

Bill 6  
Mr. Jeneroux

## PROTECTION AND COMPLIANCE STATUTES AMENDMENT ACT, 2012

### Chapter 7

(Assented to December 10, 2012)

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

#### Fair Trading Act

##### Amends RSA 2000 cF-2

**1(1)** The *Fair Trading Act* is amended by this section.

**(2)** Section 1(1) is amended

**(a)** by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):

(a) “administrative penalty” means an administrative penalty required to be paid under section 158.1(1);

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

(i.1) “notice of administrative penalty” means a notice given under section 158.1(1);

**(3)** Section 127(b) is amended by striking out “or” at the end of subclause (vi), adding “or” at the end of subclause (vii) and adding the following after subclause (vii):

(viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;

**(4)** Section 157.1 is amended by adding the following after subsection (2):

**(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.

**(5)** The following is added after section 158:

#### 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.

#### **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.

#### **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.

#### **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.

#### **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.

**(6) Section 164(1)(a) is amended by striking out "\$100 000" and substituting "\$300 000".**

**(7) Section 167 is repealed and the following is substituted:**

#### **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.

**(8) Section 177 is amended**

- (a) **in subsection (1) by striking out** “may be given” **and substituting** “may, subject to the regulations under section 158.5, be given”;
- (b) **in subsection (2) by adding** “under subsection (1)(b)” **after** “ordinary mail”.

**(9) Section 179 is amended**

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

**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.

- (b) **in subsections (6) and (8) by striking out** “decision or order” **and substituting** “decision, order or administrative penalty”.

**(10) Section 180 is amended**

- (a) **in subsection (1) by striking out** “subsection (2)” **and substituting** “this section”;
- (b) **in subsection (2) by striking out** “until the appeal board renders its decision on the appeal”;
- (c) **in subsection (3) by adding** “or the appeal is withdrawn” **after** “decision on the appeal”;
- (d) **by adding the following after subsection (3):**

(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.

**(11) Subsections (2) to (5), (8), (9) and (10) come into force on Proclamation.**

**Occupational Health and  
Safety Act**

**Amends RSA 2000 cO-2**

**2(1) The *Occupational Health and Safety Act* is amended by this section.**

**(2) Section 1 is amended**

- (a) **by renumbering clause (a) as clause (a.01) and adding the following before clause (a.01):**
  - (a) “administrative penalty” means an administrative penalty required to be paid under section 40.3(2);
- (b) **by adding the following after clause (q):**

(q.1) “notice of administrative penalty” means a notice given under section 40.3(2);

**(3) Section 3 is amended**

**(a) in subsection (1) by striking out** “at the same time”;

**(b) in subsections (3) and (4) by striking out** “this Act and the regulations” **and substituting** “this Act, the regulations and the adopted code”.

**(4) The following is added after section 4:**

**Identification**

**4.1(1)** Every person at a work site shall, on request by an officer, provide proof of identity satisfactory to the officer.

**(2)** Every employer involved in work at a work site shall, on request by an officer, identify to the officer the workers employed by that employer at the work site.

**(5) Section 7(b) is amended by adding** “and the regulations” **after** “Act”.

**(6) Section 16 is amended**

**(a) by repealing subsections (1) to (3) and substituting the following:**

**Appeal**

**16(1)** A person

- (a) to whom an order is issued under section 9, 10, 11, 12, 14, 25 or 33,
- (b) who is given a notice of administrative penalty, or
- (c) whose licence is cancelled or suspended,

may appeal the order, administrative penalty, cancellation or suspension to the Council.

**(2)** An appeal under subsection (1) shall be commenced by serving a notice of the appeal on a Director of Inspection

- (a) in the case of an appeal from an order referred to in subsection (1)(a), within 30 days from the date that the order was served on the person making the appeal,
- (b) in the case of an appeal from an administrative penalty, within 30 days from the date that the notice of administrative penalty was given to the person making the appeal, or
- (c) in the case of an appeal from the cancellation or suspension of a licence, within 30 days from the date that the licence, certificate or permit was cancelled or suspended.

**(3)** After considering the matter being appealed, the Council may by order

- (a) in the case of an appeal from an order referred to in subsection (1)(a), confirm, revoke or vary the order,
- (b) in the case of an appeal from an administrative penalty, confirm, revoke or vary the administrative penalty, or
- (c) in the case of an appeal from the cancellation or suspension of a licence,
  - (i) confirm the cancellation or suspension,
  - (ii) reinstate the cancelled licence,
  - (iii) substitute a suspension for the cancellation, or
  - (iv) remove or vary the suspension.

**(b) in subsection (7) by striking out “subsection (1)” and substituting “subsection (1)(a) or (c)”;**

**(c) by adding the following after subsection (7):**

**(7.1)** When an appeal from an administrative penalty is commenced under subsection (1)(b), the commencement of that appeal operates to stay the administrative penalty until the Council renders its decision on the appeal or the appeal is withdrawn.

**(d) in subsection (8) by adding “from an order of the Council under subsection (3)(a) or (c)” after “an appeal”;**

**(e) by adding the following after subsection (8):**

**(9)** When an appeal from an order of the Council under subsection (3)(b) confirming or varying an administrative penalty is commenced under subsection (5), the commencement of that appeal operates to stay the administrative penalty until the Court of Queen’s Bench renders its decision on the appeal or the appeal is withdrawn.

**(7) Section 17 is amended by adding the following after subsection (7):**

**(8)** For the purpose of hearing appeals under this Act, the members of the Council have the same power as is vested in the Court of Queen’s Bench for the trial of civil actions

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

(b) to compel witnesses to give evidence under oath or otherwise,

(c) to compel witnesses to give evidence in person or otherwise, and

(d) to compel witnesses to produce any record, object or thing that relates to the matter being heard.

**(8) Section 36 is amended by striking out “this Act or the regulations” and substituting “this Act, the regulations or the adopted code”.**

**(9) Section 40(1) is amended**

**(a) in clause (a)(ii) by striking out “this Act or the regulations” and substituting “this Act, the regulations or an adopted code”;**

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

(i.1) respecting administrative penalties, including regulations

(i) respecting notices of administrative penalty, their form and contents and the manner in which they are required to be given;

(ii) respecting the amounts of the administrative penalties that may, subject to section 40.3(3), be imposed under section 40.3(2) and respecting factors to be taken into account in setting the amount of an administrative penalty;

(iii) respecting appeals from administrative penalties, including regulations authorizing the charging of fees in respect of appeals from administrative penalties and regulations respecting the fees, the amounts of the fees and their disposition;

(iv) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of the system of administrative penalties;

(i.2) respecting service of orders under section 44(1.1)(a), (b) and (c), including regulations respecting the electronic methods by which service may be effected, regulations respecting service by recorded mail and regulations respecting when service by recorded mail or an electronic method is deemed to be effective;

**(10) The following is added after section 40.2:**

**Administrative penalties**

**40.3(1)** In this section, “regulated person” means

- (a) a contractor;
- (b) an employer;
- (c) a prime contractor;
- (d) a supplier;
- (e) a worker.

**(2)** If an officer is of the opinion that a regulated person

- (a) has contravened a provision of this Act, the regulations or an adopted code,
- (b) has failed to comply with an order made under this Act, the regulations or an adopted code,
- (c) has failed to comply with a term, condition or requirement of an acceptance issued under section 34, or
- (d) has failed to comply with a term, condition or requirement of an approval issued under an adopted code,

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

**(3)** The amount set out in a notice of administrative penalty must not exceed

- (a) \$10 000, or
- (b) in the case of a contravention or a failure to comply that continues for more than one day, \$10 000 for each day or part of a day on which the contravention or failure to comply occurs or continues.

**(4)** A regulated 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.

**(5)** A notice of administrative penalty may be given within 2 years after the alleged contravention or non-compliance occurs, but not afterwards.

**(6)** Subject to the right to appeal, where a regulated 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.

**(11) The following is added before section 41:**

**Prohibition**

**40.4** No person shall interfere with or in any manner hinder an officer or peace officer who is exercising powers or performing duties or functions under this Act.

**(12) Section 41(1) is amended by striking out “this Act or the regulations or” and substituting “this Act, the regulations or an adopted code or with”.**

**(13) The following is added after section 41.1:**

**Effect of non-payment**

**41.2(1)** If a person is ordered under section 41.1 to pay money to any other person and fails to pay

- (a) the entire amount before the expiry of the time period within which the order requires the entire amount to be paid, or
- (b) an instalment toward the entire amount before the expiry of the time period within which the order requires the instalment to be paid,

then on the expiry of that time period the entire amount, or that portion which then remains unpaid, is deemed to be a fine imposed on the person and is enforceable by the Crown in right of Alberta in the same manner as any other fine may be enforced under the *Provincial Offences Procedure Act*.

(2) Subsection (1) does not apply where the order requiring the payment of money was made before the coming into force of this section.

**(14) Section 42(a) is amended by striking out “this Act or the regulations” and substituting “this Act, the regulations or an adopted code”.**

**(15) Section 44 is amended**

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

**Service of orders**

**44(1)** In this section, “recorded mail” means a form of document delivery by mail or courier in which receipt of the document must be acknowledged in writing as specified in the regulations.

**(1.1)** Where a notice of administrative penalty is given to a person or where an order that may be given to a person under this Act, the regulations or the adopted code is required to be in writing, the notice of administrative penalty or order shall be served on the person

- (a) by personal service,
- (b) by recorded mail,
- (c) in accordance with the regulations, by an electronic method, or
- (d) as directed by the Court of Queen’s Bench on application.

**(1.2)** Notwithstanding subsection (1.1), where a person required to be served under that subsection is an employer involved in work at a work site, the notice of administrative penalty or order is deemed to have been served on the employer if it is served personally on an individual present at the work site who has apparent authority in respect of the work of that employer at the work site.

**(b) in subsection (2) by striking out “subsection (1)(c)” and substituting “subsection (1.1)(d)”.**

**(16) Subsections (2), (6), (7), (9)(b) and (10) come into force on Proclamation.**

### **Safety Codes Act**

**Amends RSA 2000 cS-1**

**3(1) The *Safety Codes Act* is amended by this section.**

**(2) Section 68(1) is amended**

- (a) in clause (a)(i) by striking out “\$15 000” and substituting “\$100 000”;**
- (b) in clause (b)(i) by striking out “\$30 000” and substituting “\$500 000”.**

**(3) The following is added after section 68:**

**Prosecution time limit**

**68.1(1)** A prosecution of an offence under this Act may not be commenced more than 3 years after the day on which evidence of the offence first came to the attention of a safety codes officer.

**(2)** This section applies only in respect of offences that are committed on or after the day on which

this section comes into force.

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