

No. 58.

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FOURTH SESSION, SIXTH LEGISLATURE, ALBERTA  
20 GEORGE V, 1930

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## **BILL**

**An Act for the Prevention of Fraud in connection with the Sale of Securities**

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HON. MR. LYMBURN

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# BILL

No. 58 of 1930.

## An Act for the Prevention of Fraud in connection with the Sale of Securities.

(Assented to \_\_\_\_\_, 1930.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:—

- |                |  |
|----------------|--|
| Short title    | <b>1.</b> This Act may be cited as <i>The Security Frauds Prevention Act, 1930.</i>  |
| Interpretation | <b>2.</b> In this Act—   |
| “Broker”       | (a) “Broker” shall mean every person other than a salesman who engages either for the whole or part of his time directly or through an agent in the business of trading in securities and shall include <b>a company, and</b> such officials of a company or partnership which trades in securities as may be designated by the Regulations, <b>and shall include a security issuer except where the context clearly indicates the contrary.</b>   |
| “Company”      | (b) “Company” <b>means</b> any incorporated corporation, <b>association</b> or other organization.   |
| “Fraud”        | (c) “Fraud,” “fraudulent” and “fraudulent act” shall, in addition to their ordinary meaning, include: <ul style="list-style-type: none"> <li>(i) any intentional misrepresentation by word, conduct or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;</li> <li>(ii) any promise or representation as to the future which is beyond reasonable expectation and not made in good faith;</li> <li>(iii) any fictitious or pretended trade in any security;</li> </ul> |

EXPLANATORY NOTE.

The Act is re-enacted for greater convenience, so that the proper effect of the amendments may be more readily understood. The amendments are indicated in blacker type than the body of the Bill.

Section 2 (*a*). The definition is extended to include a company in order to save repetition later on, and to exclude companies, syndicates, etc., which issue only their own stock, units, etc. Former reference to a trustee capacity is deleted.

Section 2 (*b*). Rearranged for greater clarity.

- (iv) the gaining or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or **gross** profit so large and exorbitant as to be unconscionable and unreasonable;
  - (v) any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser **or the vendor** of any security as to the nature of any transaction or as to the value of such security;
  - (vi) the making of any material false statement in any application, information, material or evidence submitted or given to the Attorney-General, his representative or the Registrar under the provisions of this Act or the Regulations; or in any prospectus or return filed with the Provincial Secretary;
  - (vii) the violation of any provision of this Act or of the Regulations relating to trading in securities;
  - (viii) **generally** any artifice, agreement, device or scheme **course of conduct or business** to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law **and** anything specifically designated in the Regulations as coming within the meaning of this definition;
- "Person" (d) "Person" shall mean an individual, partnership, association, syndicate and any unincorporated organization.
- "Registrar" (e) "Registrar" shall mean the person appointed by the Lieutenant-Governor in Council to act as Registrar under the provisions of this Act and the Regulations.
- "Regulations" (f) "Regulations" shall mean the regulations made from time to time by the Lieutenant-Governor in Council under the provisions of this Act.
- "Salesman" (g) "Salesman" shall mean every person employed, appointed or authorized by any broker or company to trade in securities whether directly or through sub-agents.

Section 2 (c) (iv). The words "gross profit" prevent any argument as to whether "net profit" might have been meant.

Section 2 (c) (v). Amended to include deceit of one who has a security to exchange for what may prove to be one of less value.

Section 2 (c) (vii). More concisely worded.

Section 2 (c) (viii). Rearranged with the addition of the power to add further definitions.

Section 2 (d). Reference to a trustee capacity is deleted.

- “Security”** (h) **“Security” shall include,**
- (a) **any document, instrument or writing commonly known as a security, or**
  - (b) **any document constituting evidence of title to or interests in the capital, assets, property, profits, earnings or royalties of any person or company; or**
  - (c) **any document constituting evidence of an interest in an association of legatees or heirs, or**
  - (d) **any document constituting evidence of an interest in any option given upon a security, or**
  - (e) **any document designated as a security by the regulations.**
- “Security issuer”** (i) **“Security issuer” shall include a company or person, other than an individual, trading in securities of its own issue and not trading generally in other securities.**
- “Trade”** (j) **“Trade” or “Trading” shall include any solicitation or obtaining of a subscription to, disposition of, transaction in, or attempt to deal in, sell or dispose of a security or interest in or option upon a security for any valuable consideration whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, and any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing or specifically designated as “trade” or “trading” in the Regulations.**

## PART I.

### REGISTRATION OF BROKERS AND SALESMEN

#### 3.—(1) No person shall,—

- Brokers, officials and salesmen to register** (a) **trade in any security unless he is registered as a broker or salesman of a registered broker, or**

Section 2 (h). The definition is merely rearranged.

Section 2 (i). A new definition to distinguish the company selling its own stock from the general broker.

Section 2 (j). Amended to cover the solicitations of subscriptions to capital stock, to overcome any possible restriction upon the scope of the definition.

*Note.*—A former definition of “trustee” is deleted as superfluous.

Section 3 (1). Amended to make it clear that salesman can only do business while employed by a registered broker, and not after dismissal, etc., until they have been employed by another registered broker.

- (b) act as an official of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he or the partnership or company is registered as a broker,
- (c) act as a salesman of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he is registered as a salesman **of a partnership or company which is registered as a broker,**

and such registrations have been made in accordance with the provisions of this Act and the Regulations, and any violation of this section shall constitute an offence.

Partnership  
or company  
may be  
registered

(2) With the approval of the Attorney-General, any partnership or company may be registered as a broker, whereupon the partnership or company may trade in securities, and the members and officials of the partnership, and the officials of the company other than branch managers or salesmen of the partnership or company, may act as such without separate registration, and the provisions of this Act, and of the Regulations relating to registered persons or companies, shall be deemed to apply to such partnership or company.

Exemptions

(3) **Registration shall not be required in respect of any of the following classes of trades or securities,—**

Judicial  
sales

(a) A trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorized trustee or assignee, an interim or official receiver or a custodian under *The Bankruptcy Act*, a receiver under *The Judicature Act*, or a liquidator under *The Companies Act, 1929*, or *The Winding-Up Act of the Dominion of Canada*.

Isolated  
transactions  
by owner

(b) An isolated trade in a specific security by or on behalf of the owner, for the owner's account, where such trade is not made in the course of continued and successive transactions of a like character, **nor by a person whose usual business is trading in securities.**

Banks, etc.,  
Crown,  
municipal  
and public  
officials, and  
registered  
persons, etc.

(c) A trade where one of the parties is a bank, loan company, trust company or insurance company, or is an official or employee, in the performance of his



Section 3 (3). Phraseology slightly changed.

Section 3 (3) (b). Amended to cover cases that have arisen of  
salesmen who have been refused registration trying to evade the Act.

duties as such, of His Majesty in right of the Dominion or any province or territory of Canada or of any municipal corporation, or public board or commission in Canada or is registered as a broker under the provisions of this Act.

- |   |  |
|---|--|
| Sale by<br>pledge for<br>debt                       | (d) A trade by or for the account of a pledgee or mortgagee for the purpose of liquidating a <i>bona fide</i> debt by selling or offering for sale or delivery in good faith in the ordinary course of business a security pledged in good faith as security for such debt.  |
| Stock<br>dividends,<br>etc.                         | (e) The distribution, issuance or sale by a company exclusively to the holders of its securities of capital stock, bonds or other securities as a stock dividend or other distribution out of earnings or surplus, or in the process of a <i>bona fide</i> reorganization of the company, or of additional capital stock where no commission or other remuneration is paid or given in connection therewith. |
| Exchange<br>on merger                               | (f) The exchange by or on account of one company with another company of its own securities in connection with a consolidation, amalgamation or merger of either company.  |
| Prospector's<br>"grubstake"<br>or share in<br>claim | (g) A trade in good faith by an actual prospector of a security issued by him for the purpose of financing a prospecting expedition, or for the purpose of disposing of any of his interest in a mining claim or property staked by or wholly or partly owned by him.  |
| Trust   | (h) Securities in which trust funds may lawfully be invested in Alberta.   |
| Secured<br>bonds                                    | (i) <b>Securities</b> secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the <b>securities</b> secured thereby or where <b>all of the securities secured thereby</b> are sold at the one time.   |
| Negotiable<br>paper                                 | (j) Negotiable promissory notes or commercial paper maturing not more than a year from the date of issue.  |
| Securities<br>based upon<br>conditional<br>sales    | (k) Securities evidencing indebtedness due under any contract made pursuant to the provisions of any statute of any province of Canada providing for the   |

Section 3 (3) (i). Slight amendment to supersede a similar regulation.

acquisition of personal property under conditional sale contracts.

Shares of non-profit-sharing companies

- (l) Securities issued by a person or company organized exclusively for educational, benevolent, fraternal, charitable, or recreational purposes and not for pecuniary profit, where no part of the net earnings thereof enure to the benefit of any security holder.

Trades or securities exempted by Regulations

- (m) Any class of trade or security specifically exempted from the application of subsections 1 and 2 of this section by the Regulations.

Registration within ten days unless Attorney-General objects

4.—(1) Unless the Attorney-General otherwise directs the Registrar may after the receipt by him of any application for registration cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called the "Register," the name and address for service of such applicant, whereupon such applicant shall be deemed to be registered as a broker or salesman as the case may be.

Temporary registration

(2) The Registrar may cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Attorney-General.

Expiration, change and renewal of registration

(3) Registrations shall expire, and may be changed or renewed as the Regulations shall provide.

Application to be upon forms with proper fees and bonds

5.—(1) Every application under this Act or the Regulations shall be made in writing upon the forms provided by the Registrar, and shall be accompanied by the fee prescribed by the Regulations and such bond as may be required.

Address for service

(2) Every applicant, whether domiciled in Alberta or not, shall state in every application an address for service in Alberta, and all notices under this Act or the Regulations and all legal process issued by or on behalf of any person or company shall be sufficiently served for all purposes if posted by registered mail to the applicant at the latest address for service so stated, and in the case of a non-registered company where the officials are registered to the latest address of the person registered as the senior official of such company in Alberta.

Further information

(3) The Registrar may from time to time and shall when so directed by the Attorney-General require any further information or material to be submitted by any applicant or any registered person or company within a specified time limit and may require verification by affidavit or otherwise of any matter then or previously submitted.

Section 4 (1). Words "within ten days" after "may" in line 2, deleted to conform to practice.

Section 4 (2). The requirement of a special direction for a "temporary registration" is dispensed with to conform to practice.

\$500 bond  
by every  
broker and  
applicant

**6.—(1)** Every applicant for registration as a broker shall before registration submit a bond by the applicant or the person or company he represents as the Registrar may require, such bond to be in the sum of \$500 and in such form and upon such condition as the Regulations shall prescribe.

Bond by  
a surety  
company if  
required

(2) The Registrar may and when so directed by the Attorney-General shall require any applicant or any registered person or company within a specified time limit to deliver a bond by a surety company approved by the Attorney-General or any other bond in such form and upon such condition as the Regulations shall prescribe, and in such amount as the Regulations or the Attorney-General shall require.

New bond

(3) The Registrar may and when so directed by the Attorney-General shall require a new bond of the kind mentioned in subsections 1 or 2 to be filed within a specified time limit.

Forfeiture  
of bonds

**7.—(1)** Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of the Province of Alberta when there has been filed with the Registrar the Attorney-General's certificate that the **broker** in respect of whose conduct the bond is conditioned, or any official of **the broker** has, in connection with a trade in a security, been—

\$500 bond

(a) in the case of the bond mentioned in subsection 1 of section 6,

(i) charged with any criminal offence, or,

(ii) found upon investigation by the Attorney-General or his representative to have committed a fraudulent act, or

Bond  
by surety  
company

(b) in the case of the bond mentioned in subsection 2 of section 6,

(i) convicted of a criminal offence, or

(ii) convicted of an offence against any provision of this Act or the Regulations, or

(iii) enjoined by the Supreme Court or a Judge thereof otherwise than by an interim injunction.

(iv) **a party to civil proceedings in the courts as a result of which final judgment has been**

Section 7 (1). Deletion of words "employee or salesman" after "official" in line 7, removes a somewhat unreasonable responsibility from the surety companies.

"Broker" replaces "person or company."

Section 7 (1) (b) (iv). This makes the surety bond available to a judgment creditor who has obtained judgment from a broker who has defrauded him.

given against such person, company or official in connection with a trade in a security where such judgment is based upon a finding of fraud.

Forfeiture upon bankruptcy or winding up proceedings

(2) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of the Province of Alberta when there has been filed with the Registrar a certificate signed by the Attorney-General that proceedings by or in respect of the broker or salesman in respect of whose conduct the bond is conditioned have been taken under *The Bankruptcy Act*, or by way of winding up.

Assignment of bond or payment of moneys to creditors

(3) The Attorney-General may assign any bond forfeited under the provisions of subsections 1 or 2, or may pay over any moneys recovered thereunder to any person, or to the accountant of the Supreme Court in trust for such persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company, as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in the Regulations or in any special order of the Lieutenant-Governor in Council.

Attorney General's orders concerning applications

8.—(1) The Attorney-General may order that,—

(a) any application for registration, renewal, or change of registration shall or shall not be granted for any reason which he may deem sufficient, or that

Deceptive names

(b) the application of any person for registration shall not be granted where it appears that such person proposes to use or is using a trading name other than his own, or that of his partner, where such trading name is apt to lead the public to believe it is that of a business firm of longer established standing in Alberta, or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable, or that

Temporary entries

(c) any temporary entry in the register shall be made, suspended or cancelled for any reason which he may deem sufficient, or that

Registration reduced or cancelled

(d) any registration shall be reduced to a temporary registration or suspended or cancelled upon,—



Section 8 (1) (d). Extension of the power to reduce registration  
to temporary registration.  
"Broker" replaces "person or company."

- (i) any proceedings being taken by or in respect of the broker under *The Bankruptcy Act* or by way of winding up, or
- (ii) suspension from any stock exchange of any broker or any representative upon any stock exchange of any broker, or
- (iii) institution of criminal proceedings against the broker or any official of the broker, or
- (iv) conviction of the broker or an official of the broker of an offence against this Act or the Regulations.

Suspension  
or cancel-  
lation for  
default

- (e) the registration of any **broker or salesman** shall be suspended for any period or cancelled by reason of default in filing a bond when required under the provisions of subsections 2 and 3 of section 6, or that

Suspension  
under Part  
II.

- (f) the registration of any **broker or salesman** shall be suspended as provided in section 10,

and no order of the Attorney-General shall be subject to review in any way in any court.

Entry of  
suspension  
or cancel-  
lation

(2) The Registrar upon receiving any order of the Attorney-General suspending or cancelling any registration shall cause immediate entry thereof to be made in the register whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the **broker or salesman** concerned.

Further  
applications

(3) Notwithstanding any order of the Attorney-General a further application may be made upon new or other material, or where it is clear that material circumstances have changed.

## PART II.

### INVESTIGATION AND ACTION BY THE ATTORNEY-GENERAL.

Investi-  
gation by  
Attorney  
General

**9** —(1) The Attorney-General, or any person or **persons** to whom as his representative or **representatives** he may in writing delegate such authority, may examine any person, **company, property** or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or of the Regulations has

Section 8 (1) (e), (f); Section 8 (2). "Broker or salesman" replaces "person or company."

Section 9 (1). The meaning of the section, enabling the Attorney General to examine any person "at any time" is clarified, and the question of privilege, which was misunderstood by the trial judge in a recent case is set forth better. The Act takes away the common law privilege of objecting to produce documents on the ground that they might incriminate, as this was untouched by *The Evidence Act*. The right to object under that Act is retained, and only interfered with in section 11 (3).

been, is being, or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Supreme Court or a Judge thereof for the trial of civil cases, **save that the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses shall not apply and save further that no person shall be entitled to claim any privilege in respect of any document, record or thing asked for, given or produced on the ground that he might be incriminated or exposed to a penalty or to civil litigation thereby and no evidence given shall be privileged except under *The Alberta Evidence Act* and *The Canada Evidence Act*, and save further that no provisions of *The Alberta Evidence Act* shall exempt any bank or any officer or employee thereof from the operation of this section.**

Appoint-  
ment of  
accountants  
and other  
experts

(2) When the Attorney-General, or his representative, is about to examine or is examining any person or company under this section the Attorney-General may appoint an accountant or other expert to examine documents, records, properties and matters and report thereon to him.

Failure to  
give infor-  
mation, etc.,  
an offence  
and also  
*prima facie*  
evidence

(3) The failure without reasonable excuse of any person or company to furnish information required by the Registrar under Part I within the time limited, or the failure without reasonable excuse of any person summoned for examination under subsection 1 to appear or his refusal to give evidence or to answer any question, or the failure without reasonable excuse or refusal of any person or company to produce anything where the evidence, answer or production would be required in an action shall constitute an offence and shall also be *prima facie* evidence upon which,—

- (a) the Attorney-General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it relevant, or
- (b) the Supreme Court, or a Judge thereof, may grant an interim or permanent injunction, or
- (c) a police magistrate may base a conviction for an offence against this Act or the Regulations.

Evidence  
not to be  
disclosed

(4) Disclosure by any person other than the Attorney-General, his representative or the Registrar, without the consent of any one of them, of any information or evidence

To remove any doubt as to whether or not a bank is exempt from examination, it is expressly provided that *The Alberta Evidence Act* shall not affect the operation of the section.

Section 9 (2). This is to enable the appointment of expert accountants, engineers, etc., to investigate.

obtained or the name of any witness examined or sought to be examined under subsection 1 shall constitute an offence.

Attorney  
General  
may

**10.** If the Attorney-General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the Regulations, has been, is being, or is about to be committed, the Attorney-General

suspend for  
over ten  
days

(a) may where a registered broker, company or salesman is in his opinion concerned therein, order that the broker, company or salesman and any other registered broker, company or salesman connected with the same organization, be suspended from registration for any period not exceeding ten days, or

and proceed  
by injunction

(b) may where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 11, or, otherwise under this Act or the Regulations, or

Notice of  
fraud

(c) may give notice of the fraudulent act to the public by advertisement or otherwise or to any individual by letter or otherwise, whenever he deems it advisable.

Supreme  
Court or  
Judge may  
enjoin from  
trading in  
securities

**11.—(1)** The Supreme Court or any judge thereof is hereby empowered upon the application of the Attorney-General, where it is made to appear upon the material filed or evidence adduced that any fraudulent act, or any offence against this Act or the Regulations has been, is being or is about to be committed may by order enjoin,—

(a) any registered broker, company or salesman or any person or company implicated with any of them in the same matter from trading in any security whatever absolutely or for such period of time as shall seem just, and any such injunction shall *ipso facto* suspend the registration of any registered person or company named in the order during the same period, or

(b) any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts absolutely or for such period of time as shall seem just.

Application  
may be  
*ex parte*

(2) The application of the Attorney-General under subsection 1 may be made without any action being instituted, either,—

(a) by an *ex parte* motion for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause (b) hereof is sooner heard and determined. or

or by  
originating  
notice

(b) by an originating notice of motion, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction.

Evidence

(3) Any information, evidence, exhibit or thing obtained by the Attorney-General or his representative or the Registrar under the provisions of this Act or the Regulations, or copies thereof, **or statement that a person or company is or is not registered or other data concerning registration** certified by the Attorney-General or the Registrar **without proof of the office or signature of the person certifying**, shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution and, in proceedings under this section only, the evidence of a witness may be used against him notwithstanding anything in *The Alberta Evidence Act* contained.

Attorney-  
General  
may order  
funds, etc.,  
to be held

**12** —(1) The Attorney-General may,—

(a) when he is about to examine or during or after the examination of any person or company under the provisions of section 9, or

(b) when he is about to apply for or has applied for or has obtained an injunction interim or otherwise against any person or company under the provisions of section 11, or

(c) where criminal proceedings which in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the accused are about to be or have been instituted against any person,

in writing or by telegram direct any person or company having in Alberta on deposit or under control or for safe keeping any funds or securities of the person or company so to be or actually examined, enjoined or charged, to hold such funds or securities **or direct the person or company**

Section 11 (3). The Registrar is enabled to certify as to registration without having to attend and give evidence.

Section 12 (1). The power to hold funds and securities is extended somewhat.



so to be or actually examined, enjoined or charged to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safe keeping, or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the provisions of *The Bankruptcy Act*, *The Judicature Act*, *The Companies Act, 1929*, or *The Winding-Up Act of the Dominion of Canada*, or until the Attorney-General in writing revokes such direction or consents to release any particular fund or security from such direction, and failure without reasonable excuse by any person or company to comply with any such direction shall constitute an offence, provided that no such direction shall apply to funds or securities in a stock exchange clearing house nor to securities in process of transfer by a transfer agent unless such direction expressly so states, and in the case of a bank, loan or trust company the direction shall only apply to the offices, branches or agencies thereof named in the direction.

Proviso

(2) Any person or company in receipt of a direction given under subsection 1, if in doubt as to the application of such direction to any funds or security, or in case of a claim being made thereto by any person or company not named in such direction, may apply to the Supreme Court or a judge thereof who may direct the disposition of such fund or security and may make such order as to costs as may seem just.

Application for direction

(3) In any of the circumstances mentioned in clauses (a), (b), or (c) of subsection 1, the Attorney-General may in writing or by telegram notify any Registrar of Land Titles or other proper officer that proceedings are being or are about to be taken which may affect land belonging to the person or company referred to in the said notice which notice shall be registered against the lands mentioned therein and shall have the same effect as the registration of a certificate of *lis pendens*, save that the Attorney-General may in writing revoke or modify such notice.

Notice to Registrars, etc.

(4) The Attorney-General, whenever His Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of sections 6 and 7, may take such proceedings as he shall see fit under *The Bankruptcy Act*, *The Judicature Act*, *The Companies Act, 1929*, or *The Winding-Up Act of the Dominion of Canada* for the appointment of an interim receiver, custodian, trustee, receiver or liquidator as the case may be.

and may take bankruptcy proceedings, etc.

## PART III.

## Audit, Accounts, Information.

- Interpretation
- 13.—(1) In this Part:**
- “Brokers’ Auditor” (a) “Brokers’ Auditor” shall mean an accountant whose name is on the panel of accountants approved by an executive committee.
- “Exchange Auditor” (b) “Exchange Auditor” shall mean an accountant who shall have practiced as such in the Province for not less than ten years and who is employed by the executive committee.
- “Executive Committee” (c) “Executive Committee” shall include the board of directors, managing committee or other governing committee of a stock exchange in Alberta.
- Panel of brokers’ auditors (2) Every executive committee shall from time to time select a panel of accountants each of whom shall have practised as such in Alberta for not less than five years and shall be known as a brokers’ auditor, and shall also employ an exchange auditor.
- Exchange auditor
- Allotment of audits (3) The executive committee shall allot to each brokers’ auditor the persons or companies, whether members of or represented upon the exchange, which are to be audited by him, and all of the expenses of every audit are to be paid to the brokers’ auditor by the executive committee, subject to full repayment forthwith by the person or company audited, and until such repayment is made the executive committee shall have a lien upon the seat belonging to or controlled by the person or company so indebted to the executive committee.
- Duties of auditor (4) Every brokers’ auditor shall in each year audit the assets and liabilities as at a permanent date in each year fixed by the executive committee and prepare a balance sheet showing the position as at such date of the business and affairs of each person or company allotted to him, and shall also in each year make a like audit and prepare a like balance sheet as of a date designated by the executive committee, such last mentioned date to be not earlier than four months nor later than eight months from the permanent date in such year, and shall also make such further audit and prepare such further statements and make such further reports as such auditor may think advisable or as the executive committee may direct; no warning or notice shall in any way be given of any audit, other than that of the permanent date.

Section 13 (2). As the principal exchanges have put this audit into effect, it is well to force the smaller ones to comply.

Section 13 (4). One audit will be at a fixed date in order to let it be used as the end of a fiscal year, for purposes of income tax, etc. The other audit will be at random.

Special  
audit

(5) The executive committee of a stock exchange may at any time require any brokers' auditor upon the panel of accountants of the exchange to make any general or special audit or report upon the whole or any aspect of the business or affairs of any person or company who is or has been a member of or in any way represented upon the exchange.

Powers of  
auditors

(6) Every brokers' auditor, for the purpose of any audit under the provisions of this section shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company being audited, and any person or company withholding, destroying, concealing or refusing to give any information or thing reasonably required by the auditor for the purpose of his audit, shall be guilty of an offence.

Auditors'  
reports

(7) Every brokers' auditor during or upon the completion of every statement and audit under the provisions of this section shall send a copy of every report whether interim or final to the exchange auditor and shall in addition specially report to such auditor any particular information which may be required under the by-laws, rules or regulations of the exchange and any further information which the brokers' auditor deems it to be in the public interest so to report, and the exchange auditor shall summarize all information so received, and report thereon to the executive committee for scrutiny, identifying the person or company affected thereby by number only until the executive committee decides to take action in respect of any such person or company, or until the exchange auditor thinks it advisable in the public interest or in the interests of the exchange to disclose such name to the executive committee.

Power to  
examine

(8) Any person designated in writing by an executive committee may examine under oath any member of the exchange or any officer of any company represented thereon, or any associate or employee of any such person or company upon any matter arising out of any report of a brokers' auditor and for the purposes of such inquiry the person so designated shall have all the powers which a representative of the Attorney-General may exercise under section 9 hereof.

Change of  
accounting  
system

(9) Any executive committee may in writing, require any person or company whose affairs have been audited or are being audited to alter, supplement or replace any system of book or record keeping in any manner and to comply with any recommendation made by the exchange auditor, and any requirement of such executive committee.

Section 13 (9). Gives the exchanges absolute power to enforce the recommendations of the exchange auditor.

Failure to comply

(10) Failure by any person or company, a member of or represented upon any stock exchange, to comply with any requirement of the executive committee of the exchange, or any person designated by it under subsection 8 hereof, shall constitute an offence and shall entitle the executive committee to suspend such person or member representing such company for such period as the said committee shall determine.

No action against auditors, etc.

(11) No action shall lie against any stock exchange, executive committee or any member thereof, or any person designated by it under subsection 8 hereof, or against any brokers' or exchange auditor in respect of any act or proceeding, under the provisions of this section.

PART IV.

Regulation of Trading

Selling against customers' buying orders

14.—(1) Whenever a person, or a member or employee of a partnership, or a director, officer or employee of a corporation, while he, or the partnership or corporation is employed as a broker by any customer to buy and carry upon margin any securities of any incorporated or unincorporated company or undertaking either in Canada or elsewhere, thereafter sells or causes to be sold, securities of the same company or undertaking for any account in which

- (a) he, or
- (b) his firm or a partner thereof, or
- (c) the corporation or a director thereof,

has a direct or indirect interest, if the effect of such sale shall otherwise than unintentionally be to reduce the amount of such securities in the hands of the broker or under his control in the ordinary course of business below the amount of such securities which he should be carrying for all customers, any such contract with a customer shall at the option of such customer be void, and the customer may recover from the broker all moneys paid with interest thereon or securities deposited in respect thereof, and the broker shall be guilty of an offence.

Customer's contract voidable

An offence

Exercise of option

(2) The customer may exercise such option by a registered letter to that effect addressed to the broker at his address for service in this Province.

Confirmation to customers

15. Every broker who has acted as an agent for a customer shall promptly send or deliver to each customer

Section 13 (11). Protects the exchanges also.

Section 14. This is directed at the practice of a broker selling for his own account against a customer's buying order, thus preventing the purchase from having any effect upon the market, and relieving the broker from carrying the stock.

The customer who has been so treated may elect to treat the contract as void, and recover whatever he paid with interest.

The act is also an offence.

Section 15. Provides more extensive information so customers can trace transactions and ascertain whether they were charged higher than the price paid by the broker.

for whom any security has been bought or sold by the broker, a written confirmation of the transaction, setting forth:

- (a) the quantity and description of the security.
- (b) the name of the person or company from or to whom the security was bought or sold.
- (c) the day, and in the case of a member of a stock exchange, the half hours between which, and the name of the stock exchange upon which the transaction took place,

and failure, without reasonable excuse, to comply herewith shall constitute an offence.

16. Every stock exchange shall keep a record showing the time at which each transaction on such exchange took place and shall supply to any customer of any member of such exchange, upon production of any written confirmation of any transaction with any such member, particulars of the time at which such transaction took place and certification or otherwise of the matters set forth in such confirmation.

## PART V.

### GENERAL PROVISIONS.

Judge  
not *persona*  
*designata*

17.—(1) A judge of the Supreme Court in exercising any of the powers conferred upon such judge by this Act shall be deemed so to act as a judge of such court and not as *persona designata*.

nor  
Attorney  
General

(2) The Attorney-General shall in all proceedings under this Act or the Regulations be deemed to be acting as the representative of His Majesty in the right of the Province of Alberta, and not as *persona designata*.

Judicature  
Act and  
Rules apply

(3) The provisions of *The Judicature Act* and so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, shall apply to every proceeding before the Supreme Court or a judge thereof under the provisions of this Act, save that service of notices and other legal process shall be in accordance with subsection 2 of section 5 and save that costs may be awarded to but not against the Attorney-General.



No action,  
etc., against  
persons ad-  
ministering  
this Act.

**18.** No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the Regulations where such person is the Attorney General or his representative, or the Registrar or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a judge thereof made under the provisions of this Act.

Regulations,  
general  
powers

**19.** The Lieutenant Governor in Council may make and from time to time amend, alter or repeal regulations not inconsistent with this Act for the better carrying out of the provisions of this Act, for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in Alberta for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in *The Alberta Gazette*.

Penalties

**20.—(1)** Every person who violates any provision of this Act or the Regulations designated as an offence, or who does any fraudulent act not punishable under the provisions of *The Criminal Code of Canada*, shall be liable upon summary conviction thereof to a penalty of not more than \$1,000 for a first offence, nor \$2,000 for a second or subsequent offence, and in case of either a first or a subsequent offence either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months.

Companies

**(2)** The provisions of subsection (1) shall be deemed to apply, *mutatis mutandis*, to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding \$25,000.

Apportion-  
ment of  
penalty on  
company  
among  
officers, etc.

**(3)** Where any company is convicted under this Act the magistrate may direct that, in default of payment of the penalty imposed, proportionate parts thereof shall be paid by such officers, directors, officials or employees of the company, and in such amounts as he shall designate, and in default of payment by any person so designated the magistrate may impose a penalty of imprisonment for a term not exceeding six months.

Consent  
of the  
Attorney  
General  
required

**(4)** No proceedings under this section shall be instituted except with the consent or under the direction of the Attorney General.

Collection of  
costs of in-  
vestigation

**21. Where in consequence of an investigation under Part II of this Act, any person or company has been—**

- (a) convicted of a criminal offence; or
- (b) convicted of an offence against any provision of this Act or the Regulations; or
- (c) enjoined by the Supreme Court or a judge thereof otherwise than by an interim injunction; or
- (d) examined and documents, records, properties or matters have been examined by an accountant or other expert appointed by the Attorney General—

the Attorney General may certify in writing as to the costs of the investigation and shall be entitled to take such proceedings as are available to a judgment creditor for the collection from such person or company of the sum set forth in such certificate, which sum shall be a debt to His Majesty in right of the Province of Alberta.

Execution  
of warrant  
issued in  
another  
province

**22.—(1) Where a police magistrate or justice of another province issues a warrant for the arrest of any person on a charge of violating any provision of *The Security Frauds Prevention Act* or any similar statute of that province, any police magistrate or justice of Alberta within whose jurisdiction that person is or is suspected to be may upon satisfactory proof of the handwriting of the police magistrate or justice who issues the warrant make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed shall be sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all police constables within the territorial jurisdiction of the police magistrate or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Alberta and to rearrest such person anywhere in Alberta.**

Prisoner in  
transit

**(2) Any police constable of Alberta or of any other province of Canada who is passing through Alberta having in his custody a person arrested in another province under a warrant endorsed in pursuance of subsection (1) hereof shall be entitled to hold, take and rearrest the accused anywhere in Alberta under such warrant without proof of the warrant or the endorsement thereof.**

**23. *The Security Frauds Prevention Act, 1929*, is hereby repealed.**

Royal Assent

**24. This Act shall come into force on the day upon which it receives the Royal Assent.**

Section 22. This corresponds largely to section 662 of *The Criminal Code*, and will enable the Provinces to aid each other in capturing undesirables accused of offences against this Act.

No. 58.

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**BILL**

An Act for the Prevention of Fraud in  
connection with the Sale of Securities.

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*1st Reading*

*2nd Reading*

*3rd Reading*

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HON. MR. LYMBURN

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1930