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C.C.S.M. c. F80

The Fires Prevention and Emergency Response Act

(Assented to June 13, 2006)

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

INTRODUCTORY PROVISIONS

Definitions

1(1) The following definitions apply in this Act.

"approved form" means a form approved by the fire commissioner. (« forme approuvée »)

"designate" means a deputy fire commissioner, an assistant fire commissioner and a local assistant, and includes a person exercising a delegated power, duty or function under subsection 23(3). (« délégué »)

"disaster" means a calamity, however caused, which has resulted in or may result in

- (a) the loss of life;
- (b) serious harm or damage to the safety, health or welfare of people; or
- (c) wide-spread damage to property or the environment. (« sinistre »)

"emergency" means a present or imminent situation or condition that requires prompt action to prevent or limit

- (a) loss of life;
- (b) harm or damage to the safety, health or welfare of people; or
- (c) damage to property or the environment. (« urgence »)

"emergency response personnel" means the personnel of organizations that provide emergency response services. (« personnel d'intervention d'urgence »)

"emergency response services" includes the following services provided at the site of an emergency or a disaster:

- (a) fire suppression;
- (b) security and policing;

(c) emergency medical care;

(d) search and rescue;

(e) hazardous materials response. (« services d'intervention d'urgence »)

"fire" includes explosion. (« incendie »)

"fire commissioner" means the Fire Commissioner of Manitoba appointed under subsection 2(1). (« commissaire aux incendies »)

"fire protection services" means fire suppression and prevention, fire safety education and fire safety inspections. (« services de protection contre l'incendie »)

"fire safety inspection" means an inspection of land or premises to determine

(a) whether the land or premises complies with this Act and the regulations; and

(b) what actions or measures are necessary to eliminate or reduce the effects of a fire or other emergency that might occur on the land or premises. (« visite de prévention »)

"insurer" has the same meaning as in section 1 of The Insurance Act. (« assureur »)

"local authority" means

(a) a municipality;

(b) an incorporated community established or continued under The Northern Affairs Act;

(c) in the part of Northern Manitoba — as defined in section 1 of The Northern Affairs Act — that is not within the boundaries of an incorporated community, the minister appointed to administer The Northern Affairs Act; and

(d) a local government district. (« autorité locale »)

"minister" means, unless otherwise indicated, the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"prescribed" means prescribed by regulation.

"property" includes real and personal property. (« biens »)

"record" means information that

(a) is recorded or stored by mechanical, electronic, magnetic, optical or any other means; and

(b) is recorded or stored in understandable form or is capable of being produced or reproduced in understandable form. (« document »)

"regulation" means a regulation made under this Act. (« règlement »)

Interpretation: land and premises

1(2) For the purposes of this Act, a reference to land and premises or to land or premises includes any building, structure or thing situated on or attached to the land or premises.

Crown bound

1(3) This Act binds the Crown.

FIRE COMMISSIONER

Fire Commissioner of Manitoba

2(1) A Fire Commissioner of Manitoba must be appointed in accordance with The Civil Service Act.

Fire commissioner to administer Act

2(2) Under the direction of the minister, the fire commissioner shall administer and enforce this Act and the regulations.

Powers of fire commissioner

2(3) The fire commissioner may

- (a) promote methods of fire prevention and public safety;
- (b) collect and disseminate information and statistics about fires;
- (c) give advice and assistance to local authorities about
 - (i) emergency response and fire protection services, including training of persons who provide those services,
 - (ii) equipment and adequate water supply for emergency response and fire protection services, and
 - (iii) by-laws and agreements respecting emergency response and fire protection services;
- (d) provide critical incident stress management for emergency response personnel;
- (e) provide and co-ordinate resources used for search and rescue;
- (f) establish an incident management system for directing and managing emergency response services at the site of an emergency or disaster;
- (g) issue directives about how to dispose of combustibles and explosive materials or other things that may constitute a fire menace; and
- (h) assist in activities carried out by law enforcement agencies, including providing expertise in responding to the special hazards associated with land or premises used to produce illegal drugs.

Staff of fire commissioner's office

3 One or more deputy fire commissioners and assistant fire commissioners may be appointed in accordance with The Civil Service Act, as well as any other employees required to carry out the responsibilities of the office of the fire commissioner.

Duties and powers of deputy fire commissioners

4(1) A deputy fire commissioner must carry out the duties and may exercise the powers and perform the functions of the fire commissioner, including holding an inquiry under section 17, if

- (a) the office of fire commissioner is vacant;
- (b) the fire commissioner is absent or unavailable for any reason; or
- (c) the fire commissioner requests the deputy to do so.

If more than one deputy fire commissioner

4(2) If more than one deputy fire commissioner has been appointed, the deputy fire commissioner who in the circumstances has been designated in writing by the fire commissioner or the minister may act in the place of the fire commissioner.

Delegation by fire commissioner to designates

4(3) The fire commissioner may, in writing, delegate any of his or her powers, duties and functions to a designate.

EMERGENCY AND DISASTER RESPONSE

Powers in emergency or disaster

5(1) In an emergency or disaster, the fire commissioner may take any action that he or she considers necessary to meet the emergency or disaster and to eliminate or reduce its effect, including, without limitation,

- (a) directing that land or premises affected by the emergency or disaster be evacuated;
- (b) entering without a warrant land or premises on which the emergency or disaster occurred or is occurring, or on adjacent land or premises; and
- (c) pulling down or removing buildings, structures or things on or attached to the land or premises on which the emergency or disaster occurred or is occurring, or on adjacent land or premises.

Incident management

5(2) At the site of an emergency or disaster, the fire commissioner may direct and manage all emergency response personnel in attendance, including those of a local authority, in accordance with the incident management system established under clause 2(3)(f).

Local authority must comply with directions

5(3) At the site of an emergency or disaster, a local authority must

- (a) carry out an action;
- (b) cease an action it is carrying out; or
- (c) change the way it is carrying out an action;

if directed to do so by the fire commissioner.

Directions re provision of labour and other things

5(4) A person or a local authority directed by the fire commissioner to provide labour, services, equipment or materials at the site of an emergency or disaster must comply with the direction.

Assistance of peace officers and police

5(5) When an evacuation is directed under clause (1)(a), the fire commissioner may direct a peace officer or police force having jurisdiction to assist in the evacuation, and the peace officer or police force directed to act must do everything reasonably possible to ensure that the evacuation is carried out.

Remuneration for service or materials

5(6) A person who provides labour, services, equipment or materials under this section is entitled to reasonable remuneration from the office of the fire commissioner in accordance with the regulations, unless the person caused the emergency or disaster.

Form of direction

5(7) A direction of the fire commissioner under this section may be made orally or in writing.

FIRE INVESTIGATIONS AND FIRE SAFETY INSPECTIONS

Entry for investigation of fire

6(1) For the purpose of investigating the cause, origin and circumstances of a fire that has occurred on land or premises, the fire commissioner or a designate may, with or without the consent of the owner or occupant, and without a warrant, enter on the land or premises.

Entry onto adjacent premises

6(2) The fire commissioner or designate who enters on land or premises under subsection (1) may, without a warrant, enter on adjacent land or premises if the entry is necessary to conduct an investigation into the cause, origin and circumstances of the fire.

Closure of land or premises

6(3) The fire commissioner or designate who enters land or premises under this section may close the land or premises and prevent entry by any other person for the length of time necessary to complete the investigation of the fire.

Entry for fire safety inspection

7(1) The fire commissioner or a designate may without a warrant enter on land or premises, other than a dwelling, at any reasonable time to conduct a fire safety inspection.

Entry into dwelling with consent

7(2) The fire commissioner or designate may enter and conduct a fire safety inspection of a dwelling with the consent of the owner or occupant.

Warrant for entry into dwelling

7(3) On application by the fire commissioner or a designate, a justice may at any time issue a warrant authorizing the fire commissioner or the designate named in the warrant to enter and inspect a dwelling, if the justice is satisfied there are reasonable grounds to believe that entry to the dwelling is necessary for the purpose of conducting a fire safety inspection, and

(a) entry has been refused or there are reasonable grounds to believe that entry will be refused;

(b) the occupant is temporarily absent; or

(c) the dwelling is unoccupied.

Conditions

7(4) A warrant may be made subject to any conditions specified in it.

Use of force

7(5) The fire commissioner or designate named in the warrant may use whatever reasonable force is necessary to execute the warrant and may call on a peace officer for assistance in executing it.

Fees for inspections

7(6) A fee for carrying out a fire safety inspection under this section may be charged by

(a) the fire commissioner; or

(b) the local authority, where the inspection is carried out by a local assistant;

and may be collected in the same manner as a cost under subsection 18(4).

Identification

8 The fire commissioner or designate entering on land or premises under section 6 or 7 must produce identification when requested to do so.

General investigation and inspection powers

9(1) For the purposes of a fire investigation or fire safety inspection, the fire commissioner or designate entering on land or premises under section 6 or 7 may

- (a) examine or require the production of a document, record or other thing;
- (b) remove any relevant document, record or other thing for review, examination or copying;
- (c) require that any machinery, equipment or device be operated, used or set in motion, under specified conditions; and
- (d) conduct tests, take and remove samples, take photographs and copies and make videotapes and other images, electronic or otherwise.

Assistance of others

9(2) The fire commissioner or designate who enters land or premises under section 6 or 7 may take with him or her any other person, and any equipment or materials, to assist in the investigation or inspection.

Copying documents and records

9(3) The fire commissioner or designate may use equipment at the place of the fire investigation or fire safety inspection to make copies of relevant documents and records, and may remove the copies from the place for further examination.

Obligation to produce and assist

9(4) If under subsection (1) the fire commissioner or designate requires that a document, record or other thing be produced, the person who has custody or control of the document, record or thing must produce it and, in the case of a document or record, must on request provide any assistance that is reasonably necessary to interpret it or to produce it in a readable form.

Documents, records and things removed

9(5) The fire commissioner or designate who removes a document, record or other thing under subsection (1) must

- (a) make it available, on request, to the person from whom it was removed, at a time and place that is convenient for the person and for the fire commissioner or designate who removed it; and
- (b) return it to the person from whom it was removed within a reasonable time, unless its retention is required for an inquiry or prosecution under this Act.

Copy admissible in evidence

9(6) A document certified by the fire commissioner or designate to be a copy of a document or record obtained under this section

(a) is admissible in evidence without proof of the office or signature of the person purporting to have made the certificate; and

(b) has the same probative force as the original document or record.

Inquiries re inspections

10 For the purpose of a fire safety inspection, the fire commissioner or designate may make any reasonable inquiry of any person, orally or in writing.

ACTIONS AND ORDERS

Immediate actions may be taken

11(1) During the course of or after investigating a fire or carrying out a fire safety inspection, the fire commissioner or designate may take any of the following actions that he or she considers necessary, with respect to the land or premises, for the immediate protection of persons and property:

(a) cause the land or premises to be closed immediately and persons on the land or premises to be removed;

(b) post a fire watch, make repairs to existing fire safety systems and install temporary safeguards, including fire extinguishers and smoke alarms;

(c) eliminate ignition sources and remove combustible or explosive material or anything that may constitute a fire menace, and dispose of that material or thing in accordance with any directives issued by the fire commissioner under clause 2(3)(g);

(d) do any other thing that the fire commissioner or designate reasonably believes is immediately required to remove or reduce the threat to life or property.

Notice of actions to owner and occupants

11(2) After taking an action under subsection (1), the fire commissioner or designate must promptly give notice to the owner of the land or premises, and, if it is occupied by someone other than the owner, to the occupant.

Content of notice

11(3) A notice under subsection (2) must describe the location of the land or premises, and state the reason for the entry and the actions taken.

Orders re investigation or inspection

12(1) During the course of or after investigating a fire or carrying out a fire safety inspection, the fire commissioner or designate may, in writing, order the owner, the occupant or both

(a) to do one or more of the following:

- (i) remove buildings, structures, combustible or explosive material or any other thing that may constitute a fire hazard from the land or premises,
 - (ii) demolish or make structural and other repairs or alterations, including material alterations, to buildings or structures on the land or premises,
 - (iii) install or modify things relating to the containment of a possible fire, means of egress, fire alarms, and the detection and suppression of fires,
 - (iv) install and use specified equipment or devices to contain hazardous material on the land or premises and, in the event of a fire, to remove or transport the material,
 - (v) discontinue manufacturing, producing or fabricating any material, device or other thing that creates or poses an undue risk of fire or explosion,
 - (vi) take any other measure necessary to remedy any contravention of this Act or the regulations;
- (b) to close the land or premises and prevent persons from entering until the corrective actions ordered under clause (a) have been completed; or
- (c) to take any other measure necessary for fire safety on the land or premises.

Contents of order

12(2) An order may

- (a) direct a person to stop doing something, or to change the way in which the person is doing it;
- (b) direct the person to take any action or measure necessary to remedy the contravention of this Act or regulations, including the removal or demolition of a building or structure, and, if necessary, to prevent a re-occurrence of the contravention;
- (c) specify the time within which the person must comply with the order; and
- (d) state that if the person does not comply with the order within the specified time, the fire commissioner or local authority will take the action or measure ordered at the expense of the person.

Order also must set out review or appeal

12(3) An order made by a designate must state that the person to whom it is directed has the right to have the order reviewed under section 15. An order made by the fire commissioner must state that the person to whom it is directed has the right to appeal the order under section 16.

Period for compliance may be extended

12(4) When an order specifies a time period within which the person must comply, the period may be extended by the fire commissioner or designate who made the order, unless a review of the order has been requested or it has been appealed.

Service of order

13(1) Subject to subsections (2) and (3), the fire commissioner or designate who made the order under section 12 must ensure that a copy of it is served on the owner and any occupant of the land and premises, in accordance with section 43.

Service re multi-unit building

13(2) In the case of an order respecting a building that contains two or more units intended for separate occupancy, the order is deemed to be served on the occupants of the building if a copy of it is posted in a conspicuous place on the outside of or near to the building.

Service of closure order

13(3) If an order is made under clause 12(1)(b) requiring the closing of land or premises, the fire commissioner or designate who made the order must ensure that a copy of the order

(a) is posted on the land or premises; and

(b) served on the owner of the land or premises, if the owner is in Manitoba and his or her whereabouts are known.

Remedying contraventions

14(1) The fire commissioner or a local authority may take whatever action or measures are necessary to remedy a contravention of this Act or a regulation, or to prevent a re-occurrence of the contravention, if

(a) the fire commissioner or designate has made an order under section 12;

(b) the order contained a direction referred to in clause 12(2)(b);

(c) the person to whom the order was directed did not comply with the order within the specified time; and

(d) as applicable, the period for requesting a review or appealing the order has passed, or a review or appeal of the order has been decided and the decision

(i) confirms the order, or

(ii) varies the order, but the person has not complied with the order as varied.

Closure of premises

14(2) If the order under section 12 directs that buildings or structures be demolished or removed from the land or premises, the fire commissioner or local authority may, under this section, close the premises and use reasonable force to remove occupants.

Review or Appeal of Order

Request for review by fire commissioner

15(1) A person to whom a designate has directed an order may submit a request to the fire commissioner for a review of the order. The request must be in writing and must include

- (a) the person's name and address and the reasons for requesting the review; and
- (b) a copy of the order.

Time limit for seeking review

15(2) A request for review of an order must be made within the following times:

- (a) if the order requires compliance in less than 14 days, within the time specified for compliance;
- (b) in any other case, within 14 days after the person received or is deemed to have received the order.

If request for review not submitted

15(3) If a request for review is not received within the time specified in subsection (2), the order is final.

Review by fire commissioner

15(4) Upon receiving a request for review in accordance with this section, the fire commissioner may confirm the original order, or may revoke or vary it if he or she considers that the order

- (a) is improper, impracticable or unreasonable; or
- (b) is inconsistent with the applicable requirements of the Manitoba Fire Code.

Decision of fire commissioner to be served

15(5) The fire commissioner must ensure that a decision under subsection (4) is served in accordance with section 43 on all the persons on whom the order was originally served and on the person who made the order.

No hearing required

15(6) The fire commissioner may hold a hearing when reviewing an order under this section but is not required to do so.

Procedure

15(7) If a hearing is held, the fire commissioner

- (a) is not bound by the rules of evidence that apply to judicial proceedings; and
- (b) may establish rules of practice and procedure for the hearing.

Stay pending review

15(8) Except in regard to an order made under clause 12(1)(b), a request for review operates as a stay of the order pending the outcome of the review.

Appeal to judge

16(1) A person who is aggrieved by

(a) an order made by the fire commissioner under section 12; or

(b) a decision of the fire commissioner under subsection 15(4);

may, within 14 days after being served with a copy of the order or decision, appeal it to a judge of the Court of Queen's Bench.

Appeal by application

16(2) An appeal under subsection (1) must be commenced by an application made in accordance with the Queen's Bench Rules. The judge, after hearing the appeal, may make any order he or she thinks fit, including an order as to costs.

Fire commissioner a party

16(3) The fire commissioner is a party to an appeal under this section.

Order stayed by appeal

16(4) Except in regard to an order made under clause 12(1)(b), an appeal under this section operates as a stay of the order pending the outcome of the appeal.

Inquiries

Inquiries into fires

17(1) The fire commissioner may conduct an inquiry into the cause, origin and circumstances of a fire, and when requested to do so by the minister, must inquire into the cause, origin and circumstances of a fire.

Part V of Evidence Act powers

17(2) In conducting an inquiry, the fire commissioner has the powers of a commissioner under Part V of The Manitoba Evidence Act.

Responsibility for Costs

Costs re emergencies and disasters

18(1) The costs of an action or measure taken by the fire commissioner under section 5 to eliminate or reduce the effects of an emergency or disaster, including remuneration referred to in subsection 5(6), are an amount owing to the fire commissioner by the person who caused the emergency or disaster.

Costs re immediate actions

18(2) The costs of an action or measure taken on land or premises by the fire commissioner or a local authority under section 11 (immediate actions) are an amount owing to the fire commissioner or local authority by the owner or the person having control of the land or premises.

Costs re remedying contraventions

18(3) The costs of an action or measure taken by the fire commissioner or a local authority under section 14 (remedying contraventions) are an amount owing to the fire commissioner or local authority by the person who was required to do something by the order under section 12.

Collecting costs

18(4) An amount owing under this section may be collected

- (a) in the case of the fire commissioner, by action in a court of competent jurisdiction; and
- (b) in the case of a local authority,
 - (i) by action in a court of competent jurisdiction, or
 - (ii) by adding the amount to the real property taxes imposed by the local authority on the property, in which case the amount added may be collected in the same manner and with the same priority as those taxes.

ADOPTION OF THE MANITOBA FIRE CODE

Adopting the fire code

19(1) The Lieutenant Governor in Council may, by regulation,

- (a) adopt all or part of the National Fire Code of Canada, or any other code or standard on fire standards and fire safety, as the Manitoba Fire Code; and
- (b) on terms and conditions, provide that the adoption of a code or standard includes the adoption of any amendments made to it, or any new code or standard substituted for it, by the organization that established the code or standard.

Amendments and subsequent changes

19(2) A regulation made under subsection (1) may amend the code or standard adopted and provide that those amendments continue in force despite any subsequent changes to the code or standard that would otherwise be adopted under clause (1)(b).

LOCAL AUTHORITIES AND LOCAL ASSISTANTS

Local authorities to enforce fire code

20 Within its boundaries, a local authority must, in accordance with the procedures of this Act, enforce the Manitoba Fire Code as it is prescribed for the part for the province in which the local authority is situated.

Local authority must inspect prescribed buildings

21(1) Subject to subsection (3), a local authority must

(a) establish a system for conducting regular fire safety inspections of prescribed buildings within its boundaries; and

(b) ensure that its local assistant, or a person exercising the powers, duties and functions of a local assistant, carries out those inspections.

Records to be kept and made available

21(2) The local authority must ensure that

(a) a record in the approved form is made of every fire safety inspection of a prescribed building done by the local authority;

(b) the records are made available, on request, to the fire commissioner; and

(c) unless otherwise prescribed by regulation, the records are kept for at least seven years.

Fire commissioner to inspect prescribed buildings

21(3) Despite any other provision of this Act, the Lieutenant Governor in Council may prescribe buildings or classes of buildings in respect of which only the fire commissioner or a person authorized in writing by the fire commissioner may carry out a fire safety inspection.

Local incident management system to be established

22(1) A local authority must establish a local incident management system for directing and managing emergency response services at the site of any emergency or disaster within its boundaries.

Incident management systems to be consistent

22(2) The local incident management system must address any matter that is prescribed, and otherwise must not be inconsistent with the incident management system established under clause 2(3)(f).

Local assistants

23(1) The following persons are local assistants under this Act:

(a) the chief of the fire department of a local authority, or for a local authority that does not have a fire department,

(i) the chief administrative officer, in the case of a municipality,

(ii) the community administrative officer, in the case of an incorporated community established or continued under The Northern Affairs Act,

(iii) the person designated by the minister responsible for the administration of The Northern Affairs Act, in the case of an area in Northern Manitoba that is not within the boundaries of an incorporated community,

(iv) the resident administrator, in the case of a local government district;

(b) a person designated in writing as a local assistant by the fire commissioner.

Reporting by local authority

23(2) A local authority must report the following to the fire commissioner's office as soon as practicable after it occurs:

(a) a change in its local assistant;

(b) a delegation of the role of local assistant under subsection (3), and the name of each person who is delegated the role of local assistant or any part of that role.

Local assistants may delegate to other employees

23(3) A local assistant described in clause (1)(a) may delegate his or her powers, duties and functions under this Act to another employee of the local authority.

Limitations

23(4) The delegation must be made in writing and is subject to the limitations and conditions that are prescribed or set out in the delegation.

Local assistant must give immediate notice

24 A local assistant must immediately notify

(a) the fire commissioner and the police if

(i) a person dies or is seriously injured because of a fire, or

(ii) the local assistant believes that a fire might be incendiary or is of suspicious origin; and

(b) the fire commissioner if

(i) an explosion causes injury to a person or damage to property,

(ii) the local assistant cannot determine the cause, origin or circumstances of a fire, or requires the assistance of the fire commissioner to conduct the fire investigation, or

(iii) in the opinion of the local assistant, a fire results in a significant loss to the local authority or its residents.

Local assistant to investigate fires and report

25(1) Unless otherwise directed by the fire commissioner, a local assistant who becomes aware of a fire within his or her local authority must investigate its cause, origin and circumstances and report to the fire commissioner.

Report in approved form to be made within 14 days

25(2) A report under subsection (1) must be in an approved form and must be filed with the fire commissioner within 14 days after the fire comes to the local assistant's attention.

Annual report re emergency response resources

26(1) A local authority must annually file a report with the fire commissioner containing information required by the fire commissioner about emergency response resources in the local authority.

Person responsible for ensuring report is filed

26(2) The following persons must ensure that the annual report is filed with the fire commissioner:

- (a) in the case of a municipality, its chief administrative officer;
- (b) in the case of a community incorporated under The Northern Affairs Act, its community administrative officer;
- (c) in the case of an area in Northern Manitoba that is designated as a community under The Northern Affairs Act, the person designated by the minister responsible for the administration of that Act;
- (d) in the case of a local government district, its resident administrator.

Investigation of emergency response — minister

27(1) At the request of the minister, the fire commissioner must investigate any emergency response services provided in response to an emergency or disaster and make a report, with recommendations, to the minister.

Investigation of emergency response — local authority

27(2) At the request of a local authority, the fire commissioner may investigate any emergency response services provided in response to an emergency or disaster and may make a report, with recommendations, to the local authority.

Local authority may established higher standards

28(1) Nothing in this Act prevents a local authority from making and enforcing by-laws relating to matters dealt with by this Act or the regulations, including making by-laws that impose

or prescribe higher or more stringent standards or requirements than those provided for by this Act or the regulations.

By-law inconsistent with other legislation

28(2) A by-law that is inconsistent with this Act or with a regulation that is in force in the part of the province in which the local authority is situated is of no effect to the extent of the inconsistency.

INSURERS AND ADJUSTERS

Definitions

29(1) In this section, "adjuster" and "licence" have the same meaning as in section 1 of The Insurance Act.

Immediate report

29(2) An insurer or adjuster who has information indicating that a fire is or might be incendiary or of suspicious origin must immediately

(a) report that information to the fire commissioner; and

(b) give the fire commissioner, on request,

(i) any information the insurer or adjuster has about the owner or occupant of the land or premises where the fire occurred, and the use or occupancy of that land or premises, and

(ii) any report or other information the insurer or adjuster may have, or may have obtained, about the cause, origin and circumstances of the fire.

Monthly report — insurer

29(3) Monthly, an insurer must report to the fire commissioner every fire occurring in the province in which it is interested as insurer.

Monthly report — adjuster

29(4) Monthly, an adjuster engaged in making adjustments of loss or damage by fire must report to the fire commissioner every adjustment he or she made respecting a fire occurring in the province.

Content and filing of report

29(5) A monthly report required under this section must

(a) be in the approved form;

(b) contain the information specified by the fire commissioner; and

(c) be filed with the fire commissioner's office within 10 days after the end of the month to which it relates.

Information in addition to other reports

29(6) Information and reports provided under this section are in addition to any other information or report that the insurer or adjuster is required to make by this Act or another enactment.

Retention of insurance money

30(1) Pending an investigation or inquiry under this Act about a fire, the fire commissioner may order an insurer to withhold a payment under a policy of insurance on property destroyed or damaged by the fire for a period of not longer than 90 days after completion of the proof of loss, despite a statutory provision or a condition in the policy to the contrary.

Notice of retention order

30(2) The fire commissioner must ensure that the insurer and the insured are served with a copy of an order made under subsection (1).

Definition

31(1) In this section, "property insurance" means insurance against the loss of, or damage to, property, but does not include

(a) the following classes of insurance as defined in section 1 of The Insurance Act:

- (i) aircraft insurance,
- (ii) automobile insurance,
- (iii) hail insurance; or

(b) insurance against loss or damage to an automobile caused by fire, if that insurance is not incidental to automobile insurance as defined in The Insurance Act.

Special assessment

31(2) For each year, each licensed insurer transacting property insurance and each attorney for a reciprocal or inter-insurance exchange must, on or before March 31 of the following year, pay to the Minister of Finance the prescribed percentage of the total of the property insurance premiums and assessments, less return premiums and cancellations, reckoned on the business as reported to the Superintendent of Insurance for the purpose of The Insurance Act during the year.

Assessment for unlicensed insurance

31(3) A person who purchases or obtains in a year a contract of property insurance from a person who is not licensed as an insurer under The Insurance Act must, on or before March 31 of the following year, pay to the Minister of Finance the prescribed percentage of the premium or assessment paid or charged in respect of the property insurance.

Limit on prescribed percentage

31(4) The percentage prescribed for the purposes of subsections (2) and (3) must not exceed 2%.

Assessment is a separate charge

31(5) The amount payable under this section is in addition to any tax or fee required to be paid under any other Act or regulation.

Assessments to be deposited into fund

31(6) Money received under this section by the Minister of Finance must be deposited into the Fires Prevention Fund.

FIRE PROTECTION AREAS

Prescribed fire protection areas

32(1) The Lieutenant Governor in Council may by regulation designate as a fire protection area an area in the province that is not within a local authority.

Local assistant for area

32(2) The fire commissioner must appoint a person to act as the local assistant for an area designated as a fire protection area.

Powers and duties of area assistant

32(3) In addition to performing the duties and exercising the powers of a local assistant under this Act within the fire protection area, a person appointed as a local assistant for a fire protection area must

(a) establish and perform a regular system of fire safety inspections of prescribed buildings in the area;

(b) ensure that

(i) a record in the approved form is made of every fire safety inspection of a prescribed building undertaken,

(ii) the records are made available to the fire commissioner, on request, and

(iii) the records are kept for at least seven years, unless otherwise prescribed by regulation; and

(c) ensure that a local incident management system that addresses any matter that is prescribed and is not otherwise inconsistent with the incident management system under clause 2(3)(f) is established for the fire protection area.

Fire commissioner may provide assistance

32(4) The fire commissioner may provide assistance to a fire protection area.

Fees

32(5) The fire commissioner may charge a prescribed fee for a fire safety inspection carried out by a local assistant within a fire protection area, and the fee is a debt due to the fire commissioner by the owner or occupant of the land or premises inspected and may be recovered by action in any court of competent jurisdiction.

GENERAL MATTERS

Guidelines for fire suppression and fire safety education programs

33 The fire commissioner may develop and publish guidelines about

(a) fire suppression practices and procedures, including

(i) necessary training for particular practices and procedures, and

(ii) the number of firefighters and the number and types of vehicles appropriate for particular practices and procedures;

(b) the design, construction, operation, maintenance and inspection of equipment and vehicles used for fire suppression and rescue; and

(c) education programs to be provided by local authorities about fire safety and fire protection.

Training college

34(1) The fire commissioner may maintain and operate a training college for fire protection and emergency response personnel.

Training and certification

34(2) The fire commissioner may

(a) establish and operate regional schools that deliver training programs related to fire investigations, fire safety inspections and fire protection and emergency response services;

(b) develop training programs for people doing fire investigations or fire safety inspections or providing fire protection and emergency response services;

(c) provide training in critical incident stress management;

(d) issue certificates of qualification to people who have successfully completed training programs delivered by the fire commissioner; and

(e) enter into agreements respecting the establishment and recognition of training standards and certification for emergency response personnel.

Mutual aid districts

35 The fire commissioner may establish or recognize one or more mutual aid districts and provide assistance to them.

Fire commissioner may contract to provide services

36 The fire commissioner may contract to provide services of the fire commissioner's office to a person, a local authority, a band as defined in the Indian Act (Canada), or the Government of Canada or one of its agencies.

Fires Prevention Fund continued

37(1) The Fires Prevention Fund is continued.

Use of the fund

37(2) The Fires Prevention Fund may be used only for the following purposes:

(a) to assist in paying costs incurred by the fire commissioner's office in carrying out the powers, duties and functions of the fire commissioner and the fire commissioner's office under this Act and the regulations, including salaries and other expenses of the office of the fire commissioner;

(b) to offset the costs incurred by the fire commissioner in providing assistance and training to local authorities, mutual aid districts and fire protection areas for fire protection and emergency response services;

(c) to repay an advance received under subsection (3).

Advances to the fund

37(3) The Minister of Finance, on the written requisition of the minister, may advance money from the Consolidated Fund to the Fires Prevention Fund.

Annual report of fire commissioner

38(1) The fire commissioner must submit an annual report of the operations of the fire commissioner's office to the minister.

Tabling report in Assembly

38(2) The minister must table a copy of the report in the Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

Fire commissioner and deputies are peace officers

39 For the purpose of enforcing this Act and the regulations, the fire commissioner and each deputy fire commissioner is, and has all the authority and protections of, a peace officer.

Fire commissioner's direction prevails

40(1) Where there is a conflict between a direction of the fire commissioner made under section 5 and an order made under any other Act of the Legislature, the fire commissioner's direction prevails.

Exception

40(2) Subsection (1) does not apply in respect of an order made by, or under the authority of, the minister under section 12 of The Emergency Measures Act.

Protection from liability

41 No action or proceeding may be brought against the fire commissioner, a designate or any other person acting under the authority of this Act for anything done or not done, or for any neglect,

(a) in the performance or intended performance of a duty under this Act or the regulations; or

(b) in the exercise or intended exercise of a power under this Act or the regulations;

unless the person was acting in bad faith.

Evidentiary matters — certificate re delegation

42 A certificate of the delegation of a power, duty or function to a person, signed by the fire commissioner or a local assistant, is proof in the absence of evidence to the contrary of the delegation to that person and is admissible in evidence in any proceeding without proof of the appointment, authority or signature of the fire commissioner or local assistant who signed it.

Manner of service

43(1) A copy of an order or notice required to be given to, or served on, a person under this Act may be served personally, by ordinary mail, by electronic mail, by fax or by another method that allows proof of receipt.

When order or notice mailed

43(2) An order or notice sent by ordinary mail under subsection (1) to a person's last known address is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive the order or notice, or did not receive it until a later date, because of absence, accident, illness or other cause beyond his or her control.

When order or notice sent electronically

43(3) Service by electronic mail or by fax under subsection (1) is deemed to be received the day after it is sent or, if that day is a Saturday or holiday, on the next day that is not a Saturday or holiday, unless the person establishes that, acting in good faith, he or she did not receive the order or notice, or did not receive it until a later date, because of absence, accident, illness or other cause beyond his or her control.

OFFENCES AND ENFORCEMENT

Offences

44(1) Every person is guilty of an offence who

- (a) hinders, obstructs or interferes with the fire commissioner or a designate in the exercise of his or her powers and duties;
- (b) prevents the fire commissioner or a designate from entering land or premises in accordance with section 5, 6 or 7;
- (c) refuses to answer questions on matters relevant to a fire safety inspection, or provides the fire commissioner or designate with information on matters relevant to the inspection that the person knows, or ought reasonably to know, to be false or misleading;
- (d) removes a copy of an order or notice posted in accordance with subsection 13(2) or (3);
- (e) refuses or neglects to obey or carry out an order or direction of
 - (i) the fire commissioner or a designate issued or given under the authority of this Act, or
 - (ii) a judge made under subsection 16(2); or
- (f) contravenes any provision of this Act or the regulations.

Separate offences

44(2) When an offence referred to in subsection (1) continues for more than one day, the offender is guilty of a separate offence for each day that the offence continues.

Directors and officers of corporations

44(3) When a corporation commits an offence mentioned in clause (1)(e) or (f), a director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of the offence, whether or not the corporation has been prosecuted or convicted.

Penalty — individuals

45(1) An individual who is guilty of an offence under this Act is liable on summary conviction

- (a) for a first offence, to a fine of not more than \$1,000., or imprisonment for a term of not more than six months, or both; and
- (b) for a second or subsequent offence, to a fine of not more than \$10,000., or imprisonment for a term of not more than one year, or both.

Penalty — corporations

45(2) A corporation that is guilty of an offence under this Act is liable on summary conviction

- (a) for a first offence, to a fine of not more than \$5,000.; and
- (b) for a second or subsequent offence, to a fine of not more than \$25,000.

REGULATIONS

Regulations

46(1) The Lieutenant Governor in Council may make regulations

- (a) prescribing limitations, restrictions or conditions that apply to a delegation of powers, duties or functions of a local assistant, including restricting the type of power, duty or function that may be delegated or the class of employee to whom a power, duty or function may be delegated;
- (b) respecting standards for fire protection devices, equipment and systems;
- (c) regulating the manufacture, storage, carriage, sale and disposal of combustible, explosive or flammable material;
- (d) respecting remuneration to be paid to a person who provides labour, services, equipment or materials in an emergency or disaster and as directed by the fire commissioner;
- (e) creating classes of persons, organizations and bodies which are not eligible for remuneration under subsection 5(6);
- (f) respecting markings or identifying words or symbols to be used to denote compliance with a standard or code adopted under subsection 19(1), and how and where those markings are to be affixed;
- (g) for the purposes of section 21 and subsection 32(3),
- (i) prescribing buildings, and
- (ii) establishing classes of buildings, by use, occupancy or both,
and prescribing the minimum frequency for conducting fire safety inspections of those buildings or classes of buildings;
- (h) prescribing matters that must be addressed in a local incident management system;
- (i) prescribing the retention period for records respecting fire safety inspections of prescribed buildings;
- (j) prescribing percentages for the purpose of calculating property insurance assessments under subsections 31(2) and (3);
- (k) respecting reports to be made to the fire commissioner by local authorities, local assistants, insurers and adjusters, including information required to be included in the report and the times and manner in which the report is to be made;

(l) specifying equipment that must be operated and used in specified classes of buildings or premises to prevent or reduce the risk of fire;

(m) respecting fees and other charges

(i) for fire safety inspections carried out by a local assistant under subsection 32(5),

(ii) for services, activities or things provided or done by the fire commissioner under the authority of this Act, or

(iii) for the use of property or services under the ownership, direction, management or control of the fire commissioner,

including the method of calculating the fees or other charges and the terms of payment;

(n) respecting certification of individuals trained in fire suppression, fire investigation, fire safety inspection, hazardous materials response and search and rescue.

Collection of prescribed fees and charges

46(2) A regulation made under clause (1)(m) may establish the person or entity who is responsible for paying the fees or other charges. The amount of the fee or other charge as prescribed is a debt due to the government by that person or entity and may be recovered by action in any court of competent jurisdiction.

Regulation may provide for different application

46(3) A regulation made under section 19 or this section may

(a) apply differently in different parts of the province;

(b) establish classes of buildings, structures, land or premises and apply differently to those different classes; or

(c) establish uses of buildings, structures, land or premises and apply differently to those different uses.

47 and 48

NOTE: These sections contained consequential amendments to other Acts that are now included in those Acts.

C.C.S.M. REFERENCE, REPEAL AND COMING INTO FORCE

C.C.S.M. reference

49 This Act may be referred to as chapter F80 of the Continuing Consolidation of the Statutes of Manitoba.

Repeal

50 The Fires Prevention and Emergency Response Act, R.S.M. 1987, c. F80, is repealed.

Coming into force

51 This Act comes into force on a day to be fixed by proclamation.

NOTE: S.M. 2006, c. 19 was proclaimed in force November 1, 2006.