

Bill No. 75 of 1938.

A BILL TO AMEND THE DEBT ADJUSTMENT ACT,
1937.

NOTE.

The amendment made by section 2 places the definition of "Resident farmer" in section 17 of the Act in the general definition section, and makes it applicable throughout the Act.

The amendment made by section 3 makes the issuance of a permit unnecessary for the renewal of a writ of execution or of the registration thereof under *The Land Titles Act* or the renewal of a bill of sale, chattel mortgage or conditional sale agreement.

Section 4 adds a new Part to the Act which provides for the issuance by the Board in a proper case of a certificate to a resident debtor for the filing of such certificate in the offices of Registration Clerks in all Registration Districts, in the office of every Clerk of the Court and in all Land Titles Offices, and for the publication of notice thereof in *The Alberta Gazette*.

Subject to *The Bankruptcy Act* and *The Farmers' Creditor Arrangement Act*, after a certificate has been filed as above, no proceedings 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 debtor named in the certificate, may be taken without the consent in writing of the Board.

The Board is empowered to give directions as to the disposition of any property of the resident debtor under seizure at the time of the filing of the certificate.

The resident debtor is debarred from disposing of his property so long as the certificate remains uncanceled without the consent of the Board.

The Board is empowered to cancel a certificate when it is made to appear to the Board that the debtor is about to abscond, or to sell or dispose of his property, or in case the Board considers that the rights of creditors are jeopardized and to require the Sheriff to take possession of the debtor's property and deal with the same as the Board directs.

The Board and any person authorized by the Board in writing, is empowered to make investigations as to the property of a certificated debtor and for that purpose to take evidence on oath and to compel the attendance of witnesses and the production of documents.

ii.

Section 17 requires a resident debtor to pay to the Board yearly, in the case of a resident farmer, a sum equal to one-fourth of the gross value of all grain crops and one-fourth of the gross revenue from the sale of livestock and produce other than grain, and in the case of any other resident debtor, if he is a single person without dependents living with him, one-fourth of the amount by which his annual gross earnings and revenue exceed four hundred and eighty dollars and in other cases a sum equal to one-fourth of the amount by which his annual gross earnings and revenue exceed nine hundred dollars.

The Board is empowered to direct that the payments to be made to the Board may be less than those last mentioned.

Any sums so paid to the Board are distributable by the Board amongst creditors at the discretion of the Board without regard to the rights of creditors.

The Board is empowered to permit the bringing of an action to determine any disputed claim against a resident debtor.

The Board is empowered to give directions for the disposal of any crop or live stock of a resident debtor, notwithstanding the provisions of any mortgage, charge, lien, crop share lease or crop share agreement, affecting a crop or any mortgage, charge or lien upon live stock other than one securing the purchase price thereof, and out of the proceeds to make payments to the resident debtor for his maintenance or to enable him to carry on his operations or business and to distribute the surplus amongst creditors.

Every person is declared to be guilty of an offence who commits any wilful default in complying with any lawful order of the Board or who wilfully takes or continues any action or proceeding or seizes, sells or disposes of any chattel in violation of any provision of the Act, or being a resident debtor to whom a direction has been given, wilfully disposes of any property in contravention of the Act or makes wilful default in complying with any order, direction or condition made or imposed by the Board; every such person is liable on summary conviction to a fine of not more than two hundred and fifty dollars and in default of payment to imprisonment for not more than three months or to both.

The provisions of the Act override the provisions of *The Crop Payments Act* and any other Act, and the terms of any mortgage, agreement for sale, lease or contract.

The Act is not applicable to debts owing to The Canadian Farm Loan Board or to The Soldier Settlement Board.

R. ANDREW SMITH,
Legislative Counsel.

(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)

BILL

No. 75 of 1938.

An Act to amend The Debt Adjustment Act, 1937.

(Assented to _____, 1938.)

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, 1937, Amendment Act, 1938.*"

2. *The Debt Adjustment Act, 1937*, being chapter 9 of the Statutes of Alberta, 1937, is hereby amended as to section 2 by inserting therein immediately after paragraph (e) the following new paragraph:

"(ee) 'Resident farmer' means a person who is an actual resident of and personally living in the Province of Alberta who,—

"(i) is personally *bona fide* engaged in farming operations in the Province; or

"(ii) being the owner of a farm property, was personally *bona fide* engaged in farming operations thereon but has retired therefrom, and has either leased the said property or sold it under an agreement of sale, or transferred it and taken a mortgage thereon for purchase money on which payments are owing to him;

and includes the personal representative or representatives, son, daughter, widow or widower of a deceased resident farmer; and includes a company incorporated under any Act of the Province whose sole or main business is farming within the Province;"

3. The said Act is further amended as to section 8 by adding at the end thereof the following new subsection:

"(6) Nothing in this section shall apply to any proceedings for the renewal of any subsisting Writ of Execution or for the renewal of the registration thereof under *The Land Titles Act* or to the registration of any renewal statement in respect of any Bill of Sale or Chattel Mortgage, or to the registration of any renewal statement in respect of any Conditional Sale agreement."

4. The said Act is further amended by renumbering Parts II, III and IV thereof as Parts III, IV and V respectively and by inserting therein immediately after Part I the following new Part:

“PART II.

“12.—(1) Upon the receipt of an application in writing in Form A in the Schedule to this Act, signed by a resident debtor or by any person authorized by him for that purpose, the Board shall issue a certificate in Form B in the Schedule to this Act, and shall file a copy thereof in the offices of the Registration Clerks in all Registration Districts, in the offices of the Clerks of the Court of all Judicial Districts and Sub-judicial Districts, in the offices of the Sheriffs for all Judicial Districts and Sub-judicial Districts and in all Land Titles Offices, and shall cause a notice to be inserted in *The Alberta Gazette* to the effect that a certificate has been filed by it in respect of such resident debtor in pursuance of the provisions of this Act.

“(2) Every such application shall be attested and shall contain a list of the creditors of the resident debtor together with the amount owing to each creditor, and in case the application is signed by a person for or on behalf of the resident debtor, by an affidavit of the person so signing that he was duly authorized by the resident debtor for that purpose.

“(3) Subject to the provisions of *The Bankruptcy Act*, and *The Farmers' Creditors Arrangement Act*, and notwithstanding anything contained in any other Act, after a certificate has been filed as required by this section, 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 debtor named in the certificate, shall be taken or continued without the consent in writing of the Board.

“(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 Board, which 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) Notwithstanding anything in *The Seizures Act* to the contrary, if at the time of the filing of the said certificate any of the goods and chattels of a resident debtor, not consisting of growing crops, farm produce or live stock, are under seizure by virtue of any writ of execution or distress warrant, the Board may in its sole discretion direct either that the goods and chattels so seized be sold at such time and in such manner as the Board deems proper, and that the proceeds of such sale be distributed, having due regard to the rights of any persons having any interest in the goods

and chattels so sold, or that the same be released from seizure and be again placed in the possession of the resident debtor, and every direction so given shall be binding upon the sheriff or other person who made the seizure.

“(6) As soon as conveniently may be after the filing of a certificate, the Board shall notify the creditors of which the Board has knowledge, of the issue of the certificate and every creditor so notified shall within sixty days of the date of such notice file with the Board a sworn statement as to the amount owing to such creditor with a complete history of the debt, showing all payments made on account of principal and interest thereon together with the rate of interest charged on the said debt, and setting out full particulars of all securities held by the creditor, together with the amount at which the same are valued by him.

“(7) From and after the filing of a certificate pursuant to subsection (1) hereof and so long as such certificate remains uncanceled and in force, no sale, conveyance, mortgage or dealing of any description by the resident debtor 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 Board, which consent may be either general or specific.

“(8) No registration clerk and no Registrar of Land Titles in whose office a certificate has been filed and which remains uncanceled and in force in respect of a resident debtor, shall register any transfer, conveyance, mortgage, encumbrance or other instrument affecting any property of the resident debtor unless the same is accompanied by the consent of the Board or a certified copy thereof.

“13. Every Supreme Court Clerk and District Court Clerk and every Sheriff, Deputy Sheriff and every Registrar of Land Registration Districts shall, without fee, perform all services required to be rendered by the Board, and keep a record of every instrument filed by the Board in his office pursuant to this Act, and may issue a certified copy thereof, and every certified copy shall be *prima facie* evidence in any court of the issue and filing of such instrument without proof of the signature or official character of the officer signing the same.

“14. In any case where a certificate in respect of a resident debtor under this Part has been filed, and it is made to appear by any creditor to the Board that the resident debtor is about to abscond, or is about to sell or dispose of his property or in case for any other reason the Board considers that the rights of the creditors are in jeopardy, the Board may by writing under its 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 on its behalf in such manner as the Board 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 Board may from time to time

by writing direct, and the proper fees and expenses incurred by the Sheriff in respect of such property shall be a charge upon the said property.

“15. The Board and any person authorized by the Board in writing may make all such inquiries as may be from time to time deemed advisable with regard to the property of any resident debtor in respect of whom a certificate has been issued under this Part and as to the disposition of any such property, and for that purpose the Board or any person authorized by the Board in writing may examine under oath any such resident debtor and his servants and agents, and any person who appears to the Board or any person authorized by the Board in writing to have any knowledge of the affairs of the resident debtor, and shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

“16. In any case where it is made to appear to the Board by any creditor or creditors of a resident debtor in respect of whom a certificate has been filed that it is advisable so to do, or that the resident debtor has not complied with the provisions of section 17 of this Part, or for any other reason which the Board may deem good and sufficient, the Board may cancel such certificate in whole or in part by filing in the office in which the original certificate was filed a cancellation in Form C in 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.

“17.—(1) Every resident debtor in respect of whom a certificate has been issued under this Part shall pay to the Board in each year during which the certificate is in force,—

“(a) in the case of a resident farmer,—

“(i) a sum equal to one-fourth of the gross value of all grain crops grown upon the lands owned or operated by the said resident farmer, provided that no payment shall be made to the Board unless the total crops harvested by the resident farmer exceed an average of ten bushels to the acre; and

“(ii) a sum equal to one-fourth of the gross revenue obtained from the sale of live stock and produce other than grain marketed by the resident farmer;

“(b) in the case of all other resident debtors,—

“(i) if the debtor is a single person who has no other persons dependent upon him and living with him, a sum equal to one-fourth the amount by which his gross earnings and revenue in that year exceed the sum of four hundred and eighty dollars;

“(ii) if the debtor is a married person or a single person who has another person dependent upon him and living with him, a sum equal

to one-fourth the amount by which his gross earnings and revenue in that year exceed the sum of nine hundred dollars.

“(2) The Board may direct that the payments to be made to the Board under this section be made monthly, or by instalments or in such other manner as the Board may deem advisable having regard to all the circumstances of the case.

“(3) The Board may in its discretion issue a direction to a resident debtor to pay less than the amount required to be paid to the Board under subsection (1) of this section and in such case the resident debtor shall be required to pay only such amount as may be directed by the Board.

“(4) The Board may distribute the sum or sums received by it among the creditors of the resident debtor in such manner and in such amounts as the Board may deem fair and equitable, without regard to the legal or equitable rights of the creditors or any class of creditors or any creditor.

“18.—(1) In any case where a resident debtor in respect of whom a certificate has been issued disputes the validity of any claim and the Board is unable to effect a settlement thereof, the Board may in its discretion issue a permit authorizing the claimant to bring such action or proceedings as may be specified in the permit for the purpose of determining the dispute, and if in any such case the said action or proceeding is not taken and prosecuted with reasonable diligence, the Board shall ignore the claim in making any distribution amongst the creditors of the resident debtor.

“(2) No steps shall be taken without the permission in writing of the Board to enforce against the resident debtor any judgment or order obtained in any action or proceeding brought or taken pursuant to this section so long as the certificate in respect of such resident debtor remains uncanceled.

“19. In any case in which a certificate has been issued in respect of any resident debtor and so long as the same remains uncanceled and in force, the Board may in its discretion, having regard to the circumstances and necessities of the resident debtor, direct the disposal of any crop grown by the resident debtor or of any live stock of the resident debtor, or of both, notwithstanding any provisions of any mortgage, charge or lien, or crop share lease or crop share agreement affecting the crop or any mortgage, charge or lien upon live stock except a mortgage charge or lien for securing the payment of the purchase price thereof, in such manner and at such times as to the Board seems proper, and that the proceeds thereof be paid to it, and the Board may and it is hereby authorized and empowered to appropriate and deal with the proceeds paid to it by making such payments as the Board considers necessary for the maintenance of the debtor and his family and the continuance of his operations or business and by distributing the surplus of such proceeds after the making of any such payment among such creditors or class of creditors and in such manner as the Board may deem fair and equitable.

"20. If any person makes any wilful default in complying with the provisions of section 17 or with any order, direction or condition given or imposed by the Board, or wilfully takes or continues any action or proceeding or makes or continues any seizure, or sells or disposes of a chattel in violation of the provisions of this Act or the regulations, or if any resident in respect of whom any direction has been given in pursuance of this Act makes any disposition of any real or personal property in contravention of the provisions of this Act, or makes any wilful default in complying with any order, direction or condition given or imposed by the Board, he shall in every such event be guilty of an offence and upon summary conviction therefor be liable to a fine not exceeding two hundred and fifty dollars and in default of payment to a term of imprisonment, not exceeding three months, or to both."

5. The said Act is further amended as to section 17 by striking out the same.

6. The said Act is further amended by adding immediately following section 30 thereof the following new sections:

"30a. In case there is any conflict between the provisions of this Act and the provisions of *The Crop Payment Act* or any other Act, or the terms of any mortgage, agreement for sale, lease or contract, the provisions of this Act shall prevail.

"30b. Nothing in this Act shall apply to any debt owing to The Canadian Farm Loan Board, The Soldier Settlement Board or to any action, suit or other proceeding, including extra judicial proceedings for enforcing the payment of any such debt, or to the right of the Board to commence, take, carry on and maintain any such action, suit or proceeding."

7. The said Act is further amended by renumbering section 12 thereof as section 20 and every subsequent section consecutively thereafter.

8. The said Act is further amended by adding at the end thereof the following:

"SCHEDULE.

"FORM A.

"(Section 12, Subsection (1).)

"IN THE MATTER of *The Debt Adjustment Act, 1937*, 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, or that I am a resident debtor other than a resident farmer.

"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:

Strike out
paragraphs
which are
inapplicable

Horses
Cattle
Sheep
Swine
Farm machinery

"5. That I am engaged in the business of
..... and the assets of the business consist of the following:

"6. That I am a wage earner employed by
..... at a monthly wage of \$.....

"7. In addition to the property above mentioned I own the following property:

"8. That I have an interest in the following property, the title to which is held by or in the name of the person whose name and address is set out opposite thereto:

Description of Property.	Name and Address of Person who has Title thereto.
.....
.....

"9. 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.

"10. That the following is a list of my creditors and the amount owing to each is set out in the following statement:

Creditor.	Amount.
.....
.....
.....
.....

"Therefore, I apply to you and request you to file your certificate concerning me pursuant to the provisions of *The Debt Adjustment Act, 1937, Amendment Act, 1938*.

"And further, I undertake and agree that I will upon the filing of such certificate carry out the provisions of section

17 of the Act and 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, 193.....

"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 }
....., 193..... }

"Before me—

.....
A Commissioner for Oaths.

"FORM B.

"(Section 12, Subsection (1).)

"*The Debt Adjustment Act, 1937.*

"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 debtor within the meaning of *The Debt Adjustment Act, 1937, Amendment Act, 1938*, is a person entitled to the benefit of the provisions of Part II of the said Act.

"Dated at, this day of, 193.....

".....
Director.

"FORM C.

"(Section 16.)

"IN THE MATTER of *The Debt Adjustment Act, 1937*:

"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."

9. This Act shall come into force on the day upon which
it is assented to and upon so coming into force section 3 shall
be deemed to have been in force at all times on, from and
after the seventeenth day of June, 1937.

SIXTH SESSION
EIGHTH LEGISLATURE

1 GEORGE VI

1938

BILL

An Act to amend The Debt Adjust-
ment Act, 1937.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MAYNARD.

EDMONTON:
A. Shnitka, King's Printer
1938