

BILL

No. 108

An Act to amend *The Pension Benefits Act, 1992*

(Assented to)

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

Short title

1 This Act may be cited as *The Pension Benefits Amendment Act, 2022*.

SS 1992, c P-6.001 amended

2 *The Pension Benefits Act, 1992* is amended in the manner set forth in this Act.

Section 2 amended

3(1) Subsection 2(1) is amended:

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

“(b.1) ‘**authority**’ means the Financial and Consumer Affairs Authority of Saskatchewan continued pursuant to *The Financial and Consumer Affairs Authority of Saskatchewan Act*”;

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

“(bb.1) ‘**reserve account**’ means a separate account established pursuant to subsection 40.2(1) within a pension fund”; **and**

(c) **by adding the following clause after clause (hh):**

“(hh.1) ‘**surplus**’ means the amount, if any, by which the value of the assets of the plan exceeds the value of the liabilities of the plan, both determined in the prescribed manner”.

(2) Subsection 2(1.1) is amended by striking out “Financial and Consumer Affairs Authority of Saskatchewan” wherever it appears and in each case substituting “authority”.

New section 4.1

4 The following section is added after section 4:

“Terms and conditions

4.1 The superintendent may impose terms and conditions on any approval, consent or permission given by the superintendent pursuant to this Act or the regulations”.

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New sections 5 to 7

5 Sections 5 to 7 are repealed and the following substituted:

“Inspections

5(1) Subject to subsection 6(4), for the purposes of enforcing and administering this Act, the regulations or the provisions of a plan, the superintendent or any person authorized by the superintendent may do all or any of the following:

- (a) at any reasonable time, enter any place, including the business premises where a plan is administered or anything is done in connection with a plan, or any place containing any records or property required to be kept pursuant to this Act or the regulations or related to the administration of this Act or the regulations;
 - (b) inspect the place mentioned in clause (a) and examine any record or property found in the place that may be relevant to the administration of this Act or the regulations;
 - (c) require any administrator or employer or any representative, delegate, agent, officer or employee of an administrator or employer to:
 - (i) answer any questions that may be relevant to an inspection, audit or examination;
 - (ii) provide the superintendent with all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;
 - (d) make any inquiries of a person mentioned in clause (c);
 - (e) require any person mentioned in clause (c) to attend at a place and time set by the superintendent;
 - (f) in order to produce information, use any computer hardware or software or any other data storage, processing or retrieval device or system that is used in connection with a plan;
 - (g) subject to subsection (7), remove for examination and copying anything that may be relevant to the inspection, audit or examination, including removing any computer hardware or software or any other data storage, processing or retrieval device or system in order to produce information;
 - (h) make copies of any record or property examined;
 - (i) retain any record or property examined that may be relevant to the administration of this Act or the regulations.
- (2) The superintendent may serve a written demand on any person requiring that person to produce, including to produce under oath, any records or property:
- (a) required to be kept pursuant to this Act, the regulations or a plan;
 - (b) related to the administration of this Act or the regulations;
 - (c) related to a plan; or
 - (d) related to an administrator or an employer.

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- (3) No person on whom a written demand is served pursuant to this section shall fail to produce the records or property mentioned in the written demand within the time and in the manner specified in the written demand.
- (4) No person shall withhold, destroy, alter, conceal or refuse to produce any records or property that the superintendent reasonably requires for the purpose of enforcing and administering this Act or the regulations.
- (5) If the superintendent demands any records or property pursuant to this section, the superintendent may examine the records or property and make copies of the records with reasonable dispatch and promptly return the originals of the records to the person who produced them.
- (6) If the superintendent requires a person to answer questions, to produce a record or other property or to provide assistance in accordance with this section, the person shall do so in the manner and within the period specified by the superintendent.
- (7) The superintendent shall:
- (a) give a receipt for anything that the superintendent removes for examination or copying;
 - (b) promptly return anything removed pursuant to this section to the place from which it was removed or any other place agreed to by the superintendent and the person who provided it; and
 - (c) take all reasonable steps to ensure that, if a record is taken, a copy of the record is left at the premises to allow business to be carried on.

“Investigations

- 6(1) If a justice of the peace or a judge of the Provincial Court of Saskatchewan is satisfied by information under oath or affirmation that there are reasonable grounds to believe that an offence against this Act has occurred and that evidence of that offence is likely to be found, the justice of the peace or the judge of the Provincial Court of Saskatchewan may issue a warrant to do all or any of the following:
- (a) enter and search any place or premises named in the warrant;
 - (b) stop and search any vehicle described in the warrant;
 - (c) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act.
- (2) With a warrant issued pursuant to subsection (1), the superintendent or any person authorized by the superintendent may:
- (a) enter at any time and search any place or premises named in the warrant;
 - (b) stop and search any vehicle described in the warrant;

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(c) open and examine the contents within any trunk, box, bag, parcel, closet, cupboard or other receptacle that the superintendent finds in the place, premises or vehicle;

(d) require the production of and examine any records or property that the superintendent believes, on reasonable grounds, may contain information related to an offence against this Act;

(e) remove, for the purpose of making copies, any records examined pursuant to this section; and

(f) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act.

(3) Subject to subsection (4), the superintendent or any person authorized by the superintendent may exercise all or any of the powers mentioned in subsection (2) without a warrant issued pursuant to this section if:

(a) the conditions for obtaining a warrant exist; and

(b) the superintendent has reasonable grounds to believe that the delay necessary to obtain a warrant would result:

(i) in danger to human life or safety; or

(ii) in the loss, removal or destruction of evidence.

(4) The superintendent or any person authorized by the superintendent shall not enter any building that is ordinarily occupied as a private residence without a warrant unless the owner or occupant of that building consents to the entry.

“Travel costs

7(1) If the superintendent or any person authorized, appointed or engaged by the superintendent for the purpose of assisting in carrying out an audit, examination, inspection or investigation is required to travel outside Saskatchewan to conduct an audit, examination, inspection or investigation of a person, the superintendent may direct the person being audited, examined, inspected or investigated to pay all of the reasonable costs associated with the audit, examination, inspection or investigation.

(2) No person shall fail to pay an amount that the person is directed to pay pursuant to subsection (1).

(3) No person shall pay an amount that the person is directed to pay pursuant to subsection (1) out of the pension fund of a plan without the consent of the superintendent”.

Section 8 repealed

6 Section 8 is repealed.

Section 17 amended

7 The following subsection is added after subsection 17(3):

“(4) For the purposes of this section, the superintendent may sever from an amendment mentioned in subsection (1) that portion of the amendment that does not comply with this Act and register in accordance with subsection (3) the remaining portion of the amendment”.

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Section 19 amended

8 Subsection 19(5) is repealed and the following substituted:

“(5) If an amendment is made to a plan that confers on an employer any ownership or entitlement to the benefit of any surplus of the plan, the amendment is not effective unless it has been approved in the prescribed manner by the persons entitled to benefits pursuant to the plan”.

Section 21 amended

9(1) Subsection 21(1) is amended in the portion preceding clause (a) by adding “, a plan amendment or part of a plan amendment” after “a plan”.

(2) Subsection 21(2) is amended by adding “, a plan amendment or part of a plan amendment” after “plan”.

(3) The following subsection is added after subsection 21(3):

“(4) The cancellation of registration of a plan amendment or part of a plan amendment pursuant to subsection (1) does not cancel the registration of the corresponding plan”.

New section 21.1

10 The following section is added after section 21:

“Transactions may be reversed

21.1 If a plan amendment or part of a plan amendment has been registered and the superintendent notifies the administrator of the plan in writing that the registration has been cancelled, the superintendent may:

- (a) direct that all or part of the cancellation has retroactive effect; and
- (b) direct the administrator to reverse any transactions that were based on the assumption that the amendment or part of an amendment would remain registered”.

Section 22 amended

11(1) Subsection 22(1) is repealed and the following substituted:

“(1) If the superintendent refuses to register a plan, a plan amendment or part of a plan amendment, cancels a registration of a plan, a plan amendment or part of a plan amendment pursuant to subsection 21(1), directs an administrator to reverse a transaction pursuant to section 21.1 or directs an administrator to amend an actuarial valuation report or cost certificate pursuant to subsection 11(5), the superintendent shall give the administrator notice in writing of that fact and set out the reasons for the decision in the notice”.

(2) Subsection 22(2) is amended by adding “of a plan, a plan amendment or part of a plan amendment” after “registration”.

(3) Clause 22(4)(a) is amended by adding “, direction to reverse” after “cancellation”.

(4) Subsection 22(5) is amended by adding “or part of the amendment” after “amendment”.

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Section 23 amended

12(1) Subsection 23(1) is amended by adding “, rescind the direction to reverse” after “registration”.

(2) Subsection 23(3) is amended by adding “, part of the amendment” after “amendment”.

Section 25 amended

13 Clause 25(1)(g) is amended by striking out “surplus assets” and substituting “any surplus of the plan”.

Section 32 amended

14 The following clause is added after clause 32(2)(c):

“(c.01) subject to the regulations, an insurance company to purchase an advanced life deferred annuity as defined in subsection 146.5(1) of the *Income Tax Act* (Canada) that meets the prescribed requirements”.

New sections 32.1 to 32.4

15 The following sections are added after section 32:

“Transfers by former members

32.1(1) In this section, ‘**external plan**’ means a plan, a prescribed RRSP, a pooled registered pension plan or any other prescribed retirement plan to which a transfer may be made pursuant to subsection 32(2).

(2) Subject to any prescribed terms and conditions, a person who, as a member or former member of a plan, has transferred the commuted value of the member’s pension to an external plan may transfer the amount standing to the person’s credit in the external plan back into the plan for the purpose of receiving a prescribed pension.

(3) A person who transfers an amount into the plan pursuant to subsection (2) is deemed to be a former member for the purposes of receiving a prescribed pension.

“Purchase of pension

32.2(1) Subject to the regulations, the administrator of a plan who is required by the plan to provide a pension may purchase an annuity in the form of a pension from an insurance company in the prescribed manner and to the prescribed extent.

(2) The authority of the administrator pursuant to subsection (1) is subject to the entitlement of a member pursuant to section 32 and to prescribed limitations in relation to transfers of money from pension funds.

(3) If a purchase pursuant to subsection (1) does not meet the prescribed limitations in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the superintendent.

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“Transfer to purchase annuity

32.3(1) Subject to this section and the regulations, the administrator of a plan that contains a defined benefit provision may, if the plan has not been terminated in whole, transfer assets from the portion of the plan that relates to the defined benefit provision to an insurance company for the purchase of an annuity in the form of a pension that is required or allowed by this Act for any of the following persons:

- (a) a former member who is entitled to a benefit under the defined benefit provision;
- (b) the surviving spouse of a member or former member who is entitled to a benefit under the defined benefit provision;
- (c) the spouse or former spouse of a member or former member who is entitled to a benefit under the defined benefit provision;
- (d) a person, other than a person mentioned in clause (a), (b) or (c), who is receiving a pension under the defined benefit provision;
- (e) any prescribed person who is entitled to a benefit under the defined benefit provision.

(2) The administrator shall give notice of the intended purchase of an annuity pursuant to subsection (1) to the persons mentioned in subsection (1), as applicable, in accordance with the prescribed requirements.

(3) Subject to the regulations, if an annuity is to be purchased pursuant to subsection (1), the administrator must ensure that the annuity:

- (a) with respect to a former member who has not commenced the former member's pension, provides the former member with the same benefits as the former member would have received from the plan had the transfer not been made;
- (b) with respect to a former member who has commenced the former member's pension, provides the former member with payments in the same amount and form as the pension the former member would have received from the plan had the transfer not been made;
- (c) with respect to a surviving spouse of a member or former member who is entitled to a pension under the defined benefit provision and who has not commenced the surviving spouse's pension, provides the surviving spouse with the same benefits as the surviving spouse would have received from the plan had the transfer not been made;
- (d) with respect to a surviving spouse of a member or former member who is receiving a pension under the defined benefit provision, provides the surviving spouse with payments in the same amount and form as the pension the surviving spouse would have received from the plan had the transfer not been made;

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(e) with respect to the spouse or former spouse of a member or former member who is entitled to a benefit under the defined benefit provision in accordance with subsection 47(2) or (3), provides the spouse or former spouse with the same benefits as the spouse or former spouse would have received from the plan had the transfer not been made;

(f) with respect to the spouse or former spouse of a member or former member who is receiving a proportion of the pension payment otherwise payable to the member or former member in accordance with subsection 47(3) or (4), provides the spouse or former spouse with payments in the same amount and form as the pension the spouse or former spouse would have received from the plan had the transfer not been made;

(g) with respect to a person, other than a person mentioned in clause (1)(a), (b) or (c), who is receiving a pension under the defined benefit provision, provides the person with payments in the same amount and form as the pension the person would have received from the plan had the transfer not been made; and

(h) with respect to any prescribed person who is entitled to a benefit under the defined benefit provision, provides the person with the prescribed benefits.

(4) When purchasing an annuity pursuant to subsection (1), the administrator must be satisfied that the insurance company is authorized to sell annuities.

(5) The purchase of an annuity mentioned in subsection (1) must:

(a) meet the prescribed requirements; and

(b) meet any other requirements, conditions or limitations that may be prescribed, including requirements, conditions or limitations relating to funding.

(6) An administrator is discharged from further liability to the person with respect to whose pension or other benefits the annuity has been purchased on filing a certificate that:

(a) meets the prescribed requirements; and

(b) is prepared and signed by an actuary certifying that the administrator has complied with this section and the prescribed requirements related to the purchase of an annuity mentioned in subsection (1).

(7) Subject to subsection (8) and the regulations, if an administrator is discharged in accordance with subsection (6), a person for whom the purchase was made pursuant to this section is no longer a former member or person entitled to a benefit for the purposes of this Act.

(8) Subject to subsection (9) and the regulations, a person who receives an annuity in accordance with subsections (1) and (3) is entitled, for 3 years from the date after the purchase of the annuity, to participate in the allocation of any surplus of the plan, in accordance with the Act and the prescribed requirements, in the event of the plan's termination.

(9) Subsection (8) only applies if the person would have been entitled to payment of any surplus of the plan if the plan had been terminated on the date of the purchase, whether or not the plan actually had a surplus on the date of the purchase.

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“No discharge if requirements not met

32.4(1) Subject to subsection (3) and notwithstanding the filing of a certificate pursuant to subsection 32.3(6), if it is discovered after the filing of the certificate that the purchase referenced in the certificate did not comply with the requirements of section 32.3, the administrator is deemed, as of the filing of the certificate, not to have been discharged.

(2) The administrator who is deemed pursuant to subsection (1) not to have been discharged must immediately notify the person with respect to whom the annuity was purchased that the administrator did not comply with the requirements and is not discharged pursuant to subsection 32.3(6).

(3) An administrator who is deemed pursuant to subsection (1) not to have been discharged may subsequently be discharged on complying with the requirements of section 32.3 and on filing a new certificate pursuant to subsection 32.3(6).

(4) The superintendent may, by order, require the insurance company from whom the annuity was purchased pursuant to subsection 32.3(1) to repay an amount not greater than the amount of the payment, with interest, if the purchase does not comply with the requirements of section 32.3.

(5) An order made pursuant to subsection (4) may be filed in court without reasons and, on filing, is enforceable as an order of that court”.

Section 37 amended**16 Subsection 37(8) is repealed and the following is substituted:**

“(8) Subject to the regulations, a pension must commence no later than the last date on which a person is allowed pursuant to the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan”.

New sections 40.1 to 40.4**17 The following sections are added after section 40:****“Contribution holidays**

40.1(1) In this section, ‘**available actuarial surplus**’ means an amount to be determined in the prescribed manner.

(2) Notwithstanding subsection 40(4), prescribed contributions required to be made under a plan may be reduced or suspended, in the prescribed manner, if:

- (a) the plan has an available actuarial surplus;
- (b) the plan permits the reduction or suspension; and
- (c) any other prescribed requirements are satisfied.

(3) This section does not prevent the reduction or suspension of contributions in relation to the plan if the reduction or suspension is otherwise authorized by this Act or the regulations.

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“Reserve account

40.2(1) Subject to the regulations, a plan that contains a defined benefit provision may provide for the establishment of a reserve account in the plan’s pension fund.

- (2) The only funds that may be deposited into a reserve account are:
 - (a) payments made with respect to a solvency deficiency; and
 - (b) any other prescribed contributions or payments.
- (3) Notwithstanding subsection (2), assets must not be transferred from any other account within the pension fund to the reserve account.

“Withdrawal from reserve account

40.3 Notwithstanding any provision of a plan, amounts may be withdrawn from the reserve account, subject to and in accordance with the regulations, by a prescribed person.

“Letters of credit

40.4(1) Notwithstanding subsection 40(4), if a prescribed employer is required to make payments into the pension fund with respect to a solvency deficiency, the employer may provide a letter of credit to a prescribed person or entity for the benefit of the plan instead of making some or all of the required payments into the pension fund with respect to the solvency deficiency if the requirements of this section are satisfied.

- (2) The letter of credit must satisfy any prescribed requirements.
- (3) The employer is not entitled to provide a letter of credit if the total amount of all letters of credit provided to the prescribed person or entity for the plan would exceed 15% of the solvency liabilities of the plan.
- (4) The employer shall provide the letter of credit to the prescribed person or entity within any period after it is issued that may be prescribed and the employer shall give a copy of the letter of credit to the administrator within the same period.
- (5) The administrator shall notify the superintendent in the prescribed manner and within the prescribed period that a letter of credit has been provided and, on request, the administrator shall give the superintendent any information about the letter of credit that the superintendent may specify.
- (6) The prescribed person or entity holds the letter of credit in trust for the plan.
- (7) In the prescribed circumstances, the prescribed person or entity shall demand payment of the amount of the letter of credit into the pension fund by the issuer of the letter of credit.
- (8) The fees or expenses associated with obtaining, holding, amending or cancelling a letter of credit are not payable from the pension fund.
- (9) The fees and expenses associated with enforcing a letter of credit may be paid from the pension fund”.

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Section 51 amended**18 Subsection 51(4) is repealed and the following substituted:**

“(4) Subsections (2) and (3) do not apply to a reduction or suspension of contributions in accordance with section 40.1”.

Section 54 amended**19 The following subsections are added after subsection 54(1):**

“(1.1) Subject to subsection (1.2) and the regulations, if a plan has a solvency deficiency on the effective date of the termination of the plan, in whole or in part:

- (a) the employer must eliminate the solvency deficiency in accordance with the regulations; and
- (b) the administrator must file updated reports in accordance with the regulations until the solvency deficiency has been eliminated.

“(1.2) Subsection (1.1) does not apply to the following plans:

- (a) a plan to which subsection 40(5) of this Act applies;
- (b) a plan to which section 36.7, 36.8, 36.92, 36.96, 36.97 or 36.991 of the regulations applies;
- (c) any other prescribed plan”.

New section 62**20 Section 62 is repealed and the following substituted:****“Surplus**

62(1) Subject to subsection (2), an administrator or a fund holder shall not transfer any surplus of a plan to an employer unless:

- (a) the plan provides for the transfer;
- (b) the administrator has complied with the prescribed conditions; and
- (c) the administrator has received written notice from the superintendent stating that, following the payment or transfer of the surplus, the plan will, in the superintendent’s opinion, continue to meet the solvency tests.

(2) This section does not apply with respect to a withdrawal from a reserve account”.

New sections 65.1 and 65.2**21 The following sections are added after section 65:****“Immunity**

65.1(1) No action or other proceeding lies or shall be commenced against:

- (a) the Crown in right of Saskatchewan;
- (b) the minister;
- (c) the superintendent or any person employed in the office of the superintendent;
- (d) any representative of the superintendent;

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(e) any person who has been delegated any powers or duties of the superintendent pursuant to clause 10.1(3)(j);

(f) any person authorized, engaged, appointed, or retained by the superintendent to make or conduct any audit, examination, inspection or investigation or to do any other thing pursuant to this Act or the regulations;

(g) the authority or any person employed or engaged by the authority;

if the person mentioned in clause (a), (b), (c), (d), (e), (f) or (g) is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any responsibility imposed by this Act or the regulations.

(2) Subject to subsection (1), no action or other proceeding lies or shall be commenced against any other person with respect to any act or omission of that other person done or omitted in compliance with and not in contravention of this Act, the regulations or any direction, decision, order, ruling or other requirement made or given pursuant to this Act or the regulations.

“Order or decision of superintendent final

65.2 Except if otherwise specifically provided, every order or decision of the superintendent is final, and no order or decision of the superintendent shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari, mandamus or any other process or proceeding in court”.

Section 68 amended

22 Section 68 is amended by striking out “*The Saskatchewan Insurance Act*” and substituting “*The Insurance Act*”.

New sections 68.1 to 68.6

23 The following sections are added after section 68:

“Proceedings before superintendent

68.1(1) In this section, ‘**record**’ includes any information that is recorded or stored in any medium or by means of any device, including a computer or electronic media.

(2) For the purpose of carrying out an audit, examination or inspection pursuant to this Act or of carrying out any proceeding before the superintendent, the superintendent has the same power as is vested in the court for the trial of civil actions:

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

(b) to compel witnesses to give evidence on oath or by declaration or otherwise; and

(c) to compel witnesses to produce records or property.

(3) The superintendent may issue a summons if the superintendent believes that it is necessary in order to determine whether a person is complying with a requirement established pursuant to this Act or the regulations.

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(4) If a person summoned pursuant to subsection (2) or (3) fails or refuses to attend, answer questions or produce records or property in that person's custody or possession, the failure or refusal makes that person liable, on application to the court by the superintendent, to be committed for contempt by the court in the same manner as if that person were in breach of an order or judgment of the court.

(5) The superintendent may accept any evidence the superintendent considers appropriate and is not bound by the rules of law concerning evidence.

(6) The superintendent may establish the rules, forms and procedures to be followed in proceedings before the superintendent.

“Power to require information or material

68.2(1) At any time, the superintendent may direct any person to provide the superintendent with any information or material the superintendent reasonably requires for the purposes of this Act and the regulations.

(2) The superintendent may determine a reasonable time within which a person shall provide the information or materials directed to be provided pursuant to subsection (1).

(3) A person directed to provide information or material to the superintendent pursuant to subsection (1) shall do so in the manner and within the period specified by the superintendent.

“Publication by superintendent

68.3 The superintendent may publish:

- (a) notices;
- (b) decisions, orders and the superintendent's written reasons for making a decision or order; and
- (c) any other material or information the superintendent considers to be in the public interest to publish.

“Copies of documents

68.4 A record certified by the superintendent or any person authorized by the superintendent to be a copy made pursuant to section 5 or 6:

- (a) is admissible in evidence without proof of the office or signature of the person making the certificate; and
- (b) has the same probative force as the original record.

“Restrictions on access to records

68.5(1) Notwithstanding *The Freedom of Information and Protection of Privacy Act*, any information submitted or provided to the superintendent or obtained by the superintendent as a result of an audit, examination, inspection or investigation pursuant to this Act is not open to inspection or available for access except by:

- (a) those persons employed by the authority whose responsibilities require them to inspect or allow them to have access to the information; and
- (b) those persons who are authorized in writing by the superintendent to inspect or to have access to the information.

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(2) Unless authorized by this Act or by any other law or with the consent of the person to whom any information relates, no person employed by the authority and no person authorized by the superintendent to inspect or have access to the information shall:

- (a) communicate or allow to be communicated any information obtained pursuant to this Act to any person who is not legally entitled to the information; or
- (b) allow any person who is not legally entitled to the information obtained pursuant to this Act to inspect or have access to it.

(3) Notwithstanding subsections (1) and (2), the superintendent may authorize the release of, inspection of or access to the information mentioned in those subsections to or by any person employed by a government, regulatory authority, law enforcement agency or investigative body inside or outside Canada if:

- (a) the information will be used solely for the purpose of administering or enforcing an Act or law of Saskatchewan or Canada or of another jurisdiction inside or outside Canada;
- (b) the release, inspection or access is pursuant to an agreement made pursuant to section 10.1; or
- (c) the superintendent believes that it is in the public interest to allow the release, inspection or access.

(4) No person to whom information is provided pursuant to this section is compellable to give evidence concerning that information unless:

- (a) the person to whom the information relates consents; or
- (b) a court orders the evidence to be given.

(5) Notwithstanding subsections (1) and (2), the superintendent may authorize the publication of, or make available to the public, any information mentioned in subsection (1) if, in the opinion of the superintendent, it is in the public interest to do so.

(6) On the application for an order pursuant to clause (4)(b):

- (a) the superintendent and the person to whom the information relates are entitled to appear before the court and to make submissions; and
- (b) the person seeking the order compelling the evidence has the onus of showing why it is in the public interest that the order be made.

“Service

68.6(1) Any notice or other document that is required to be served pursuant to this Act or the regulations or in any proceeding or matter under the jurisdiction of the superintendent may be served:

- (a) by personal service made:
 - (i) in the case of an individual, on that individual;
 - (ii) in the case of a partnership, on any partner;
 - (iii) in the case of a corporation, on any officer or director of the corporation;

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(b) by registered mail addressed to the last address of the person to be served known to the superintendent;

(c) in the case of a notice to the public, or to persons who are too numerous to be served individually, by publishing the notice in any manner that the superintendent may direct; or

(d) by any other prescribed means.

(2) A notice or other document sent by registered mail is deemed to have been served on the fifth business day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the notice or document or received it at a later date.

(3) Service of a notice or document by any other prescribed means is to be proved in the prescribed manner.

(4) A notice or other document required to be served on the superintendent may be served:

(a) by leaving it at the office of the superintendent with any person appearing to have authority to accept the notice or document;

(b) by registered mail addressed to the address of the office of the superintendent; or

(c) by any other prescribed means.

(5) Any person entitled to be served a notice or a document may at any time waive, in writing, service of the notice or document.

(6) Service of the notice or document may be proved by affidavit or oral evidence of the person claiming to have served it”.

Section 69 amended

24 Subsection 69(1) is amended:

(a) by adding the following clause after clause (b):

“(b.01) for the purposes of subsection 19(5), prescribing the manner in which persons entitled to benefits pursuant to the plan are required to approve an amendment to a plan that confers on an employer an ownership or entitlement to the benefit of any surplus of the plan before the amendment is effective”;

(b) by repealing clause (e) and substituting the following:

“(e) prescribing and governing the conditions and requirements on which transfers of money to an RRSP, to an insurance company to purchase a deferred pension mentioned in clause 32(2)(c), to an insurance company to purchase an advanced life deferred annuity mentioned in clause 32(2)(c.01), another plan mentioned in clause 32(2)(d) and any subsequent transfers to an RRSP of moneys so transferred are to be made”;

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(c) by adding the following clauses after clause (e):

“(e.1) prescribing RRSPs and other retirement plans that are external plans for the purposes of subsection 32.1(1);

“(e.2) for the purposes of subsection 32.1(2), respecting the transfers of amounts into a plan from external plans, including prescribing terms and conditions with respect to those transfers;

“(e.3) for the purposes of subsections 32.1(2) and (3), prescribing a pension to be received for which a former member may transfer amounts from an external plan back into the plan”;

(d) by adding the following clauses after clause (f):

“(f.1) for the purposes of section 32.2:

(i) governing the manner in which and the extent to which an administrator may purchase a pension from an insurance company; and

(ii) prescribing limitations in relation to transfers of money from pension funds;

“(f.2) for the purposes of section 32.3:

(i) prescribing persons for whom an annuity may be purchased;

(ii) prescribing the requirements for the form and content of a notice of the intended purchase of an annuity;

(iii) respecting the purchase of an annuity and the characteristics of the annuity, including prescribing circumstances for the purchase of an annuity with modifications when the pension characteristics are not available on the market;

(iv) prescribing the requirements for the form and content of the contract for the purchase of an annuity;

(v) prescribing the conditions, requirements and limitations related to the purchase, including conditions, requirements and limitations related to funding;

(vi) prescribing requirements for the actuarial certificate; and

(vii) respecting the entitlement of a person who receives an annuity to participate in the allocation of any surplus of the plan in the event of the termination of the plan;

“(f.3) respecting the discharge of an administrator pursuant to section 32.3 and the deeming that an administrator has not been discharged pursuant to section 32.4;

“(f.4) for the purposes of subsection 37(8), respecting the date on which a pension must commence”;

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(e) by adding the following clauses after clause (g.01):

“(g.02) respecting contribution holidays for the purposes of section 40.1, including:

- (i) prescribing the manner of determining available actuarial surplus;
- (ii) prescribing the contributions that may be reduced or suspended and the manner in which contributions may be reduced or suspended; and
- (iii) prescribing requirements respecting the reduction or suspension of contributions;

“(g.03) respecting reserve accounts for the purposes of section 40.2, including prescribing funds that may be paid into a reserve account;

“(g.04) respecting withdrawals from reserve accounts for the purposes of section 40.3, including:

- (i) prescribing conditions for withdrawals from reserve accounts;
- (ii) prescribing requirements respecting an application for the superintendent’s consent to the withdrawal;
- (iii) prescribing requirements respecting the superintendent’s consent to the withdrawal;
- (iv) prescribing the amounts and the manner in which the funds may be withdrawn;
- (v) prescribing the persons authorized to make withdrawals from the reserve accounts and any notice to be provided in relation to that withdrawal;
- (vi) prescribing the conditions to be met before a withdrawal may be made from the reserve account;
- (vii) prescribing the basis on which the amount proposed to be withdrawn is calculated; and
- (viii) prescribing the times at which and the period within which an amount may be withdrawn;

“(g.05) respecting letters of credit for the purposes of section 40.4, including:

- (i) prescribing employers who may provide a letter of credit, persons and entities to whom a letter of credit may be provided and the period within which the letter of credit must be provided;
- (ii) prescribing requirements, periods and the manner of notification of the superintendent that must be satisfied in relation to a letter of credit;
- (iii) prescribing circumstances in which the persons and entities to whom a letter of credit has been provided shall demand payment of the amount of the letter of credit”;

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(f) by adding the following clauses after clause (j):

“(j.1) respecting the obligation of an employer to eliminate a solvency deficiency for the purposes of subsection 54(1.1), including the period within which, the manner in which, and the basis on which that deficiency is to be eliminated and the records that must be filed while that deficiency is being eliminated and after the deficiency is eliminated;

“(j.2) prescribing plans to which subsection 54(1.1) does not apply”; **and**

(g) by adding the following clauses after clause (q):

“(q.1) respecting variable payment life annuities, including:

(i) prescribing the requirements that a variable payment life annuity must meet;

(ii) prescribing the requirements that a variable payment life annuity fund must meet;

(iii) prescribing the conditions and time limit for transferring sums held under a plan into a variable payment life annuity fund;

(iv) prescribing the manner of determining and adjusting payments from the variable payment life annuity fund, including adjusting the payments for investment gains or losses and adjusting the payment for mortality gains or losses and the frequency of such adjustments;

(v) prescribing the methodology and assumptions and adjustments to the methodology and assumptions related to variable payment life annuities;

(vi) prescribing and governing the termination of variable payment life annuity funds;

(vii) prescribing the options available on the termination of variable payment life annuity funds;

“(q.2) respecting the surplus in a plan for the purposes of this Act or the regulations or any provision of this Act or the regulations, including prescribing methods of determining the values of assets and liabilities of plans;

“(q.3) respecting the service of documents”.

New Part heading**25 The following Part heading is added before section 70:**

“PART VIII.1
Offences, Penalties and Enforcement”.

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New section 70.1

26 The following section is added after section 70:**“Special penalties**

70.1(1) Any person who defaults in filing an actuarial valuation report, return or cost certificate required pursuant to this Act or the regulations is liable to a penalty of \$200, plus \$200 for each day or part of a day after the first 10 days during which the default continues.

(2) On receipt of a notice from the superintendent demanding payment of a penalty pursuant to this section, the person shall immediately pay the penalty to the superintendent.

(3) Any penalty payable pursuant to this section is a debt due to and recoverable by the Crown in right of Saskatchewan and may be recovered in any manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

(4) No person shall pay a penalty pursuant to this section out of the pension fund of a plan”.

New sections 71.1 to 71.5

27 The following sections are added after section 71:**“Administrative penalties**

71.1(1) Subject to subsection (4) and section 71.5, if the superintendent is satisfied that a person has contravened a provision of this Act or the regulations, the superintendent may make an order imposing an administrative penalty of up to:

- (a) \$250,000, in the case of a corporation or administrator; and
- (b) \$50,000, in the case of any other person.

(2) The superintendent may make an order pursuant to this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the superintendent related to the same matter.

(3) No administrative penalty is to be assessed by the superintendent more than 3 years after the act or omission that renders the person liable for a penalty first came to the knowledge of the superintendent.

(4) The written notice required to be provided to the person pursuant to subsection 71.5(2) must, in addition to the requirements set out in that subsection:

- (a) set out the facts and circumstances that, in the superintendent’s opinion, render the person liable to an administrative penalty; and
- (b) specify the amount of the penalty that the superintendent considers appropriate in the circumstances.

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(5) On holding a hearing or receiving a person's written representations pursuant to section 71.5, the superintendent, in addition to the requirements set out in subsection 71.5(10), shall do one of the following:

- (a) assess an administrative penalty in the amount set out in the notice and set a date by which the penalty is to be paid in full;
- (b) assess a revised penalty and set a date by which the penalty is to be paid in full;
- (c) determine that no penalty is to be assessed.

(6) The superintendent shall serve a copy of the decision pursuant to subsection (5) on the person who is the subject of the order.

(7) The superintendent may file in the court a certificate signed by the superintendent and setting out:

- (a) the amount of the administrative penalty assessed pursuant to subsection (5); and
- (b) the person from whom the penalty is to be recovered.

(8) A certificate filed pursuant to this section has the same force and effect as if it were a judgment obtained in the court for the recovery of a debt in the amount set out in the certificate, together with reasonable costs and charges with respect to its filing.

(9) Any administrative penalty payable pursuant to this section is a debt due to and recoverable by the Crown in right of Saskatchewan and may be recovered in the manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

(10) The superintendent may assess an administrative penalty pursuant to this section notwithstanding that the facts and circumstances giving rise to the penalty arose due to the actions of an employee, contractor or agent of the person required to pay the penalty.

(11) No person shall pay an administrative penalty imposed pursuant to this section out of the pension fund of a plan.

“Power of superintendent to order compliance

71.2(1) The superintendent may issue an order pursuant to subsection (2) if the superintendent is satisfied that any of the following circumstances exist:

- (a) a person is not complying with this Act, the regulations or a plan;
- (b) a person's activities or failure or neglect to undertake any activities will result in that person not complying with this Act, the regulations or a plan;
- (c) a person's activities or failure or neglect to undertake any activities with respect to a plan are contrary to safe and sound pension practices;
- (d) a plan does not comply with this Act or the regulations;
- (e) a plan is not being administered in accordance with this Act, the regulations or the plan.

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(2) Subject to section 71.5, in any of the circumstances mentioned in subsection (1), the superintendent may order a person to do all or any of the following:

- (a) cease doing an act or cease failing or neglecting to do an act;
- (b) comply with this Act, the regulations or a plan;
- (c) do or refrain from doing any other thing, including, without limitation, payment or repayment of money, that the superintendent considers necessary to remedy the situation.

(3) An order pursuant to this section may specify one or more deadlines or periods for complying with the order.

“Power of court to order compliance

71.3(1) If the superintendent is of the opinion that a person has failed to comply with this Act, the regulations, a plan or an order made pursuant to this Act, the superintendent may apply to the court for all or any of the following:

- (a) an order directing the person to comply with this Act, the regulations, a plan or an order made pursuant to this Act or restraining that person from contravening this Act, the regulations, a plan or an order made pursuant to this Act;
- (b) if a person is a body corporate, an order directing the directors and officers of the body corporate to comply with this Act, the regulations, a plan or an order made pursuant to this Act or restraining those directors and officers from contravening this Act, the regulations, a plan or an order made pursuant to this Act;
- (c) any other order, relief or remedy that the superintendent may request.

(2) On an application pursuant to subsection (1), the court may make any order that the court considers necessary.

“Costs

71.4(1) In this section, **‘proceeding’** includes an audit, examination or inspection pursuant to this Act.

(2) Subject to section 71.5, after conducting a proceeding respecting a person, the superintendent may order the person to pay the costs of or related to the proceeding if the superintendent is satisfied that the person who was the subject of the proceeding has not complied with a provision of this Act.

(3) For the purposes of subsection (2), the costs that the superintendent may order the person to pay include all or any of the following:

- (a) costs incurred with respect to services provided by a person engaged, appointed or retained by the superintendent for the purposes of the proceeding;
- (b) costs of matters preliminary to the proceeding;

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(c) costs for time spent by the superintendent, by any person employed in the office of the superintendent or by any persons engaged, appointed or retained by the superintendent;

(d) fees paid to a witness;

(e) costs of legal services provided to the superintendent.

(4) If a person is convicted of an offence pursuant to this Act, the superintendent may, subject to section 71.5, order the person to pay the costs of any investigation carried out with respect to that offence, including any costs incurred with respect to any or all of the following:

(a) the provision of services by persons engaged, appointed or retained by the superintendent;

(b) costs of obtaining a warrant;

(c) the appearance of a witness.

(5) The superintendent may file a certificate with the court certifying the amount of the costs that the person is required to pay pursuant to subsections (2) to (4).

(6) A certificate filed with the court pursuant to subsection (5) has the same force and effect as if it were a judgment of that court for the recovery of a debt in the amount specified in the certificate, together with costs and charges with respect to its filing.

(7) *The King's Bench Rules* respecting costs and the taxation of costs do not apply to costs mentioned in this section.

(8) No provision of this Act is to be interpreted as precluding the court from ordering costs payable to the superintendent.

(9) If costs are awarded to the superintendent in any proceeding, the court shall award legal fees to the superintendent, notwithstanding that the superintendent was represented by a member of the public service of Saskatchewan or a person employed by the authority.

(10) No person shall pay an amount that the person is directed to pay pursuant to this section out of the pension fund of a plan.

“Opportunity to be heard

71.5(1) In this section, ‘**action**’ means an order that the superintendent may make pursuant to subsection 71.1(1), 71.2(2) or 71.4(2), (3) or (4).

(2) Before taking an action, the superintendent shall serve notice on the person who is the subject of the proposed action:

(a) setting out the action proposed to be taken by the superintendent and the grounds that, in the superintendent’s opinion, justify the proposed action; and

(b) informing the person of the person’s right to make representations to the superintendent on why the action should not be taken.

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- (3) A person on whom a notice is served pursuant to subsection (2) may, within 15 days after being served, advise the superintendent that:
- (a) the person requests an oral hearing; or
 - (b) the person wishes to make written representations to the superintendent respecting why the action should not be taken.
- (4) A person requesting an oral hearing pursuant to clause (3)(a) shall, within 7 days after requesting the hearing, contact the superintendent and arrange a date, time and place for the hearing.
- (5) Written representations pursuant to clause (3)(b) must be received by the superintendent within 30 days after the person is served with the notice pursuant to subsection (2).
- (6) The superintendent may take the actions stated in the notice without considering any representations of the person if the person fails to:
- (a) advise the superintendent in accordance with subsection (3);
 - (b) meet the requirements of subsection (4) or (5) within the required time; or
 - (c) appear on the date and at the time and place arranged for the hearing without the prior approval of the superintendent.
- (7) The superintendent may extend the periods mentioned in subsection (3), (4) or (5) if, in the superintendent's opinion, it is appropriate to do so.
- (8) The superintendent is not required to give an oral hearing to any person who has made written representations in accordance with this section.
- (9) Notwithstanding subsection (2), if the superintendent considers that it is necessary and in the public interest to take immediate action, the superintendent may immediately make an order pursuant to subsection 71.2(2) without giving the person an opportunity to be heard, but the superintendent shall give the person an opportunity to make written representations or attend a hearing before the superintendent within 15 days after the date on which the superintendent takes the action.
- (10) On holding a hearing or receiving a person's written representations pursuant to this section, the superintendent shall, within a reasonable period:
- (a) consider the submissions and make a decision;
 - (b) notify the person, in writing, of the superintendent's decision;
 - (c) provide written reasons for the superintendent's decision; and
 - (d) provide the person with information respecting the right of appeal pursuant to section 71.6".

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New Part VIII.2**28 The following Part is added after section 71.5:****“PART VIII.2
Appeals****“Appeal of superintendent’s orders and decisions**

71.6(1) Any person who is directly affected by an order or decision of the superintendent pursuant to section 71.1, 71.2 or 71.4 may appeal the order or decision to the court on a question of law only.

(2) An appeal must be made within 30 days after a decision or order of the superintendent.

(3) An appellant shall serve a notice of appeal on the superintendent and any other person that the court may order.

(4) The commencement of an appeal pursuant to this section does not stay the effect of an order of the superintendent issued pursuant to section 71.2, unless a judge of the court orders otherwise.

(5) On hearing an appeal, the court may do all of any of the following:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;
- (d) vary the decision or order of the superintendent;
- (e) refer the matter back to the superintendent for:
 - (i) further consideration; and
 - (ii) a decision or order; or
- (f) make any other order that the court considers appropriate.

(6) The court may make any order as to costs on an appeal that the court considers appropriate.

“Documents to be filed with the court for the purposes of appeal

71.7 On receipt of a notice of an appeal pursuant to section 71.6, the superintendent shall file with the court true copies of:

- (a) all documents and materials the superintendent considered in making the decision or order;
- (b) the transcript, if one has been made, of a hearing conducted by the superintendent respecting the decision or order;
- (c) the superintendent’s decision or order; and
- (d) the superintendent’s written reasons for the decision or order if written reasons exist”.

Coming into force

29 This Act comes into force by order of the Lieutenant Governor in Council.

THIRD SESSION

Twenty-ninth Legislature

SASKATCHEWAN

BILL

No. 108

An Act to amend *The Pension Benefits Act, 1992*

Received and read the

First time

Second time

Third time

And passed

Honourable Bronwyn Eyre
