purchase, farm implements on that person’s own account or on account of a distributor;

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

- (c) “distributor” means a person, including a manufacturer, who sells, leases, consigns or delivers, or offers for sale, lease, consignment or delivery, farm implements to a dealer for sale or lease;

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

- (d.1) “Fund” means the money held by the Board pursuant to this Act;

(e) by adding the following after clause (h):

- (h.1) “loss” means a direct loss or damage but does not include loss of profits or any other indirect, special or consequential loss or damage;

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

- (i.1) “part” means a part for a farm implement but does not include any services with respect to installing the part;

(g) in clause (j) by adding “from a dealer” after “farm implement”;

(h) by adding the following after clause (j):

- (k) “sale agreement” means an agreement to purchase a farm implement.

3 Section 26 is amended

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

Licences

26(1) No person shall

- (a) sell, offer for sale, lease or offer for lease, lease-purchase or offer for lease-purchase or enter into any sale agreement, lease or lease-purchase agreement respecting a farm implement unless that person holds a dealer’s licence, or
- (b) carry on business as a distributor unless the person holds a distributor’s licence

issued to that person under this Act.

(1.1) The requirement in subsection (1)(a) for a licence does not apply to a purchaser or to a lessee.

(1.2) A person who wishes to obtain a licence must

- (a) apply to the Minister in the form provided for in the regulations,
- (b) pay the licence fee prescribed in the regulations, and
- (c) on and after January 1, 2004, pay any levy and pay an assessment, if required, for the Fund.

(1.3) A licence issued under this Act expires on December 31 of the year in which it is issued.

(b) by adding the following after subsection (2):

(2.1) Despite subsection (2), on and after January 1, 2004 a bond is not required for a licence to be issued but the applicant must pay a levy and, if required, must pay an assessment.

(2.2) The Minister may impose conditions on a licence that the Minister considers appropriate.

(2.3) A licensee must comply with the conditions imposed on the licence.

(c) in subsection (3) by adding “before January 1, 2004” after “may at any time”;

(d) by adding the following after subsection (4):

(5) A bond furnished to the Minister under subsection (2) terminates on December 31, 2003.

(6) When a bond is terminated under subsection (5) the bond issuer must pay back to the licensee the premium attributable to the unused portion of the bond, and the bond issuer shall not assess a penalty against the licensee with respect to the termination of the bond.

(7) If a claim arises from when a bond was in effect, the claim must be dealt with in accordance with subsection (4).

(8) If a dealer or distributor who is required by this section to hold a licence does not hold a licence or the licence is suspended, the Minister may give written notice of that fact to any persons as the Minister considers necessary.

(9) A person to whom a written notice has been given pursuant to subsection (8) shall not, while the dealer or distributor remains unlicensed or while the licence is suspended, deliver or cause to be delivered a farm implement to

- (a) the dealer or distributor,
- (b) a person designated by the dealer or distributor, or
- (c) a person seeking to acquire a farm implement through the dealer or distributor.

4 Section 27(1) is amended

(a) by striking out “or” at the end of clause (a);

(b) in clause (b) by striking out “or the regulations” and substituting “, the regulations or the conditions imposed on the licence,”;

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

- (c) the person to whom the licence was issued made any false or misleading statement in any documents supplied in support of the application for the licence,
- (d) the licence was issued as a result of a clerical or administrative error,
- (e) in the opinion of the Minister, the licensee or, in the case of a corporate licensee, its officers or directors, cannot reasonably be expected to be financially responsible in the conduct of the licensee’s business, or
- (f) the licensee fails to pay any fee, levy, assessment or penalty imposed under this Act, or fees imposed under section 12 of the *Government Organization Act* with respect to this Act, by the due date.

5 Section 28 is amended

(a) **in subsection (1) by striking out** “serving the Minister with a notice of appeal within 30” **and substituting** “giving the Board a notice of appeal within 14”;

(b) **by adding the following after subsection (1):**

(1.1) On receipt of a notice of appeal, the Board must hold a hearing as soon as practicable.

(c) **by repealing subsections (2) and (3);**

(d) **in subsection (4) by striking out** “An appeal board that hears an appeal under this section may” **and substituting** “When the Board hears an appeal under this section, it may”;

(e) **by repealing subsections (5) to (7) and substituting the following:**

(5) A decision of the Board is final and there is no appeal from or review of the decision except on a question of jurisdiction or on a question of law.

6 Section 29(2) is amended by striking out “Minister” and substituting “Board”.

7 Section 30 is amended by adding the following after clause (p):

- (q) respecting the membership and organization of the Board and any matter relating to the powers, duties, functions and operation of the Board;
- (r) respecting the assessing of risk and the setting of levies and assessments;
- (s) respecting applications for compensation from the Fund;

- (t) respecting the practices and procedures of the Board, including the holding of appeals and hearings;
- (u) respecting the payment of money to and from the Fund and how money in the Fund is held and invested;
- (v) respecting the giving of notices and service of documents under this Act;
- (w) respecting penalties set by the Board under this Act;
- (x) respecting the payment of levies, assessments and penalties and the collection of them on behalf of the Board.

8 The following is added after section 30:

Transitional regulations

30.1(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the termination of bonds under section 26(5);
- (b) providing for the transition from bonds to levies and assessments;
- (c) despite section 39, setting levies and assessments to be paid in 2004;
- (d) respecting any other matter necessary to give effect to sections 34 to 42 in accordance with their intent or to supply any deficiency in them.

(2) A regulation made under subsection (1) may be made retroactive to the extent set out in the regulation.

(3) A regulation made under subsection (1) is repealed on the earliest of

- (a) the coming into force of an amendment that adds the subject-matter of the regulation to this Act;
- (b) the coming into force of a regulation that repeals the regulation made under subsection (1);
- (c) 2 years after the regulation comes into force.

(4) The repeal of a regulation under subsection (3)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

9 Section 32(1) is repealed and the following is substituted:

Offence and penalty

32(1) A person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$50 000.

10 The following is added after section 33:

Board established

34(1) There is hereby established a corporation known as the Farm Implement Board consisting of 7 members determined in accordance with the regulations.

(2) The members may not be determined in a manner that would make the Board a Provincial corporation or Crown-controlled organization as those terms are defined in the *Financial Administration Act*.

(3) The Board has the capacity and, subject to this Act and the regulations, the rights, powers and privileges of a natural person.

(4) The Board may not borrow money or guarantee a loan.

(5) The Minister may provide administrative services to the Board.

(6) The Board may make rules governing, subject to the regulations, the practice and procedure of the Board.

Procedural fairness

35 The Board is bound by the rules of procedural fairness in carrying out its functions under this Act.

Board's mandate

36 The Board

- (a) must hold appeals under section 28 and hearings under section 38,
- (b) subject to this Act, must set levies and may set assessments for the Fund,
- (c) must hold the Fund, invest the money in the Fund, pay money out of the Fund and report on the Fund in accordance with this Act,
- (d) must carry out any duty given to the Board by regulation, and
- (e) must notify the Minister of levies, assessments and penalties that are unpaid.

Application for compensation

37(1) Subject to section 26(7), this section applies to a farm implement purchased or leased pursuant to a sale agreement, lease agreement or lease-purchase agreement on or after January 1, 2003.

(2) A purchaser, lessee, distributor or dealer may apply to the Board for compensation for loss arising from the breach of a sale agreement, lease or lease-purchase agreement or of a provision of this Act within one year of the loss.

(3) An application under this section must

- (a) be in writing,
- (b) state the name and address of the applicant and the name and address of the dealer and the distributor who supplied the farm implement that caused the loss,
- (c) describe the loss and how the loss occurred, and
- (d) be in the form and manner required by the regulations.

(4) The applicant must give a copy of the application to the dealer and the distributor.

(5) Any defect or inaccuracy in an application under this section does not bar the right to compensation if the Board is of the opinion that the claim to compensation has merit and ought to be allowed.

Hearing

38(1) On receipt of an application under section 37, the Board may, subject to the regulations, conduct a hearing.

(2) The applicant, the dealer, the distributor and any other person the Board allows may make submissions at the hearing.

(3) For the purposes of a hearing the Board may, by giving notice, request any person to provide information, and the person must provide the information on receipt of the notice.

(4) On completion of a hearing, the Board may dismiss the application or award compensation to the applicant.

(5) A decision of the Board is final and there is no appeal from or review of the decision except on a question of jurisdiction or on a question of law.

(6) The Board shall not award compensation to an applicant who has received a judgment from a court for the loss in respect of which compensation is applied for under this Act.

(7) An applicant does not have the right to apply to a court for damages for the same loss for which the applicant has been awarded compensation under this Act.

Fund

39(1) The Farm Implement Compensation Fund consists of the money received by the Board from levies, assessments and penalties in accordance with this Act.

(2) Despite subsection (1), penalties under section 32 do not form part of the Fund.

(3) The Board shall, in each year, by a notice, set the levy to be paid by applicants for licences in any amount, subject to the regulations, that the Board considers sufficient to pay awards of compensation.

(4) Subject to the regulations, in addition to the amounts levied under subsection (3), the Board may order an additional assessment on applicants who did not hold a licence in the preceding year and on licensees with respect to whom the

Board has awarded compensation from the Fund, and the Board must set the date by which the assessment must be paid.

(5) The levies, assessments and penalties are due to the Board for deposit in the Fund.

Use of Fund

40(1) The Board may make payments from the Fund for compensation awarded by the Board under section 38.

(2) Despite subsection (1), the Board shall not pay money from the Fund in a greater amount than there is money in the Fund.

(3) If a person who has been awarded compensation does not receive any or full payment from the Fund because there is insufficient money in the Fund, the award does not lapse but is payable in a subsequent year when there is sufficient money in the Fund.

Power of Board to enforce assessments

41(1) A licensee must pay as a penalty for default any percentage, as provided for in the regulations, of the amount owing that remains unpaid after the date an assessment is to be paid.

(2) If a licensee fails to pay an amount owing on or before the date described in subsection (1), the Board may file with the Court of Queen's Bench a certificate that sets out

- (a) the amount owing that remains unpaid at the date of the certificate,
- (b) the amount of any penalty imposed pursuant to subsection (1), and
- (c) the person from whom the amount owing and penalty are recoverable.

(3) A certificate filed pursuant to this section has the same effect as if it were a judgment obtained in the Court of Queen's Bench for the recovery of a debt in the amount specified in the certificate, together with any reasonable costs and charges with respect to its filing.

(4) Any money received pursuant to subsection (3) is due to the Board for deposit in the Fund.

Board report

42(1) The Board must prepare a report after each fiscal year on its activities and the activities of the Fund and submit the report to the Minister.

(2) On receiving a report under subsection (1), the Minister must lay the report before the Legislative Assembly if it is then sitting, and if it is not then sitting, within 15 days after the commencement of the next sitting.

Sharing information

43(1) The Board may disclose information, including personal information, to the Minister if it relates to the administration of this Act.

(2) The Minister may disclose information, including personal information, to the Board if it relates to licences under this Act.

(3) The Board and the Minister may collect and use the information that is disclosed pursuant to this section.

Liability exemption

44 No action lies against the Board or the members of the Board for anything done or omitted to be done by any of them in good faith while exercising their powers and performing their duties under this Act.

11 This Act comes into force on January 1, 2004.

Explanatory Notes

1 Amends chapter F-7 of the Revised Statutes of Alberta 2000.

2 Section 1 presently reads:

1 In this Act,

- (a) “custom operator” means a person who purchases a new farm implement and uses or permits the use of that farm implement for hire or for service to others for valuable consideration to the extent of at least 50% of the annual use of that farm implement;*
- (b) “dealer” means a person operating in the ordinary course of business a retail establishment for the sale of farm implements;*
- (c) “distributor” means a person, including a manufacturer, who sells, consigns or delivers farm implements to a dealer for sale in the ordinary course of business;*
- (d) “farm implement” means any implement, equipment, engine, motor, machine, combine, tractor or attachment used or intended for use in farming operations but does not include any thing excluded from the definition of farm implement by the regulations;*
- (e) “inspector” means an inspector appointed under section 33;*
- (f) “lease” means a lease of a farm implement under which the lessee is not given the right to purchase the farm implement;*
- (g) “lease-purchase agreement” means a lease of a farm implement under which the lessee is given the right to purchase the farm implement;*
- (h) “lessor” means the lessor under a lease or lease-purchase agreement;*
- (i) “Minister” means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;*

- (j) *“purchaser” means a farmer who purchases a farm implement for the farmer’s own farming use.*

3 Section 26 presently reads:

26(1) No person shall

- (a) carry on business as a dealer unless the person is the holder of a dealer’s licence,*
- (b) carry on business as a lessor of farm implements unless the person is the holder of a dealer’s licence, or*
- (c) carry on business as a distributor unless the person is the holder of a distributor’s licence*

issued to the person under this Act.

(2) A licence must not be issued under this Act unless the applicant furnishes to the Minister a bond in favour of the Crown in right of Alberta

- (a) in the form prescribed in the regulations, and*
- (b) in an amount prescribed by the Minister.*

(3) The Minister may at any time require a licensee to furnish a bond in a greater amount than that already furnished under subsection (2).

(4) When a bond furnished under this section is forfeited, the proceeds must be used to the benefit of persons who have claims against the licensee that are accepted by the Minister in accordance with the terms of the bond and must be paid out by the surety on the direction of the Minister in accordance with the terms of the bond.

4 Section 27 presently reads:

27(1) The Minister may cancel or suspend a licence issued under this Act if

- (a) it is in the public interest to do so, or*
- (b) the licensee contravenes this Act or the regulations.*

(2) When a licensee

- (a) applies for a renewal of a licence for the succeeding year before the licensee's existing licence expires, and*
- (b) the application is accompanied with the prescribed documents and fees,*

the existing licence remains in force until the new licence is issued or until the Minister notifies the licensee that the licensee will not be issued a new licence.

5 Section 28 presently reads:

28(1) A person

- (a) who has been refused a licence, or*
- (b) whose licence has been cancelled or suspended*

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

(2) The Minister shall, within 30 days after being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

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

(4) An appeal board that hears an appeal under this section may, by order, either

- (a) confirm the refusal, cancellation or suspension,*
- (b) direct that a licence be issued,*
- (c) reinstate a cancelled licence,*
- (d) substitute a suspension for a cancellation or a cancellation for a suspension, or*
- (e) remove or vary a suspension.*

(5) An appeal board appointed under this section shall consist of the following members:

- (a) a person who is designated as chair of the appeal board by the Minister, and*
- (b) not less than 2 and not more than 4 other persons who are persons licensed under this Act.*

(6) The Minister may pay those fees and reasonable living and travelling expenses that the Minister considers proper to the members of an appeal board.

(7) The Minister or a person whose appeal is heard by an appeal board may appeal the decision of the appeal board by applying by originating notice to the Court of Queen's Bench within 30 days after being notified in writing of the decision, and the Court may make any order that an appeal board may make under subsection (4).

6 Section 29 presently reads in part:

(2) The Court may hear an application made under this section not less than 2 days after the originating notice has been served on the Minister.

7 Regulations.

8 Transitional regulations.

9 Section 32 presently reads:

32(1) A person who contravenes this Act or the regulations is guilty of an offence and liable

(a) in the case of an individual, to a fine of not more than \$10 000, or

(b) in the case of a corporation, to a fine of not more than \$25 000.

(2) A prosecution for a contravention of this Act or the regulations may be commenced within one year after the date on which the offence is alleged to have been committed, but not afterwards.

10 Board established; Board's mandate;
Application for compensation for loss; Hearing;
Fund; Power of Board to enforce payments due;
Fund investments; Report; Liability exemption;
Information sharing.

11 Coming into force.