

# BILL

No. 89 of 1931

An Act to amend and consolidate The Debt Adjustment Act

(Assented to \_\_\_\_\_, 1931.)

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

1. This Act may be cited as "*The Debt Adjustment Act, 1931.*"

2. In this Act, unless the context requires a contrary meaning—

- (a) "Director" means the director appointed pursuant to this Act and includes any assistant directors so appointed;
- (b) "Judge" means a judge of the Supreme Court of Alberta;
- (c) "Resident" means a person who is an actual resident of and personally *bona fide* engaged in farming operations in the Province.

3. The Lieutenant Governor in Council may from time to time—

- (a) appoint a director to have the general supervision and administration of this Act, and one or more assistant directors and such other officers, clerks and employees as may be deemed necessary;
- (b) appoint a Board of Review consisting of not more than three persons, and prescribe the terms and conditions of office of the members thereof and the times and places for meetings of such board;
- (c) prescribe rules and regulations for the due administration of this Act and as to the procedure upon any proceeding under this Act and prescribe forms and prescribe and fix a tariff of the fees to be taken or received by any person on account of service performed by him in the course of any such proceeding or in respect of any act or thing done by such person in pursuance of this Act;
- (d) prescribe the method of distribution of the proceeds of sale of property sold pursuant to any of the provisions of this Act;
- (e) protect any property seized under this Act against seizure in any other proceedings or for any other reason;

- (f) add to the property exempt from seizure under any writ of execution

Provided always that no such exemptions shall exceed the exemptions permitted by *The Exemptions Act* and a further exemption from seizure under any writ of execution or from any cause whatsoever of such part of the crop or other produce of any resident and the proceeds of sale thereof as may be required to provide necessary food and clothing for the resident and his family for a period of three months in addition to the period allowed by *The Exemptions Act*, and such extended period may be anterior or subsequent to the period mentioned in *The Exemptions Act*

4. Upon the receipt of an application in writing by or on behalf of a resident or any creditor of a resident, the director shall confer with and advise the resident or his creditor and shall endeavor to bring about an amicable arrangement for the payment of the resident's indebtedness, and for that purpose the director shall inquire into the validity of all claims made against the resident and his ability to pay his just debts, either presently or in the future, and shall endeavor to effect an agreement between the resident and his creditors to provide for the settlement of the resident's debts, either in full or by a composition, and for the purposes of any such inquiry the director shall have all the powers in that behalf which may be conferred upon a commissioner pursuant to *The Public Inquiries Act*.

5.—(1) Upon the receipt of an application in writing in Form A in the schedule to this Act, signed by a resident or by any person authorized by him for that purpose, the director may, if from inquiries made by him he is satisfied that it is in the interests of the resident and his creditors so to do, file in the office of the clerk of the Court of every judicial district and the deputy clerk of the Court of every sub-judicial district, and the Registrar of every Land Registration District, a certificate in Form B in the schedule to this Act, and shall cause a notice to be published in *The Alberta Gazette* to the effect that a certificate has been filed by him in respect of such resident in pursuance of the provisions of this Act.

(2) Every such application shall be attested and shall be accompanied by an affidavit of the attesting witness as to the execution thereof, and in case the application is signed by a person for and on behalf of the resident, by an affidavit of the person so signing that he was duly authorized by the resident for that purpose

(3) Upon the filing of the said certificate, no proceeding in the nature of an execution and no proceedings leading to the sale or foreclosure of real property, and no proceeding of any sort either in Court or extra-judicial, which may lead to the seizure or sale of the property of the resident

named in the certificate, shall be taken or continued without the leave of a judge or the requisition in writing of the director, as is hereinafter provided.

(4) Upon the receipt by the Registrar of any Land Titles Office of any such certificate, the Registrar shall, with all reasonable expedition, prepare an abstract of title as to the interest of the person named in such certificate in any land of which such person is the registered owner, and forward the same to the director, who shall thereupon send to every other person shown by such abstract to have any interest in such land a notice to the effect that a certificate has been filed pursuant to this Act.

(5) As soon as conveniently may be after the filing of any certificate, the director shall take such steps as he deems proper to acquaint the creditors of the financial position of the resident.

(6) From and after the filing of a certificate pursuant to subsection (1) hereof and so long as such certificate remains uncancelled and in force, no sale, conveyance, mortgage or dealing of any description by the resident named in such certificate with any of his personal property or with any land shall have any validity, force or effect unless made or done with the consent in writing of the director, which consent may be either general or specific.

(7) No registration clerk and no Registrar of Land Titles in whose office a certificate has been filed shall register any transfer, conveyance, mortgage, incumbrance or other instrument affecting any property of the resident unless the same is accompanied by the consent of the director or a certified copy thereof.

(8) The period during which a certificate is in force shall be excluded in the computation of the time within which an action must be commenced pursuant to the provisions of any statute in force in the Province which limits the time within which actions may be brought.

6.—(1) In any case where a certificate has been filed, a creditor of the resident named therein may apply to a judge upon notice in writing to the director for leave to proceed, and such notice shall be deemed to be served upon proof that the same was sent from a post office within the Province in a duly prepaid cover by registered mail addressed to the director or to an assistant director having an office in the judicial district in which the resident resides at least eight clear days before the date of hearing mentioned in the notice.

(2) Every such application shall be made to a judge at Calgary in the case of residents of the judicial district of Calgary, Macleod, Lethbridge, Medicine Hat, Hanna or any sub-judicial districts thereof, and at Edmonton in the case of residents of any other judicial districts or sub-judicial districts thereof.

(3) Every such application shall be heard in a summary manner and the judge in his discretion may adjourn such hearing from time to time and for such time, and receive evidence by affidavit or *sub oculo*, and he may in his discretion grant or refuse any application, having regard to the circumstances of the resident and of the applicant and of all the other creditors of the resident, and the purpose and objects of this Act, and may make any order he thinks proper for the interim preservation of the property of the resident and in particular may, as a condition of refusing any leave, impose upon the resident any terms and conditions he may deem advisable as to the sale or other disposition of any property of the resident and the application of any proceeds of sale thereof or as to the custody of all or any of the property of the resident, and in case the judge makes an order granting the application, he may either cancel the certificate or exclude from the operation of the certificate any property of the resident specified in the order, and may by that or any subsequent order give all requisite directions for the removal or sale of the whole or any part of the property of the resident which may become liable to seizure or sale in consequence of the granting of such leave or the cancellation of the certificate and for the distribution of the proceeds of sale thereof, and the provisions of *The Extra-Judicial Secures Act* shall not apply in any such case.

- (4) (a) Any person who is a mortgagee or an unpaid vendor under an agreement for the sale of land and who desires to proceed against a resident in respect of whom a certificate has been filed for the purpose of enforcing the remedies of the mortgage or unpaid vendor against the land comprised in such mortgage or agreement, as the case may be, he may at his option, instead of making application for leave to a judge, apply to the Board of Review constituted pursuant to this Act, and every such application shall be heard upon the same notice and in the same manner as is by this Act provided in the case of an application to a judge, and the board hearing such application may make any order which the judge is empowered by this Act to make and every order so made shall be final and conclusive and there shall be no appeal therefrom, and every order of the board shall be signed by the chairman of the board and shall be filed in the office of the clerk of the District Court of the Judicial district or Sub-judicial district thereof in which the resident resides, and shall have the same force and effect as if such order had been made by a judge on application to him pursuant to this Act;
- (b) In any case where an application made under this subsection has been refused, the applicant may after the expiration of six months from the date of such refusal, apply to the board to cancel or vary any previous order, in the same manner as in the case

of an original application, and thereupon the board shall have the same powers as in the case of an original application;

- (c) Every application made pursuant to this subsection shall be heard at the sittings of the board held, in the case of residents of the Judicial districts of Calgary, Macleod, Lethbridge, Medicine Hat, Hanna, or any Sub-judicial districts thereof, at Calgary, and in the case of residents in any other Judicial district or Sub-judicial district thereof, at Edmonton

7. In any case where it is made to appear to the director by any creditor or creditors of a resident in respect of whom a certificate has been filed, that it is advisable so to do, the director may, in his sole discretion, cancel such certificate in whole or in part by filing in the offices of the clerk and registrar in which the certificate was originally filed, a cancellation in Form C of the schedule to this Act, and thereupon such certificate shall cease to have any effect whatsoever, or to the extent to which the same is cancelled, as the case may be.

8. In any case where a certificate under this Act has been filed, and it is made to appear by any creditor to the director that the property of the resident therein named is for any reason whatsoever in jeopardy, the director may by writing under his hand directed to the sheriff of the judicial district in which such property is situated require such sheriff to seize such designated property and to hold and deal with the same for him in such manner as the director may in writing direct; and thereupon the sheriff shall proceed forthwith to seize such property and to deal with the same in such manner as the director may from time to time by writing under his hand direct, and the proper fees and expenses incurred by the sheriff in respect of such property shall be a charge upon the said property

9. The director may, in any case where he has filed a certificate, direct the resident named in such certificate to deal with all or any part of his property in such manner as the director may in his discretion deem expedient, and every such direction shall be in writing and signed by the director, and it shall be the duty of such resident to comply with every such direction

10. If any resident in respect of whom a certificate has been filed under this Act makes any disposition of any of his real or personal property in contravention of the provisions of this Act or makes default in complying with any direction given by the director under the provisions of the last preceding section, or in complying with any order, direction or condition given or imposed by a judge or the Board of Review under the provisions of this Act, then, and in every such case the resident shall be guilty of an offence

and shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars, and in default of payment thereof to a term of imprisonment with hard labour not exceeding three months, or to both.

11. The director may make all such inquiries as he may from time to time deem advisable with regard to the property of any resident in respect of whom a certificate has been filed, and as to the disposition of any such property, and for that purpose he may examine under oath any such resident, and his servants and agents, and any person who appears to the director to have any knowledge of the affairs of such resident, and he shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

12. All the powers and authority by this Act conferred upon the director shall be deemed to be conferred upon every assistant director, and may be exercised by the assistant director in the absence of the director.

13. Every clerk of the Court and sheriff, and every deputy clerk and deputy sheriff, and every Registrar of Land Titles shall receive and file every certificate filed pursuant to this Act, and every judge's order canceling any certificate, without fee, and shall keep a record thereof.

14. *The Debt Adjustment Act*, being chapter 43 of the Statutes of Alberta, 1929, is hereby repealed.

15. This Act shall come into force on the ... day of ... , 1931, and shall remain in force only until the ... day of ... , 1933.

## SCHEDULE

### FORM A

(Section 5, subsection (1).)

In the matter of *The Debt Adjustment Act, 1931*, I, the undersigned, do hereby certify as follows.

1. That I am resident at ... ..
  2. That I am personally *bona fide* engaged in farming operations at ... .., in the Province of Alberta.
  3. That I am the owner of the land and crops thereon, as follows:
- | Description of land. | Crops thereon. | Acreage of crops. |
|----------------------|----------------|-------------------|
|----------------------|----------------|-------------------|

4. That I own the following live stock and farm machinery:

Horses	.....
Cattle	.....
Sheep	.....
Swine	.....
Farm machinery	.....

5. That I am indebted in the sum of \$ ....., and that I am unable presently to pay such debts, and that I apprehend proceedings by one or more of my creditors leading to the forced realization of my property, or part thereof, and that unless my assets are conserved, unnecessary loss will ensue both to my creditors and myself.

Therefore, I apply to you and request you to file your certificate concerning me pursuant to the provisions of *The Debt Adjustment Act, 1931*.

And further I undertake and agree that I will upon the filing of such certificate obey any directions which may be given by you as to the disposition of my said crops and all my other property above described, or any part thereof, as may be given by you pursuant to any of the provisions of the said Act, and to hold the property aforesaid as bailee for you, and I constitute you my attorney to transact any of my business in my name and on my behalf, as you may think fit, and I agree to confirm and ratify your acts in so doing, and to indemnify you in respect thereof.

Dated at ....., in the Province of Alberta,  
this .. day of .., 19 ..

Signed in the presence of }  
.....

CANADA }  
PROVINCE OF ALBERTA }

I, ....., of ....., in the Province of Alberta, ....., make oath and say.

That ....., of ....., named in the above written application is personally known to me, and that the said application was signed by him in my presence, and that the signature ....., thereto is my signature and that the same was signed as a witness thereto.

Sworn at ....., in }  
the Province of Alberta, }  
this .. day of .., }  
19.... }

Before me,

*A Commissioner for Oaths.*

## FORM B.

(Section 5, subsection (1) )

*The Debt Adjustment Act, 1931*

To the Clerk of the Court for the judicial district of  
 . . . . ., and to the Registrar for the . . . . .  
 Alberta Land Registration District

This is to certify that . . . . .  
 of . . . . ., a resident within the meaning  
 of *The Debt Adjustment Act, 1931*, is a person entitled to  
 the benefit of the provisions of section 10 of the said Act

Dated at . . . . . this . . . . . day of . . . . . 19 . . . . .

*Director*

## FORM C.

(Section 7 )

*In the matter of The Debt Adjustment Act, 1931*

To all Clerks of the Court and Sheriffs and Registrars whom  
 it may concern.

This is to certify that the certificate filed by me under the  
 provisions of the above Act, in respect of  
 of . . . . ., in your office on the . . . . .  
 day of . . . . ., 193 . . . . ., is hereby cancelled.

Dated this . . . . . day of . . . . ., 193 . . . . .

*Director.*



FIRST SESSION  
SEVENTH LEGISLATURE  
21 GEORGE V  
1931

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**B I L L**

An Act to amend and consolidate  
The Debt Adjustment Act.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR BROWNLEE

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