

No. 58

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 58

A Bill Providing for the Summary Cancellation of
Certain Sales of Goods and Services

HON. MR. PATRICK

Explanatory Note

General. This Bill provides that persons who agree to buy goods or services from door to door salesmen may cancel the sale agreements within four days of the sale or, in certain circumstances, within one year. The Bill is similar to the Hire-Purchase Act 1964 of the United Kingdom which was followed to some extent in legislation passed in 1965 in Manitoba (The Consumer Credit Act) and Saskatchewan (The Direct Sellers Act).

2. Definitions.

BILL

No. 58 of 1966

An Act Providing for the Summary Cancellation of
Certain Sales of Goods and Services

(Assented to _____, 1966)

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

1. This Act may be cited as "*The Direct Sales Cancellation Act*".

2. (1) In this Act,

- (a) "buyer" means a person who signs a sales contract as buyer or offeror, and includes an assignee of that person;
- (b) "goods" includes
 - (i) goods to be manufactured or acquired by the seller after a sales contract is entered into, and
 - (ii) growing crops and things attached to or forming part of land that are, by a sales contract, agreed to be severed, and
 - (iii) things that are intended to be affixed to the buyer's land,but does not include choses in action;
- (c) "pre-existing contract" means any sales contract or other agreement for the sale of goods or services made before or after the commencement of this Act that is replaced by a sales contract concluded after the commencement of this Act;
- (d) "related sale", with reference to a sales contract, means any sale of goods that is related to the sales contract or is made in connection with or is incidental to the sales contract, whether as an inducement to enter into the sales contract or not and whether made before, at or after the making of the sales contract, and whether it is made with the seller under the sales contract or not;
- (e) "sales contract" means
 - (i) an agreement for the sale of goods or services or both for future delivery or performance in whole or in part, or

- (ii) an agreement under which the buyer, upon the happening of an event or the payment of the price or compliance with a condition, will become the owner of goods or entitled to the performance of services or both, or
- (iii) an agreement under which the buyer may, at his option, become the owner of goods or be entitled to buy goods or be entitled to the performance of services, or
- (iv) a sale of goods effected by way of a lien note or by way of any agreement or arrangement made at the time of the sale or subsequent thereto whereby the buyer gives to the seller a chattel mortgage or a bill of sale covering the whole or part of the purchase price of the goods sold, or
- (v) an offer to buy goods or services or to enter into any agreement of the kinds mentioned in sub-clauses (i) to (iv) ;
- (f) "salesman", with reference to a sales contract, means any person, other than the seller, who solicits, negotiates or arranges for the signing by the buyer of the sales contract or who in any way participates in soliciting, negotiating or arranging for the signing by the buyer of the sales contract ;
- (g) "seller", with reference to a sales contract, means the person
 - (i) who is specified in the sales contract as seller of the goods or as the person obligated to perform the services or to cause the services to be performed, or
 - (ii) who is deemed to be the seller under the sales contract by virtue of subsection (1) of section 4,
 and includes an assignee of that person ;
- (h) "trade-in allowance" means
 - (i) the sum which, under a trade-in arrangement, is agreed to be allowed in payment or in part payment of the goods or services sold or to be sold under the sales contract, or
 - (ii) if that sum is not agreed upon, an amount that would, in all the circumstances, have been reasonable to allow in payment or in part payment, as the case may be, of the goods if no notice of cancellation had been served under section 6 in respect of that sales contract ;
- (i) "trade-in arrangement" means an agreement or arrangement, contained in a sales contract or forming the whole or part of a related agreement, whereby the buyer sells or agrees to sell his own goods to the seller or any other person and the goods are accepted as the whole or part of the consideration under the sales contract.

3. Application of Act.

- 4.** (1) Person deemed to be seller.
(2) Representations by salesman deemed to be made as agent of seller.

(2) For the purposes of this Act, a sales contract is concluded when it is signed by the buyer.

3. (1) This Act applies only to sales contracts concluded after the commencement of this Act.

(2) This Act does not apply to cases where the sales contract is solicited, negotiated or concluded at

- (a) the seller's or the salesman's normal business premises, or
- (b) a market place, auction, trade fair, agricultural fair or exhibition.

(3) This Act does not apply

- (a) to a sales contract made
 - (i) between a manufacturer or distributor and a wholesaler in respect of goods that the wholesaler intends to resell in the course of his business, or
 - (ii) between a manufacturer, distributor or wholesaler and a retailer in respect of goods that the retailer intends to resell in the course of his business,
- or
- (b) to a sales contract under which a retailer is the buyer of goods intended to be used in his business but not for resale, or
- (c) to a sales contract under which the original buyer is a corporation, or
- (d) to a sales contract negotiated, solicited and concluded without any dealings in person between the seller and the buyer or any salesman and the buyer, or
- (e) to a sales contract under which the goods to be delivered consist only of food or food products in a perishable state at the time of delivery, or
- (f) except as otherwise provided in the regulations, to a sales contract under which the goods to be delivered consist only of goods manufactured in Alberta.

(4) The Lieutenant Governor in Council may make regulations declaring that this Act applies to any class or kind of goods manufactured in Alberta.

4. (1) Where the seller is not specified in the sales contract at the time it is signed by the buyer, then any person by whom, or on whose behalf, the sales contract is signed at any subsequent time and who is then specified in the sales contract as the seller, shall be deemed to be and at all material times to have been the seller under that sales contract.

(2) Any oral or written representation, statement or undertaking, whether constituting a condition or warranty

5. Requirements to be met by the seller before he can enforce a sales contract.

6. Cancellation of sales contract by the giving of notice of cancellation by the buyer.

or not, made to the buyer by a salesman with respect to goods covered by a sales contract or a related sale shall be deemed to have been made by the salesman as agent of the seller, but nothing in this subsection exonerates any person from any liability to which he would be subject apart from this subsection.

5. A sales contract is void as against the seller unless
- (a) it is signed by the buyer,
 - (b) it contains a notice in the form in the Schedule to this Act and completed as to paragraph 4 thereof, and the notice is at least as prominent as the rest of the contents of the sales contract, and
 - (c) a copy of it is received by the buyer, by personal delivery or by mail, within seven days after the day the sales contract was signed by the buyer.

6. (1) A buyer may rescind a sales contract by giving a notice of cancellation in accordance with this section

- (a) not later than the fourth day after the date on which the copy of the sales contract was received by him, by personal delivery or by mail, or
- (b) not later than one year after the date on which the copy of the sales contract was received by him, by personal delivery or by mail, if
 - (i) all of the goods or services to be supplied under the sales contract are not supplied within thirty days of the date specified therein for delivery or performance, or, if no such date is specified, then within one hundred and twenty days after the day on which the sales contract was signed by the buyer, or
 - (ii) the seller was during the period in which the sales contract was solicited, negotiated and concluded, required to be licensed under *The Licensing of Trades and Businesses Act* but was not so licensed, or
 - (iii) any salesman was, at any time while dealing with the buyer, required to be licensed under *The Licensing of Trades and Businesses Act* but was not so licensed.

(2) A notice of cancellation under this section is sufficient if, however expressed, it indicates the intention of the buyer to cancel, terminate or withdraw from the sales contract.

(3) A notice of cancellation under this section may be given by delivering it or sending it by mail

- (a) to the seller or a person named in the sales contract as a person to whom a notice of cancellation may be given, at the address shown in the sales contract, or
- (b) if the buyer's copy of the sales contract was not received by him, by personal delivery or by mail, or if

7. Effect of cancellation of sales contract.

8. Obligations of buyer and seller as to return and interim care of the goods.

no address of the seller or other person is shown in the sales contract,

- (i) to any salesman, or
- (ii) to any address of the seller known to the buyer, or
- (iii) to the Minister of Industry and Development.

(4) For the purposes of this section a notice of cancellation sent by mail shall be deemed to be given at the time it is mailed.

7. (1) A notice of cancellation given in accordance with section 6 operates

- (a) to cancel the sales contract, or
- (b) where the sales contract is an offer to buy, to withdraw the offer,

as if the sales contract never existed.

(2) A notice of cancellation given in accordance with section 6 also operates to cancel

- (a) any related sale,
- (b) any guarantee given in respect of money payable under the sales contract, and
- (c) any security given by the buyer or a guarantor in respect of money payable under the sales contract,

as if it never existed.

8. (1) The seller shall within fifteen days of the giving of a notice of cancellation in accordance with section 6

- (a) refund to the buyer all moneys paid under the sales contract, any related sale and any pre-existing contract, and
- (b) return to the buyer's premises any goods delivered by the buyer under a trade-in arrangement.

(2) Where a notice of cancellation is given in accordance with section 6, the buyer shall return to an authorized person goods that came into the buyer's possession under the sales contract or a related sale or pre-existing contract if a written request is given to the buyer by an authorized person and signed or purporting to be signed by or on behalf of the seller, but the obligation of the buyer under this subsection is subject to any lien or right to retain the goods that he may have under section 9 and his right to enforce the lien.

(3) The buyer may

- (a) return the goods to an authorized person or to a person designated for the purpose by an authorized person, at a place elsewhere than at the buyer's premises, or
- (b) return the goods at his own expense to the seller or to any person specified in the sales contract as a person to whom a notice of cancellation may be sent.

9. Buyer's right to retain possession and enforce his lien on goods remaining in his possession.

(4) A return of the goods in accordance with subsection (2) or (3) shall be deemed to be made with the consent of the seller or, if the seller is not entitled to possession of the goods, with the consent of the person so entitled, and operates to discharge the buyer from any obligation to retain the goods or deliver them to the person so entitled.

(5) The buyer is under an obligation to take reasonable care of goods delivered to him under a sales contract or related agreement until

(a) the return of the goods in accordance with subsection (2) or (3), or

(b) the expiration of the period of twenty-one days after the giving of the notice of cancellation,

whichever event occurs first, and if he sends them to the seller or other person in accordance with clause (b) of subsection (3), he is under an obligation to take reasonable care to see that they are received by the person to whom they are sent and are not damaged in transit to him.

(6) Any obligation under subsection (5) is owed to the person for the time being entitled to possession of the goods and any breach of that obligation is actionable, at the suit of that person, as a breach of statutory duty.

(7) The buyer is under no obligation under this section to return the goods elsewhere than at the buyer's premises.

(8) Except as provided by this section, the buyer is not under any obligation, whether arising by contract or otherwise, to take care of the goods.

(9) In this section,

(a) "authorized person" means

(i) the seller or any salesman, or

(ii) the person for the time being entitled to possession of the goods, or

(iii) a person specified in the sales contract as a person to whom a notice of cancellation may be given,

and

(b) "buyer's premises" means the place specified in the sales contract as the buyer's address, or, if the address shown does not specifically identify that place by a municipal address, land description or other description sufficient to distinguish that place from any other, the place where the buyer actually resided at the time the sales contract was made.

9. Where a notice of cancellation is served in accordance with section 6, the buyer is entitled to retain possession of goods delivered to him under a sales contract, related sale or pre-existing contract

(a) until all moneys paid under the sales contract, related sale or pre-existing contract are refunded, and

10. Recovery of moneys paid and of goods traded in on a trade-in arrangement.

11. Money recovered from bond proceeds under The Licensing of Trades and Businesses Act are deemed to be recovered from the seller.

12. Waiver or release void.

13. Chapter 175 of the Revised Statutes is amended. Procedure for the use of bond proceeds for the benefit of buyers having claims against a seller.

- (b) in the case of a trade-in arrangement, until either
 - (i) the goods delivered by the buyer under the trade-in arrangement are returned to him in a condition substantially the same as when they were delivered by him, or
 - (ii) a sum equal to the trade-in allowance is paid to him,

and the buyer while in possession has a lien on those goods for any moneys so owing to him.

10. (1) Where the seller fails to refund to the buyer all moneys required to be refunded under clause (a) of subsection (1) of section 8, the buyer may recover those moneys from the seller.

- (2) In the case of a trade-in arrangement, unless
 - (a) the seller returns the buyer's goods to him in accordance with subsection (1) of section 8, and
 - (b) the goods are then in a condition substantially the same as when they were delivered by the buyer,

the buyer may recover from the seller an amount equal to the trade-in allowance for the goods.

(3) An amount recoverable under subsection (1) or (2) may be recovered as a simple contract debt.

(4) Where the buyer recovers an amount equal to the trade-in allowance, then, if the title of the buyer to goods delivered by him under the trade-in arrangement did not pass from the buyer, the title vests in the person entitled thereto under the trade-in arrangement.

11. Where pursuant to regulations under *The Licensing of Trades and Businesses Act* the proceeds of a bond are used for the benefit of buyers who have not recovered moneys owing to them following the cancellation of sales contracts, any money paid to a buyer from the proceeds of the bond shall be deemed to have been recovered from the seller.

12. Any waiver or release of the rights, benefits or protection given by this Act is against public policy and void.

13. *The Licensing of Trades and Businesses Act* is amended

- (a) as to section 5, subsection (1), clause (j) by striking out subclause (v) and by substituting the following:
 - (v) requiring in respect of any specified business or description or class of business that a bond be given in respect of the applicant for a licence in the form and amount and on the conditions prescribed by the Minister, and
- (b) by adding the following section after section 5a:

14. Commencement of Act.

6. (1) Where the business of negotiating, soliciting and concluding sales contracts to which *The Direct Sales Cancellation Act* applies is designated by the Minister as a business or a description or class of business to which this Act applies and a bond given to the Minister in respect of a seller or salesman is forfeited by reason of breach of a condition of the bond requiring compliance with the provisions of *The Direct Sales Cancellation Act*, the proceeds of the bond may be used for the benefit of persons who, as buyers under the sales contracts, have claims against the seller following cancellation of the sales contract in accordance with section 6 of that Act.

(2) Notwithstanding that the Crown in right of Alberta has not suffered any loss or damages, the bond mentioned in subsection (1) shall be construed as a penal bond and upon forfeiture the amount owing to the Crown by the person bound thereby shall be determined as if the Crown suffered such damages as would entitle the Crown to be indemnified to the maximum amount of liability prescribed by the bond.

(3) The Minister may by order make regulations providing for

- (a) the procedure for the filing of claims by the claimants referred to in subsection (1),
- (b) the manner of proving the claims, and
- (c) the conditions on which the proceeds of the bonds are to be used to satisfy the claims filed.

(4) Any moneys remaining unexpended after the satisfaction of the claims pursuant to the regulations shall be refunded to the surety or obligor under the bond.

14. (1) This Act, except clause (a) of section 13, comes into force on the first day of July, 1966.

(2) Clause (a) of section 13 comes into force on the day upon which this Act is assented to.

SCHEDULE

THE DIRECT SALES CANCELLATION ACT STATUTORY NOTICE

Right of Cancellation by Buyer

1. This is a sales contract to which *The Direct Sales Cancellation Act* of Alberta applies.

2. The buyer may cancel this contract by giving notice of cancellation within four days after the date on which the buyer's copy of this contract is delivered or sent by mail to him, without giving reasons for cancellation.

3. The buyer may cancel this contract by giving notice of cancellation within one year of the date on which the buyer's copy of this contract is delivered or sent by mail to him, in any of the following cases :

If the goods or services to be supplied under this contract are not supplied within thirty days after the date specified in this contract for their delivery or performance.

OR

If no such date is specified and the goods or services are not supplied within one hundred and twenty days after the date this contract was signed by the buyer.

OR

If the seller herein was during the period in which this contract was solicited, negotiated and concluded, required to be licensed under *The Licensing of Trades and Businesses Act*, but was not so licensed.

OR

If any salesman who conducted or participated in the soliciting, negotiating or arranging for the signing of this agreement by the buyer, was required to be licensed under the said Act but was not so licensed.

4. A notice of cancellation under paragraph 1 or 2 may be delivered to or sent by mail to

.....
(insert name and address of the seller or other person)
and if sent by mail, is deemed to be given at the time of mailing.

5. The buyer is advised to make and keep a copy of the notice of cancellation for his own use and to note the date on which it was delivered or mailed, if it is not sent by registered mail.

6. This statutory notice indicates in a general way only the buyer's rights of cancellation. *The Direct Sales Cancellation Act* should be consulted as to the right of cancellation and other rights of the buyer in respect of this contract.

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THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act Providing for the Summary
Cancellation of Certain Sales
of Goods and Services

Received and read the

First time

Second time

Third time

HON. MR. PATRICK
