



Province of Alberta

# **CONSUMER PROTECTION ACT**

Revised Statutes of Alberta 2000  
Chapter C-26.3

Current as of August 1, 2018

Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2017 c18 s1 (2018 c11 s1 - effective June 11, 2018) adds Part 10.1 ss108.1 to 108.3, amends ss127, 136, 137(7), adds ss137.8 to 137.92, amends s161.

2017 c18 s1 adds Part 12.01 ss124.01 and 124.02 , amends s161.

2015 c12 s10 (2017 c18 s1(25) - effective December 15, 2017) amends s7.4(1).

2017 c18 s1 amends s6(4), adds s6.1 and 6.2.

### Regulations

The following is a list of the regulations made under the *Consumer Protection Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Consumer Protection Act</b>		
Administrative Penalties (Fair Trading Act).....	135/2013	
Appeal Board .....	195/99	108/2002, 164/2010, 69/2012, 108/2015, 78/2016, 122/2018
Automotive Business .....	192/99	96/2000, 137/2000, 68/2004, 221/2004,

<i>NOTE: AR 133/2018 ss3, 6 and 7 come</i>		<i>1/2006, 112/2006,</i>
<i>into force on Oct. 31, 2018 and ss4 and 5 come</i>		
<i>into force on Jan. 1, 2019</i>		
Collection and Debt Repayment		
Practices .....	194/99 .....	27/2002, 68/2004, 3/2006, 68/2008, 163/2009, 31/2012, 62/2013, 152/2013, 57/2014
Consumer Transaction Cancellation		
and Recovery Notice .....	287/2006 .....	132/2016
Cost of Credit Disclosure .....	198/99 .....	143/2003, 68/2004, 158/2007, 254/2007, 184/2008, 120/2015
Credit and Personal Reports .....	193/99 .....	144/2003, 238/2003, 245/2005, 118/2015
Designation of Trades		
and Businesses .....	178/99 .....	93/2000, 251/2001, 45/2002, 144/2004, 221/2004, 246/2005, 8/2006, 66/2009, 133/2009, 147/2009, 98/2010, 77/2011, 31/2012, 43/2012, 45/2014, 140/2014, 125/2015
Direct Sales Cancellation		
and Exemption .....	191/99 .....	161/2000, 10/2004, 68/2004, 246/2005, 26/2009, 152/2013, 140/2014
Direct Selling Business Licensing.....	190/99 .....	108/2002, 70/2012, 74/2015, 198/2016
Employment Agency Business		
Licensing .....	45/2012 .....	173/2016, 166//2017
Energy Marketing and Residential Heat		
Sub-metering .....	246/2005 .....	4/2006, 35/2007, 254/2007, 309/2009, 72/2012, 119/2015, 198/2016
Exemption .....	188/99 .....	68/2004, 139/2013
General Licensing and Security .....	187/99 .....	109/2000, 56/2002, 10/2004, 68/2004, 246/2005, 259/2005, 226/2009, 105/2010, 33/2011, 45/2012, 140/2014, 115/2015
Gift Card .....	146/2008 .....	162/2009, 173/2013, 167/2016

High-cost Credit.....	132/2018	
<i>NOTE: AR 132/2018 comes into force on Jan. 1, 2019</i>		
Home Inspection Business .....	75/2011	133/2016, 157/2017
Internet Sales Contract .....	81/2001	118/2001, 10/2004, 246/2005, 15/2006, 227/2009, 105/2010, 140/2014, 140/2016
Payday Loans .....	157/2009	230/2009, 353/2009, 92/2016, 134/2016, 183/2016, 123/2018
Prepaid Contracting		
Business Licensing .....	185/99	108/2002, 183/2011, 71/2012, 66/2015, 198/2016
Public Auctions .....	196/99	68/2004, 187/2005, 260/2005, 288/2009, 82/2010
Retail Home Sales		
Business Licensing .....	197/99	68/2004, 46/2011, 116/2015
Ticket Sales .....	78/2018	
Time Share and Points-based Contracts and Business.....	105/2010	36/2014

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#### **Preamble**

WHEREAS all consumers have the right to be safe from unfair business practices, the right to be properly informed about products and transactions, and the right to reasonable access to redress when they have been harmed;

WHEREAS businesses thrive when a balanced marketplace is promoted and when consumers have confidence that they will be treated fairly and ethically by members of an industry;

WHEREAS businesses that comply with legal rules should not be disadvantaged by competing against those that do not; and

WHEREAS the Government of Alberta is committed to protecting consumers and businesses from unfair practices to support a prosperous and vibrant economy;

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

### **Interpretation**

**1(1)** In this Act,

- (a) “administrative penalty” means an administrative penalty required to be paid under section 158.1(1);
- (a.1) “advertiser” means a person who prints, publishes, distributes, broadcasts or telecasts other people’s advertisements;
- (b) “consumer” means, subject to the regulations under subsection (2) and except in section 108.1(c), an individual who
  - (i) receives or has the right to receive goods or services from a supplier as a result of a purchase, lease, gift, contest or other arrangement, but does not include an individual who intends to sell the goods after receiving them,
  - (ii) has a legal obligation to compensate a supplier for goods that have been or are to be supplied to another individual and the other individual does not intend to sell the goods after receiving them, or
  - (iii) has a legal obligation to compensate a supplier for services that have been or are to be supplied to another individual;
- (c) “consumer transaction” means, subject to the regulations under subsection (2),
  - (i) the supply of goods or services by a supplier to a consumer as a result of a purchase, lease, gift, contest or other arrangement, or

- (ii) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement;
- (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;
- (d) “Director” means the Director of Fair Trading appointed under section 173;
- (e) “goods”, except in Part 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;
- (f) “inspector” means an inspector appointed under section 173;
- (g) “licence” means a licence issued or renewed under this Act;
- (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;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i.1) “notice of administrative penalty” means a notice given under section 158.1(1);
- (i.2) “ongoing consumer transaction” means a consumer transaction providing for the continuing or periodic supply of goods or services, whether for a fixed or an indeterminate period of time;

- (i.3) “recorded mail” means a form of document delivery by mail or courier in which receipt of the document must be acknowledged in writing;
- (j) “regulatory board” means a regulatory board established under the regulations;
- (k) “services” means, subject to the regulations under subsection (2), any service offered or provided primarily for personal, family or household purposes, including
  - (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,
  - (iii) the right to use property under a time share contract, and
  - (iv) any credit agreement;
- (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;
- (m) “time share contract” means a contract in which an individual acquires the right to use, occupy or possess real or personal property, 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;

- (n) “voucher” means any document that purports to give the holder of the document the right to obtain goods or a service or the right to obtain goods or a service at a discounted or reduced price.

**(1.1)** The Minister may, for the purposes of this Act or any part of this Act and for the purposes of the regulations, make regulations defining any word or term used but not defined in this Act or in the part of this Act.

**(2)** Without limiting the generality of subsection (1.1), the Minister may make regulations that restrict or broaden the definitions of consumer, consumer transaction, goods, services and supplier, and the restricting or broadening of the definitions may apply to one or more provisions of this Act and to one or more provisions of the regulations under this Act.

RSA 2000 cF-2 s1;2005 c9 s2;2012 c7 s1;  
2016 c8 s2;2017 c18 s1(5);2018 c11 s7

### **Consumer Bill of Rights**

**1.1(1)** The Minister shall establish and make publicly available a Consumer Bill of Rights that highlights consumer rights and protections under this Act.

**(2)** A failure of a person to act in a manner that is consistent with the Consumer Bill of Rights does not in itself give rise to

- (a) a cause of action or other legally enforceable right or legal remedy or claim,
- (b) an offence under this Act, or
- (c) proceedings in any court or before any body or person having the power to make decisions under an enactment.

**(3)** The Consumer Bill of Rights does not limit or otherwise affect any existing rights or obligations under this Act.

2017 c18 s1(6)

## **Part 1 General Principles**

### **Act prevails**

**2(1)** Any waiver or release by a person of the person’s rights, benefits or protections under this Act or the regulations is void.

**(2)** Subsection (1) does not apply to a release made by a person in the settlement of a dispute.

1998 cF-1.05 s2

**Application of Act**

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

2005 c9 s3;2018 c11 s7

**Other rights unaffected**

**3** None of the rights or remedies under this Act or the regulations restrict, limit or derogate from any legal, equitable or statutory right or remedy that the following may have:

- (a) a consumer;
- (b) a person dealing with a reporting agency as defined in Part 5, licensee or loan broker;
- (c) a borrower or lessee to which Part 9 applies;
- (d) a borrower to whom Part 12.1 applies.

RSA 2000 cF-2 s3;2016 cE-9.5 s8

**Interpretation of documents**

**4** If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

1998 cF-1.05 s4

**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.

2005 c9 s4

## Part 2 Unfair and Negative Option Practices

### Division 1 Unfair Practices

#### Application

**5** This Act applies to the following unfair practices:

- (a) an unfair practice in which the supplier or consumer is a resident of Alberta;
- (b) an unfair practice involving a consumer transaction in which the offer or acceptance is made in or is sent from Alberta;
- (c) an unfair practice made or received in Alberta involving a supplier's representative;
- (d) an unfair practice specified in the regulations.

1998 cF-1.05 s5

#### Unfair practices

**6(1)** In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

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

**(2)** It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,

- (a) to exert undue pressure or influence on the consumer to enter into the consumer transaction;
- (b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;
- (c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
- (d) to charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;
- (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.
- (3)** It is an unfair practice for a supplier
- (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
  - (b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;
  - (c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;
  - (d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.
- (4)** Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
  - (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
  - (c) a supplier's representation that goods or services have sponsorship, approval, performance, characteristics, accessories, ingredients, quantities, components, uses, benefits or other attributes that they do not have;

- (d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;
- (e) a supplier's representation that goods or services are of a particular standard, quality, grade, style or model if they are not;
- (f) a supplier's representation that goods have or have not been used to an extent that is different from the fact;
- (g) a supplier's representation that goods are new if they are used, deteriorated, altered or reconditioned;
- (h) a supplier's representation that goods have or do not have a particular prior history or usage if that is different from the fact;
- (i) a supplier's representation that goods or services are available for a reason that is different from the fact;
- (j) a supplier's representation that goods or services have been made available in accordance with a previous representation if they have not;
- (k) a supplier's representation that the supplier can supply goods or services if the supplier cannot;
- (l) a supplier's representation involving a voucher that another supplier will provide goods or a service or will provide goods or a service at a discounted or reduced price if the first-mentioned supplier knows or ought to know that the second-mentioned supplier will not;
- (m) a supplier's representation that goods are available in a particular quantity if they are not;
- (n) a supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not;
- (o) a supplier's representation that a specific price benefit or advantage exists if it does not;
- (p) a supplier's representation that a part, replacement, repair or adjustment is needed or desirable if it is not;
- (q) a supplier's representation that the supplier is requesting information, conducting a survey or making a solicitation for a particular purpose if that is not the case;

- (r) a supplier's representation that a person does or does not have the authority to negotiate the terms of a consumer transaction if the representation is different from the fact;
- (s) when the price of any part of goods or services is given in any representation by a supplier,
  - (i) failure to give the total price of the goods or services, or
  - (ii) giving less prominence to the total price of the goods or services than to the price of the part;
- (t) when the amount of any instalment to be paid in respect of goods or services is given in any representation by a supplier,
  - (i) failure to give the total price of the goods or services, or
  - (ii) giving less prominence to the total price of the goods and services than to the amount of the instalment;
- (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;
- (u) a supplier's giving an estimate of the price of goods or services if the goods or services cannot be provided for that price;
- (v) a supplier's representation of the price of goods or services in such a way that a consumer might reasonably believe that the price refers to a larger package of goods or services than is the case;
- (w) a supplier's representation that a consumer will obtain a benefit for helping the supplier to find other potential customers if it is unlikely that the consumer will obtain such a benefit;
- (x) a supplier's representation about the performance, capability or length of life of goods or services unless
  - (i) the representation is based on adequate and proper independent testing that was done before the representation is made,

- (ii) the testing substantiates the claim, and
- (iii) the representation accurately and fairly reflects the results of the testing;
- (y) a supplier's representation that goods or services are available at an advantageous price if reasonable quantities of them are not available at such a price, unless it is made clear that quantities are limited;
- (z) a supplier's representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or promotion;
- (aa) anything specified in the regulations.

RSA 2000 cF-2 s6;2005 c9 s5;2018 c11 s7

#### **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.

RSA 2000 cF-2 s7;2005 c9 s6

#### **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.

2005 c9 s6

#### **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.

2005 c9 s6

#### **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.

2005 c9 s6

#### **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.

2005 c9 s6

#### **Time of occurrence**

**8** An unfair practice may occur before, during or after a consumer transaction, and is an unfair practice for all the purposes of this Part even if no consumer transaction is entered into or concluded.

1998 cF-1.05 s8

#### **Advertising**

**9(1)** No advertiser may print, publish, distribute, broadcast or telecast a supplier's advertisement for goods or a service if the advertisement contains an unfair practice.

**(2)** Subsection (1) does not apply to an advertiser who prints, publishes, distributes, broadcasts or telecasts a supplier's advertisement in good faith and in the ordinary course of business.

1998 cF-1.05 s9

#### **Trust accounts**

**10** Every supplier must comply with the requirements respecting trust accounts established by the regulations under section 143.

1998 cF-1.05 s10

#### **Information in representations**

**11** If a regulation is made pursuant to section 12(d), every supplier who makes a representation to which the regulation applies must ensure that the representation contains the information prescribed by the regulation.

1998 cF-1.05 s11

#### **Regulations**

**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;
- (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.

RSA 2000 cF-2 s12;2005 c9 s7

## **Division 2 Civil Remedies Against Suppliers**

### **Court action by consumer**

#### **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 or any principal, director, manager, employee or agent of a supplier who engaged in or acquiesced in the unfair practice that caused that damage or loss.

**(2)** In an action under this section, the Court of Queen's Bench may

- (a) declare that the practice is an unfair practice;
- (b) award damages for damage or loss suffered;
- (c) award punitive or exemplary damages;
- (d) make an order for
  - (i) specific performance of the consumer transaction,
  - (ii) restitution of property or funds, or
  - (iii) rescission of the consumer transaction;

- (e) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair practice;
- (f) make any directions and grant any other relief the Court considers proper.

**(3)** In determining whether to grant any relief under this section and the nature and extent of the relief, the Court of Queen's Bench must consider whether the consumer made a reasonable effort to minimize any damage resulting from the unfair practice and to resolve the dispute with the supplier before commencing the action in the Court.

**(4)** The Court of Queen's Bench may award costs in accordance with the *Alberta Rules of Court*.

RSA 2000 cF-2 s13;2005 c9 s8;2009 c53 s64

#### **Provincial Court**

**14(1)** Subject to the jurisdiction of the Provincial Court, an action under section 13(1) may be commenced under Part 4 of the *Provincial Court Act*.

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

1998 cF-1.05 s14

#### **Actions by the Director on behalf of consumers**

**15(1)** Subject to this section, the Director may, when in the opinion of the Director it is in the public interest to do so,

- (a) commence and maintain an action under section 13 if a consumer has a cause of action under that section,
- (b) maintain an action under section 13 after it has been commenced, or
- (c) bring and maintain an appeal of an action under section 13.

**(2)** When, pursuant to subsection (1), the Director brings or maintains an action or an appeal under section 13, the Director must do so in the name of and on behalf of that consumer, and the Director is entitled to take the same steps in and have the same control over the action or appeal, including the right to settle the action or appeal or any part of it, that the consumer would have had in respect of that action or appeal.

**(3)** The Director may not bring or maintain an action or an appeal under this section without first obtaining the written consent of the consumer in whose name the action is brought.

(4) On the consumer's giving written consent, the Director may, without consulting or seeking any further consent of the consumer, conduct the action or appeal in any manner the Director considers appropriate.

(5) In an action or appeal commenced, brought or maintained by the Director pursuant to subsection (1),

- (a) any money recovered, excluding costs of the action or appeal, must be paid to the consumer;
- (b) any money payable by the consumer, excluding costs of the action or appeal, is not recoverable from the Director or the Government;
- (c) the costs of the action or appeal are to be paid to or borne by the Government.

(6) Nothing in this section abrogates or restricts any right of set-off that a person has or may have against a consumer on whose behalf the Director is acting under this section.

(7) When the Director, while acting on behalf of a consumer under this section, releases a supplier from a liability or an obligation arising out of the cause of action, that release extinguishes the claim to the liability or obligation referred to in that release that the consumer may have against that supplier.

1998 cF-1.05 s15

#### **Arbitration clause, agreement**

**16(1)** Subject to subsection (3), a supplier shall not enforce an arbitration clause in a consumer transaction or an arbitration agreement with a consumer.

(2) Subject to subsection (3), an arbitration clause in a consumer transaction or an arbitration agreement with a consumer is void and unenforceable.

(3) Subsections (1) and (2) do not apply in respect of

- (a) an arbitration agreement voluntarily entered into between a supplier and a consumer after a dispute has arisen, or
- (b) an arbitration agreement or an arbitration clause in a consumer transaction if the agreement or clause allows the consumer to decide, after a dispute has arisen, whether the consumer will use arbitration or an action in court to resolve the dispute.

RSA 2000 cF-2 s16;2017 c18 s1(9)

**Court action by consumer organizations**

**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 or any principal, director, manager, employee or agent of 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 or any principal, director, manager, employee or agent of the supplier from engaging in the unfair practice.

**(3)** A consumer organization bringing an action under this section is not required to have an interest in or be affected by the matter in issue in order to commence and maintain the action.

**(4)** When an action is commenced under this section, the Court of Queen's Bench may order the consumer organization that commenced the action to furnish security for costs in any amount the Court considers proper.

RSA 2000 cF-2 s17;2005 c9 s9

**Director to be notified**

**18(1)** A party that commences an action under section 13 or 17 must serve the Director with a copy of the statement of claim.

**(2)** The party commencing the action may not take the next step in the action until the Director has been served under subsection (1).

**(3)** On being served under subsection (1), the Director may, on notice to all parties to the action, make application to the Court to be added as a party and on the making of the order the Director may take any of the steps under section 15.

1998 cF-1.05 s18

**Advertisement of judicial decision**

**19(1)** When a court grants relief under section 13, 15 or 17, the court may make a further order requiring the supplier to advertise to the public the particulars of any order, judgment or other relief granted by the court.

**(2)** In making an order under subsection (1), the court may prescribe

- (a) the methods of making the advertisement so that it will assure prompt and reasonable communication to consumers;
- (b) the contents or form, or both, of the advertisement;
- (c) the number of times the advertisement is to be made;
- (d) any other conditions the court considers proper.

1998 cF-1.05 s19

### **Division 3 Negative Option Practices**

#### **Definition**

**20** In this Division, “negative option practice” means a consumer transaction in which a supplier

- (a) provides goods or services to a consumer, including the enhancement of a service that a consumer is already receiving, that the consumer did not request, and
- (b) requires the consumer to pay for the goods or services unless the consumer informs the supplier that the consumer does not want the goods or services.

1998 cF-1.05 s20

#### **Application**

**21** This Division applies to a negative option practice if

- (a) the supplier or consumer is a resident of Alberta, or
- (b) the goods or services are provided from or received in Alberta.

1998 cF-1.05 s21

#### **No consumer liability**

**22** A consumer is not liable to pay for any goods or services received under a negative option practice.

RSA 2000 cF-2 s22;2005 c9 s10

#### **Negative option practices prohibited**

**23** No supplier may supply goods or services to a consumer through a negative option practice.

1998 cF-1.05 s23

### **Part 3**

## **Cancellation of Direct Sales Contracts and Time Share Contracts**

#### **Definitions**

**24** In this Part,

- (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;
- (a.1) “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);
- (b) “trade-in allowance” means the greater of
  - (i) the price or value of the consumer’s goods as set out in a trade-in arrangement, or
  - (ii) the market value of the consumer’s goods when taken in trade under a trade-in arrangement;
- (c) “trade-in arrangement” means an agreement or arrangement, contained in a direct sales contract or forming the whole or part of a related agreement, under which the consumer sells or agrees to sell the consumer’s own goods to the supplier or any other person and the goods are accepted as the whole or part of the consideration under the direct sales contract.

RSA 2000 cF-2 s24;2005 c9 s11

#### **Application**

**25(1)** This Part applies to the following direct sales contracts and time share contracts:

- (a) a contract in which the supplier or consumer is a resident of Alberta;

- (b) a contract in which the offer or acceptance is made in or is sent from Alberta;
  - (c) a contract specified in the regulations.
- (2) This Part or a Division of this Part does not apply to classes of business exempted in the regulations.
- (3) The Minister may make regulations for the purposes of subsections (1)(c) and (2).

RSA 2000 cF-2 s25;2005 c9 s12

## **Division 1 Direct Sales Contracts**

### **Salesperson's representations**

**26** An oral or written representation, statement or undertaking, whether constituting a condition or warranty or not, made to a consumer by a salesperson with respect to goods covered by a direct sales contract or a related sale is deemed to have been made by the salesperson as agent of the supplier, but nothing in this section exonerates any person from any liability to which the person would be subject apart from this section.

1998 cF-1.05 s26

### **Absolute cancellation right**

**27** A consumer may, without any reason, cancel a direct sales contract at any time from the date the sales contract is entered into until, subject to the regulations, 10 days after the consumer receives a copy of the written sales contract.

1998 cF-1.05 s27

### **Extended cancellation in certain circumstances**

**28(1)** In addition to the right of cancellation under section 27, a consumer may cancel a direct sales contract in the circumstances set out in this section.

- (2) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into,
- (a) if the supplier was required to be licensed under Part 10 and was not licensed at the time the direct sales contract was concluded, or
  - (b) if the direct sales contract does not include all the information required under section 35.
- (3) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into if the supplier

- (a) does not deliver the goods within 30 days from the delivery date specified in the direct sales contract or an amended delivery date agreed on in writing by the consumer and the supplier, or
- (b) does not begin the services within 30 days from the commencement date specified in the direct sales contract or an amended commencement date agreed on in writing by the consumer and the supplier.

(4) If, after the period mentioned in subsection (3) has expired, the consumer accepts delivery of the goods or the consumer authorizes the services to begin, the consumer may not cancel the direct sales contract pursuant to subsection (3).

(5) Subject to subsection (6), a consumer may cancel a direct sales contract in which the goods purchased are a voucher if, within one year from the date that the direct sales contract is entered into or within the date specified in the voucher for exercising the rights granted by the voucher, whichever occurs first, the supplier that is to provide the goods or services under the voucher or is to provide goods or services at a discounted or reduced price under the voucher

- (a) refuses to do so for a reason that is not specified in the voucher, or
- (b) no longer exists.

(6) Subsection (5) does not apply to a direct sales contract in which the goods purchased are a voucher if the consumer has received

- (a) goods or services under the voucher having a value that is at least the price paid for the voucher,
- (b) discounts or price reductions under the voucher having a value that is at least the price paid for the voucher, or
- (c) a combination of the values referred to in clauses (a) and (b) that is at least the price paid for the voucher.

1998 cF-1.05 s28

#### **Method of cancellation**

**29(1)** A direct sales contract is cancelled on the giving of a notice of cancellation in accordance with this section.

(2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the direct sales contract.

(3) The notice of cancellation may be given by any means, including, but not limited to, personal service, registered mail, courier or telecopier or by any other method, including orally, by which the consumer can provide evidence of the date that the consumer cancelled the direct sales contract.

(4) Where the notice is given other than by personal service or orally, the notice of cancellation is deemed to be given when sent.

(5) The notice of cancellation may be sent or delivered to the supplier at the address set out in the direct sales contract or, if the consumer did not receive a copy of the direct sales contract or the address of the supplier was not set out in the direct sales contract, the consumer may send or deliver the cancellation notice

- (a) to any address of the supplier on record with the Government of Alberta,
- (b) to an address of the supplier known by the consumer, or
- (c) to the salesperson of the supplier at an address known by the consumer.

(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 consumer services division of the department whose Minister is responsible for this Act or to any other place designated by the regulations.

RSA 2000 cF-2 s29;2005 c9 s13

#### **Effect of cancellation of contract**

**30(1)** A cancellation of a direct sales contract in accordance with this Division operates

- (a) to cancel the direct sales contract, or
- (b) when the direct sales contract is an offer to buy, to withdraw the offer,

as if the direct sales contract never existed.

(2) A cancellation of a direct sales contract in accordance with this Division also operates to cancel

- (a) any related sale,
- (b) any guarantee given in respect of money payable under the direct sales contract, and

- (c) any security given by the consumer or a guarantor in respect of money payable under the direct sales contract,

as if it never existed.

**(3)** Where credit is extended or arranged by the supplier, the credit contract is conditional on the direct sales contract whether or not the credit contract is a part of or attached to the direct sales contract, and if the direct sales contract is cancelled, that cancellation has the effect of cancelling the credit contract as if the direct sales contract had never existed.

1998 cF-1.05 s30

### **Responsibilities on cancellation**

**31(1)** In this section,

- (a) “authorized person” means
- (i) the supplier,
  - (ii) the person for the time being entitled to possession of the goods, or
  - (iii) a person specified in the direct sales contract as a person to whom a notice of cancellation may be given;
- (b) “consumer’s premises” means the place specified in the sales contract as the consumer’s address or, if the address shown does not specifically identify that place by a municipal address, land description or other description sufficient to distinguish that place from any other, the place where the consumer actually resided at the time the sales contract was made.

**(2)** Within 15 days after a direct sales contract is cancelled, the supplier must refund to the consumer all money paid by the consumer and return to the consumer’s premises any trade-in or an amount equal to the trade-in allowance.

**(3)** In the case of a direct sales contract for goods, the consumer must, on receiving the refund and return of the trade-in or an amount equal to the trade-in allowance, return the goods to the supplier.

**(4)** Where a direct sales contract has been cancelled but the consumer solicited the services of a supplier and requested that the service be provided within 10 days from the date that the direct sales contract was entered into, the supplier is entitled to reasonable compensation for the services performed by the supplier, but the

supplier's rights under this subsection do not arise until the supplier complies with subsection (2).

**(5)** When a notice of cancellation is given in accordance with section 29, the consumer must return to an authorized person goods that came into the consumer's possession under the direct sales contract or a related sale or pre-existing contract if an authorized person gives the consumer a written request that is signed or purports to be signed by or on behalf of the supplier, but the obligation of the consumer under this subsection is subject to any lien or right to retain the goods that the consumer may have under section 32 and the consumer's right to enforce the lien.

**(6)** The consumer may

- (a) return the goods to an authorized person or to a person designated for the purpose by an authorized person, at a place elsewhere than at the consumer's premises, or
- (b) return the goods at the consumer's expense to the supplier or to a person specified in the direct sales contract as a person to whom a notice of cancellation may be given.

**(7)** A return of the goods in accordance with subsection (5) or (6) is deemed to be made with the consent of the supplier or, if the supplier is not entitled to possession of the goods, with the consent of the person so entitled, and operates to discharge the consumer from any obligation to retain the goods or deliver them to the person so entitled.

**(8)** The consumer is under an obligation to take reasonable care of goods delivered to the consumer under a direct sales contract or related agreement until

- (a) the return of the goods in accordance with subsection (5) or (6), or
- (b) the expiration of the period of 21 days after the giving of the notice of cancellation,

whichever event occurs first, and if the consumer sends the goods to the supplier or other person in accordance with subsection (6)(b), the consumer is under an obligation to take reasonable care to see that they are received by the person to whom they are sent and are not damaged in transit.

**(9)** Any obligation under subsection (8) is owed to the person for the time being entitled to possession of the goods and any breach of

that obligation is actionable, at the suit of that person, as a breach of statutory duty.

**(10)** The consumer is under no obligation under this section to return the goods elsewhere than at the consumer's premises.

**(11)** Except as provided by this section, the consumer is not under any obligation, whether arising by contract or otherwise, to take care of the goods.

1998 cF-1.05 s31

### **Consumer's right to retain goods**

**32** When a notice of cancellation is served in accordance with section 29, the consumer is entitled to retain possession of goods delivered to the consumer under a direct sales contract, related sale or pre-existing contract

- (a) until all money paid under the direct sales contract, related sale or pre-existing contract is refunded, and
- (b) in the case of a trade-in arrangement, until either
  - (i) the goods delivered by the consumer under the trade-in arrangement are returned to the consumer in a condition substantially the same as when they were delivered by the consumer, or
  - (ii) a sum equal to the trade-in allowance is paid to the consumer,

and the consumer, while in possession, has a lien on those goods for any money so owing to the consumer.

1998 cF-1.05 s32

### **Recovery of refund and trade-in allowance**

**33(1)** If the supplier fails to refund to the consumer all money paid under the direct sales contract, any related sale and any pre-existing contract under section 31, the consumer may recover that money from the supplier.

**(2)** In the case of a trade-in arrangement, unless

- (a) the supplier returns the consumer's goods to the consumer in accordance with section 31(1), and
- (b) the goods are then in a condition substantially the same as when they were delivered by the consumer,

the consumer may recover from the supplier an amount equal to the trade-in allowance for the goods.

**(3)** An amount recoverable under subsection (1) or (2) may be recovered as a simple contract debt.

**(4)** When the consumer recovers an amount equal to the trade-in allowance, then, if the title of the consumer to goods delivered by the consumer under the trade-in arrangement did not pass from the consumer, the title vests in the person entitled to the title under the trade-in arrangement.

1998 cF-1.05 s33

#### **Proceeds of bond**

**34** When, pursuant to regulations under Part 13, the proceeds of a security are used for the benefit of consumers who have not recovered money owing to them following the cancellation of direct sales contracts, any money paid to a consumer from the proceeds of the security is deemed to have been recovered from the supplier.

1998 cF-1.05 s34

#### **Contents of sales contract**

**35** A written direct sales contract must include

- (a) the consumer's name and address;
- (b) the supplier's name, business address, telephone number and, where applicable, fax number;
- (c) where applicable, the salesperson's name;
- (d) the date and place at which the direct sales contract is entered into;
- (e) a description of the goods or services, sufficient to identify them;
- (f) a statement of cancellation rights that conforms with the requirements set out in the regulations;
- (g) the itemized price of the goods or services, or both;
- (h) the total amount of the direct sales contract;
- (i) the terms of payment;
- (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 commencement date for the services, or both;

- (k) in the case of a sales contract for the future provision of services or the delivery of goods together with services, the completion date for providing the services or the goods together with services;
- (l) where credit is extended,
  - (i) a statement of any security taken for payment, and
  - (ii) the disclosure statement required under Part 9;
- (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
- (n) the signatures of the consumer and the supplier.

RSA 2000 cF-2 s35;2005 c9 s14

### Regulations

**36** The Minister may make regulations

- (a) specifying amounts for the purposes of section 24(a.1)(i);
- (b) respecting the form and contents of the statement of cancellation rights that must be included in a direct sales contract and the form of the contract;
- (c) designating places where notices of cancellation may be sent or delivered for the purposes of section 29.

RSA 2000 cF-2 s36;2005 c9 s15

## Division 2 Time Share Contracts

### Absolute cancellation right

**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 10 days after the consumer receives a copy of the contract.

**(2)** In addition to the right of cancellation under subsection (1), a consumer may cancel a time share contract within one year from the date the contract is entered into if the time share contract does not set out

- (a) the consumer's right of cancellation under subsection (1), or
- (b) the consumer's right to receive a refund of money paid under section 39.

RSA 2000 cF-2 s37;2005 c9 s16

**Method of cancellation**

**38** A time share contract is cancelled on the giving of a notice of cancellation in accordance with the regulations.

1998 cF-1.05 s38

**Responsibilities on cancellation**

**39(1)** Within 15 days after a time share contract is cancelled, the supplier must refund to the consumer all money paid by the consumer.

**(2)** Where a time share contract has been cancelled and the consumer has used the property under the time share contract, the supplier is entitled to reasonable compensation for the use of the property, but the supplier's rights under this section do not arise until the supplier complies with subsection (1).

1998 cF-1.05 s39

**Recovery of refund**

**40** If the supplier fails to refund to the consumer all money paid under the time share contract under section 39, the consumer may recover the money from the supplier as a simple contract debt.

1998 cF-1.05 s40

**Regulations**

**41** The Minister may make regulations

- (a) respecting the form and contents of time share contracts;
- (b) respecting the giving of a notice of cancellation of a time share contract, including specifying when notice is deemed to be received.

1998 cF-1.05 s41

## **Part 4**

### **Marketing Through Electronic Media**

**Regulations**

**42(1)** The Minister may make regulations respecting the marketing of goods and services through forms of electronic media, such as telephone, television, fax, e-mail or the Internet, that are specified in the regulations.

**(2)** Without limiting subsection (1), the Minister may make regulations

- (a) specifying the forms of electronic media and the types of marketing to which the regulation applies;

- (b) regulating and prohibiting specified activities involved in marketing of goods and services through electronic media;
- (c) setting out the rights and remedies of consumers who enter into consumer transactions wholly or partly through a form of electronic media.

RSA 2000 cF-2 s42;2005 c9 s17

## **Part 5**

### **Credit and Personal Reports**

#### **Definitions**

**43** In this Part,

- (a) “credit information” means information about an individual’s name, age and place of residence and other information prescribed in the regulations;
- (b) “file”, when used as a noun, means all of the information pertaining to an individual that is recorded and retained by a reporting agency, regardless of the manner or form in which the information is stored;
- (c) “personal information” means information other than credit information about an individual’s character, reputation, health, physical or personal characteristics or mode of living or about any other matter concerning the individual;
- (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;
- (e) “reporting agency” means a person who carries on the activity of furnishing reports as prescribed in the regulations.

RSA 2000 cF-2 s43;2002 cA-4.5 s34;2005 c9 s18

#### **Furnishing reports**

**44(1)** A reporting agency, and an officer, agent 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 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,
  - (ii) in connection with the entering into or the renewal of a tenancy agreement by the individual to whom the report pertains with the individual's express consent,
  - (iii) for employment purposes, with the express consent of the individual to whom the report pertains,
  - (iv) in connection with the underwriting of insurance involving the individual to whom the report pertains, with the individual's express consent, 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 with the individual's express consent;
  - (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 express consent of the individual to obtain the report;
  - (e) in response to the order of a court;
  - (f) in circumstances specified in the regulations.
- (2)** No person may obtain a report from a reporting agency except in the circumstances referred to in subsection (1).
- (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.
- (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.

**Contents of reports**

**45(1)** Every reporting agency must adopt all reasonable procedures to ensure accuracy and fairness in the contents of its reports.

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

**(3)** Repealed 2005 c9 s20.

RSA 2000 cF-2 s45;2005 c9 s20

**46** Repealed 2005 c9 s21.

**Explanation by individual**

**47(1)** An individual may deliver to a reporting agency an explanation or additional information, in writing as prescribed in the regulations, 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.

**(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).

RSA 2000 cF-2 s47;2005 c9 s22

**48** Repealed 2005 c9 s23.

**False information**

**49** No person may give false or misleading information to a reporting agency.

1998 cF-1.05 s49

**Civil remedy**

**50(1)** If an individual has suffered loss, damage or inconvenience as a result of a contravention of this Part or the regulations made under this Part, the individual has a cause of action against the person who contravened this Part or the regulations made under

this Part and is entitled, if the court finds the individual has suffered loss, damage or inconvenience, to a judgment for the damages suffered.

(2) In this section, “court” includes the Provincial Court, even though a contravention may also constitute a libel or slander.

1998 cF-1.05 s50

### Regulations

**51** The Minister may make regulations

- (a) designating persons as reporting agencies;
- (b) requiring and governing the books, accounts and records to be kept and maintained by reporting agencies;
- (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;
- (c) prescribing information that may not be reported by a reporting agency or contained in its files;
- (d) respecting fees that a reporting agency may charge an individual before disclosing or supplying information to the individual;
- (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.

RSA 2000 cF-2 s51;2005 c9 s24

## Part 6 Wage Assignments

### Definitions

**52** In this Part and Part 7,

- (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;
- (b) “wages” includes any salary, pay, overtime pay and other remuneration for work or services however computed, but does not include tips or other gratuities.

RSA 2000 cF-2 s52;2005 c9 s25

### Assignments

**53(1)** 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 lender;
- (b) is unenforceable by a lender if it is originally made in favour of a person other than a lender and is later acquired by a lender.

**(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.

RSA 2000 cF-2 s53;2005 c9 s26

## Part 7 Fees Charged by Loan Brokers

### 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 access to 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.

RSA 2000 cF-2 s54;2005 c9 s27;2016 c18 s6

**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.

2005 c9 s27

## **Part 8**

### **Consignment Sales, Mobile Homes and Motor Fuel**

**Consignment sales**

**55(1)** An agreement is deemed to contain the terms set out in the regulations if

- (a) the agreement is between an individual and another person in which the person agrees to sell goods of the individual on consignment, and
- (b) the agreement falls within a class of agreement specified in the regulations.

(2) Every person referred to in subsection (1) who agrees to sell goods of an individual must ensure that the agreement meets the requirements of the regulations.

(3) The Minister may make regulations

- (a) specifying the classes of agreements to which this section applies;
- (b) setting out the terms that are deemed to be contained in one or more classes of agreements to which this section applies;
- (c) respecting the requirements that agreements to which this section applies must meet;
- (d) respecting the rights and remedies of the individual referred to in subsection (1) if the terms of the agreement are not met;
- (e) requiring the person who agrees to sell goods of an individual to deposit money that the person receives from the sale of the goods into a trust account in the situations described in the regulations;
- (f) respecting the trust account referred to in clause (e), including where the trust account may be established and maintained and when the money must be deposited;
- (g) respecting who is entitled to the money in the trust account referred to in clause (e), the duties and responsibilities of the trustee, the disbursement of funds from the trust account and what happens if the person entitled to the money in the trust account cannot be located;
- (h) respecting the records to be kept respecting the trust account referred to in clause (e), the period of time that those records are to be maintained and the audit of the trust account.

1998 cF-1.05 s55

#### **Mobile homes**

**56(1)** No person may sell a new mobile home unless the mobile home is constructed in accordance with the standards contained in or referred to in the regulations.

(2) The Minister may make regulations respecting construction standards for new mobile homes.

1998 cF-1.05 s56

**Motor fuel**

**57(1)** No person may sell motor fuel that does not meet the requirements of the regulations.

**(2)** The Minister may make regulations

- (a) defining “motor fuel” for the purposes of this section;
- (b) respecting standards specifications for motor fuel or any specified class of motor fuel;
- (c) respecting the information to be furnished to a purchaser on the sale of any motor fuel in respect of which a standards specification is prescribed;
- (d) respecting the grade, quality or specifications of motor fuel to be sold in Alberta, and the securing of samples and the methods of testing motor fuel;
- (e) respecting advertising standards for selling motor fuel.

1998 cF-1.05 s57

## **Part 8.1**

### **Ticket Sales and Resales**

**Definitions**

**57.1** In this Part,

- (a) “primary seller” means a person other than a secondary seller who is engaged in the business of making tickets available for sale and includes, as applicable, the owner of the place to which a ticket provides admission, the promoter of the event occurring at that place and any agent of those persons;
- (b) “secondary seller” means a person who is engaged in the business of making available for sale tickets that were originally made available for sale by a primary seller;
- (c) “secondary ticketing platform” means a website, online service, electronic application, print publication or physical location that facilitates the sale of tickets by providing ticket sellers, other than primary sellers, with a method through which to make their tickets available for sale;
- (d) “ticket” means any card, paper, document or thing, whether in electronic form or otherwise, that, on presentation, entitles the holder to admission to a place for a recreational, sporting or cultural event or other prescribed event, located in Alberta;

- (e) “ticket business” means a primary seller, a secondary seller or an operator of a secondary ticketing platform;
- (f) “ticket purchaser” means a person who participates as a purchaser in a transaction involving the sale of a ticket.

2017 c18 s1(10)

**Ticket refund by secondary seller, operator of secondary ticketing platform**

**57.2** A secondary seller or an operator of a secondary ticketing platform shall provide a full refund to a ticket purchaser in any of the following circumstances:

- (a) the event to which the ticket provides admission is cancelled before the ticket can be used;
- (b) the ticket does not grant the ticket purchaser admission to the event for which it was issued;
- (c) the ticket is counterfeit;
- (d) the ticket does not match its description as advertised or as represented to the ticket purchaser;
- (e) the ticket has been cancelled by the primary seller under section 57.3(4) because the ticket was purchased through the use of software described in section 57.3(1).

2017 c18 s1(10)

**Use of certain software**

**57.3(1)** A person shall not use software, including automated ticket purchasing software, intended to circumvent any of the following on a website, online service or electronic application of a ticket business:

- (a) a security measure;
- (b) an access-control system;
- (c) a control or measure that is used to ensure an equitable ticket-buying process;
- (d) a control or measure that is used to limit the number of tickets a person may purchase;
- (e) a prescribed control, measure or system.

**(2)** Subsection (1) does not apply to the use of software that is intended

- (a) to investigate a contravention of this or any other Act or law,
- (b) to engage in research to identify and analyze flaws and vulnerabilities of measures, systems or controls referred to in subsection (1) for the purpose of advancing the state of knowledge in the field of computer system security or assisting in the development of a computer security product, or
- (c) for a prescribed research or educational purpose.

**(3)** No person shall knowingly make a ticket available for sale or facilitate the sale of a ticket if the ticket was obtained through the use of software described in subsection (1).

**(4)** A primary seller shall

- (a) exercise reasonable diligence to detect the purchase of a ticket through the use of software described in subsection (1), and
- (b) cancel any ticket the primary seller reasonably believes was purchased from the primary seller through the use of software described in subsection (1).

2017 c18 s1(10);2018 c11 s1

**Court action re prohibited use of software**

**57.4(1)** A ticket purchaser or ticket business that suffers damage or loss as a result of a person's contravention of section 57.3(1) or (3) may commence an action in the Court of Queen's Bench against that person for relief from the damage or loss.

**(2)** In an action under this section, the Court may

- (a) order restitution of any money or other consideration given or furnished by the plaintiff,
- (b) award the plaintiff damages in the amount of any loss suffered because of the contravention, including exemplary or punitive damages,
- (c) grant an injunction restraining the defendant from continuing to contravene the provision,
- (d) make an order of specific performance against the defendant, or
- (e) make any other order the Court considers appropriate.

(3) An order under subsection (2)(b) for exemplary or punitive damages may not be made if the defendant took reasonable precautions and exercised due diligence to avoid contravening the provision.

2017 c18 s1(10)

#### **Provincial Court**

**57.5** Subject to the jurisdiction of the Provincial Court, an action under section 57.4 may be commenced under Part 4 of the *Provincial Court Act*.

2017 c18 s1(10)

#### **Regulations**

**57.6** The Minister may make regulations respecting ticket sales or resales, including, without limitation, regulations

- (a) respecting damages for the purposes of section 57.4(2);
- (b) respecting the exemption of a secondary seller or an operator of a secondary ticketing platform or a class of secondary sellers or a class of operators of secondary ticketing platforms from the application of all or part of section 57.2;
- (c) respecting the exemption of a primary seller or a class of primary sellers from the application of all or part of section 57.3(4);
- (d) providing for anything that by this Part is to be prescribed by the regulations.

2017 c18 s1(10)

## **Part 9 Cost of Credit Disclosure**

### **Division 1 Interpretation and Application**

#### **Definitions**

**58** In this Part,

- (a) “advance” means value received by the borrower within the meaning of section 59(3);
- (b) “APR” means the annual percentage rate determined in accordance with the regulations;

- (c) “borrower” means the party to a credit agreement or prospective credit agreement who receives or will receive credit from the other party, but does not include a guarantor;
- (d) “brokerage fee” means an amount that a borrower pays or agrees to pay to a loan broker in consideration of the loan broker’s services in arranging or attempting to arrange a credit agreement, and includes an amount deducted from an advance and paid to the loan broker by the credit grantor;
- (e) “business day” means a day on which the credit grantor is open for business;
- (f) “capitalized amount” means, subject to the regulations, the cash value of the leased goods plus the amount of any other advances made to the lessee at or before the beginning of the term, minus the total amount of all payments made by the lessee at or before the beginning of the term;
- (g) “cash customer” means a person who buys a product and pays for it in full before or at the time of receiving the product;
- (h) “cash price” of a product means,
  - (i) for a sale by a credit grantor or an associate of the credit grantor who sells the product to cash customers in the ordinary course of business, an amount that fairly represents the price for which the credit grantor or associate sells the product to cash customers, unless the parties agree on a lower price,
  - (ii) for a sale where subclause (i) does not apply, the price agreed on by the parties, and
  - (iii) for an advertisement, the price for which the advertiser currently offers to sell the product to cash customers or, if the advertiser does not currently offer the product to cash customers, the price stated in the advertisement,and, for the purpose of determining the amount advanced under a credit agreement, includes taxes and any other charges payable by a cash customer;
- (i) “cash value” of leased goods means,
  - (i) where the lessor offers like goods to cash customers in the ordinary course of business, an amount that fairly represents the price for which the credit grantor sells

such goods to cash customers, unless the parties agree on a lower cash value, and

- (ii) where the lessor does not in the ordinary course of business offer like goods to cash customers, the lessor's reasonable estimate of the amount that cash customers would pay to buy such goods, unless the parties agree on a lower cash value;
- (j) "Court" means the Court of Queen's Bench or, subject to the jurisdiction of the Provincial Court, the Provincial Court;
- (k) repealed 2005 c9 s28;
- (l) "credit card" means a card or device that can be used to obtain advances under a credit agreement for open credit;
- (m) "credit grantor" means
  - (i) the party to a credit agreement or prospective credit agreement who extends or will extend credit to the other party, or
  - (ii) an assignee of the rights of the original credit grantor, if the borrower has been given notice of the assignment,and includes a credit card issuer;
- (n) "credit sale" means a transaction under which the purchase of a product is financed by the seller or manufacturer of the product or by an associate of the seller or manufacturer;
- (o) "default charge" means a charge imposed on a borrower who fails to make a payment as it comes due under a credit agreement or who fails to comply with any other obligation under a credit agreement, but does not include interest on an overdue payment;
- (p) "fixed credit" means credit under a credit agreement that is not for open credit;
- (q) "floating rate" means an interest rate that bears a specified mathematical relationship to an index rate, and includes an interest rate that
  - (i) is subject to a minimum or maximum, or

- (ii) is determined at the beginning of a period for the whole period, regardless of changes in the index rate during the period;
- (r) “grace period” means a period in which interest accrues but will be forgiven if the borrower satisfies conditions specified in the credit agreement;
- (s) “index rate” means a rate that meets criteria prescribed by the regulations;
- (t) “initial disclosure statement” means a disclosure statement referred to in section 77, 84 or 93;
- (u) “interest” means charges that accrue over time and are determined by applying a rate to an amount owing from time to time under a credit agreement;
- (v) “interest-free period” means a period following the making of an advance during which interest does not accrue on the advance;
- (w) “lease” means any agreement for the hire of goods, except an agreement for the hire of goods in connection with a residential tenancy agreement;
- (x) “lessee” means a party to a lease or prospective lease;
- (y) “non-interest finance charge” means any charge that a borrower is required to pay in connection with a credit agreement other than
  - (i) interest,
  - (ii) a prepayment or default charge,
  - (iii) a charge for an optional service,
  - (iv) a charge referred to in section 59(3)(f) or (g) or anything designated under section 59(3)(h), or
  - (v) for a credit sale, any charge that would also be payable by a cash customer;
- (z) “open credit” means credit under a credit agreement that
  - (i) anticipates multiple advances, to be made when requested by the borrower in accordance with the agreement, and

- (ii) does not establish the total amount to be advanced to the borrower under the agreement, although it may impose a credit limit;
- (aa) “optional service” means a service that is offered to a borrower in connection with a credit agreement and that the borrower does not have to accept in order to enter into the credit agreement;
- (bb) “outstanding balance” means the total amount owing at a particular time under a credit agreement;
- (cc) “payment” means value given by a borrower within the meaning of section 59(5);
- (dd) “product” means goods, services or goods and services, but does not include the extension of credit;
- (ee) “scheduled-payments credit agreement” means a credit agreement for fixed credit under which the amount advanced is to be repaid in accordance with a specified schedule of payments, which may be subject to adjustment to accommodate contingencies, including, but not limited to, the possibility of changes in the interest rate;
- (ff) “security interest” means any interest in property that secures the borrower’s obligations under a credit agreement;
- (gg) “term”, in relation to the duration of a credit agreement, means the period between the first advance and the last payment anticipated by the agreement;
- (hh) “total cost of credit” has the meaning set out in section 59(2).

RSA 2000 cF-2 s58;2005 c9 s28

**Determination of cost of credit**

**59(1)** In subsections (3), (4) and (5), except subsection (3)(b), (e) and (g), “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively.

**(2)** The total cost of credit is the difference between the value received or to be received by the borrower in connection with a credit agreement and the value given or to be given by the borrower in connection with the credit agreement, disregarding the possibility of prepayment or default.

**(3)** Subject to subsection (4), the following constitute value received or to be received by a borrower in connection with a credit agreement:

- (a) money transferred by the credit grantor to the borrower or to the order of the borrower;
- (b) the cash price of a product purchased by the borrower from the credit grantor;
- (c) the cash value of leased goods under a lease;
- (d) the payment, discharge or consolidation by the credit grantor of a pre-existing monetary obligation of the borrower, the value received by the borrower being the amount of the obligation so paid, discharged or consolidated;
- (e) the use of a credit card to obtain money or a product, the value received by the borrower being the money obtained or the cash price of the product;
- (f) a charge for any of the following expenses, if the credit grantor incurs the expense for the purpose of arranging, documenting, insuring or securing a credit agreement and then charges the expense to the borrower:
  - (i) a fee paid to a third party to record or register a document or information in, or to obtain a document or information from, a public registry of interests in real or personal property;
  - (ii) a fee for professional services required for the purpose of confirming the value, condition, location or conformity to law of property that serves as security for a credit agreement, if the borrower is given a report signed by the person providing the professional services and is free to give the report to third persons;
  - (iii) a premium for insurance that protects the credit grantor against the risk of default on a high-ratio mortgage, as defined by regulation;
  - (iv) a premium for casualty insurance on the subject-matter of a security interest, if the borrower is a beneficiary of the insurance and the insured amount is the full insurable value of the subject-matter;
- (g) a fee charged by the credit grantor for maintenance of a tax account on a high-ratio mortgage, as defined by regulation;
- (h) anything designated by the regulations as value received by the borrower for the purposes of this subsection.

(4) The following do not constitute value received or to be received by the borrower unless they relate to an optional service, an expense or fee referred to in subsection (3)(f) or (g) or something designated under subsection (3)(h):

- (a) insurance provided or paid for by the credit grantor in connection with a credit agreement;
- (b) money paid, an expense incurred or anything done by the credit grantor for the purpose of arranging, documenting, securing, administering or renewing a credit agreement.

(5) The following constitute value given or to be given by a borrower in connection with a credit agreement:

- (a) money or property transferred from the borrower to the credit grantor for any purpose in connection with the credit agreement;
- (b) money or property transferred from the borrower to a person other than the credit grantor in respect of a charge for services that the credit grantor requires the borrower to obtain or pay for in connection with the credit agreement, unless the charge
  - (i) is for an expense to which subsection (3)(f) or regulations under subsection (3)(h) would have applied if it had been incurred initially by the credit grantor and then charged by the credit grantor to the borrower,
  - (ii) is for services provided by a lawyer chosen by the borrower, or
  - (iii) is for title insurance provided by an insurer chosen by the borrower.

(6) Despite subsections (3) and (5), amounts paid into or out of a tax account for a mortgage loan are ignored when calculating the APR and total cost of credit.

1998 cF-1.05 s59

#### **Application**

**60(1)** In this section, “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively.

**(2)** This Part applies to a loan or lease made by ATB Financial and to a loan made by the Alberta Social Housing Corporation or its predecessors.

**(3)** Subject to subsections (4) and (5) and the regulations, this Part applies to a credit agreement if

- (a) the borrower is an individual who enters into the credit agreement primarily for personal, family, household or farming purposes, and
- (b) either,
  - (i) the credit grantor enters into the agreement in the course of carrying on a business, or
  - (ii) the credit agreement is arranged by a loan broker.

**(4)** For the purposes of subsection (3)(a), a credit grantor is entitled to rely on a statement in a credit agreement or other document regarding the purpose for which a borrower enters into a credit agreement, if the statement is signed by the borrower and the credit grantor believes in good faith that the statement is true.

**(5)** This Part does not apply to a credit sale where all of the following occur:

- (a) the credit sale anticipates payment in full for the product in a single payment within a certain period after a written invoice or statement of account is delivered to the buyer,
- (b) the credit sale is unconditionally interest-free during the period for payment referred to in clause (a),
- (c) the credit sale is unsecured, apart from any lien on the product that may arise by operation of law,
- (d) the credit sale is not assigned in the ordinary course of the credit grantor's business otherwise than as security, and
- (e) the credit sale does not provide for any non-interest finance charges.

RSA 2000 cF-2 s60;2017 c22 s18

## **Division 2 Disclosure**

### **Definition**

**61** In sections 62 to 67, “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively.

1998 cF-1.05 s61

**Requirement to disclose**

**62(1)** Every credit grantor must, in the form and manner provided by this Part and the regulations, disclose to borrowers the information that this Part and the regulations require to be disclosed.

**(2)** Every credit grantor must, with respect to any advertisement published or made by or on behalf of the credit grantor, disclose in the advertisement, in the form and manner provided by this Part and the regulations, the information that this Part and the regulations require to be disclosed.

1998 cF-1.05 s62

**Form of disclosure statements**

**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 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
- (b) must express the required information clearly, concisely, in a logical order and in a manner that is likely to bring the information to the borrower's attention.

**(2)** A disclosure statement may be a separate document or part of another document.

RSA 2000 cF-2 s63;2005 c9 s29

**Time at which disclosure statement to be delivered**

**64(1)** The credit grantor must deliver the initial disclosure statement for a credit agreement other than a mortgage loan to the borrower before the earlier of the following occurs:

- (a) the borrower enters into the credit agreement;
- (b) the borrower makes any payment in connection with the credit agreement.

**(2)** The credit grantor must deliver the initial disclosure statement for a mortgage loan to the borrower at least 2 business days before the earlier of the following occurs:

- (a) the borrower incurs any obligation to the credit grantor in connection with the mortgage loan, other than an obligation in respect of a charge referred to in section 59(3)(f) or prescribed by regulation for the purposes of this clause;

(b) the borrower makes any payment to the credit grantor in connection with the mortgage loan, other than a payment in respect of a charge referred to in section 59(3)(f) or prescribed by regulation for the purposes of this clause.

(3) When authorized by the regulations, the time period referred to in subsection (2) may be waived in accordance with terms and conditions set out in the regulations.

1998 cF-1.05 s64

#### **Delivery of disclosure statements**

**65(1)** Where there is more than one borrower under a credit agreement, a disclosure statement or other document that is required to be delivered to the borrowers may be delivered to any of the borrowers, and it is unnecessary to deliver a separate copy to each borrower.

(2) A document sent by ordinary mail to a borrower at the mailing address provided by the borrower to the credit grantor is considered, in the absence of evidence to the contrary, to have been delivered to the borrower 7 days after it was sent.

1998 cF-1.05 s65

### **Fees, Charges and Optional Services**

#### **Required insurance**

**66(1)** A borrower who is required by a credit grantor to purchase any insurance may purchase it from any insurer who may lawfully provide that type of insurance, except that the credit grantor may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

(2) A credit grantor who offers to provide or to arrange insurance referred to in subsection (1) must at the same time clearly disclose to the borrower in writing that the borrower may purchase the required insurance through an insurance agent and from an insurer of the borrower's choice.

RSA 2000 cF-2 s66;RSA 2000 cI-3 s855

#### **Cancellation of optional services**

**67(1)** A borrower may cancel an optional service of a continuing nature that is provided by the credit grantor or an associate of the credit grantor on giving 30 days' notice, or any shorter period of notice that is provided for by the agreement under which the service is provided.

(2) A borrower who cancels an optional service in accordance with subsection (1)

- (a) is not liable, and
- (b) is entitled to a refund of any amount already paid,

for charges relating to any portion of the service that has not been provided at the time of cancellation.

1998 cF-1.05 s67

#### **Prepayment of non-mortgage credit**

**68(1)** This section does not apply to mortgage loans.

**(2)** A borrower is entitled to pay the full outstanding balance under a credit agreement at any time without any prepayment charge or penalty.

**(3)** Where a borrower prepays the full outstanding balance under a credit agreement for fixed credit, the credit grantor must refund or credit the borrower with a portion of any non-interest finance charge that was paid by the borrower or was added to the outstanding balance of the credit agreement.

**(4)** The portion of each non-interest finance charge that must be refunded or credited to the borrower under subsection (3) is to be determined in accordance with the regulations.

**(5)** A borrower is entitled to prepay a portion of the outstanding balance of a credit agreement for fixed credit on any scheduled payment date or at least monthly without any prepayment charge or penalty, but is not entitled by reason of the payment to a credit for any non-interest finance charges.

1998 cF-1.05 s68

#### **Default charges**

**69** The only default charges that may be provided for by a credit agreement are

- (a) reasonable charges in respect of legal costs incurred in collecting or attempting to collect a payment under a credit agreement,
- (b) reasonable charges in respect of costs, including legal costs, incurred in realizing a security interest or protecting the subject-matter of a security interest after default, and
- (c) reasonable charges that reflect the costs incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonoured.

1998 cF-1.05 s69;1999 c26 s8

**Invitation to defer payment**

**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 amount of the deferred payment 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 amount of the deferred payment during the period during which payment is deferred, the credit grantor is deemed to waive the interest that would otherwise accrue during that period.

RSA 2000 cF-2 s70;2005 c9 s30

**Acceleration clauses**

**71(1)** Despite anything in a credit agreement, where the credit agreement contains a provision to the effect that on default by the borrower or on the occurrence of any other event, and whether or not at the option of the credit grantor, the whole or part of the outstanding balance becomes immediately payable or is otherwise accelerated,

- (a) the whole or part of the outstanding balance does not become payable or otherwise accelerated, and
- (b) any rate of interest made specially applicable to the outstanding balance does not become effective,

until written notice of the default or other event is sent by registered mail to the borrower at the borrower's latest address as shown on the records of the credit grantor or is served personally on the borrower.

**(2)** Despite subsection (1), where the credit grantor sends a notice by registered mail to the borrower at the borrower's latest address as shown on the records of the credit grantor,

- (a) the whole or part of the outstanding balance does not become payable or otherwise accelerated, and
- (b) any rate of interest made specially applicable to the outstanding balance does not become effective,

until 10 days has elapsed from the date that the notice was sent to the borrower.

1998 cF-1.05 s71

### **Credit Arranged by Loan Brokers**

#### **Non-business credit grantors**

**72(1)** This section applies where a loan broker arranges a credit agreement involving a credit grantor who does not enter into the credit agreement in the course of carrying on a business.

**(2)** Any provision of this Part or the regulations that imposes a duty on a credit grantor is to be read as imposing the duty on the loan broker, rather than on the credit grantor.

**(3)** Where the borrower pays or is liable to pay a brokerage fee, the initial disclosure statement for the credit agreement must

- (a) disclose the amount of the brokerage fee, and
- (b) account for the brokerage fee in the APR and the total cost of credit.

1998 cF-1.05 s72

#### **Business credit grantors**

**73(1)** This section applies where a loan broker arranges a credit agreement involving a credit grantor who enters into the credit agreement in the course of carrying on a business.

**(2)** Where the credit grantor deducts a brokerage fee from an advance, the credit grantor's initial disclosure statement must

- (a) disclose the amount of the brokerage fee, and
- (b) account for the brokerage fee in the APR and the total cost of credit.

**(3)** A loan broker who takes a loan application from a borrower and forwards it to a credit grantor must give the borrower a disclosure statement containing the information referred to in subsection (2) and any other information required by this Part and the regulations to be disclosed in an initial disclosure statement.

**(4)** Where a loan broker is required by subsection (3) to give the borrower a disclosure statement, the credit grantor may adopt the disclosure statement given by the loan broker as its own disclosure statement or may elect to deliver a separate disclosure statement to the borrower that contains the required information.

1998 cF-1.05 s73

## Division 3 Fixed Credit

### General

#### Application

**74** This Division applies only to credit agreements that extend fixed credit.

1998 cF-1.05 s74

#### Credit sales

**75** A credit grantor may not enter into a credit sale unless the credit sale is a scheduled-payments credit agreement.

1998 cF-1.05 s75

#### Advertising for fixed credit

**76(1)** Every advertisement that offers credit and that states the interest rate or amount of any payment must disclose the information provided by the regulations.

**(2)** An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

**(3)** An advertisement to which subsection (2) applies that does not, in the form and manner referred to in the regulations, disclose the information required under subsection (2) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

1998 cF-1.05 s76

### Disclosure Statements

#### Initial disclosure statement for fixed credit

**77** The initial disclosure statement for a credit agreement must disclose the information prescribed by the regulations.

1998 cF-1.05 s77

#### Changes in interest rate

**78(1)** Where the interest rate under a credit agreement is a floating rate, the credit grantor must, at least once every 12 months, deliver to the borrower a disclosure statement containing the information prescribed by the regulations for the period covered by the statement.

**(2)** Where the interest rate may be changed but is not a floating rate, the credit grantor must, within 30 days after increasing the annual interest rate to a rate that is at least 1% higher than the rate most recently disclosed to the borrower, deliver to the borrower a

disclosure statement containing the information prescribed by the regulations.

(3) Where, as a result of an increase in the outstanding principal because of a missed or late payment or the imposition of a default charge, the scheduled payments under a scheduled-payments credit agreement will not cover interest that will accrue between payments, the credit grantor must give the borrower notice in writing to that effect within 30 days after the outstanding principal increases.

1998 cF-1.05 s78

#### **Disclosure regarding amendments**

**79(1)** If information disclosed in an earlier disclosure statement changes because of an amendment to a credit agreement, the credit grantor must deliver a supplementary disclosure statement to the borrower within 30 days after the amendment is made.

(2) The supplementary disclosure statement must provide the changed information but need not repeat any information that is unchanged from the earlier disclosure statement.

(3) Where an amendment consists only of a revision to the schedule of payments, the supplementary disclosure statement need not disclose any change to the APR or any decrease in the total cost of credit or total payments.

(4) This section does not apply to changes effected by a renewal agreement to which section 80 or 81 applies.

1998 cF-1.05 s79

#### **Disclosure where mortgage loan renewed**

**80(1)** Where the amortization period for a mortgage loan under a scheduled-payments credit agreement is longer than its term, the credit grantor must, at least 21 days before the end of the term, deliver to the borrower a written notice stating whether or not the credit grantor is willing to renew the loan for a further term.

(2) A credit grantor who is willing to renew a mortgage loan must include with the notice referred to in subsection (1) a disclosure statement that contains the information prescribed by the regulations.

(3) Where the terms of the renewal agreement differ from the terms contemplated in the disclosure statement because

- (a) the outstanding balance on the renewal date differs from what was stated in the disclosure statement because of one or more missed, late, early or extra payments,

- (b) the interest rate under the renewal agreement is lower than was stated in the disclosure statement, or
- (c) the amortization period or frequency of payments under the renewal agreement differs from what was stated or assumed,

or because of any combination of such events, the credit grantor must deliver a revised disclosure statement to the borrower within 30 days after the effective date of the renewal agreement.

**(4)** Subject to subsection (3), where a credit grantor does not provide a disclosure statement that reflects the actual terms of the renewal agreement to the borrower at least 21 days before the effective date of a renewal agreement, the borrower

- (a) is entitled to prepay the outstanding balance of the renewed mortgage loan without penalty at any time within 21 days after receiving the disclosure statement, and
- (b) on exercising that right, is entitled to a refund of any non-interest finance charges imposed in connection with the renewal.

1998 cF-1.05 s80

#### **Renewal of non-mortgage loan**

**81** When fixed credit other than a mortgage loan is renewed, the credit grantor must deliver to the borrower on or before the renewal date a disclosure statement containing the information prescribed by the regulations.

1998 cF-1.05 s81

### **Division 4 Open Credit**

#### **General**

##### **Application**

**82** This Division applies only to credit agreements that extend open credit.

1998 cF-1.05 s82

##### **Advertising for open credit**

**83(1)** An advertisement that gives any specific information about the cost of credit must disclose the information prescribed by the regulations.

**(2)** An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction under a credit agreement must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

**(3)** An advertisement to which subsection (2) applies that does not, in the form and manner referred to in the regulations, disclose the information required under subsection (2) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

1998 cF-1.05 s83

**Initial disclosure statement**

**84** The initial disclosure statement for a credit agreement must disclose the information prescribed by the regulations.

1998 cF-1.05 s84

**Statement of account**

**85(1)** Subject to subsection (2), the credit grantor must deliver a statement of account to the borrower at least monthly.

**(2)** A credit grantor is not required to send a statement of account to a borrower at the end of any period during which there have been no advances or payments where

- (a) the outstanding balance is zero, or
- (b) the borrower is in default and has been notified that the privilege of obtaining advances under the agreement has been cancelled or suspended and the credit grantor has demanded payment of the outstanding balance.

**(3)** The credit grantor must provide a telephone number at which the borrower can make inquiries about the borrower's account during the credit grantor's ordinary business hours without incurring any charges for the call.

**(4)** A statement of account must disclose the information prescribed by the regulations.

**(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.

RSA 2000 cF-2 s85;2005 c9 s31

### **Credit Cards**

#### **No unsolicited credit cards**

**86(1)** A credit card issuer must not issue a credit card to a person who has not applied for the card.

**(2)** Subsection (1) does not apply to a credit card that is issued to a person to replace or renew a card that was applied for and issued to that person.

1998 cF-1.05 s86

#### **Application for credit card**

**87(1)** A credit card issuer must disclose in an application form for a credit card the information prescribed by the regulations.

**(2)** A person who applies for a credit card without signing an application form is considered to enter into a credit agreement in relation to that card on using the card for the first time.

**(3)** Nothing in this section relieves the credit card issuer from the requirement to deliver an initial disclosure statement in accordance with sections 64(1) and 84.

1998 cF-1.05 s87

#### **Additional disclosure for credit card**

**88(1)** In addition to the applicable information required to be disclosed under section 84, a credit card issuer must disclose in the initial disclosure statement for open credit associated with a credit card the card holder's maximum liability for unauthorized use of the credit card if it is lost or stolen.

**(2)** The credit card issuer must give the card holder at least 30 days' notice of any change in the information disclosed in a disclosure statement.

**(3)** Subsection (2) does not apply to

- (a) a change in the credit limit,
- (b) a decrease in the interest rate or the amount of any other charge,

- (c) an increase in the length of an interest-free period or grace period, or
- (d) a change in a floating rate,

but the relevant information must be disclosed in the next statement of account following the change or in a document that is given to the borrower with the next statement of account.

1998 cF-1.05 s88

#### **Limitation of liability**

**89(1)** A card holder is not liable for a debt incurred through the unauthorized use of a lost or stolen credit card after the credit card issuer receives notice of the loss or theft.

**(2)** A notice under subsection (1) may be oral or in writing.

**(3)** The maximum total liability of a card holder arising from unauthorized use of a lost or stolen credit card before the issuer receives notice under subsection (1) is the lesser of

- (a) \$50, and
- (b) the amount fixed or agreed to by the credit card issuer as the maximum amount for which the card holder is liable in the event of the unauthorized use of the card after its loss or theft.

**(4)** Subsection (3) does not apply to a transaction prescribed by regulation.

1998 cF-1.05 s89

## **Division 5 Leases of Goods**

#### **Definitions**

**90** In this Division,

- (a) “estimated residual value” means the lessor’s reasonable estimate of the wholesale value of the leased goods at the end of the lease term;
- (b) “residual obligation lease” means a lease under which the lessee may be required at the end of the lease term to pay the lessor an amount based wholly or partly on the difference, if any, between the estimated residual value and the realizable value of the leased goods;

- (c) “term”, in relation to the duration of a lease, means the period during which the lessee is entitled to retain possession of the leased goods.

1998 cF-1.05 s90

**Application of Division**

**91** This Division applies to a lease if the lease

- (a) is for a fixed term of 4 months or more,
- (b) is for an indefinite term or is renewed automatically until one of the parties takes positive steps to terminate it, or
- (c) is a residual obligation lease.

1998 cF-1.05 s91

**Advertisements**

**92** An advertisement that gives any specific information about the cost of a lease must disclose the information prescribed by the regulations.

1998 cF-1.05 s92

**Disclosure statement for lease**

**93** The initial disclosure statement for a lease must disclose the information prescribed by the regulations.

1998 cF-1.05 s93

**Residual obligation leases**

**94** The lessee’s maximum liability at the end of the term of a residual obligation lease after returning the leased goods to the lessor is to be calculated in accordance with the regulations.

1998 cF-1.05 s94

## Division 6 Compliance

**Interpretation**

**95(1)** In this Division, “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively, and “credit grantor” also includes a loan broker.

**(2)** For the purposes of this Division, a credit grantor is considered to have a compliance procedure if the credit grantor

- (a) requires its employees and agents to follow procedures, or has implemented automated procedures, designed to ensure that borrowers receive the information to which they are entitled at the time and in the form required by this Part, and

- (b) monitors the effectiveness of the measures referred to in clause (a) and promptly remedies any deficiencies it discovers in their design or implementation.

1998 cF-1.05 s95

**Recovery of payments and compensation**

**96(1)** Despite any agreement to the contrary, where a borrower makes a payment to a credit grantor that by virtue of this Part the credit grantor is not entitled to receive, the credit grantor must refund the payment to the borrower or, if the parties agree, credit the payment against the outstanding balance of the relevant credit agreement as of the time the payment was made.

**(2)** A credit grantor who contravenes this Part or the regulations must compensate a borrower for any loss the borrower suffers because of the contravention, and the compensation to which the borrower is entitled may be set off against the outstanding balance of the relevant credit agreement or may be recovered in an action.

1998 cF-1.05 s96

**Inconsistency between disclosure statement and contract**

**97** If information in a disclosure statement is inconsistent with any information or term set out in the credit agreement, the credit agreement is presumed to incorporate the information or term that is more favourable to the borrower, unless it is proved that the less favourable information or term reflects the borrower's actual understanding of the terms of the agreement.

1998 cF-1.05 s97

**Statutory damages**

**98(1)** A contravention of this Part or the regulations by a credit grantor is an excusable error for the purposes of this section if

- (a) the credit grantor had a compliance procedure when the contravention occurred,
- (b) the contravention was accidental or the result of an employee's or agent's failure to follow the compliance procedure, and
- (c) on discovering the contravention, the credit grantor promptly took steps to minimize its effect on any affected borrower.

**(2)** Where a credit grantor contravenes this Part or the regulations in relation to a credit agreement and the contravention is not an excusable error, the borrower is entitled, in addition to any other remedy to which the borrower may be entitled under this Part, to

recover from the credit grantor in an action the statutory damages provided for by this section.

**(3)** Subject to subsection (4), the statutory damages for a contravention of this Part or the regulations are the lesser of \$500 and 5% of whichever of the following is applicable:

- (a) for a credit agreement for fixed credit, the maximum outstanding balance;
- (b) for a lease, the capitalized amount;
- (c) for a credit agreement for open credit, the credit limit,

except that the statutory damages are \$500 for open credit that does not specify a credit limit.

**(4)** Where a contravention of this Part or the regulations relates to a statement of account for open credit, the statutory damages are equal to the interest and any non-interest finance charges for the period covered by the statement of account.

**(5)** The Court may reduce the statutory damages to which a borrower would otherwise be entitled under this section if the Court is satisfied in view of all the circumstances, including any undertakings as to future compliance with this Part or the regulations that are given by the credit grantor, that it would be just and equitable to do so.

**(6)** Statutory damages to which a borrower is entitled may be set off against any amount otherwise payable by the borrower to the credit grantor.

1998 cF-1.05 s98

#### **Exemplary damages**

**99** The Court may award exemplary damages to a borrower against a person who has deliberately contravened this Part or the regulations or in any case where the Court considers that the conduct of a person who has contravened this Part or the regulations justifies an award of exemplary damages against that person.

1998 cF-1.05 s99

#### **Assignee**

**100(1)** Except as otherwise provided in this section, a borrower may assert against a person to whom the rights of a credit grantor have been assigned any rights or remedies under section 96, 97 or 98 that the borrower could have asserted against the original credit grantor immediately before receiving notice of the assignment.

(2) The assignee's maximum liability under any of the provisions referred to in subsection (1) is limited to the outstanding balance at the time of the assignment, or the proportion of the outstanding balance that is assigned to the assignee.

(3) An assignee incurs no liability under this section for a credit grantor's contravention of this Part or the regulations unless

- (a) the assignee knew of the contravention before the borrower received notice of the assignment,
- (b) the contravention consists of the credit grantor's failure to deliver a disclosure statement to the borrower when required by this Part or the regulations, or
- (c) the contravention is apparent on the face of a disclosure statement, or by comparing the disclosure statement with the written terms of the credit agreement.

(4) An assignee is entitled to rely in good faith on a borrower's signed acknowledgment of receipt of a disclosure statement.

1998 cF-1.05 s100

## **Division 7 Regulations**

### **Regulations**

**101(1)** The Minister may make regulations

- (a) respecting the criteria in determining what constitutes an interest rate;
- (b) respecting the calculation of the APR for the purposes of credit agreements and leases;
- (c) defining "high-ratio mortgage" for the purposes of section 59(3)(f)(iii) and (g);
- (d) designating what is value received by a borrower for the purposes of section 59(3)(h);
- (e) respecting terms and conditions for the waiver of the time period referred to in section 64(2);
- (f) respecting, in addition to the requirements set out in this Part,
  - (i) the form of disclosure statements and the form of disclosure in advertisements,

- (ii) information to be disclosed in a disclosure statement or advertisement, and
  - (iii) the manner in which information may be disclosed under this Act and the regulations;
  - (g) respecting the form and manner in which information referred to in sections 76 and 83 must be disclosed in an advertisement;
  - (h) respecting the manner in which a refund referred to in section 67(2)(b) may be determined;
  - (i) determining the portion of each non-interest finance charge that must be refunded or credited to the borrower under section 68(4);
  - (j) respecting what constitutes reasonable charges for the purpose of section 69;
  - (k) respecting the information that must be disclosed for the purposes of sections 76(1) and (2), 77, 78(1) and (2), 80(2), 81, 83(1) and (2), 84, 85(4) and (6), 87(1) and (3), 92 and 93;
  - (l) respecting the transactions to which section 89(3) does not apply;
  - (m) respecting, for the purposes of section 94, the calculation of a lessee's maximum liability at the end of the term of a residual obligation lease after returning the leased goods to the lessor;
  - (n) restricting or broadening the definition of "capitalized amount";
  - (o) defining any term or expression not otherwise defined in this Part;
  - (p) respecting the early termination of leases, including the early exercise of purchase options, and, in particular, limiting the compensation or penalties payable by a lessee on the early termination of a lease;
  - (q) respecting the terms and conditions applicable to reverse mortgages.
- (2) The Lieutenant Governor in Council may make regulations respecting the exemption of any class of advertisement, credit agreement, credit grantor, loan broker, lease or lessor from the

application of this Part or the regulations or of any provision of this Part or the regulations.

RSA 2000 cF-2 s101;2005 c9 s32

## **Part 10**

### **Designated Trades and Businesses**

#### **Definitions**

**102** In this Part,

- (a) “designated agent” means a person who is appointed as a designated agent pursuant to the regulations;
- (b) “designated business” means a trade, business, industry, employment or occupation to which this Part is made applicable by regulation under section 103.

1998 cF-1.05 s102

#### **Application of Part**

**103(1)** The Lieutenant Governor in Council may, by regulation, provide that this Part applies to the whole or a part of a trade, business, industry, employment or occupation designated in the regulations.

**(2)** The Lieutenant Governor in Council may not designate the following:

- (a) trades, businesses, industries, employments and occupations that are licensed pursuant to the *Gaming, Liquor and Cannabis Act* or the *Film and Video Classification Act*;
- (b) professions or callings to which the *Apprenticeship and Industry Training Act*, *Architects Act*, Schedule 2 of the *Health Professions Act*, Schedule 7 of the *Health Professions Act*, *Engineering and Geoscience Professions Act*, *Land Surveyors Act*, *Legal Profession Act*, Schedule 21 of the *Health Professions Act*, Schedule 24 of the *Health Professions Act*, Schedule 17 of the *Health Professions Act*, Schedule 19 of the *Health Professions Act*, *Real Estate Act*, *Chartered Professional Accountants Act*, *Teaching Profession Act* or *Veterinary Profession Act* applies;
- (c) a trade, business, industry, employment or occupation that is subject to the control of the Alberta Utilities Commission;

- (d) the occupation of a farmer, a rancher, a farm labourer, a domestic servant or an unskilled labourer.

RSA 2000 cF-2 s103;  
RSA 2000 cH-7 ss143,146,147,149,150;  
RSA 2000 cR-12 s146;2002 c30 ss7,12;2007 cA-37.2 s82(7);  
2008 cF-11.5 s21;2011 c3 s33;2014 cC-10.2 s176;2017 c21 s29

#### **Licence required - designated businesses**

**104(1)** No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

**(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.

RSA 2000 cF-2 s104;2005 c9 s33

#### **Regulations**

**105(1)** The Minister may make regulations

- (a) specifying activities that constitute engaging in a designated business for the purposes of this Act;
- (b) prescribing fees payable by or in respect of designated agents;
- (c) respecting the duties and obligations of persons engaged or employed in a designated business;
- (d) requiring persons engaged or employed in a designated business to appoint designated agents as their representatives and respecting the eligibility requirements, duties and obligations of designated agents;
- (e) prescribing or adopting, with or without modification, codes, standards or rules governing
  - (i) the manner of carrying on a designated business or class of designated business,
  - (ii) experience and education requirements and requirements as to financial responsibility of persons carrying on or wishing to carry on a designated business,
  - (iii) the type and condition of premises and equipment used in a designated business, and
  - (iv) the conduct of persons engaged in carrying on a designated business;

- (f) respecting the manner of informing members of the public of
  - (i) any sale of or dealing with goods, products or services of a designated business, and
  - (ii) contraventions of this Part;
- (g) respecting terms and conditions for a designated business or class of designated business that has contravened this Part or the regulations made under this Part to continue operating as a business under this Part;
- (h) prescribing in respect of any designated business or class of designated business that the approval of any authority specified by the Minister is required for the obtaining of a licence or the renewal of a licence or the establishment of that business or class of business;
- (i) prescribing as to any designated business or class of designated business the information to be contained in agreements used by persons carrying on or engaged in that business in their dealings with the public;
- (j) requiring in respect of any designated business or class of designated business that specified accounts and records be maintained by persons carrying on or engaged in that business.

(2) The Minister may, by order, delegate in whole or in part to any other head of a department of the Public Service the power to make any regulations under this Part that the Minister is empowered to make, and the Minister may, by order, authorize another department to make any inspections of any business for the purposes of this Part.

1998 cF-1.05 s105

#### **Codes respecting competitive practices**

**106(1)** The Minister may establish or adopt codes that establish standards of ethics, methods, practices and systems applicable to any designated business or class of designated business to effect an end to or to prevent competitive practices that are, by their nature, detrimental either to the business, to persons employed in the business or to the public.

(2) The Minister must ensure that any code established or adopted under subsection (1) is published in The Alberta Gazette.

(3) The *Regulations Act* does not apply to a code established or adopted under subsection (1).

1998 cF-1.05 s106

#### Compliance with code

**107** The principals, directors, managers and employees of a designated business that is subject to a code under section 106 must comply with the code.

1998 cF-1.05 s107

#### Municipal licences

**108** No municipality or Metis settlement may issue a licence for the carrying on of a designated business unless the applicant for the licence holds a licence issued under this Act in respect of that business.

1998 cF-1.05 s108

## Part 11 Collection Practices

#### 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.

RSA 2000 cF-2 s109;2005 c9 s34

#### Exemptions

**110(1)** This Part, except section 117, does not apply

- (a) to an insurer licensed under the *Insurance Act*, to an insurance agent who holds an insurance agent’s certificate of authority under the *Insurance Act* or to an adjuster who holds an adjuster’s certificate of authority under the *Insurance Act* or to the employees of any of them acting in the regular course of their employment,
- (b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy and Insolvency Act* (Canada), the *Canada Business Corporations Act* (Canada), the *Companies Act*, the *Business Corporations Act*, the *Cooperatives Act*, the *Judicature Act*, the *Personal Property Security Act* or the *Winding-up and Restructuring Act* (Canada) or to a person acting under a debenture or the order of any court, or

(c) to an industry member within the meaning of the *Real Estate Act* or to the employees of an industry member acting in the regular course of their employment.

(2) This Part does not apply to lawyers who are acting in the practice of their profession or to a civil enforcement bailiff or civil enforcement agency while realizing on a security.

(3) This Part or any provision of this Part does not apply to any person or class of persons designated by the regulations as a person or class of persons exempt from the operation of this Part or that provision.

RSA 2000 cF-2 s110;RSA 2000 cI-3 s855;2001 cC-28.1 s451

#### **Licence required**

**111(1)** No person may carry on the activities of a collection agency unless the person is the holder of a collection agency licence issued under this Act.

(2) No person may act as a collector for a collection agency unless the person is the holder of a collector's licence issued under this Act.

(3) No collection agency may employ or authorize any person to be a collector unless that person is the holder of a collector's licence.

(4) No person may claim or advertise that the person is a collector or carries on the activities of a collection agency unless the person holds a collector's licence or a collection agency licence, as the case may be.

RSA 2000 cF-2 s111;2005 c9 s35

#### **Suspension and cancellation of licence**

**112** The licence of a collector

(a) is cancelled when the person who holds the licence ceases to be employed or authorized by a collection agency to act as a collector, and

(b) is suspended or cancelled, as the case may be, on the suspension or cancellation of the collection agency licence of the collection agency that employed or authorized the person to act as a collector.

1998 cF-1.05 s112

**113** Repealed 2005 c9 s36.

**Statement of account**

**114(1)** Every collection agency must, on the written request of a debtor, provide to the debtor a statement of account that shows the amounts received and paid out by the agency in respect of the debtor and the amount owing by the debtor at the date of the statement.

**(2)** A collection agency does not have to provide the statement of account more frequently than once every 6 months.

1998 cF-1.05 s114

**115** and **116** Repealed 2005 c9 s37.

**Withdrawal of accounts**

**117** No person may place an account for collection with a collection agency without first withdrawing in writing any previous placement of that account with any other collection agency.

1998 cF-1.05 s117

**Regulations**

**118** The Minister may make regulations

- (a) designating any person or any class of persons as exempt persons for the purpose of section 110(3);
- (b) specifying what constitutes carrying on the activities of a collection agency for the purposes of this Act;
- (c) respecting receipts under this Part;
- (d) respecting the creation, maintenance and providing of audits, records or reports;
- (e) respecting advertising by collection agencies and collectors;
- (f) governing the fees, commissions or disbursements charged by any collection agency or class of collection agency in performing its services;
- (g) prohibiting a collection agency or collector from doing specified things;
- (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.

RSA 2000 cF-2 s118;2005 c9 s38

## **Part 12 Public Auctions**

### **Definitions**

**119** In this Part,

- (a) “auction sales business” means an individual, partnership or corporation that carries on any activity referred to in section 121(1)(a) to (c) or the regulations under section 124(b);
- (b) “auctioneer” means an individual who conducts the bidding at a sale by public auction;
- (c) “licence” means an auction sales business licence issued under this Act;
- (d) “sale by public auction” means a sale of goods by public auction and includes a sale of goods in lots by public auction.

RSA 2000 cF-2 s119;2005 c9 s39

### **Application**

**120(1)** Subject to subsections (2) and (3), this Part does not apply to a sale by public auction

- (a) to which the *Civil Enforcement Act* applies, or that is held pursuant to an order of a court,
- (b) of goods taken in distress under the authority of an enactment for the recovery of a tax, rate or imposition made or levied pursuant to that enactment,
- (c) of livestock by an auction sales business that is licensed as a livestock dealer and has provided the security required under the *Livestock Identification and Commerce Act*,
- (d) held by a religious, charitable or non-profit organization, or
- (e) held by an educational institution as part of a course of instruction in auctioneering offered by it.

**(2)** No person may conduct the bidding at a sale by public auction referred to in subsection (1)(a) to (d) unless the person meets the qualifications for an auctioneer under the regulations.

**(3)** No person may conduct the bidding at a sale by public auction referred to in subsection (1)(e) unless the person is a student registered in a course for the training of auctioneers at an educational institution and the student is supervised by officials from the institution.

**(4)** If a licensee holds a sale by public auction referred to in subsection (1), the provisions in the regulations under Part 13 dealing with claims against the licensee's security apply in respect of that sale, even though the auction sales business does not have to be licensed or to provide security in respect of it.

RSA 2000 cF-2 s120;2006 cL-16.2 c96

#### **Licence required**

**121(1)** No person may

- (a) carry on the activities of holding sales by public auction,
- (b) hold a sale by public auction, or
- (c) advertise a sale by public auction,

unless the person is the holder of a subsisting licence.

**(2)** No auctioneer may conduct the bidding at a sale by public auction unless the auction sales business holding the sale is the holder of a subsisting licence.

**(3)** No auction sales business may

- (a) authorize, permit or direct any of its employees, or
- (b) engage, permit or authorize any other individual

to conduct the bidding at a sale by public auction held by the auction sales business unless the employee or individual meets the qualifications for an auctioneer under the regulations.

RSA 2000 cF-2 s121;2005 c9 s40

**122** Repealed 2005 c9 s41.

#### **Removal of goods purchased**

**123** When a sale by public auction is held,

- (a) no purchaser may remove, and
- (b) no auctioneer and no auction sales business or its employees may permit to be removed

from the place at which the sale is held any goods purchased at the sale unless the purchase price of the goods is first paid to the auction sales business or other arrangements satisfactory to the auction sales business are made for payment of the purchase price.

1998 cF-1.05 s123

### Regulations

**124** The Minister may make regulations

- (a) respecting the qualifications of auctioneers;
- (b) specifying activities that constitute carrying on the activities of holding sales by public auction for the purposes of this Act;
- (c) respecting standards of conduct to be followed and requirements to be met by auction sales businesses and auctioneers in connection with any activities referred to in section 121(1)(a) to (c) or the regulations under clause (b);
- (d) respecting the duty of auction sales businesses and auctioneers to determine if goods to be sold at a public auction are subject to a mortgage, charge, lien or encumbrance;
- (e) respecting the duty and liability of auction sales businesses and auctioneers if goods sold at a public auction are subject to a mortgage, charge, lien or encumbrance;
- (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.

RSA 2000 cF-2 s124;2005 c9 s42

## Part 12.1 Payday Loans

### Interpretation

**124.1** In this Part,

- (a) “cash card” means a card or other device issued, supplied or provided by a payday lender to the borrower of a payday loan, instead of an advance of cash or a transfer of money to

the order of the borrower, that can be used to obtain cash or acquire goods and services, but does not include a credit card;

- (b) “discounting” means the practice of deducting or withholding from the initial advance of a payday loan an amount representing any portion of the cost of borrowing;
- (c) “licence” means a payday loan business licence;
- (d) “pay period” means
  - (i) the period from the date on which a payday loan is entered into until the day on which the borrower next receives his or her pay or other income, or
  - (ii) a period during the term of a payday loan from the day on which a borrower receives his or her pay or other income until the day on which the borrower next receives his or her pay or other income;
- (e) “payday lender” means a person who offers, arranges or provides payday loans;
- (f) “payday loan” means any advancement of money with a principal of \$1500 or less and a term of 62 days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature, but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card;
- (g) “payday loan business” means the activity of offering, arranging for or providing payday loans by a payday lender;
- (h) “rollover loan” means the extension or renewal of a payday loan that imposes additional fees or charges on the borrower, other than interest, and includes the advancement of a new payday loan to pay out an existing payday loan.

2016 cE-9.5 s8

### Application

**124.11** This Part applies

- (a) to every payday lender who offers, arranges or provides a payday loan to a borrower in Alberta, whether the payday lender operates from business premises or on the Internet, and

- (b) to each payday loan, regardless of the number of payday lenders involved in the payday loan.

2016 cE-9.5 s8

**Express consent**

**124.12** The express consent referred to in this Part must be in a verifiable form, including, but not limited to, writing and audio recordings.

2016 cE-9.5 s8

**Prohibited practices**

**124.2(1)** A payday lender shall not engage in any of the following practices:

- (a) discounting the principal amount of a payday loan;
- (b) collecting or receiving any fees or charges before the first payday loan instalment payment is due;
- (c) granting a rollover loan;
- (d) accepting a cheque from a borrower that is not payable to the payday lender;
- (e) subject to the regulations, requiring a payday loan instalment payment to be due on a day before the day on which a borrower will receive his or her pay or other income for the pay period to which that instalment payment relates;
- (f) requiring, requesting or accepting information or consent that would give the payday lender or a third party direct access to a borrower's bank account, other than information required for pre-authorization for repayment of a specific payday loan;
- (g) attempting to process a payday loan instalment payment before the day on which it is due;
- (h) making withdrawals from a borrower's account without the express consent of the borrower;
- (i) charging any amount to a borrower to whom the payday lender provides a payday loan in addition to the fees provided for in the agreement with that borrower in relation to the payday loan;
- (j) charging a fee for converting a payday loan cheque issued by the payday lender to cash;

- (k) failing to include the name of the payday lender as shown on the payday lender's licence in all contact and correspondence with the borrower;
- (l) making any call in person or by telephone for the purpose of collecting or attempting to collect an outstanding payday loan payment except between 7 a.m. and 10 p.m. in Alberta;
- (m) directly or indirectly threatening or stating an intention to proceed with any action for which there is no lawful authority;
- (n) contacting an individual other than the borrower for the purposes of collecting or attempting to collect an outstanding payday loan payment;
- (o) contacting or attempting to contact any individual in respect of an outstanding payday loan payment by any means in such a manner as to constitute harassment, including but not limited to
  - (i) the use of threatening, profane, intimidating or coercive language,
  - (ii) the use of undue, excessive or unreasonable pressure, or
  - (iii) the use of telephone, e-mail, a call in person or other methods of contact, other than traditional mail, to call or send messages excessively;
- (p) giving any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment;
- (q) contacting a borrower's spouse or adult interdependent partner, relative, neighbour, friend or acquaintance unless the contact is limited to the purpose of obtaining the borrower's residential address, personal telephone number or employment telephone number;
- (r) contacting a borrower's employer for any purpose other than to confirm the borrower's employment status and business title, the business address of the borrower's place of employment or the date of the borrower's next payday;
- (s) contacting a borrower at the borrower's place of employment for the purposes of collecting or attempting to collect an outstanding payday loan payment;

- (t) contacting a borrower at the borrower's place of employment, for any reason other than collecting or attempting to collect an outstanding payday loan payment, if the borrower
  - (i) requests the payday lender not to contact the borrower there,
  - (ii) makes reasonable arrangements to discuss the payday loan with the payday lender, and
  - (iii) discusses the payday loan with the payday lender in accordance with the arrangements;
- (u) communicating information about a payday loan or the existence of a payday loan to any person without the express consent of the borrower;
- (v) entering into or arranging wage assignments with a borrower or the employer of a borrower;
- (w) publishing or threatening to publish a notice of a borrower's failure to pay;
- (x) giving false, misleading or deceptive information in advertisements, solicitations or negotiations with respect to a payday loan;
- (y) soliciting, negotiating or entering into an agreement with a borrower respecting another form of credit at a time when a payday loan entered into by the borrower is outstanding;
- (z) actively soliciting individuals through direct contact by mail, phone, fax, e-mail or a social media website.

**(2)** A payday lender shall not attempt to collect an outstanding payday loan more than 3 years after the date of the last payment or written acknowledgment by the borrower.

2016 cE-9.5 s8

**Tied selling prohibited**

**124.21(1)** A payday lender shall not make a payday loan contingent on the supply of other goods or services.

**(2)** A payday lender shall not include a term or condition relating to the supply of other goods or services in any payday loan agreement.

(3) A payday lender shall ensure that each payday loan agreement includes a statement that the supply of other goods or services is separate and optional.

(4) The statement referred to in subsection (3) must be initialled by the borrower.

2016 cE-9.5 s8

#### **Instalment payments**

**124.3(1)** A payday lender shall ensure that a payday loan agreement provided to a borrower contains a term requiring the borrower to repay the payday loan through an instalment plan.

(2) The payday lender shall ensure that the instalment plan allows the borrower to repay the loan over a period of at least 42 days and no more than 62 days regardless of any other term stated in the payday loan agreement.

(3) A payday lender shall ensure that

- (a) if the borrower is paid or otherwise receives income on a semi-monthly, bi-weekly or more frequent basis, the payday loan agreement specifies that repayment is to be spread over at least 3 pay periods, or
- (b) if the borrower is paid or otherwise receives income on a basis that is less frequent than those referred to in clause (a), the payday loan agreement specifies that repayment is to be spread over at least 2 pay periods.

(4) A borrower may pay all or part of the outstanding balance under a payday loan agreement at any time without incurring any prepayment charge or penalty, regardless of the number of instalments remaining.

(5) A payday lender shall comply with requirements respecting instalment plans as set out in the regulations.

2016 cE-9.5 s8

#### **Financial literacy information**

**124.31** A payday lender shall

- (a) display financial literacy information, and
- (b) provide borrowers with financial literacy information

as required by the regulations.

2016 cE-9.5 s8

**Cancellation period**

**124.4(1)** A borrower under a payday loan agreement may, without any reason, cancel the agreement

- (a) until the end of the 2nd day after the payday lender gives a copy of the agreement to the borrower, if the payday lender is open for business on that day, or
- (b) if the payday lender is not open for business on the day referred to in clause (a), until the end of the first day after that day that the payday lender is open for business.

**(2)** A borrower who wishes to cancel a payday loan agreement must

- (a) give written notice to the payday lender within the time period set out in subsection (1), and
- (b) return to the payday lender the full amount received by the borrower.

**(3)** In giving notice of cancellation under subsection (2), a borrower may

- (a) use the copy of the cancellation notice provided by the payday lender under section 124.5(2), or
- (b) provide notice in writing, signed by the borrower, of the borrower's intention to cancel the payday loan agreement.

**(4)** On receiving notice of cancellation from a borrower and repayment of the full amount received by the borrower in accordance with subsections (2) and (3), the payday lender shall give the borrower an acknowledgment of the receipt of the loan cancellation.

**(5)** An acknowledgment of the receipt of a loan cancellation under subsection (4) must be in the form submitted to the Director under the regulations.

**(6)** A payday lender shall not charge

- (a) interest on a payday loan that has been cancelled, or
- (b) a fee for the cancellation of a payday loan.

2016 cE-9.5 s8

**Standard content of agreements, forms,  
other documents**

**124.41(1)** The Director may establish standard content for agreements, forms and other documents used by payday lenders, including, but not limited to, payday loan agreements, cancellation forms, receipts and pre-authorized debit agreements.

**(2)** If the Director establishes standard content for a document, a payday lender shall use that standard content.

2016 cE-9.5 s8

**Agreement and advance**

**124.5(1)** A payday lender shall ensure that the terms, information and statements contained in payday loan documents are clear and comprehensible.

**(2)** A payday lender shall give a borrower a copy of the payday loan agreement at the time it is entered into by the borrower, together with a copy of the cancellation notice that may be used by the borrower for the purposes of section 124.4.

**(3)** With the borrower's express consent, a payday lender may, for the purposes of subsection (2), provide a copy of the full payday loan agreement and any required accompanying documentation by e-mail sent to the address provided by the borrower for that purpose, or by other electronic means.

**(4)** A payday lender shall ensure that the proceeds of the payday loan are delivered to the borrower no later than at the time of entering into the payday loan agreement.

**(5)** In the case of a payday loan obtained by means of the Internet or by telephone, the payday lender is deemed to have complied with subsection (4) if the payday lender delivers instructions to the payday lender's financial services provider to transfer the amount of the advance to the borrower on the same day as the day on which the payday loan agreement is entered into by both the borrower and the payday lender.

**(6)** For the purposes of subsection (5), "financial services provider" includes a bank listed in Schedule I, II or III of the *Bank Act* (Canada), a treasury branch, a credit union, a trust corporation or loan corporation registered under the *Loan and Trust Corporations Act* or an organization that provides remote funds transfers, electronic funds transfers or any similar method of transferring money.

2016 cE-9.5 s8

**Acknowledgment of receipt of payment**

**124.51(1)** On receiving payment from a borrower in person at its business premises, the payday lender shall immediately give the borrower an acknowledgment of the receipt of that payment, in the form submitted to the Director under the regulations.

**(2)** The payday lender shall ensure that the acknowledgment referred to in subsection (1) or (4) specifies

- (a) the name of the borrower,
- (b) the date of payment,
- (c) the agreement number of the payday loan in respect of which the payment was made,
- (d) the amount paid, and
- (e) the amount still owing in respect of the payday loan, if any.

**(3)** For the purposes of subsection (1), with the express consent of the borrower, a payday lender may provide a copy of an acknowledgment of the receipt of payment by e-mail or by other electronic means.

**(4)** On receiving payment from a borrower by means other than in person at its business premises, the payday lender shall provide an acknowledgment of the receipt of that payment to the borrower electronically sent to the e-mail address provided by the borrower, in the form submitted to the Director under the regulations.

2016 cE-9.5 s8

**Payout of balance on cash card**

**124.6(1)** If in respect of a payday loan the payday lender issues a cash card to the borrower, the borrower is entitled to be paid in cash the amount of credit remaining on the card where

- (a) the balance of credit remaining on the cash card is less than \$25, or
- (b) the payday loan has been repaid by the borrower and the cash card has expired.

**(2)** If the borrower is entitled to be paid a balance under subsection (1) and returns the cash card to the payday lender, the payday lender shall immediately pay the balance on demand by the borrower.

2016 cE-9.5 s8

**Maximum allowable cost of borrowing**

**124.61(1)** A payday lender shall not charge, require or accept a total cost of borrowing that exceeds 15% of the principal amount of the payday loan.

(2) The maximum total cost of borrowing under subsection (1) must include the fees for all mandatory and optional services provided by the payday lender in relation to a payday loan and any other fees or charges set out in the regulations.

(3) In addition to the cost set out in subsection (1), if a borrower fails to repay the amount specified in the payday loan agreement, the payday lender may charge the following:

- (a) interest at a rate of 2.5% per month, not to be compounded;
- (b) a one-time fee in an amount determined by the Director for each dishonoured cheque or dishonoured pre-authorized debit.

2016 cE-9.5 s8

**Consequence of failure to comply**

**124.7** If, in respect of section 124.2, 124.21, 124.3, 124.5(2) or (4), 124.51(1), (2) or (4), 124.6 or 124.61, any requirement is not complied with or any prohibition is contravened,

- (a) all amounts in respect of the payday loan except the principal cease to be permissible charges, and
- (b) the borrower is not liable to pay the payday lender any amount that exceeds the principal of the payday loan.

2016 cE-9.5 s8

**Signs and notices**

**124.8(1)** A payday lender shall prominently display at each of the payday lender's business premises

- (a) a sign visible to borrowers immediately when they enter the premises, and
- (b) a sign visible to borrowers at each place within the premises where a payday loan is negotiated.

(2) Subject to the regulations, the payday lender shall ensure that the signs required under subsection (1) contain only the following wording or information in the following order:

- (a) the words "Maximum total cost of borrowing permitted in Alberta for a payday loan: \$15 per \$100 lent";

- (b) the words “We charge \_\_\_\_\_”, indicating the payday lender’s total charges for a payday loan;
- (c) the words “Payday loans are a form of high-cost credit”;
- (d) the words “This information meets the requirements of the *Consumer Protection Act*”;
- (e) the payday lender’s licence number;
- (f) any other wording or information prescribed by the regulations.

(3) If a payday lender offers payday loans with varying costs of borrowing, the payday lender shall ensure that the sign wording referred in subsection (2)(a) indicates the highest cost of borrowing that the payday lender charges any borrower.

(4) A payday lender who engages in the payday loan business by means of the Internet shall display the wording and information required under subsection (2) on a page of the payday lender’s website that precedes the payday loan application.

(5) A payday lender who engages in the payday loan business by telephone shall disclose to a prospective borrower the wording and information required under subsection (2).

2016 cE-9.5 s8;2017 c18 s1(13)

#### **Creation, retention of records**

**124.81(1)** A payday lender shall create and maintain records relating to the payday lender’s collection activities with respect to each payday loan, including but not limited to records respecting

- (a) letters, e-mail and other correspondence sent to the borrower, and
- (b) logs of telephone calls and other records of contact such as note lines.

(2) A payday lender shall retain the following documents and records in respect of each payday loan for a period of 3 years after the date on which the payday loan was fully repaid, or after the later of the date of default or the date of last payment, if the loan is not fully repaid:

- (a) each payday loan agreement;
- (b) each acknowledgment of receipt of payment;
- (c) any notice of cancellation;

(d) the documents and records referred to in subsection (1);

(e) any other documents in respect of the payday loan.

2016 cE-9.5 s8

#### **Use, disclosure of personal information**

**124.9** A payday lender shall ensure that personal information that is contained in an application for a payday loan, a payday loan agreement or other documents in respect of a payday loan

(a) is used or disclosed only for the purpose of providing, administering or collecting a payday loan, and

(b) is not used or disclosed in connection with the provision of any other goods or services.

2016 cE-9.5 s8

#### **Regulations**

**124.91** The Minister may make regulations

(a) respecting repayment of payday loans by instalment payments;

(b) respecting pre-authorized debit, including pre-authorized debit agreements;

(c) respecting advertising, including advertising outside and inside the business premises of a payday lender;

(d) respecting the provision and display of financial literacy information;

(e) respecting the total cost of borrowing, including, without limitation, regulations respecting

(i) the calculation of the total cost of borrowing, and

(ii) the fees and charges to be included in and excluded from the total cost of borrowing;

(f) respecting the signs and notices at a payday lender's business premises;

(g) respecting the duties and obligations of payday lenders;

(h) respecting standards or rules governing payday lenders;

(i) defining words used but not defined in this Part;

- (j) providing for any transitional matters the Minister considers necessary to ensure the transition of matters respecting payday loans to this Part.

2016 cE-9.5 s8

## Part 13 Licensing

### Definition

**125** In this Part, “conviction” means a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Director’s opinion, indicates that the person convicted is unsuitable to be licensed under this Act.

1998 cF-1.05 s125

### Application for licence

**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,
- (b) any additional information that is requested by the Director, including a criminal record check or authorization to obtain a criminal record check,
- (c) the fee established under the regulations, and
- (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.

**(2)** The application and other information submitted under subsection (1) must, on the request of the Director, be verified by affidavit or in another manner that is satisfactory to the Director.

**(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.

RSA 2000 cF-2 s126;2005 c9 s43

### Refusal, suspension, cancellation, terms

**127** The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;

- (b) the applicant or licensee or any of its officers or employees
  - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,
  - (ii) fails to comply with a direction of the Director under section 151(3),
  - (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,
  - (iv) fails to comply with an undertaking under this Act,
  - (v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,
  - (v.1) fails to comply with any other legislation that may be applicable,
  - (vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction,
  - (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction, or
  - (viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;
- (c) in the opinion of the Director, it is in the public interest to do so.

RSA 2000 cF-2 s127;2005 c9 s44;2008 c43 s4;  
2012 c7 s1

#### Notice

**128(1)** Before refusing to issue or renew a licence and before a licence is suspended or cancelled or terms or conditions are imposed, the applicant or licensee must be given

- (a) written notice of the proposed refusal, suspension or cancellation or the proposed terms and conditions with reasons, and
- (b) an opportunity to make representations to the Director.

**(2)** Despite subsection (1), the Director may suspend the licence of a licensee without notice or an opportunity to make representations if the licensee is being investigated under this Act and the Director

is of the opinion that the licensee has misappropriated or will misappropriate funds that the licensee is required to hold in trust.

1998 cF-1.05 s128

#### **Order against agents and others**

**129** When the Director cancels or suspends the licence of a person, the Director may by order prohibit any designated agent as defined in section 102, salesperson or anyone else who is acting on behalf of that person from engaging in the business or carrying out an activity that was authorized by the licence, and the order may contain any terms or conditions that the Director considers appropriate.

1998 cF-1.05 s129

#### **Security**

**130(1)** When a security submitted by a licensee is no longer in force, the licence is suspended and remains suspended until the licensee submits to the Director a new security that meets the requirements of the regulations.

**(2)** When the Director increases, in accordance with the regulations, the amount of security that is to be provided by a licensee before the term of the licence ends and the licensee does not provide a security in the increased amount by the time specified by the Director, the licence is suspended and remains suspended until the licensee submits to the Director a security in the increased amount.

**(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.

RSA 2000 cF-2 s130;2005 c9 s45

#### **Term of licence**

**131** The length of the term of a licence is specified in the regulations.

1998 cF-1.05 s131

#### **Duty to maintain records**

**132(1)** Every licensee and former licensee must create and 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.

(2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

RSA 2000 cF-2 s132;2005 c9 s46

#### **Trust accounts**

**133** Every licensee must comply with the requirements respecting trust accounts established by the regulations under section 143.

1998 cF-1.05 s133

#### **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.

RSA 2000 cF-2 s134;2005 c9 s47

#### **Appeal**

**135** A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence has been cancelled or suspended under section 127, or
- (d) who has been issued an order under section 129,

may appeal under section 179.

1998 cF-1.05 s135

#### **Delegation to regulatory boards**

**136(1)** The Minister may make regulations

- (a) providing for the establishment of regulatory boards to exercise the powers and perform the duties and functions delegated to them under subsection (5);

- (b) providing for the appointment of the members of a regulatory board, including, without limitation, providing for the number of members, the method of appointment of members, the terms of office of members and the filling of vacancies.
- (2) A regulatory board may make bylaws
- (a) respecting the conduct of the business and affairs of the board;
  - (b) respecting the calling of meetings of the members and the conduct of business at those meetings;
  - (c) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of members, officers and employees of the board;
  - (d) delegating to the officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make bylaws;
  - (e) respecting the establishment, membership, duties and functions of special, standing and other committees.
- (3) A bylaw made by a regulatory board is not effective until it is approved by the Director.
- (4) The *Regulations Act* does not apply to a bylaw of a regulatory board.
- (5) The Director may by notice in writing to a regulatory board
- (a) delegate to a regulatory board any or all of the Director's powers, duties or functions under this Act and the regulations, except the power to approve bylaws,
  - (b) impose any conditions on the regulatory board's exercise of the delegated powers, duties or functions that the Director considers appropriate, and
  - (c) amend or revoke the notice.
- (6) Where the Director makes a delegation under subsection (5), a reference in this Act or the regulations to the Director with respect to the delegated power, duty or function is to be read as if it were a reference to the regulatory board to whom the delegation was made.
- (7) The Minister may make regulations respecting

- (a) the collection of fees by a regulatory board on the Government's behalf and their remittance to the Minister, and
- (b) the payment of a commission to a regulatory board for its services under this subsection.

**(8)** A regulatory board may, with the approval of the Minister, collect money by the levy of assessments on licensees and designated agents as defined in section 102 for the purpose of enabling the board to carry out the powers, duties and functions delegated to it under subsection (5).

**(9)** A person may not, without the written consent of the Director, disclose any information that the person has obtained in the course of exercising delegated authority under this section.

**(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.

RSA 2000 cF-2 s136;2005 c9 s48;2006 c23 s28

#### **Establishment of fund by regulatory board**

**137(1)** A regulatory board may create a fund to be used for the following purposes:

- (a) to pay claims of persons who have suffered loss or damage arising out of the operation of a business by a licensee;
- (b) any other purposes authorized by the regulations.

**(2)** Subject to the regulations, the regulatory board may collect money by the levy of assessments on

- (a) licensees, and
- (b) designated agents as defined in section 102

who are engaged or employed in a business in respect of which powers, duties or functions have been delegated to the board under section 136(5).

- (3) The money collected under subsection (2) and any income from the investment of that money must be credited to the fund.
- (4) A regulatory board is deemed to hold in trust all money credited to a fund and must immediately deposit that money in a trust account in a bank, treasury branch, trust corporation or credit union in Alberta, separate and apart from any other money of the regulatory board.
- (5) Despite subsections (3) and (4), a regulatory board may, from the income from the investment of the money in a fund, pay the administrative costs associated with the fund.
- (6) If the income from the investment of the money in a fund is insufficient to pay the administrative costs associated with the fund, the regulatory board may collect money to pay those costs by the levy of assessments on licensees and designated agents as defined in section 102 in accordance with the regulations.
- (7) The Minister may make regulations
- (a) respecting purposes for which the money in a fund may be used, in addition to the purpose referred to in subsection (1)(a);
  - (b) respecting the investment of the money in a fund that is not currently required for disposition;
  - (c) respecting the protection, by insurance or other means, of the money in a fund against claims or losses;
  - (d) respecting the administration of a fund and the levy and collection of assessments for a fund;
  - (e) requiring a regulatory board to make a report to the Minister and respecting the nature and contents of such a report and the times at which it must be made;
  - (f) respecting the kinds of claims that may be paid from a fund and the conditions to be met before any claim is paid from a fund;
  - (g) respecting the limits of liability of a fund;
  - (h) respecting the time period within which claims against a fund must be made;
  - (i) providing for the recovery by the regulatory board from a licensee or designated agent as defined in section 102 of amounts paid from the fund to a claimant in respect of a

claim against the licensee or designated agent for loss or damage arising out of the operation of a business by the licensee or that involved the designated agent;

- (j) respecting the winding-up of a fund.

1998 cF-1.05 s137

#### **Review respecting regulatory board**

**137.1(1)** The Minister may, whenever the Minister considers it necessary, review or appoint a person to review

- (a) the conduct of a regulatory board,
- (b) any matter relating to a fund created by a regulatory board under section 137, or
- (c) any matters relating to the operations, powers, duties or functions of a regulatory board.

**(2)** The Minister or other person conducting a review under subsection (1)

- (a) may require the attendance of any members, directors, officers, employees or agents of the regulatory board or of any other person whose presence is considered necessary during the course of the review, and
- (b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

**(3)** When required to do so by the Minister or other person conducting a review, a person referred to in subsection (2)(a) must produce for review all books and records that are in that person's possession or under that person's control that are relevant to the subject-matter of the review.

**(4)** A person, other than the Minister, who conducts a review must forthwith on concluding the review report in writing to the Minister.

2016 c8 s3

#### **Ministerial order after review**

**137.2(1)** After concluding a review or receiving a report under section 137.1, the Minister may, by order,

- (a) direct that the regulatory board or any member, director, officer or employee of the regulatory board take any action that the Minister considers appropriate in the circumstances, and

- (b) provide for the procedure to be followed and reporting to be performed in relation to any direction given under clause (a).

**(2)** If an order under subsection (1) is not complied with to the satisfaction of the Minister, the Minister may, by order, do any or all of the following:

- (a) appoint an administrator;
- (b) dismiss or suspend any member, director, officer or employee of the regulatory board;
- (c) direct that new members, directors, officers or employees be appointed to or employed by the regulatory board.

**(3)** The Minister may, by order,

- (a) provide for payment of remuneration and expenses to the administrator, and
- (b) order the regulatory board to pay the remuneration and expenses of the administrator at the rates set by the Minister.

**(4)** An administrator appointed under this section

- (a) has all the powers and functions related to the management and operation of the regulatory board, including the powers of the board of directors, and
- (b) is responsible for all the duties
  - (i) of the regulatory board under this Act, including the delegated powers, duties and functions of the Director, and
  - (ii) of the board of directors of the regulatory board.

**(5)** An order under this section takes effect when it is made or at the time specified in the order, and the regulatory board or member, director, officer or employee of the regulatory board, as the case may be, to whom an order under subsection (1) is directed must comply with the order within the time period specified in the order, if any, or otherwise within 45 days after the order is made.

**(6)** An order under this section prevails over

- (a) any provision of the legislation under which the regulatory board is incorporated, and

- (b) bylaws, articles or rules of the regulatory board.

2016 c8 s3

**Notice of ministerial order**

**137.3(1)** Before making an order under section 137.2, the Minister shall provide the affected regulatory board and any affected member, director, officer or employee of the regulatory board with at least 20 days' notice in writing and the opportunity to make written representations during that notice period.

- (2) The Minister may, as the Minister considers appropriate, extend the notice period under subsection (1).

2016 c8 s3

**Ministerial order in public interest without review, notice, representations**

**137.4(1)** Despite sections 137.1 and 137.2, if the Minister is of the opinion that it is in the public interest to do so, the Minister may, by order, do anything that may be done by an order under section 137.2 but

- (a) without a review having been conducted, and
- (b) without providing notice and the opportunity to make representations

before making the order.

- (2) Section 137.2(4) to (6) apply to an order made under subsection (1) as if it were made under section 137.2.

2016 c8 s3

**Request to revoke or vary ministerial order made without notice**

**137.5(1)** If the Minister makes an order under section 137.4, a regulatory board or a member, director, officer or employee of the regulatory board to whom the order is directed may

- (a) make a written request that the Minister revoke or vary the order, and
- (b) make written representations in support of the request

within 20 days after the order is made.

- (2) The Minister may, as the Minister considers appropriate, extend the time for making written representations under subsection (1).

(3) After a request is made under subsection (1) and any written representations are made, the Minister shall confirm, vary or revoke the order.

2016 c8 s3

**Revocation of ministerial order**

**137.6** The Minister may revoke an order made under section 137.2 or 137.4 on the Minister's own motion at any time.

2016 c8 s3

**Responsibility for review and order costs**

**137.7** Unless the Minister orders otherwise, a regulatory board is responsible for all costs and expenses related to

- (a) a review conducted in respect of that regulatory board under section 137.1, and
- (b) an order made in respect of that regulatory board under section 137.2 or 137.4.

2016 c8 s3

**Delegation to department head**

**138** The Minister may, by order, delegate in whole or in part to any other head of a department of the Public Service the power to make any regulations under section 136 or 137 that the Minister is empowered to make, and the Minister may, by order, authorize another department to make any inspections of any business for the purposes of this Part.

1998 cF-1.05 s138

**Regulations**

**139** The Minister may make regulations

- (a) establishing different classes of licences;
- (a.1) establishing standard conditions that will apply to all licences while they are in force;
- (b) respecting the classes of licences and circumstances in which an applicant for a licence or a renewal of a licence is required to submit a security;
- (c) respecting the form, amount and terms and conditions of a security;
- (d) respecting the terms and conditions under which a security is forfeited, the persons who are entitled to the proceeds under the security and the procedures to be followed for claiming on a security;

- (e) respecting a system of resolving disputes involving claims against a security that claimants and licensees are required to participate in and providing that decisions under the system are binding;
- (f) respecting conditions and requirements that must be met before a licence is issued or renewed or that apply during the term of the licence;
- (g) respecting fees for licences and renewals, including
  - (i) establishing different fees for different businesses or classes of businesses, and
  - (ii) establishing different fees for different types of licences;
- (h) respecting the length of terms of licences;
- (i) respecting the transfer of licences;
- (j) respecting the refund of fees;
- (k) respecting the records and documents to be maintained by licensees and former licensees, including where the records and documents are to be maintained and the time period for which they must be maintained.

RSA 2000 cF-2 s139;2005 c9 s49

**Registration**

**140(1)** In this section, “licensee” means a person who is required to be licensed under this Act.

**(2)** When the Minister specifies in the regulations under subsection (3) that a person who falls within a specified class is required to be registered before acting on behalf of a licensee,

- (a) a person who falls within that class may not act on behalf of the licensee unless the person is registered, and
- (b) the licensee may not authorize a person who falls within that class to act on the licensee’s behalf unless the person is registered.

**(3)** The Minister may make regulations

- (a) specifying that salespersons or other classes of people are required to be registered before they act on behalf of a licensee;

- (b) establishing a registration scheme for those classes of people required to be registered;
- (c) adopting with or without modification the provisions of this Act relating to licensing for the purposes of the registration scheme;
- (d) dealing with any matter on which the Minister may make regulations under section 139 for the purposes of the registration scheme.

1998 cF-1.05 s140

## **Part 14**

### **Remedies and Enforcement**

#### **Definition**

**141** In this Part, “regulated person” means

- (a) a supplier,
- (b) a reporting agency as defined in Part 5,
- (c) a loan broker,
- (d) a credit grantor or lessor to which Part 9 applies, or
- (e) a person who is required to be licensed under this Act.

1998 cF-1.05 s141

#### **Dispute Resolution**

#### **Dispute resolution**

**142** The Director may provide any person who is involved in a dispute respecting a matter under this Act with information on dispute resolution processes, such as arbitration and mediation, and may establish dispute resolution processes that the parties to the dispute may choose to use.

1998 cF-1.05 s142

#### **Court Action by Consumer**

#### **Court action by consumer re contravention, failure to comply**

**142.1(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 a contravention of, or failure to comply with, this Act or the regulations,

that consumer may commence an action in the Court of Queen's Bench for relief from that damage or loss against any supplier or any principal, director, manager, employee or agent of a supplier who engaged in or acquiesced in the contravention or failure to comply that caused that damage or loss.

(2) In an action under this section, the Court of Queen's Bench may

- (a) award damages for damage or loss suffered,
- (b) award punitive or exemplary damages,
- (c) make an order for
  - (i) specific performance of the consumer transaction,
  - (ii) restitution of property or funds, or
  - (iii) rescission of the consumer transaction,
- (d) grant an order in the nature of an injunction restraining the supplier from contravening or failing to comply with this Act or the regulations, or
- (e) make any directions and grant any other relief the Court considers proper.

(3) In determining whether to grant any relief under this section by a regulation and the nature and extent of the relief, the Court of Queen's Bench must consider whether the consumer made a reasonable effort to minimize any damage resulting from the contravention or failure to comply and to resolve the dispute with the supplier before commencing the action in the Court.

(4) In an action under this section, the Court of Queen's Bench may award costs in accordance with the *Alberta Rules of Court*.  
2017 c18 s1(18)

#### **Provincial Court**

**142.2** Subject to the jurisdiction of the Provincial Court, an action under section 142.1(1) may be commenced under Part 4 of the *Provincial Court Act*.

2017 c18 s1(18)

### **Trust Accounts**

#### **Regulations**

**143** The Minister may make regulations

- (a) requiring a supplier or licensee, in the situations described in the regulations, to deposit into a trust account money that is received in the course of the supplier's or licensee's business;
- (b) respecting trust accounts, including where trust accounts may be established and maintained and when the money has to be deposited;
- (c) respecting who is entitled to the money in a trust account, the duties and responsibilities of the trustee, the disbursement of funds from the trust accounts and what happens if the person entitled to the money in a trust account cannot be located;
- (d) respecting the records to be kept respecting trust accounts, the period of time that those records are to be maintained and the audit of trust accounts.

1998 cF-1.05 s143

### Inspections and Investigations

#### Identification of inspectors

**144** An inspector who enters any place under the authority of this Act must, on request,

- (a) produce a document that identifies the person as an inspector under this Act, and
- (b) explain the inspector's purpose for entering the place.

1998 cF-1.05 s144

#### Inspection

**145(1)** An inspector may enter the business premises of a regulated person at any reasonable time to conduct an inspection to determine if there is compliance with this Act and the regulations.

**(2)** If an inspector has reasonable grounds to believe that

- (a) books, records or documents of a regulated person are located in another person's business premises, and
- (b) those books, records or documents are relevant to determine if there is compliance with this Act or the regulations,

the inspector may enter those other business premises at any reasonable time.

**(3)** An inspector may in the course of an inspection request a person who is working in business premises referred to in subsection (1) or (2)

- (a) to give written or oral replies to questions,
- (b) to produce any books, records, documents or other things and to provide copies of them, and
- (c) to provide any other information

to determine if there is compliance with this Act and the regulations.

**(4)** An inspector may in the course of an inspection inspect, examine and make copies of or temporarily remove books, records or documents or other things that are relevant to determine if there is compliance with this Act and the regulations.

**(5)** When an inspector removes any books, records, documents or other things under subsection (4), the inspector

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

**(6)** A licensee and any person working in the business premises of a licensee must co-operate with an inspector acting under the authority of this section.

**(7)** A regulated person who is neither a licensee nor a worker in the business premises of a licensee may refuse to co-operate with an inspector who is acting under the authority of this section.

1998 cF-1.05 s145

#### **Order compelling assistance in inspections**

**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 for an order

- (a) compelling a regulated person or an employee or agent of a regulated person to allow an inspector to enter the business premises, private dwelling or other place occupied or controlled by the regulated person, employee or agent;

- (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;
  - (b) authorizing the inspector to copy or remove the books, records, documents or other things on any terms that the Court considers appropriate;
  - (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;
  - (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.
- (2)** The Court of Queen's Bench may grant an order under subsection (1) if satisfied on evidence under oath by the Director that there are reasonable grounds to believe that
- (a) the inspection is reasonable,
  - (b) the regulated person or agent or employee of the regulated person has not co-operated or likely will not co-operate with the investigation, and
  - (c) the order is appropriate in the circumstances.
- (3)** An application under this section may be made ex parte unless in the opinion of the Court of Queen's Bench it would be improper to do so.
- (4)** No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized to use force.
- (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.

RSA 2000 cF-2 s146;2005 c9 s50;2009 c53 s64

### Investigation

**147(1)** An inspector who has reasonable grounds to believe that a person has committed an offence under this Act or the regulations may, after explaining to the person or to the person's agent that the inspector wishes to enter the person's business premises for the purposes of carrying out an investigation, request permission to enter the business premises.

(2) If a person permits an inspector to enter business premises for the purposes of an investigation, the inspector may, with the permission of the person, inspect, examine and make copies of or temporarily remove books, records, documents or other things that are relevant to determine if an offence has been committed under this Act or the regulations.

(3) When an inspector removes any books, records, documents or other things under subsection (2), the inspector

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them,
- (c) must, within a reasonable time, return anything that has been copied to the person to whom the receipt was given, and
- (d) must return everything else that was removed to the person to whom the receipt was given within a reasonable time after the investigation and any prosecution resulting from the investigation is concluded.

1998 cF-1.05 s147

**Order compelling assistance in investigations**

**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 for an order

- (a) compelling a person to allow an inspector to enter the person's business premises, private dwelling or other place occupied or controlled by the person;
- (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;
- (b) authorizing the inspector to copy or remove the books, records, documents or other things on any terms that the Court considers appropriate;
- (c) requiring a person to co-operate with the investigation on any terms that the Court considers appropriate;
- (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.

**(2)** The Court of Queen's Bench may grant an order under subsection (1) if satisfied on evidence under oath by the Director that there are reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed, and
- (b) the order is appropriate in the circumstances.

**(3)** An application under this section may be made *ex parte* unless in the opinion of the Court of Queen's Bench it would be improper to do so.

**(4)** No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized to use force.

**(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.

RSA 2000 cF-2 s148;2005 c9 s51;2009 c53 s64

#### **Special circumstances**

**149(1)** Despite any provision of this Act, an inspector may during an inspection or investigation under this Act seize or make copies of any books, records, documents or other things if the inspector has reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed,
- (b) the books, records, documents or other things will provide evidence of the commission of the offence, and

- (c) the delay involved in obtaining an order under section 148 or a search warrant could result in the loss or destruction of evidence.
- (2) An inspector, on seizing anything under this section,
- (a) must inform the person, if any, from whom the thing is seized of the reason for the seizure,
  - (b) must give a receipt for the thing to the person, if any, having physical possession of it when it is seized, and
  - (c) may make copies of, take photographs of or otherwise record them.
- (3) An inspector who seizes anything pursuant to this section must deal with it in the same manner as if it were seized pursuant to a search warrant.

1998 cF-1.05 s149

**Publication of information**

**150(1)** The Minister or Director may publish information, including personal information,

- (a) obtained in or arising from an inspection or investigation under this Act,
  - (b) relating to charges or convictions under this Act, or
  - (c) relating to the status of the licence of a licensed business and any actions taken by the Director under section 127.
- (2) Subject to the regulations, the Minister or Director may determine the form, content and timing of any publication under this section.
- (3) The Minister may make regulations respecting the publication and disclosure in the public interest of information, including personal information, including, without limitation, regulations respecting the form, content and timing of publication of information in relation to complaints, warnings, undertakings, orders under section 151 or 157, court orders, injunctions, administrative penalties, charges, prosecutions and convictions under this Act.
- (4) No liability attaches to the publication or disclosure of any information under this section done in good faith.

RSA 2000 cF-2 s150;2017 c18 s1(19)

**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.

2005 c9 s52

**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 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.

RSA 2000 cF-2 s151;2005 c9 s53;2009 c53 s64

#### **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.

2005 c9 s53

#### **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.

2005 c9 s53

#### **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.

2005 c9 s53

### **Undertakings**

#### **Supplier's undertakings**

**152(1)** When

- (a) the Director is of the opinion that a person has contravened this Act or the regulations, and
- (b) the Director is satisfied that the person has ceased the contravention,

the person may enter into an undertaking with the Director in the form and containing the provisions that the Director, on negotiation with that person, considers proper.

**(2)** Without limiting subsection (1), an undertaking may include any of the following specific undertakings:

- (a) to stop engaging in a practice or to change a practice described in the undertaking;
- (b) to provide compensation to anyone who has suffered a loss;
- (c) to publicize the undertaking or the action being taken;
- (d) to pay the costs of investigating the person's activities and any costs associated with the undertaking.

**(3)** Repealed 2016 c18 s6.

RSA 2000 cF-2 s152;2016 c18 s6

#### **Change in undertaking by Director**

**153(1)** A person who enters into an undertaking may apply to the Director to vary or cancel that undertaking.

**(2)** On considering the application, the Director may

- (a) refuse the application, or
- (b) vary or cancel the undertaking.

1998 cF-1.05 s153

#### **Change in undertaking by Court**

**154(1)** Despite section 153, a person who enters into an undertaking may apply to the Court of Queen's Bench for an order to vary or cancel the undertaking.

**(2)** On considering an application, the Court of Queen's Bench may

- (a) refuse the application, or
- (b) vary or cancel the undertaking and impose whatever terms or conditions the Court considers proper.

RSA 2000 cF-2 s154;2009 c53 s64

#### **Effect of varying or cancelling an undertaking**

**155** When an undertaking is varied or cancelled, that variance or cancellation does not invalidate anything done under that undertaking prior to the variance or cancellation.

1998 cF-1.05 s155

## Injunctions and Compliance Orders

### Injunction

**156(1)** Where, on the application of the Director to the Court of Queen's Bench, it appears to the Court that a person has done, is doing or is about to do anything that constitutes or is directed toward a contravention of this Act or the regulations or that involves the misappropriation of funds held in trust under this Act, the Court may issue an injunction ordering any person named in the application

- (a) to refrain from doing that thing, or
- (b) to do anything that in the opinion of the Court may prevent the contravention of this Act or the regulations or the misappropriation of funds held in trust.

**(2)** The Court of Queen's Bench may, if it considers it necessary in the circumstances, issue an interim injunction granting the relief that the Court considers appropriate pending the determination of the application.

**(3)** An interim injunction under subsection (2) may be made ex parte if the Court of Queen's Bench considers it appropriate in the circumstances.

RSA 2000 cF-2 s156;2009 c53 s64

### 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.

**(2)** An order may direct the person or publisher

- (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 or publisher who is subject to an order under this section may appeal under section 179.

RSA 2000 cF-2 s157;2005 c9 s54

#### **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.

(3) The Director must maintain a public record of administrative penalties and may prescribe the form of the public record and the documents and information that must or may be included in it.

2005 c9 s55;2012 c7 s1

#### **Enforcement of Director's order**

**158(1)** If the Director is of the opinion that a person is not complying or has not complied with an order of the Director under section 157, the Director may apply to the Court of Queen's Bench for an order directing that person to comply with the order.

(2) The Director may not bring an application under this section

(a) until the time for appealing the Director's order has passed without an appeal's being made, or

(b) if an appeal has been made, the Director's order has been confirmed by the appeal board.

(3) After receiving an application under subsection (1), the Court of Queen's Bench may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court of Queen's Bench considers it appropriate in the circumstances.

(5) On hearing an application, the Court of Queen's Bench may,

- (a) if it is of the opinion that there were insufficient grounds for the Director to have issued an order under section 157, quash the order;
- (b) if it is of the opinion that the Director had sufficient grounds for issuing the order and that the person is not complying or has not complied with the Director's order, grant an order, subject to any terms and conditions the Court considers appropriate in the circumstances, doing one or more of the following:
  - (i) directing the person to comply with the order of the Director;
  - (ii) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;
  - (iii) awarding costs in respect of the matter.

RSA 2000 cF-2 s158;2009 c53 s64

### **Administrative Penalties**

#### **Notice of administrative penalty**

**158.1(1)** If the Director is of the opinion that a person

- (a) has contravened a provision of this Act or the regulations, or
- (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

**(2)** Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

**(3)** The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

**(4)** Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

**(5)** Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a

consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

2012 c7 s1

**Right to make representations**

**158.2** Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

2012 c7 s1

**No offence where administrative penalty paid**

**158.3** A person who pays an administrative penalty in respect of a contravention or a failure to comply shall not be charged under this Act with an offence in respect of the same contravention or failure to comply that is described in the notice of administrative penalty.

2012 c7 s1

**Enforceability of notice of administrative penalty**

**158.4** Subject to the right of appeal, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court of Queen's Bench, and on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

2012 c7 s1

**Ministerial regulations**

**158.5** The Minister may make regulations

- (a) respecting the contents of notices of administrative penalty and the manner in which the notices are required to be given;
- (b) respecting the amounts of the administrative penalties that may, subject to section 158.1(3), be imposed under section 158.1(1) and respecting factors to be taken into account in setting the amount of an administrative penalty;

- (c) respecting any other matter the Minister considers necessary or advisable for the administration of the system of administrative penalties.

2012 c7 s1

### Other Remedies

#### Court actions by the Director

**159(1)** In addition to any other remedy in this Act, the Director may commence and maintain an action in the Court of Queen's Bench against a person if the Director is of the opinion that a person

- (a) has contravened this Act or the regulations under this Act, or
- (b) has not complied with the terms of an undertaking that the person has entered into.

**(2)** In an action brought under subsection (1), the Court of Queen's Bench may

- (a) declare that this Act or the regulations under this Act have been contravened;
- (b) grant an order requiring the person to provide any redress the Court considers proper to those persons who suffered damage or loss arising from the contravention of this Act or the regulations;
- (c) grant an order in the nature of an injunction restraining the person from engaging in the practice that gave rise to the contravention of this Act or the regulations;
- (d) if the person who is the subject of the order had entered into a consumer transaction, grant an order for specific performance of the consumer transaction or grant an order for rescission of the consumer transaction;
- (e) grant an order for the restitution of property or funds;
- (f) award punitive or exemplary damages;
- (g) grant any other relief the Court considers proper.

**(3)** Damages awarded under this section are a debt owing to the Crown in right of Alberta.

1998 cF-1.05 s159

**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.

2005 c9 s56

**Advertisement of judicial decision**

**160(1)** When the Court of Queen's Bench grants relief under section 159, the Court may make a further order requiring the supplier to advertise to the public particulars of any order, judgment or other relief granted by the Court.

**(2)** In making an order under subsection (1), the Court of Queen's Bench may prescribe

- (a) the methods of making the advertisement so that it will assure prompt and reasonable communication to consumers;
- (b) the contents or form, or both, of the advertisement;
- (c) the number of times the advertisement is to be made;
- (d) any other conditions the Court considers proper.

1998 cF-1.05 s160

**Offences****Non-compliance with Act**

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

- (a) in Part 2, sections 6, 9, 10, 11, 16(1), 23;
- (b) in Part 3, sections 31(2), 39(1);
- (c) in Part 5, sections 44(1) and (2) and 49;
- (c.1) in Part 6, section 53(2);
- (d) in Part 7, section 54;
- (e) in Part 8, sections 55(2), 56(1), 57(1);
- (e.1) in Part 8.1, sections 57.2, 57.3(1), (3) and (4);

- (f) in Part 9, sections 62, 64(1) and (2), 66(2), 68(3), 73(3), 78, 79(1), 80, 81, 85, 86, 87, 88;
- (g) in Part 10, sections 104, 107;
- (h) in Part 11, sections 111, 114(1), 117;
- (i) in Part 12, sections 120(2) and (3), 121, 123;
- (i.1) in Part 12.1
  - (i) sections 124.2, 124.21(1), (2) and (3), 124.4(4) and (6), 124.41(2), 124.5(2) and (4), 124.51(1), (2) and (4), 124.6(2), 124.61, 124.8, 124.81 and 124.9;
  - (ii) section 124.3;
- (j) in Part 13, sections 126(3), 132, 133, 134;
- (k) in Part 14, sections 145(6), 168(3).  
RSA 2000 cF-2 s161;2005 c9 s57;2016 cE-9.5 s8;  
2017 c18 s1(21)

#### **Non-compliance with regulations**

**162(1)** A person who contravenes a section in the regulations the contravention of which is designated by the regulations to be an offence is guilty of an offence.

**(2)** The Minister may make regulations designating provisions in the regulations the contravention of which is an offence.

1998 cF-1.05 s162

#### **Non-compliance with orders, etc.**

**163** Any person who

- (a) fails to comply with an order of the Director under section 129, 151(3) or 157, unless the order has been stayed,
- (b) repealed 2005 c9 s58,
- (c) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director, or
- (d) fails to comply with an undertaking under this Act

contravenes this Act and is guilty of an offence.

RSA 2000 cF-2 s163;2005 c9 s58

#### **Penalty**

**164(1)** Any person who is convicted of an offence under this Act or the regulations is liable to a fine of not more than

- (a) \$300 000, or
- (b) 3 times the amount obtained by the defendant as a result of the offence,

whichever is greater, or to imprisonment for not more than 2 years, or both.

(2) Each day that an offence continues constitutes a separate offence, but the total term of imprisonment that may be imposed on a person in respect of a continuing offence may not exceed 2 years.

RSA 2000 cF-2 s164;2012 c7 s1

#### **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.

RSA 2000 cF-2 s165;2005 c9 s59

#### **Vicarious liability**

**166** For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

1998 cF-1.05 s166

#### **Time limit for prosecution**

**167(1)** Subject to subsection (2), a prosecution of an offence under this Act or the regulations shall not be commenced more than 3 years after the day on which the offence was committed.

(2) Where an offence was committed in the course of a consumer transaction or an attempt to enter into a consumer transaction, a prosecution may be commenced within 3 years after the day the consumer first knew or ought to have known of the offence but not more than 8 years after the day on which the offence was committed.

RSA 2000 cF-2 s167;2012 c7 s1

### Restitution

**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 Solicitor 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 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.

(2) If an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment in the Court of Queen's Bench the amount ordered to be paid, and that judgment is enforceable against the defendant in the same manner as if it were a judgment rendered against the defendant in the Court of Queen's Bench in civil proceedings.

(3) Every person who is ordered to pay an amount under this section must make the payments in accordance with the order.

RSA 2000 cF-2 s168;2005 c9 s60;2013 c10 s34

### Evidence

#### Carrying on business

**169** Evidence that

- (a) a person entered into one transaction in a business or activity, or
- (b) a person set out in a letter, advertisement, card or other document issued by or under the authority of the person that the person is carrying on a business or activity

is proof, in the absence of evidence to the contrary, that the person was carrying on that business or activity.

1998 cF-1.05 s169

#### 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.

2005 c9 s61

#### **Loan brokers**

**170(1)** In this section, "claimant" means a person who claims to have been charged a fee by or paid a fee to a loan broker for assisting the person in obtaining a loan.

(2) In a prosecution for a contravention of section 54, an affidavit of a claimant that contains the statements referred to in subsection (3) is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements contained in the affidavit.

(3) For the purposes of subsection (2), the affidavit of the claimant must

- (a) identify the loan broker,
- (b) state that the loan broker agreed to assist the claimant in obtaining a loan,
- (c) state that, before the claimant received the proceeds of the loan, either the loan broker charged the claimant for assisting the claimant in obtaining the loan or the claimant paid for the assistance, and
- (d) include, as an exhibit, the bill charging the claimant or proof of the amount paid.

(4) An affidavit referred to in subsection (2) is admissible in evidence without proof of the signature of the claimant purporting to have signed the affidavit.

(5) Unless the court orders otherwise, an affidavit referred to in subsection (2) is not admissible in evidence unless the prosecutor has, before the trial or other proceeding, given to the accused a

copy of the affidavit and reasonable notice of intention to provide it in evidence.

(6) Despite subsection (1), the court may require a claimant who has purported to have signed an affidavit referred to in subsection (2) to appear before it for examination or cross-examination in respect of the statements contained in the affidavit.

1998 cF-1.05 s170

#### **Status of licensee and nature of substances, etc.**

**171(1)** A certificate of the Director stating that on a specified day or during a specified period

- (a) a person named in the certificate was or was not licensed under this Act, or
- (b) the licence of a person named in the certificate had been suspended under this Act,

is proof, in the absence of evidence to the contrary, of the facts stated in the certificate.

(2) A certificate of an expert defining or stating the nature of any substance, goods or services examined is proof, in the absence of evidence to the contrary, of the facts set out in the certificate.

(3) A certificate referred to in subsection (1) or (2) is admissible in evidence without proof of the signature, authority or office of the person purporting to have signed the certificate.

1998 cF-1.05 s171

#### **Copies**

**172** A copy of a document made during an inspection or investigation under this Act and certified to be a true copy by the person who conducted the inspection or investigation 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.

1998 cF-1.05 s172

## **Part 15 Administration and Appeals**

### **Administration**

#### **Director and inspectors**

**173(1)** The Minister may appoint an individual as the Director of Fair Trading.

(2) The Director may appoint individuals as inspectors.

(3) The Director may exercise the powers and perform the duties of an inspector.

(4) Every police officer as defined in the *Police Act* is an inspector for the purposes of this Act.

1998 cF-1.05 s173

#### **Delegation**

**174** In addition to the delegation referred to in section 136, the Director may delegate any of the Director's powers, duties or functions under this Act or the regulations to any person and may authorize the person to further delegate the power or duty.

1998 cF-1.05 s174

#### **Co-operative enforcement**

**175(1)** If the Minister has, on behalf of the Government of Alberta, entered into an agreement with another jurisdiction respecting the co-operative enforcement of consumer legislation,

- (a) the Director may appoint an official from that jurisdiction as an inspector under this Act to enable the official to exercise in Alberta the powers of an inspector, and
- (b) the Director may, on the written request of that jurisdiction by an official specified in the agreement, disclose information in the records of the Director obtained through any inspection or investigation under this Act or in the administration of this Act, if the Director is satisfied that the information will be used only for the purpose of enforcing or administering a law of that jurisdiction.

(2) If the Minister has entered into an agreement referred to in subsection (1) with a jurisdiction, the Director may request information in the records of the jurisdiction for the purposes of enforcing or administering this Act.

(3) Information obtained in a request under subsection (2) must not be disclosed except for the purposes of enforcing or administering this Act.

1998 cF-1.05 s175

#### **Government's costs**

**176(1)** The Director may require a person who

- (a) is investigated under this Act,
- (b) is the subject of an order of the Director under section 129 or 157, or
- (c) has entered into an undertaking

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.

(2) The Director must notify the person of the amount of the costs, and the person has 30 days from receiving the notice to file an objection with the Director respecting the amount of the costs.

(3) On receiving an objection within the 30-day time limit, the Director must submit the matter to an arbitration process approved by the Minister.

(4) The person who is required to pay the costs under subsection (1) is liable to pay

- (a) the amount specified in the Director's notice, if no objection is filed within the time period specified in subsection (2), or
- (b) the amount specified in the decision of the arbitrator,

and the Director may collect the amount by civil action for debt.

RSA 2000 cF-2 s176;2005 c9 s62

#### **Service of documents**

**177(1)** If this Act requires the Minister or the Director to serve a person with a document or to give notice of a document to a person, the service or notice may, subject to the regulations under section 158.5, be given

- (a) personally,
- (b) by ordinary mail,
- (b.1) by recorded mail, or
- (c) if the person requests that service or notice be given by electronic means that results in a printed copy of the document being received by the person, by the electronic means.

(2) If service or notice is given to a person by ordinary mail under subsection (1)(b), it must be sent to the last address for the person on the Director's records, and any service or notice given by ordinary mail under subsection (1)(b) is deemed to have been received 7 days after it is mailed unless

- (a) the document is returned by a person who is not the addressee, or

- (b) the document was not received by the addressee, the proof of which lies on the addressee.

RSA 2000 cF-2 s177;2012 c7 s1;2018 c11 s7

### Forms

**178** The Director may establish forms for the purposes of this Act.

1998 cF-1.05 s178

## Appeals

### Appeal

**179(1)** A person

- (a) who is refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence is cancelled or suspended under section 127,
- (d) to whom an order under section 129 or 157 is directed, or
- (e) to whom a notice of administrative penalty is given under section 158.1(1)

may appeal the decision, order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order or being given the notice of administrative penalty.

**(2)** The Minister must, within 30 days after being served with a notice of appeal under subsection (1) 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).

**(3)** The Minister may appoint an individual as the chair of the appeal board who serves as the chair whether or not an appeal is being considered by the appeal board.

**(4)** The Minister may designate a board or commission established by or under an Act of the Legislature to be an appeal board for the appeals specified in the designation.

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

**(6)** An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision, order or administrative penalty that is being appealed.

(7) The Minister may, in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*, set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.

(8) An appeal under this section is a new trial of the issues that resulted in the decision, order or administrative penalty being appealed.

RSA 2000 cF-2 s179;2005 c9 s63;2009 cA-31.5 s40;2012 c7 s1

#### **Effect of appeal**

**180(1)** Subject to this section, an appeal under section 179 does not affect the status or enforceability of the decision or order being appealed.

(2) A person who is appealing a decision or order under section 179(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision or order being appealed.

(3) On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision or order being appealed until the appeal board renders its decision on the appeal or the appeal is withdrawn.

(4) Service under section 179(1) of a notice of appeal of an administrative penalty operates to stay the administrative penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

RSA 2000 cF-2 s180;2012 c7 s1

#### **Court of Queen's Bench**

**181** The Director or a person whose appeal is heard by an appeal board may appeal the decision of the appeal board by filing an application with the Court of Queen's Bench within 30 days after being notified in writing of the decision, and the Court may make any order that an appeal board may make under section 179(6).

RSA 2000 cF-2 s181;2009 c53 s64

#### **Powers of appeal board**

**182** For the purposes of conducting appeals before an appeal board,

(a) the chair and the other members of the appeal board have the same power as is vested in the Court of Queen's Bench for the trial of civil actions

(i) to summon and enforce the attendance of witnesses,

- (ii) to compel witnesses to give evidence on oath or otherwise,
  - (iii) to compel witnesses to give evidence in person or otherwise, and
  - (iv) to compel witnesses to produce any record, object or thing that relates to the matter being heard;
- (b) the appeal board may take evidence under oath;
  - (c) any member of the appeal board may administer oaths for the purpose of taking evidence;
  - (d) the appeal board may reconsider a previous decision made by the appeal board.

1998 cF-1.05 s182

**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.

2005 c9 s64

**Regulations**

**183** The Minister may make regulations

- (a) respecting fees for filing appeals under this Division;
  - (b) respecting the formation of an appeal board, including the term and manner of appointment of members;
- (b.1) establishing additional grounds for appeals to the appeal board;
- (c) establishing rules respecting appeals before the appeal board, including rules that deal with the following matters:
    - (i) notices of appeal;
    - (ii) the procedure before the appeal board;

- (iii) adjournments of matters before the appeal board;
- (iv) the attendance of witnesses;
- (v) the applicability of the rules of evidence in judicial proceedings to hearings before the appeal board;
- (vi) the receiving and recording of evidence;
- (vii) empowering the appeal board to proceed when a party to the appeal fails to appear at or attend a hearing;
- (viii) providing for majority and minority decisions;
- (ix) empowering the appeal board to consider an appeal without holding a hearing and the procedure to be used in those circumstances;
- (x) the applicability of the *Alberta Rules of Court*;
- (xi) the issuing and publication of decisions of the appeal board;
- (xii) empowering the appeal board to require the production of any record, object or thing;
- (xiii) the reconsideration of decisions made by the appeal board;
- (xiv) costs.

RSA 2000 cF-2 s183;2005 c9 s65

## Part 15.1 General

### Publication of review

**183.1(1)** A business shall not include in a consumer transaction a provision that prohibits a consumer from publishing a review of the business or transaction.

**(2)** No action lies against a person for compensation, damages or any other remedy for loss or damage resulting from the publication of a negative review or other communication by the person in respect of the conduct of a supplier or any other person to whom this Act applies, unless the review or communication is malicious, vexatious or harassing or otherwise made in bad faith.

2017 c18 s1(22)

**Complainant protection**

**183.2** No action lies against a person for compensation, damages or any other remedy for loss or damage resulting from

- (a) a complaint or other communication by the person to the Minister or Director, an inspector or any other person acting under this Act in respect of the conduct of a supplier or any other person to whom this Act applies,
- (b) assistance provided by the person in an inspection or investigation,
- (c) assistance or evidence given by the person in any proceeding brought by the Director, or
- (d) a claim made by the person pursuant to a regulation under section 139(d).

2017 c18 s1(22)

**Part 16** Repealed 2016 c18 s6.







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