

MINISTER OF PUBLIC SAFETY AND SOLICITOR
GENERAL AND DEPUTY PREMIER

BILL 30 – 2022

**CANNABIS CONTROL AND LICENSING
AMENDMENT ACT, 2022**

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

- 1 Section 11 (1) (a) of the Cannabis Control and Licensing Act, S.B.C. 2018, c. 29, is amended by adding “the Civil Forfeiture Act,” after “the Cannabis Distribution Act.”*
- 2 Section 12 is amended*
 - (a) in subsection (2) by striking out “The general manager may disclose” and substituting “The general manager and director may disclose” and by striking out “the general manager considers” and substituting “the general manager or director, as the case may be, considers”, and*
 - (b) in subsection (3) by striking out “The general manager may disclose” and substituting “The general manager and director may disclose”.*
- 3 Sections 14 (d) and 17 (d) are amended by adding “under section 89 (2) (f) [inspection] or” after “the transportation is authorized”.*
- 4 Section 51 (f) is amended by adding “under section 89 (2) (f) [inspection] or” after “transporting cannabis as authorized”.*
- 5 Section 87 is repealed and the following substituted:*

Definitions

87 In this Division:

“**electronic device**” means a device by which a person may electronically send, receive, download, view or access information or records;

“**premises**” means a place or conveyance.

6 Section 89 is amended

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

- (a) inspect records found in the premises;
- (a.1) require any person in the premises to produce records for the purposes of inspection;
- (a.2) remove records for the purposes of inspection or making copies or extracts;
- (a.3) request that any person provide a password, or otherwise facilitate access, to an electronic device if the director has reasonable grounds to believe that
 - (i) the electronic device contains, or can provide access to, records, and
 - (ii) the records referred to in subparagraph (i) are relevant to determining compliance with this Act and the regulations;
- (a.4) remove an electronic device referred to in paragraph (a.3) for the purposes of
 - (i) inspection,
 - (ii) making copies or extracts of the records that are contained in the electronic device or to which the electronic device can provide access, or
 - (iii) preserving the electronic device while obtaining a warrant under section 92.1; ,

(b) by repealing subsection (1) (d) and substituting the following:

- (d) open a package or a locked or unlocked receptacle found in the premises;
- (d.1) remove a locked receptacle for opening and inspection; ,

(c) by repealing subsection (1) (g) and substituting the following:

- (g) seize and remove cannabis found in the premises and the packages containing the cannabis if, in the opinion of the director, the cannabis is possessed in contravention of this Act or the regulations; ,

(d) in subsection (1) by adding the following paragraph:

- (g.1) seize, dismantle and remove all or part of any equipment found in the premises if, in the opinion of the director, the equipment may have been used in connection with a contravention of this Act or the regulations; ,

(e) in subsection (2) by striking out “and” at the end of paragraph (a) and by adding the following paragraphs:

- (c) may be accompanied by any other individual the director considers necessary in the circumstances,
- (d) may use the services of a locksmith or similar service provider or any other necessary means to open a locked door or a locked receptacle found in the premises,
- (e) may use the services of a technician, electrician or similar service provider to dismantle equipment, and
- (f) may use the services of a common carrier to remove any thing from the premises. ,

(f) by repealing subsection (3) and substituting the following:

- (3) If the director removes things or takes samples under subsection (1), the director must, within a reasonable time,
 - (a) give a receipt for the things removed or samples taken, and
 - (b) return the things removed, other than cannabis, equipment or samples. , ***and***

(g) by adding the following subsection:

- (4) Section 82 (a) [*transportation by common carrier*] does not apply to a common carrier that is transporting cannabis under subsection (2) (f) of this section.

7 Section 90 (2) is amended

- (a) by striking out “the occupant of the premises” and substituting “a person”, and***
- (b) in paragraph (a) by striking out “or is otherwise related to the inspection” and substituting “or otherwise related to the inspection”.***

8 Section 91 (2) is amended

- (a) by striking out “evidence on oath” and substituting “information on oath in the prescribed form”,***
- (b) by striking out “is occupied” and substituting “are occupied”, and***
- (c) by adding “, in the prescribed form,” after “may issue a warrant”.***

9 *The following section is added:*

Warrant to enter non-residential premises

- 91.1** (1) The director may apply for a warrant under subsection (2) if, in respect of premises that are not occupied as a residence,
- (a) entry under section 89 is refused, or
 - (b) the director believes that entry under section 89 may be refused.
- (2) On being satisfied by information on oath in the prescribed form that there are reasonable grounds to believe that the sale, supply, production or storage of cannabis has occurred or is occurring in premises that are not occupied as a residence, a justice may issue a warrant, in the prescribed form, authorizing a person named in the warrant to enter the premises in accordance with the warrant in order to exercise the powers referred to in section 89.

10 *Section 92 is repealed and the following substituted:*

Warrant to enter premises and seize records

- 92** (1) The director may apply, in the prescribed form, for a warrant under subsection (2) if a person refuses to produce a record that the director requires when conducting an inspection under section 89.
- (2) On being satisfied that the record referred to in subsection (1) is relevant to determining compliance with this Act and the regulations, a justice may issue a warrant, in the prescribed form, authorizing a person named in the warrant to enter the premises in accordance with the warrant and seize the record.

11 *The following sections are added:*

Warrant to access electronic device

- 92.1** (1) The director may apply for a warrant under subsection (2) if the director has requested under section 89 (1) (a.3) that a person provide a password, or otherwise facilitate access, to an electronic device and the request is refused.
- (2) On being satisfied by information on oath in the prescribed form that there are reasonable grounds to believe that the electronic device referred to in subsection (1) contains, or can provide access to, records and that those records are relevant to determining compliance with this Act and the regulations, a justice may issue a warrant, in the prescribed form,
- (a) requiring a person named in the warrant to provide the director with a password to the electronic device or to otherwise facilitate the director's access to the electronic device, and
 - (b) authorizing the director to access the electronic device by any necessary means and seize the records.

Telewarrants

- 92.2** (1) If the director believes that it would be impracticable to appear personally before a justice to apply for a warrant under section 91, 91.1 or 92.1, the director may submit an information on oath by telephone or other means of telecommunication and, for this purpose, section 22 of the *Offence Act* applies.
- (2) If the director believes that it would be impracticable to appear personally before a justice to apply for a warrant under section 92, the director may apply for the warrant by telephone or other means of telecommunication.

12 *The following section is added:*

Purchase of substance believed to be cannabis

- 92.3** The director may purchase any substance that the director believes to be cannabis in order to determine compliance with this Act and the regulations.

13 *Section 95 is amended*

- (a) *in subsection (3) by striking out “may be based on only one” and substituting “may be based only on one”,*
- (b) *in subsection (3) by adding the following paragraphs:*
- (a.1) a failure to observe the rules of procedural fairness;
 - (a.2) an error of law other than an error of law respecting any constitutional question, including, but not limited to, a constitutional question that requires notice to be given under section 8 of the *Constitutional Question Act*; , and
- (c) *in subsection (7) by striking out “prevent steps to be taken” and substituting “prevent steps from being taken”.*

14 *The following section is added:*

No jurisdiction over constitutional questions

- 95.1** (1) In considering whether to impose a monetary penalty under section 94 or reconsidering a compliance order under section 95, the director does not have jurisdiction over any constitutional question, including, but not limited to, a constitutional question that requires notice to be given under section 8 of the *Constitutional Question Act*.
- (2) An application to a court in relation to a constitutional question does not prevent steps from being taken to impose or collect a monetary penalty.

- (3) This section applies to all monetary penalties considered, and to all compliance orders reconsidered, before, on or after the date this section comes into force.

15 Section 97 is amended

- (a) by renumbering the section as section 97 (1),**
- (b) in subsection (1) by striking out “The director” and substituting “Subject to subsections (2) and (3), the director”, and**
- (c) by adding the following subsections:**
 - (2) The director must conduct a hearing under this Division in writing unless the director determines that an oral hearing is necessary.
 - (3) In a hearing under this Division, no person may be cross-examined.
 - (4) Subsections (2) and (3) apply to all hearings commenced before, on or after the date this section comes into force.

16 Section 102 is amended by adding the following subsection:

- (1.1) If a peace officer believes that it would be impracticable to appear personally before a justice to apply for a warrant under subsection (1), the peace officer may submit an information on oath by telephone or other means of telecommunication and, for this purpose, section 22 of the *Offence Act* applies.

17 Section 105 is amended

- (a) in subsection (1) (b) by adding “or 91.1” after “a warrant under section 91”,**
- (b) in subsection (2) by striking out “that have been seized”, and**
- (c) in subsections (5) and (6) by striking out “notice of the claim” and substituting “the application” and by adding “or damaged” after “destroyed” wherever it appears.**

18 *The following sections are added:*

No jurisdiction over constitutional questions

- 105.1** (1) In considering an application under section 105, the general manager and director do not have jurisdiction over any constitutional question, including, but not limited to, a constitutional question that requires notice to be given under section 8 of the *Constitutional Question Act*.
- (2) An application to a court in relation to a constitutional question does not prevent the general manager or the director from making a decision on an application under section 105.
- (3) This section applies to all applications under section 105 that are made before, on or after the date this section comes into force.

Practice and procedure

- 105.2** (1) Subject to subsection (2), the general manager and director may each make rules respecting the practices and procedures to be followed in considering applications under section 105.
- (2) The general manager and director must consider applications under section 105 on the basis of written representations only.
- (3) Subsection (2) applies to all applications made before, on or after the date this section comes into force.

**Disposition of equipment seized
in relation to inspection powers**

- 105.3** (1) This section applies to equipment that is seized by the director under section 89 or under a warrant under section 91 or 91.1.
- (2) Equipment referred to in subsection (1) may be
- (a) retained and dealt with under this section,
 - (b) sold, or
 - (c) destroyed.
- (3) A person may, within 30 days after the date the director seized the equipment, apply in writing to the director for the return of the equipment or for compensation because the equipment seized was not used in connection with a contravention of this Act or the regulations.
- (4) If the director receives an application under subsection (3) within 30 days after the date of the seizure and is satisfied that the equipment seized was not used in connection with a contravention of this Act or the regulations, the director must, as soon as practicable after receiving the application,
- (a) in respect of equipment that is still in the custody of the director, order that the equipment be returned, or

- (b) in respect of equipment that has been sold, destroyed or damaged by the director, pay compensation out of the consolidated revenue fund.
- (5) If equipment that has been seized is related to a prosecution of an offence under this Act, the director is not required to make a decision on an application under this section until the proceedings are complete.
- (6) In considering an application under this section, the director does not have jurisdiction over any constitutional question, including, but not limited to, a constitutional question that requires notice to be given under section 8 of the *Constitutional Question Act*.
- (7) An application to a court in relation to a constitutional question does not prevent the director from making a decision on an application under this section.
- (8) Subject to subsection (9), the director may make rules respecting the practices and procedures to be followed in considering applications under this section.
- (9) The director must consider applications under this section on the basis of written representations only.

19 Section 108 is amended

- (a) by adding “or 105.3” after “compensation under section 105”,
- (b) in paragraph (a) by adding “or removal” after “the seizure”, and
- (c) in paragraph (b) by adding “or removed” after “seized”.

20 The following Division is added to Part 6:

Division 3.1 – Production Orders

Order to produce information

- 108.1** (1) Subject to subsection (2), on application by the director or a peace officer, a justice may make an order, in the prescribed form, requiring a person to produce a statement or record specified in subsection (3).
- (2) A justice may make an order under subsection (1) if the justice is satisfied by information on oath in the prescribed form that there are reasonable grounds to believe that
- (a) the person is selling or producing cannabis in contravention of this Act or the regulations, or
 - (b) the person has information about a person or activities referred to in paragraph (a).

- (3) An order under subsection (1) may require production of the following statement and records:
 - (a) a written statement on matters specified in the order relating to the sale or production of cannabis;
 - (b) records as specified in the order.
- (4) A justice may make an order requiring a person to produce a statement or record under subsection (1) whether or not the director has, under section 93, delivered a demand notice to the person to provide the statement or record.

21 Section 134 (a) is amended by adding the following subparagraph:

- (ii.1) by persons who request that a hearing held for the purposes of section 94 or 95 be conducted orally, .

Commencement

- 22** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 8 to 11	By regulation of the Lieutenant Governor in Council
3	Section 13	By regulation of the Lieutenant Governor in Council
4	Section 20	By regulation of the Lieutenant Governor in Council