

Legislative Update

by Sarah Crabbe*

The following is a list of some of the Acts passed by the 1st session of the 40th Manitoba Legislature in 2012. While every effort has been made to ensure the accuracy of the information provided, lawyers should refer to the specific legislative or regulatory provision. Current versions of Manitoba statutes and regulations are available online at <http://web2.gov.mb.ca/laws/index.php>.

The Protecting Affordability for University Students Act, S.M. 2012, c. 4 (Bill 2, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Council on Post-Secondary Education Act*, C.C.S.M. c. C235

Summary: Under this Bill, the Council on Post-Secondary Education is required to include in its annual funding plan for the 2014-2015 fiscal year a forecast of the operating funds that will be provided to universities in each of the following two fiscal years. The Council must provide similar forecasts every third fiscal year after that. The Council is given the power to review whether a university's increase in a course-related fee reflects the associated costs incurred by the university. If the increase does not, the Council may require the university to stop charging the increased fee and pay refunds to students who have already paid it. If a university increases tuition fees by more than the increase in the rate of inflation, the Council is required to deduct from the grants it makes to the university the amount by which the increase exceeds the rate of inflation. On application of a university, the Council may designate a program as a professional degree program and the Lieutenant Governor in Council may order that such a program is exempt from the limits on increases in tuition fees.

In Force: Upon Royal Assent.

The Missing Persons Act, S.M. 2012, c. 6 (Bill 4, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Summary: This Bill enables members of a police service to obtain access to records about a missing person that may assist the police service in locating the missing person. Records and information collected by a police service under this Bill are confidential and may only be disclosed in specified circumstances. It also allows an order to be issued that authorizes members of a police service to search premises for a missing minor or vulnerable person.

In Force: By Proclamation.

The Regional Health Authorities Amendment Act (Improved Fiscal Responsibility and Community Involvement), S.M. 2012, c. 8 (Bill 6, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Regional Health Authorities Act*, C.C.S.M. c. R34

Summary: This Bill gives the government authority to amalgamate regional health authorities (RHAs) whether or not it has received a request to amalgamate from the affected authorities. The government may set a policy to standardize the employment contracts for senior managers of RHAs. The policy can deal with all aspects of such contracts, including compensation. In addition, RHAs may set a compensation policy for senior managers of health facilities within their region. Contract provisions that do not comply with a policy are void. Restrictions are placed on the re-hiring of former senior managers by RHAs and health facilities. RHAs may give directions to health facilities within their region about the process they use to hire senior managers. RHAs must have local health involvement groups, which replace the existing advisory councils. Such groups will advise RHAs about health issues in the region. New regulation-making powers allow the government to establish rules respecting the way in which

RHAs and health facilities use budgetary surpluses and revenue they receive from providing ancillary services, such as parking. The provision of the current Act allowing for two RHAs for the City of Winnipeg is repealed. In provisions of the current Act not yet in effect, RHAs are required to post the expenses of their chief executive officer. This Bill extends that requirement to the heads of health facilities.

In Force: Upon Royal Assent, subject to subsection (2) of the Act.

The Securities Amendment Act, S.M. 2012, c. 12 (Bill 10, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Securities Act*, C.C.S.M. c. S50

Summary: This Bill extends the regulatory powers of the Manitoba Securities Commission to derivatives trading. Restrictions are placed on derivatives traders and advisers. The Bill also provides for the recognition and regulation of clearing agencies, through which derivatives may be traded, and trade repositories, to which trades will be reported. Finally, this Bill allows for the use of an alternative disclosure document for mutual funds; resolves a problem with the limitation period facing persons seeking to commence lawsuits on the basis of secondary market disclosure (misrepresentation); and ensures consistency of expression in the French version in light of the amendments respecting derivatives.

In Force: By Proclamation, except for sections 1, 40 and 44, clause 49(c) and section 53, which come into force on the day this Act receives Royal Assent.

The Criminal Property Forfeiture Amendment Act (Administrative Forfeiture and Miscellaneous Amendments), S.M. 2012, c. 13 (Bill 11, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Criminal Property Forfeiture Act*, C.C.S.M. c. C306

Summary: This Bill makes two major changes to *The Criminal Property Forfeiture Act*. An administrative forfeiture process is established for specified personal property that is alleged to be an instrument of unlawful activity or proceeds of unlawful activity. Notice of the proposed forfeiture will be given to interested persons and to the public. If no person objects to the proposed forfeiture by a specified deadline, the property will be forfeited to the government. If an objection is received, court proceedings must be commenced to determine if the property should be forfeited. A person who claims to have suffered losses as the result of this type of forfeiture of property may bring a claim against the government. The Bill also enables a department official to manage and sell property forfeited under the *Criminal Code* and *The Controlled Drugs and Substances Act*.

In Force: Upon Royal Assent.

The Protection for Persons in Care Amendment Act, S.M. 2012, c. 16 (Bill 14, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Protection for Persons in Care Act*, C.C.S.M. c. P144

Summary: Protection from abuse and neglect under the Act is clarified. If the minister believes a person has abused or neglected a patient, the matter must be reported to the adult abuse registry committee established under *The Adult Abuse Registry Act*. The committee determines if the name of the person should be placed on the adult abuse registry. If the person's duties involve providing care or services to patients or other specified adults, or the person has unsupervised access to patients, the minister must also notify the person's employer. A further amendment enables the minister to issue binding directions to an operator of a health facility for the protection of any patients of the facility, and not just the specific patient in relation to whom an investigation was conducted.

In Force: By Proclamation.

The Fortified Buildings Amendment Act, S.M. 2012, c. 17 (Bill 15, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Fortified Buildings Act*, C.C.S.M. c. F153

Summary: This Bill makes it an offence to set a trap on a property or to knowingly allow a trap to remain on a property that a person owns or occupies.

In Force: By Proclamation.

The Consumer Protection Amendment Act (Improved Enforcement and Administration), S.M. 2012, c. 18 (Bill 16, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Consumer Protection Act*, C.C.S.M. c. C200

Summary: *The Consumer Protection Act* is amended to prohibit a person from asking or making a consumer waive or limit his or her consumer protection rights unless the waiver or limitation is statutorily permitted, to expand the grounds on which the director may refuse to issue or renew a payday lending license, to permit the director to communicate information to the public when it is in the public interest, and to clarify when reports about compliance orders relating to payday lenders may be issued to the public. Other administrative amendments are made to the Act, including amendments to clarify inspection powers and the power to issue director's orders.

In Force: Upon Royal Assent.

The Use of Animals to Shield Unlawful Activities Act, S.M. 2012, c. 21 (Bill 19, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Summary: This Bill makes it an offence to use an animal to protect property on which unlawful activities are occurring.

In Force: Upon Royal Assent.

The Highway Traffic Amendment Act (Extension of Ignition-Interlock Program), S.M. 2012, c. 24 (Bill 22, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Highway Traffic Act*, C.C.S.M. c. H60

Summary: Under *The Highway Traffic Act*, a person's license is restricted to driving a motor vehicle equipped with an ignition-interlock device if the person is convicted of certain alcohol-related offences under the Criminal Code. This restriction does not apply to a first offence unless it involved an aggravating factor, such as causing bodily injury. This Bill extends the restriction so that it applies to a first offence, even if it doesn't involve aggravating factors. The Bill also increases the penalty for a person convicted of driving without the required ignition-interlock device, if the person is driving without a license. The increased penalty is consistent with the penalty that applies to a person who holds a restricted license and drives contrary to the restriction.

In Force: By Proclamation.

The Groundwater and Water Well and Related Amendments Act, S.M. 2012, c. 27 (Bill 25, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Repeals: *The Ground Water and Water Well Act*, R.S.M. 1987, c. G110

Summary: The purposes of the Bill are to protect groundwater; to regulate the construction and sealing of wells in order to protect the quality of Manitoba's groundwater and aquifers as well as

human health and safety; and to allow for the collection and sharing of information about wells and groundwater for the better management of Manitoba's groundwater and aquifers. Well drilling contractors are required to be licensed, and individual well drillers and sealers are required to be certified. They must meet prescribed requirements and conduct their work in accordance with standards prescribed by regulation. The minister may establish aquifer management zones, and may require aquifer management plans to be prepared for these zones. An aquifer management plan, which is to be created with public consultation and submitted to the minister for approval, will allow for enhanced protection of groundwater in these zones. A public registry of groundwater information is to be established. It will contain information collected under the Bill about wells and test holes, copies of permits issued and orders made under the Bill, aquifer management plans and other information. Anyone will be able to access the information in the registry.

Related amendments are made to other Acts.

- *The Drinking Water Safety Act* — to allow information obtained under that Act to be shared with officials under this Bill.
- *The Planning Act* — to require aquifer management plans to be considered when making or amending a development plan.
- *The Water Protection Act* — to require aquifer management plans to be considered when making a watershed management plan or certain regulations, to require the Manitoba Water Council to monitor aquifer management plans and to enable the Water Stewardship Fund to be used to support the implementation of aquifer management plans.

A consequential amendment is made to *The Water Resources Administration Act*.

In Force: By Proclamation.

The International Interests in Mobile Equipment Act (Aircraft Equipment), S.M. 2012, c. 28 (Bill 26, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Summary: The Convention on International Interests in Mobile Equipment establishes a legal framework for international security interests in mobile equipment and creates an international registry for the protection of those interests. The Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment is necessary to implement the Convention as it relates to aircraft equipment. This Act facilitates the application of the Convention and the Aircraft Protocol in Manitoba upon their ratification by Canada.

In Force: By Proclamation.

The Insurance Amendment Act, S.M. 2012, c. 29 (Bill 27, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Insurance Act*, C.C.S.M. c. I40

Summary: This Bill makes significant amendments to *The Insurance Act* and modernizes the wording of approximately one-third of the Act's provisions. Some of the significant amendments are:

- Many of the Act's provisions, including virtually all of Parts V and VI (life insurance and accident and sickness insurance), are harmonized with the *Insurance Act* of Alberta.
- Part IV (fire insurance) is consolidated with Part III (insurance contracts generally) and harmonized statutory conditions are made applicable to most property and casualty insurance contracts. Parts VIII (livestock insurance) and IX (weather insurance) are repealed. The risks governed by these parts will be governed by the consolidated Part III.
- Consumer protection enhancements include

- better access for claimants to documents and information about life insurance and accident and sickness insurance contracts;
- enhancements to dispute resolution;
- protection for innocent persons from loss of coverage for intentional acts of co-insureds and other persons;
- requiring the approval of the Superintendent of Insurance for fire exclusions;
- authority to license incidental sellers of insurance.
- As in other provinces, insurers, brokers and agents will be permitted to offer reasonable customer inducements, such as loyalty reward programs.
- A broker or agent is no longer prohibited from charging a fee on a commercial insurance transaction in connection with which a commission is also earned.
- To promote greater risk-based self-evaluation, insurers who conduct their own compliance audits have a limited privilege in relation to the audit documentation.
- Amendments are made to facilitate and regulate electronic transactions under the Act.
- Regulations may be made about how insurers may use information about the credit status of policy holders and applicants for property insurance relating to a residence.
- The procedure for appeals to The Insurance Agents' and Adjusters' Licensing Appeal Board is modified and additional guidance is provided for how the appeal board deals with issues that may arise in connection with an appeal.

The Bill also contains a consequential amendment to *The Insurance Corporations Tax Act* relating to the name of the class of accident and sickness insurance.

In Force: By Proclamation.

The Residential Tenancies Amendment Act, S.M. 2012, c. 30 (Bill 28, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Residential Tenancies Act*, C.C.S.M. c. R119

Summary: This Bill makes several amendments to *The Residential Tenancies Act*. The following are the key changes

- Landlords are required to use prescribed forms when terminating tenancies to ensure that tenants receive important information about their rights.
- Authority is given to make regulations allowing the Director of Residential Tenancies and the Residential Tenancies Commission to waive filing fees in certain situations.
- Authority is also given to make regulations setting out circumstances when late payment fees cannot be charged.
- Tenants who wish to object to a rent increase that is at or below the guideline increase are required to identify a reason why the increase is not justified.
- Provisions are added regarding increases or decreases in tenant services charges when there is a change in the number of people occupying a rental unit. A related provision allows for an increase in a tenant services security deposit when a tenant services charge is increased because of an additional occupant.
- Landlords who plan to do extensive renovations or a rehabilitation must provide tenants with an estimate of the rent that will be charged following the renovations or rehabilitation. The landlord may be required to compensate the tenant for moving and other expenses, if the estimated rent is unreasonable and causes the tenant to move or discourages the tenant from exercising a right of first refusal.

Other amendments include

- Setting out the rights of tenants and landlords to examine material filed in relation to rent regulation applications and clarifying which materials cannot be copied;

- Clarifying the rights and obligations of a tenant and landlord when the landlord wishes to terminate, during the school year, the tenancy of a tenant with a school-aged child;
- Clarifying that the provisions in Part 9 of the Act relating to reducing rent if there is a withdrawal or reduction of service apply only to a permanent withdrawal or reduction; and
- Removing the requirement for the Director of Residential Tenancies to provide a separate annual report, in addition to the report included in the department's annual report.

In Force: Upon Royal Assent, subject to subsection (2).

The Contaminated Sites Remediation Amendment Act, S.M. 2012, c. 31 (Bill 29, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Contaminated Sites Remediation Act*, C.C.S.M. c. C205

Summary: Under the current Act, a site is to be designated as a contaminated site if it is contaminated at a level that poses, or may pose, a threat to human health or safety or to the environment. The Bill enables the director to designate a site as a contaminated site — if the site is contaminated at a level that poses a threat to human health or safety or to the environment; or as an impacted site — if the site is contaminated at a level that does not currently pose such a threat, but that may pose such a threat in the future. The current provisions of the Act continue to apply to sites designated as contaminated sites.

If a site is designated as an impacted site, the owner must prepare a plan to address the contamination and submit the plan to the director for review. The director may issue a remediation order for an impacted site. The owner of an impacted site is responsible for remediation of the site. But an owner who believes that he or she should not be solely responsible for the remediation may apply to the director for an order apportioning responsibility for the remediation among those who could be held responsible if the site had been designated as a contaminated site. The Bill imposes a duty on the owner or occupier of a site to notify the director if he or she becomes aware of information about contamination on the site that exceeds standards established by regulation. The Bill clarifies responsibility for the cost of emergency remediation work and ensures access to sites where remediation is to be performed. It also requires remediation work to be performed as specified or approved by the director.

In Force: By Proclamation.

The Human Rights Code Amendment Act, S.M. 2012, c. 38 (Bill 36, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Amends: *The Human Rights Code*, C.C.S.M. c. H175

Summary: This Bill expands the list of protected characteristics under the Human Rights Code to cover social disadvantage and gender identity. The Bill streamlines the handling of complaints in several ways:

the Human Right Commission may sit in panels to consider complaints; the Commission and the adjudicator at a hearing are authorized to explore the settlement of complaints; an adjudicator can deal with similar complaints involving different parties in a single hearing; and position of chief adjudicator is created. Fines under the Code are increased. The time allowed for filing a complaint or starting a prosecution under the Code is increased. In addition, the wording of several provisions is updated or clarified.

In Force: Upon Royal Assent.

The Budget Implementation and Tax Statutes Amendment Act, S.M. 2012, c. 1 (Bill 39, 1st Session, 40th Legislature)

Royal Assent: June 14, 2012

Summary: This Bill implements measures in the 2012 Manitoba Budget, and makes various other amendments to tax and financial legislation. A selection of these amendments are summarized as follows:

The Corporation Capital Tax Act, C.C.S.M. c. C226 – amended to increase the corporation capital tax on financial institutions from 3% to 4%.

The Income Tax Act, C.C.S.M. c. I10 – amended to clarify how unused mineral exploration tax credits may be carried forward or back to other taxation years; to provide a new refundable nutrient management tax credit equal to 10% of amounts expended by agricultural producers on equipment used to eliminate or significantly reduce the risk that nutrients or pathogens will be transported to a waterway; to reduce the dividend tax credit from 11% to 8%; to make community revitalization levies eligible for the education tax credit and to correct the maximum municipal tax reduction; to expand the film and video production tax credit by allowing producers of eligible films to claim temporary accommodation expenditures up to \$300 (tax included) per night per unit; to amend the criteria for the Neighbourhoods Alive! tax credit; to provide a new refundable data processing tax credit equal to 4% of the capital cost of a building and 7% of the capital cost of machinery or equipment used for data processing; and to increase the co-op education and apprenticeship tax credits and making available an additional tax credit for northern and rural early-level apprentices.

In Force: Upon Royal Assent.

* Sarah is starting her 3rd year at law school and was the MBA summer student for 2012. Thank you to Manitoba Justice – Legislative Counsel for reviewing the article.