

Bill 6
Mr. Ducharme

BILL 6

2005

FAIR TRADING AMENDMENT ACT, 2005

(Assented to , 2005)

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

Amends RSA 2000 cF-2

1 The *Fair Trading Act* is amended by this Act.

2 Section 1(1) is amended

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

(c.1) “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;

**(b) in clause (e) by striking out “Parts 9 and” and
substituting “Part”;**

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

(h) “loan broker” means a person who for compensation
directly assists a person in obtaining credit or a loan of

money for business or personal use, including credit or a loan made from the loan broker's own funds;

(d) in clause (k)

(i) by striking out “, except in Part 9,”;

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

(iv) any credit agreement;

(e) in clause (l) by striking out “, but does not include an advertiser”;

(f) in clause (m) by striking out “the right to use any type of real or personal property that can be used as accommodation” and substituting “the right to use, occupy or possess real or personal property”.

3 The following is added after section 2:

Application of Act

2.1 In determining whether this Act applies to an entity or a transaction, a court or an appeal board must consider the real substance of the entity or the transaction and in doing so may disregard the outward form.

4 The following is added after section 4:

Regulations

4.1 The Minister may make regulations respecting the establishment of minimum standards for specific types of business that are subject to this Act, without requiring them to be licensed.

5 Section 6 is amended

(a) by adding the following after subsection (1):

(1.1) It is an offence for a supplier to engage in an unfair practice.

(b) by repealing subsection (2)(e) and substituting the following:

- (e) to charge a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services unless
 - (i) the consumer has expressly consented to the higher price before the goods or services are supplied, or
 - (ii) if the consumer requires additional or different goods and services, the consumer and the supplier agree to amend the estimate in a consumer agreement;
- (f) to charge a fee for an estimate for goods or services unless the consumer
 - (i) is informed in advance that a fee will be charged and informed of the amount of the fee, and
 - (ii) has expressly consented to be charged the fee.

(c) in subsection (4) by adding the following after clause (t):

- (t.1) a supplier's representation regarding an agreement for continuing provision of services if the supplier fails to provide prominent and full disclosure of the details of the agreement, including duration, changes in price, renewals, extensions or amendments, or if the supplier fails to obtain the consumer's express consent to renewals, extensions or amendments of the agreement;

6 Section 7 is repealed and the following is substituted:

Cancelling agreement

7(1) A consumer may cancel at no cost or penalty to the consumer a consumer transaction, whether written or oral, that

was entered into by the consumer and a supplier who engaged in an unfair practice regarding the consumer transaction, whether the unfair practice occurred before, during or after the time when the consumer transaction was entered into, and in addition the consumer is entitled to any remedy that is available at law, including damages.

(2) Where a supplier has been found to have engaged in an unfair practice, any consumer who entered into a consumer transaction that was subject to the unfair practice with the supplier who engaged in the unfair practice may cancel the consumer transaction at no cost or penalty to the consumer.

(3) A consumer is entitled to recover the amount by which the consumer's payment under the consumer transaction exceeds the value of the goods or services to the consumer, or to recover damages, or both, if cancellation of the consumer transaction under subsection (1) or (2) is not possible because

- (a) the return or restitution of the goods or cancellation of the services is no longer possible, or
- (b) cancellation would deprive a third party of a right in the subject-matter of the consumer transaction that the third party has acquired in good faith and for value.

(4) When a consumer cancels a consumer transaction under subsection (1) or (2), the cancellation operates to cancel, as if they never existed,

- (a) the consumer transaction,
- (b) all related consumer transactions,
- (c) all guarantees given in respect of money payable under the consumer transaction,
- (d) all security given by the consumer or a guarantor in respect of money payable under the consumer transaction, and
- (e) all credit agreements and other payment instruments, including promissory notes,

- (i) extended, arranged or facilitated by the supplier with whom the consumer made the consumer transaction, or
- (ii) otherwise related to the consumer transaction.

Notice

7.1(1) A consumer must give notice within one year of a supplier having been found to have engaged in an unfair practice related to a consumer transaction if

- (a) the consumer wishes to cancel the consumer transaction under section 7(1) or (2), or
- (b) the consumer seeks recovery under section 7(3), if cancellation is not possible.

(2) A consumer may give notice in any manner as long as the notice indicates

- (a) the consumer's intention
 - (i) to cancel the consumer transaction, or
 - (ii) to seek recovery if cancellation is not possible,
- and
- (b) the consumer's reasons for taking the actions set out in clause (a),

and meets any requirements that may be prescribed.

(3) Notice may be delivered by any means, but if notice is delivered other than by personal service it is deemed to have been given when sent.

(4) The consumer may send or deliver the notice to the supplier with whom the consumer entered into the consumer transaction at the address set out in an agreement under the consumer transaction or, if the consumer did not receive a written copy of the agreement or if the address of the supplier was not set out in the agreement, the consumer may send or deliver the notice

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

(b) to an address of the supplier known to the consumer.

(5) If a consumer has delivered notice and has not received a satisfactory response within the prescribed period, the consumer may commence an action in the Court of Queen's Bench.

Powers of Court

7.2(1) In an action commenced under this Division, the Court of Queen's Bench may award exemplary or punitive damages in addition to any other remedy the Court considers proper.

(2) In the trial of an issue under this Division, oral evidence respecting an unfair practice is admissible despite the existence of a written agreement under the consumer transaction and despite the fact that the oral evidence pertains to a representation in respect of a term, condition or undertaking that is not provided for in the agreement.

(3) The Court of Queen's Bench may disregard the requirement that the consumer give notice under section 7.1 or any requirement relating to the notice if the Court considers that it is in the interest of justice to do so.

Liability

7.3(1) Each person who engages in an unfair practice is jointly and severally liable with the supplier who entered into a consumer transaction that was subject to the unfair practice with a consumer for any amount to which the consumer is entitled under section 7 or 7.2.

(2) If an agreement under a consumer transaction to which section 7 applies has been assigned, or if any right to payment under such a consumer transaction has been assigned, the liability of the person to whom it has been assigned is limited to the amount paid to that person by the consumer.

Provincial Court

7.4(1) Subject to the jurisdiction of the Provincial Court, an action under section 7.1(5) may be commenced under Part 4 of the *Provincial Court Act*.

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

7 Section 12 is amended by adding the following after clause (d):

- (e) prescribing requirements for notice that must be given by a consumer for the purpose of cancelling a consumer transaction or seeking recovery under section 7;
- (f) prescribing the period for a supplier to respond to notice given by a consumer under section 7.1.

8 Section 13(1) is amended by adding “or any principal, director, manager, employee or agent of a supplier” after “any supplier”.

9 Section 17 is amended

- (a) **in subsection (1) by adding “or any principal, director, manager, employee or agent of a supplier” after “supplier”;**
- (b) **in subsection (2)(b) by adding “or any principal, director, manager, employee or agent of the supplier” after “supplier”.**

10 Section 22 is amended by striking out “unless the consumer agrees in writing to pay for the goods or services”.

11 Section 24 is amended by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

- (a) “commencement date” means the date a supplier of a prepaid or direct sales contract begins tangible or identifiable service at the location specified in the contract;

12 Section 25(2) is amended by striking out “specified” **and substituting** “exempted”.

13 Section 29(6) is amended by striking out “Housing and Consumer Affairs Division of the Department of Municipal Affairs” **and substituting** “consumer services division of the department whose Minister is responsible for this Act”.

14 Section 35(j) is amended by striking out “start date” **and substituting** “commencement date”.

15 Section 36(a) is amended by striking out “24(a)(i)” and substituting “24(a.1)(i)”.

16 Section 37(1) is amended by striking out “7 days” and substituting “10 days”.

17 Section 42(1) is amended by adding “, fax, e-mail” after “television”.

18 Section 43 is amended

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

(a) “credit information” means information about an individual’s name, age and place of residence and other information prescribed in the regulations;

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

(d) “report” means a written, oral or other communication of credit or personal information of a type, or made in a manner, specified in the regulations;

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

(e) “reporting agency” means a person who carries on the activity of furnishing reports as prescribed in the regulations.

19 Section 44 is amended

(a) in subsection (1)

(i) by adding “, agent” after “officer”;

(ii) by repealing clause (a)(i) and substituting the following:

(i) in connection with the extension of credit to the individual to whom the report pertains, with the individual’s express consent,

(i.1) in connection with the collection of a debt from the individual to whom the report pertains,

(iii) in clause (a)(ii) by adding “with the individual’s express consent,” after “pertains,”;

(iv) in clause (a)(iii) by adding “with the express consent of the individual to whom the report pertains,” after “purposes,”;

(v) in clause (a)(iv) by adding “with the individual’s express consent,” after “pertains,”;

(vi) in clause (b) by adding “, with the individual’s express consent” after “pertains”;

(vii) in clause (d) by striking out “written” and substituting “express”;

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

(f) in circumstances specified in the regulations.

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

(2.1) The express consent of an individual referred to in subsection (1) must be in a verifiable form, including but not limited to writing and audio recordings.

20 Section 45(2) and (3) are repealed and the following is substituted:

(2) A reporting agency must meet the requirements respecting the contents of reports that are prescribed in the regulations.

21 Section 46 is repealed.

22 Section 47 is amended

(a) **by renumbering it as section 47(1);**

(b) **in subsection (1) by striking out “, in writing of not more than 500 words, an explanation, or additional information” and substituting “an explanation or additional information, in writing as prescribed in the regulations”;**

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

(2) An individual who has delivered an explanation or additional information written by the individual to a reporting agency may have the explanation or additional information removed from the individual’s file by delivering a written request for removal to the reporting agency.

(3) A reporting agency must remove the explanation or additional information from an individual’s file within 45 days of receiving a request under subsection (2).

23 Section 48 is repealed.

24 Section 51 is amended

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

(b.1) respecting security measures for the protection of the books, accounts and records kept and maintained by reporting agencies and for the disposal of the books, accounts and records when they are no longer required;

(b) **in clause (d) by striking out “under section 46”;**

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

- (e) respecting consumer credit repair services, including but not limited to
 - (i) defining “consumer credit repair services” and other words or expressions applicable to the activity of providing consumer credit repair services,
 - (ii) prescribing fees that may be charged for consumer credit repair services,
 - (iii) prohibiting the requirement of advance payment for consumer credit repair services,
 - (iv) prescribing requirements for consumer credit repair service agreements,
 - (v) determining the grounds for cancellation of provisions of consumer credit repair service agreements, and
 - (vi) determining what constitutes prohibited representations in consumer credit repair service agreements;
- (f) respecting those persons or individuals to whom a report may or must be furnished;
- (g) respecting requirements for the contents of reports, including the kinds of information that reports may contain and the kinds of information they must not contain;
- (h) specifying the requirements for an explanation or additional information to be provided by an individual under section 47;
- (i) respecting the procedures for the correction of errors in an individual’s file maintained by a reporting agency, including the requirement to distribute the corrected information to persons who were given reports based on the uncorrected file;
- (j) respecting the requirements for disclosure of information to an individual;
- (k) respecting alternative dispute resolution processes;

- (l) defining words or terms, including restricting or broadening the definitions set out in section 43;
- (m) respecting identity theft, including but not limited to regulations respecting
 - (i) definitions,
 - (ii) procedures to improve the accuracy and security of consumer records,
 - (iii) consumer access to credit information,
 - (iv) consumer rights and remedies,
 - (v) procedures to be undertaken by suppliers and credit reporting agencies,
 - (vi) regulation and prohibition of disclosure of information,
 - (vii) measures to assist investigations regarding identity theft, and
 - (viii) fees and costs associated with corrections, notifications and registration of warning notices by reporting agencies on the files of individuals.

25 Section 52 is amended

- (a) by striking out “In this Part,” and substituting “In this Part and Part 7,”;**
- (b) by repealing clause (a) and substituting the following:**
 - (a) “lender” means a supplier who engages in the activity of lending money or extending credit or who undertakes the activity through assignment or purchase of the lender’s interest, but does not include an employer who makes an advance on wages to an employee;

26 Section 53 is amended

- (a) by renumbering it as section 53(1);
- (b) in subsection (1) by striking out “lending institution” wherever it occurs and substituting “lender”;
- (c) by adding the following after subsection (1):

(2) A lender or an officer, director, employee or agent of a lender shall not attempt to induce a person to assign wages in favour of the lender in contravention of subsection (1) or to enforce what purports to be an assignment of wages in favour of or acquired by the lender.

27 Section 54 is repealed and the following is substituted:

Charging and collecting fees

54(1) No loan broker may charge or collect a fee for assisting a person to obtain personal or business credit until the person has obtained the credit, unless the fee

- (a) is paid directly to the loan broker by a credit grantor or lender for a referral of business, or
- (b) is for the purpose of obtaining a lease or leasing arrangements.

(2) This section does not apply to fees charged by

- (a) a loan broker who is authorized to deal as a mortgage broker under the *Real Estate Act* if the loan is part of a mortgage as defined in the *Real Estate Act*,
- (b) a federal or provincial lender by virtue of the legislation governing the lender, or
- (c) a loan broker for performing other services for a person, such as preparing or analysing business plans, budgets or financial statements, if
 - (i) the fee or fees for the services are charged under a separate contract from any services in connection with a loan,
 - (ii) the separate contract contains a disclosure statement about the fee or fees, and

- (iii) the separate contract is provided to the person in writing before payment of the fee is demanded.

Regulations

54.1 The Minister may make regulations respecting the brokering of loans, including but not limited to regulations respecting

- (a) the requirements for contracts for the brokering of loans;
- (b) prohibited practices in the brokering of loans;
- (c) the size of loans to which this Part applies.

28 Section 58(k) is repealed.

29 Section 63(1) is amended by repealing clause (a) and substituting the following:

- (a) must be in writing and prepared in duplicate or, with the borrower's consent, in any similar form that will allow the borrower to retain a copy of the disclosure statement for future reference, and

30 Section 70 is amended by striking out "unpaid amount" wherever it occurs and substituting "amount of the deferred payment".

31 Section 85 is amended by adding the following after subsection (4):

- (5) A credit grantor who, pursuant to the agreement, changes the interest rate under the agreement shall deliver a disclosure statement to the borrower disclosing the change
 - (a) in the next statement of account after the change, in the case of a credit agreement that is not for a credit card, and

(b) at least 30 days before the change, in the case of a credit agreement that is for a credit card where the interest rate is not a floating rate.

(6) A credit grantor who, pursuant to the agreement, changes any of the information prescribed under section 84 other than the interest rate under the agreement shall deliver a disclosure statement to the borrower disclosing the change

- (a) in the next statement of account after the change if the change is not a material change, as prescribed, and
- (b) at least 30 days before the change if the change is a material change, as prescribed.

32 Section 101(1) is amended

(a) in clause (a) by striking out “index rate” and substituting “interest rate”;

(b) in clause (k) by adding “and (6)” after “85(4)”;

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

(q) respecting the terms and conditions applicable to reverse mortgages.

33 Section 104(2) is repealed and the following is substituted:

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

34 Section 109 is repealed and the following is substituted:

Definitions

109 In this Part,

- (a) “collection agency” means a person, other than a collector, who carries on the activities prescribed by regulation;

- (b) “collector” means an individual employed or authorized by a collection agency to carry on the activities prescribed by regulation on behalf of the collection agency.

35 Section 111 is amended

- (a) **in subsection (1) by striking out** “engage in the business” **and substituting** “carry on the activities”;
- (b) **in subsection (4) by striking out** “carries on the business” **and substituting** “carries on the activities”.

36 Section 113 is repealed.

37 Sections 115 and 116 are repealed.

38 Section 118 is amended

- (a) **in clause (b) by striking out** “activities that constitute engaging in the business” **and substituting** “what constitutes carrying on the activities”;
- (b) **in clause (c) by striking out** “under section 113” **and substituting** “under this Part”;
- (c) **by repealing clause (d) and substituting the following:**
 - (d) respecting the creation, maintenance and providing of audits, records or reports;
- (d) **by adding the following after clause (g):**
 - (h) respecting the activities that may be carried on by a collection agency or a collector;

- (i) defining words or terms, including regulations restricting or broadening the definitions of collection agency and collector.

39 Section 119(a) is amended by striking out “engages in” and substituting “carries on”.

40 Section 121(1)(a) is amended by striking out “engage in the business” and substituting “carry on the activities”.

41 Section 122 is repealed.

42 Section 124 is amended

(a) in clause (b) by striking out “engaging in the business” and substituting “carrying on the activities”;

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

- (f) respecting the conditions of sale by public auction, including the requirement to communicate those conditions to bidders;
- (g) respecting the contents of statements made by auction sales businesses or auctioneers or any employee or agent of an auction sales business or an auctioneer concerning goods intended for sale by public auction, terms of sale or the policies or services of the auction sales business or auctioneer.

43 Section 126 is amended

(a) in subsection (1)

- (i) in clause (b) by adding “including a criminal record check or authorization to obtain a criminal record check,” after “Director,”;**

(ii) by repealing clause (d) and substituting the following:

- (d) if the regulations require a security or payment into an assurance fund approved by the Director to be submitted in respect of the class of licence applied for, a security or proof of payment into the assurance fund that meets the requirements of the regulations.

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

- (3)** A person who makes a false statement of fact or misrepresents any fact or circumstance in any application or document submitted to the Director under this Act commits an offence.

44 Section 127(b) is amended

(a) in subclause (i) by striking out “115,”;

(b) by adding the following after subclause (v):

- (v.1) fails to comply with any other legislation that may be applicable,

45 Section 130 is amended by adding the following after subsection (2):

- (3)** Where a licensee who is required under the regulations to be covered by an assurance fund approved by the Director is no longer covered by that assurance fund, the licence is suspended.

46 Section 132(1) is amended by adding “create and” before “maintain”.

47 Section 134 is repealed and the following is substituted:

Notification of changes

- 134(1)** Every licensee must notify the Director in writing within 15 days 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 activities for which the licence was issued must notify the

Director within 15 days of the cessation of the activities and return the licence with the notification.

48 Section 136 is amended by adding the following after subsection (9):

(10) No action or other proceeding for damages may be commenced against a regulatory board, a member or employee of the board or a person appointed or engaged to perform a duty or exercise a power for the board

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act, the regulations or the bylaws, or
- (b) for any neglect or default in the performance of the duty or exercise of the power in good faith.

49 Section 139 is amended

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

(a.1) establishing standard conditions that will apply to all licences while they are in force;

(b) in clause (f) by adding “or that apply during the term of the licence” after “renewed”.

50 Section 146 is amended

(a) in subsection (1)

(i) **in clause (a) by striking out** “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”;

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

(a.1) requiring a regulated person, employee or agent to produce for the inspector’s examination books,

records, documents or other things relevant to the inspection;

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

- (d) authorizing the inspector, if charges are laid or a formal administrative process is commenced as a result of the inspection, to retain books, records documents or other things until the charges have been formally disposed of or the administrative process has been concluded.

(b) in subsection (3) by striking out “if the Court of Queen’s Bench considers it proper to do so” and substituting “unless in the opinion of the Court of Queen’s Bench it would be improper to do so”;

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

(5) A copy of a document seized under an order granted under subsection (1) and certified by the person who conducted the inspection to be a true copy of the original document 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.

(6) If in the course of an inspection under this section reasonable grounds are found to indicate that a person has committed an offence under this Act or the regulations, the inspection may be discontinued and an investigation under section 147 may be commenced.

(7) In an application under this section, the Court of Queen’s Bench shall give greater weight to the protection of persons who are dealing with a regulated person than to the carrying on of the activities of the regulated person.

(8) An order under subsection (1) applies to a regulated person or an employee or agent of a regulated person and may also apply to third parties such as accountants or other persons who have possession or control of books, records or documents relating to the activities of the regulated person.

51 Section 148 is amended

(a) in subsection (1)

(i) in clause (a) by striking out “and requiring the person to produce for the inspector’s examination the person’s books, records, documents or other things relevant to the investigation”;

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

(a.1) requiring a person to produce for the inspector’s examination the person’s books, records, documents or other things relevant to the investigation;

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

(d) authorizing the inspector, if charges are laid or a formal administrative process is commenced as a result of the investigation, to retain books, records, documents or other things until the charges have been formally disposed of or the administrative process has been concluded.

(b) in subsection (3) by striking out “if the Court of Queen’s Bench considers it proper to do so” **and substituting** “unless in the opinion of the Court of Queen’s Bench it would be improper to do so”;

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

(5) A copy of a document seized under an order granted under subsection (1) and certified by the person who conducted the investigation to be a true copy of the original document 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.

(6) An order under subsection (1) applies to a person under investigation and may also apply to third parties such as accountants or other persons who have possession or control of books, records or documents relating to the activities of the person under investigation.

(7) The following persons may apply to the Court of Queen's Bench for an order varying or cancelling an order under subsection (1):

- (a) a person to whom the order is directed;
- (b) a person under investigation who is named in the order;
- (c) a person other than one referred to in clauses (a) and (b) who is otherwise affected by the order.

(8) On an application under subsection (7), the Court of Queen's Bench may vary or cancel an order on any terms or conditions the Court considers just, if the Court finds that

- (a) all or a part of the order is not required for the protection of persons who are dealing with a person under investigation named in the order, or
- (b) one or more affected persons are unduly prejudiced by the order.

(9) In an application under this section, the Court of Queen's Bench shall give greater weight to the protection of persons who are dealing with a person under investigation than to the carrying on of the activities of the person under investigation.

52 The following is added after section 150:

Disclosing default in payment of fines

150.1(1) If a fine or an order for restitution of money that is payable as a result of a conviction for an offence under this Act is in default for 60 days or more, the Director may disclose to a reporting agency the name of the defaulter, the amount of the fine or restitution order and the date the fine or restitution order went into default.

(2) Within 15 days after the Director has received notice that a fine or an order for the restitution of money that was reported to a reporting agency as being in default has been paid in full, the Director must inform the reporting agency of the payment.

53 Section 151 is repealed and the following is substituted:

Property freeze orders

151(1) In this section and sections 151.1 to 151.3,

- (a) “investigated person” means
 - (i) a licensee referred to in subsection (2),
 - (ii) a collection agency or collector as defined in section 109,
 - (iii) a supplier, or
 - (iv) any other person to whom this Act applies,
who is under investigation in respect of an alleged contravention of this Act or the regulations;
- (b) “property” means real property or personal property as defined in the *Personal Property Security Act*, and personal property includes but is not limited to money, money in a trust account, goods, assets, a security or a debt;
- (c) “property freeze order” means an order of the Director under subsection (2).

(2) The Director may issue a property freeze order in the following circumstances:

- (a) where the Director is about to cancel or suspend or has cancelled or suspended the 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 an alleged contravention of this Act or the regulations
are about to be or have been initiated against any person;

- (c) where an investigated person has been paid money or been given security by a person in respect of a consumer transaction, or where an investigated person has been paid money by a debtor in respect of a debt, and
 - (i) the investigated person has absconded from Alberta, or
 - (ii) the Director has reasonable and probable grounds to believe that the investigated person
 - (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 any money paid or any assets delivered to the investigated person;
- (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;
- (e) where the Director has reason to believe it advisable for the protection of consumers dealing with an investigated person.

(3) In the circumstances referred to in subsection (2), the Director may, in writing, on terms that the Director considers reasonable, issue one or more of the following property freeze orders:

- (a) that the investigated person
 - (i) not take any of the investigated person's real or personal property from the possession of another person named in the order who has the property on deposit, under control or for safekeeping, or

- (ii) not dispose of any of the investigated person's real or personal property nor otherwise deal with the investigated person's real or personal property in a way that reduces the value of the property, whether the property is acquired by the investigated person before, on or after the date of the order;
- (b) that a person to whom the order is directed hold in trust any real or personal property of the investigated person that the person has possession or control of or holds for safekeeping;
- (c) that a debtor of the investigated person to whom the order is directed
 - (i) hold in trust any real or personal property that is payable or transferable in satisfaction of the debt, or
 - (ii) transfer to a receiver, receiver-manager or trustee appointed under subsection (4) any real or personal property that is payable or transferable in satisfaction of the debt;
- (d) that a lessor to whom the order is directed who leases safety deposit boxes, safes or compartments in safes not permit an investigated person or the investigated person's representative or agent to open or remove a safety deposit box, safe or compartment in a safe leased to the investigated person;
- (e) that a person to whom the order is directed hold the real or personal property affected by the order in that person's possession, safekeeping or control in trust for an interim receiver, custodian, trustee, receiver-manager, receiver or liquidator who has been appointed or whose appointment has been applied for under the *Bankruptcy and Insolvency Act* (Canada), the *Canada Business Corporations Act* (Canada), the *Judicature Act*, the *Personal Property Security Act*, the *Companies Act*, the *Business Corporations Act*, the *Cooperatives Act* or this Act, as the case may be.

(4) 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 property of an investigated person on any terms or conditions that the Court approves.

(5) An application under subsection (4) may be made ex parte unless in the opinion of the Court of Queen's Bench it would be improper to do so.

(6) A property freeze order does not apply to assets in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the order expressly states that it applies to those assets or securities.

(7) A property freeze order must be served on each person to whom it is directed and on each investigated person who is named in the order.

(8) A property freeze order takes effect in respect of a person or an investigated person at the time the order is served on the person or investigated person or at a later time specified by the Director in the order.

(9) Subject to section 151.3, any property affected by a property freeze order continues to be affected by the order until the Director, in writing,

- (a) amends or cancels the order, or
- (b) orders the release of the property.

(10) An amendment or a cancellation of a property freeze order under subsection (9)(a) or a release order under subsection (9)(b) must be served on the person to whom it is directed.

Payment into court

151.1(1) A person who has property of an investigated person in the form of money on deposit with the person or in the person's control and who is served with a property freeze order may pay the money into the Court of Queen's Bench if

- (a) the person is in doubt regarding the application of the order to the money on deposit with or under the control of the person, or

(b) a person not named in the order claims a right to or an interest in the money.

(2) If a person pays money into court in accordance with subsection (1), the person is discharged from liability to the extent of that payment.

Notice filed in land titles office or Personal Property Registry

151.2(1) In the circumstances referred to in section 151(2), the Director may register in the appropriate land titles office or in the Personal Property Registry a notice that an order has been issued that may affect property belonging to the investigated person referred to in the notice.

(2) A notice registered in accordance with subsection (1) has the same effect as a certificate of *lis pendens* registered under the *Land Titles Act* or a statutory charge registered under the *Personal Property Security Act* except that the Director may in writing amend or revoke the notice.

Application to Court respecting order or notice

151.3(1) The following persons may apply to the Court of Queen's Bench for an order varying or cancelling a property freeze order under section 151 or a notice registered under section 151.2:

- (a) a person to whom the order is directed;
- (b) an investigated person who is named in the order;
- (c) a person who has an interest in property in respect of which a notice has been registered under section 151.2(1);
- (d) a person other than one referred to in clauses (a) to (c) who is otherwise affected by the property freeze order.

(2) On an application under subsection (1), the Court may vary or cancel a property freeze order or a registered notice on any terms or conditions the Court considers just if the Court finds that

- (a) all or a part of the order or notice is not required for the protection of persons who are dealing with the investigated person named in the order, or

- (b) affected persons are unduly prejudiced by the order or notice.

(3) In an application under this section, the Court must give greater weight to the protection of persons who are dealing with the investigated person than to the carrying on of the activities of the investigated person.

54 Section 157 is amended

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

Director's order

157(1) If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (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, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,

the Director may issue an order directed to the person or publisher.

- (b) **in subsection (2) by striking out “direct the person” and substituting “direct the person or publisher”;**
- (c) **in subsection (3) by striking out “A person” and substituting “A person or publisher”.**

55 The following is added after section 157:

Public record

157.1(1) The Director must maintain a public record of undertakings, Director's orders, court orders and injunctions and any other prescribed document or information.

(2) The Director may prescribe the form of the public record referred to in subsection (1) and which documents must or may be included.

56 The following is added after section 159:

Director's claim for restitution

159.1 If the Court of Queen's Bench has granted an order under section 159 that provides for restitution of property or money to a person or persons who have suffered loss arising from a contravention of this Act or the regulations, the Director may, on behalf of the person or persons, do anything necessary to enforce the order against the personal or real property of the person who is liable to pay the restitution.

57 Section 161 is amended

- (a) in clause (a) by striking out "7" and substituting "6";
- (b) in clause (c) by striking out " , 45, 46(1), (3), (4), (6) and (7), 48(2) and (3)," and substituting "and";
- (c) by adding the following after clause (c):
 - (c.1) in Part 6, section 53(2);
- (d) in clause (h) by striking out "113, 114(1), 115(1), 116(1)," and substituting "114(1)";
- (e) in clause (i) by striking out "122,";
- (f) in clause (j) by adding "126(3)," after "sections".

58 Section 163 is amended

- (a) by repealing clause (a) and substituting the following:

- (a) fails to comply with an order of the Director under section 129, 151(3) or 157, unless the order has been stayed,

(b) by repealing clause (b).

59 Section 165 is repealed and the following is substituted:

Corporations, partnerships and sole proprietorships

165(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 who assented to, acquiesced in 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) When a partner in a partnership or an owner of a sole proprietorship commits an offence under this Act or the regulations, each partner in the partnership and each manager, employee or agent of the partner or owner who authorized the act or omission that constitutes the offence or who assented to, acquiesced in or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the partner or owner has been prosecuted for the offence.

60 Section 168(1) is amended by striking out “to a maximum of \$100 000”.

61 The following is added after section 169:

Evidence

169.1(1) The Director may administer oaths for the purposes of this Act.

(2) The Director may, by order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the Director considers requisite to the full investigation and

consideration of matters within the Director's jurisdiction in the same manner as a court of record may in civil cases.

(3) The Director

- (a) may accept any oral or written evidence that the Director considers proper, whether or not it would be admissible in a court of law, and
- (b) is not bound by the law of evidence applicable to judicial proceedings.

62 Section 176(1)(b) is amended by striking out "115,".

63 Section 179 is amended

- (a) in subsection (2) by striking out "subsection (2)" and substituting "subsection (1)";**
- (b) in subsection (7) by striking out "pay" and substituting "set the rates of remuneration for and provide for the payment of";**
- (c) by adding the following after subsection (7):**
 - (8) An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.**

64 The following is added after section 182:

Protection from liability

182.1 No action or other proceeding for damages may be commenced against an appeal board, a member or employee of the appeal board or a person appointed or engaged to perform a duty or exercise a power for the appeal board

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act or the regulations, or

- (b) for any neglect or default in the performance of the duty or exercise of the power in good faith.

65 Section 183 is amended by adding the following after clause (b):

- (b.1) establishing additional grounds for appeals to the appeal board;

66 This Act comes into force on Proclamation.

Explanatory Notes

1 Amends chapter F-2 of the Revised Statutes of Alberta 2000.

2 Section 1(1) presently reads in part:

1(1) In this Act,

- (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;*
- (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*

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- (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;*

3 Application of Act.

4 Regulations.

5 Section 6(2) to (4) set out what constitute unfair practices on the part of a supplier.

6 Remedies for unfair practices.

7 Section 12 presently reads:

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.*

8 Section 13(1) presently reads:

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.

9 Section 17 presently reads in part:

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.*

10 Section 22 presently reads:

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.

11 Section 24 presently reads in part:

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, auction, 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);

12 Section 25(2) presently reads:

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

13 Section 29(6) presently reads:

(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.

14 Section 35(j) presently reads:

35 A written direct sales contract must include

- (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;*

15 Corrects reference consequential to a previous amendment.

16 Section 37(1) presently reads:

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.

17 Section 42(1) presently reads:

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.

18 Section 43 presently reads in part:

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 or adult interdependent partner’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;*
- (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, or*
- (ii) *is designated by the regulations.*

19 Section 44 presently reads:

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 or territory, 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.

20 Section 45 presently reads in part:

(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 the information was obtained from a source outside 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) unfavourable information about a debt if more than 6 years has elapsed since the date of the last payment on that debt or, where no payment has been made on that debt, if more than 6 years has elapsed since the date the debt was incurred;
- (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, provincial or territorial 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.*

21 Section 46 presently reads:

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 this 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.*

22 Section 47 presently reads:

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.

23 Section 48 presently reads:

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 after 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.

24 Additional regulation-making powers.

25 Section 52 presently reads in part:

52 In this Part,

(a) "lending institution" means a person who lends money in the ordinary course of the person's business or operations;

26 Section 53 presently reads:

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.

27 Section 54 presently reads:

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.

28 Section 58 presently reads in part:

58 In this Part,

(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;

29 Section 63(1) presently reads in part:

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

30 Section 70 presently reads:

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 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 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.

31 Notification of interest rate changes.

32 Section 101(1)(a) presently reads:

101(1) The Minister may make regulations

- (a) *respecting the criteria in determining what constitutes an index rate;*

33 Section 104(2) presently reads:

(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.

34 Section 109 presently reads:

109 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 an individual 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.*

35 Section 111 presently reads in part:

111(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.

(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.

36 Section 113 presently reads:

113 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.

37 Sections 115 and 116 presently read:

115(1) A collection agency must

- (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.*

(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.

116(1) No collection agency or collector may

- (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 adult interdependent partner 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 or adult interdependent partner, 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*

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*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.*

38 Section 118 presently reads in part:

118 The Minister may make regulations

- (b) *specifying activities that constitute engaging in the business of a collection agency for the purposes of this Act;*
- (c) *respecting receipts under section 113;*
- (d) *governing reports under section 116(1)(g);*

39 Section 119 presently reads in part:

119 In this Part,

- (a) *“auction sales business” means an individual, partnership or corporation that engages in any activity referred to in section 121(1)(a) to (c) or the regulations under section 124(b);*

40 Section 121 presently reads in part:

121(1) No person may

- (a) *engage in the business of holding sales by public auction,*

41 Section 122 presently reads:

122(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) The auctioneer’s duty to read the conditions of sale or to cause them to be read at a sale by public auction under subsection (1) does not arise if all of the bidders at the sale are regular bidders at public auctions of the auction sales business that is holding the sale.

(3) 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.*

(4) 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.

(5) Subsection (4) does not apply to statements, announcements or any form or manner of salesmanship in respect of personal property that is used or ordinarily used primarily for personal, family or household purposes.

(6) Part 2 applies to statements, announcements or any form or manner of salesmanship referred to in subsection (4) in respect of

personal property that is used or ordinarily used primarily for personal, family or household purposes.

42 Additional regulation-making powers.

43 Section 126(1) presently reads in part:

126(1) A person who wishes to be licensed or to have a licence renewed under this Act must submit to the Director

(a) an application on a form established by the Director,

(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.

44 Additional ground on which the Director may refuse to issue or renew or may cancel or suspend a licence.

45 Suspension of licence.

46 Section 132(1) presently reads:

132(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.*

47 Section 134 presently reads:

134(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.

48 Prohibiting any action or proceeding for damages for acts or performance of duties done in good faith.

49 Section 139 presently reads in part:

139 The Minister may make regulations

- (a) *establishing different classes of licences;*
- (f) *respecting conditions and requirements that must be met before a licence is issued or renewed;*

50 Section 146 presently reads in part:

146(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

(c) requiring a regulated person or an employee or agent of a regulated person to co-operate with the inspection on any terms that the Court considers appropriate.

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

51 Section 148 presently reads in part:

148(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

(c) requiring a person to co-operate with the investigation on any terms that the Court considers appropriate.

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

52 Disclosing default in payment of fines.

53 Section 151 presently reads:

151(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*

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(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 Canada Business Corporations Act (Canada), the Judicature Act, the Personal Property Security Act, the Companies Act, the Business Corporations Act, the Cooperatives 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.

54 Section 157 presently reads:

157(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 179.*

55 Provides for public access to details of undertakings and orders under the Act.

56 Director's claim for restitution.

57 Section 161 presently reads in part:

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

- (a) *in Part 2, sections 7, 9, 10, 11, 23;*
- (c) *in Part 5, sections 44(1) and (2), 45, 46(1), (3), (4), (6) and (7), 48(2) and (3), 49;*
- (h) *in Part 11, sections 111, 113, 114(1), 115(1), 116(1), 117;*
- (i) *in Part 12, sections 120(2) and (3), 121, 122, 123;*
- (j) *in Part 13, sections 132, 133, 134;*

58 Section 163 presently reads in part:

163 Any person who

- (a) *fails to comply with an order of the Director under section 115, 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,*
- (b) *fails to comply with a direction of the Director under section 151(5),*

59 Section 165 presently reads:

165(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.

60 Section 168(1) presently reads:

168(1) A justice who 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 an aggrieved person an amount as restitution to a maximum of \$100 000 for loss of or damage to property suffered by the aggrieved person as a result of the commission of the offence where the amount is readily ascertainable.

61 Evidence.

62 Section 176(1) presently reads in part:

176(1) The Director may require a person who

(b) is the subject of an order of the Director under section 115, 129 or 157, or

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.

63 Section 179 presently reads in part:

(2) The Minister must, within 30 days after 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).

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

64 Protection from liability.

65 Additional regulation-making powers.

66 Coming into force.

Explanatory Notes