

1971 Bill 83

Fourth Session, 16th Legislature, 20 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 83

An Act to amend The Farm Implement Act

THE MINISTER OF AGRICULTURE

First Reading

Second Reading

Third Reading

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BILL 83

1971

AN ACT TO AMEND THE FARM IMPLEMENT ACT

(Assented to _____, 1971)

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

1. *The Farm Implement Act is hereby amended.*

2. *Section 2 is amended*

- (a) *as to clause (a) by striking out the words "and who is required to be licensed as a farm implement dealer under The Licensing of Trades and Businesses Act",*
- (b) *by adding after clause (c) the following clause:*
- (c) *"Minister" means the Minister of Agriculture;*

3. *Section 3, subsection (1) is amended by striking out clause (d) and by substituting the following:*

- (d) *except as provided in sections 22 and 23, to vendors or dealers.*

4. *Section 4, subsection (1) is amended*

- (a) *by striking out clause (b) and by substituting the following:*
- (b) *shall contain an address for the vendor,*
- (b) *by adding the following clauses:*
- (d) *shall contain a description of the farm implement whereby it may be readily known and distinguished, which description shall include any serial number, model number and engine serial number, and*
- (e) *where the sale agreement relates to more than one farm implement, shall show a purchase price for each implement.*

Explanatory Notes

1. This Bill amends chapter 136 of the Revised Statutes.

2. Section 2 (a) reads:

- (a) "dealer" means a person operating in the ordinary course of business a retail establishment for the sale or resale of farm implements, repair parts and implement services and who is required to be licensed as a farm implement dealer under The Licensing of Trades and Businesses Act;

See section 9 of this Bill.

3. Section 3 (1) (d) reads:

3. (1) This Act does not apply to sales of farm implements (d) to vendors or dealers.

See the proposed sections 22 and 23 to be added by section 9 of this Bill.

4. Section 4 (1) reads:

4. (1) Every sale agreement of a farm implement whether new or used,
(a) shall be in writing,
(b) shall state the address of the principal office of the vendor in Alberta, and
(c) shall set out the nature and duration of all warranties given in connection with the farm implement.

5. *Section 6 is struck out and the following is substituted:*

6. (1) Where a new farm implement used under reasonable operating conditions and with proper use and maintenance fails to perform the work for which it is intended in a satisfactory manner, the purchaser may within ten days from the date the implement is first used give notice, by registered mail, to the vendor, the dealer and the Minister of the failure to perform and the dealer or vendor shall endeavour to make the implement perform in a satisfactory manner

- (a) not later than the seventh day after receiving the notice, given reasonable operating conditions, or
- (b) if reasonable operating conditions do not exist following the receipt of the notice, then not later than the seventh day of reasonable operating conditions after receipt of the notice,

and if the dealer or vendor fails to make the implement perform in a satisfactory manner by the end of those seven days the dealer or vendor shall, within 48 hours provide the purchaser with a satisfactory substitute implement for the purchaser's use until his implement is made to perform in a satisfactory manner.

(2) If the sale agreement does not contain an address for the vendor

- (a) the purchaser is not required to give notice to the vendor under subsection (1), and
- (b) where the notice is given to the dealer, the notice shall be deemed to be given also to the vendor.

(3) If, within a reasonable time after providing the substitute farm implement to the purchaser, the dealer or vendor fails to make the purchaser's implement perform in a satisfactory manner, the dealer or vendor shall either

- (a) replace the purchaser's implement with an implement that is acceptable to the purchaser, or
- (b) terminate the sale agreement, or, where the sale agreement relates to the purchase of more than one farm implement, terminate the sale agreement only as to the farm implement in respect of which notice under subsection (1) was given.

(4) Where the sale agreement relates to one farm implement and is wholly terminated pursuant to subsection (3), clause (b), the dealer or vendor shall

- (a) refund to the purchaser all moneys paid by him in connection with the sale agreement, and
- (b) subject to subsections (5) and (6), return to the purchaser any trade-in, in any case where a trade-in arrangement was made.

5. Section 6 presently reads:

6. (1) Where a new farm implement used under reasonable operating conditions and with proper use and maintenance fails to perform the work for which it is intended in a satisfactory manner, the purchaser may within seven days from the date the implement is first used give notice, by registered mail, to the vendor of the failure to perform and the dealer or vendor shall endeavour to make the implement perform in a satisfactory manner

(a) not later than the seventh day after receiving the notice, given reasonable operating conditions, or

(b) if reasonable operating conditions do not exist following the receipt of the notice, then not later than the seventh day of reasonable operating conditions after receipt of the notice,

and if the dealer or vendor fails to make the implement perform in a satisfactory manner by the end of those seven days the dealer or vendor shall, within 24 hours provide the purchaser with a satisfactory substitute implement for the purchaser's use until his implement is made to perform in a satisfactory manner.

(2) If, within a reasonable time after providing the substitute implement to the purchaser, the dealer or vendor fails to make the purchaser's implement perform in a satisfactory manner, the dealer or vendor shall replace the purchaser's implement with an implement which is acceptable to the purchaser or terminate the sale agreement and refund to the purchaser all moneys paid by him in connection therewith.

(3) A purchaser is not obliged to follow the procedure set out in subsection (1) and the fact that he does not follow it in no way reduces the liability of the dealer or vendor for a breach of warranty.

The section is rewritten primarily to spell out in more detail the procedure that follows the giving of a notice under subsection (1) by the purchaser, particularly where a trade-in arrangement is involved or when more than one implement is included in the same sale agreement. One major difference in the new subsection (1) is that the purchaser will be required to give the notice to the farm implement dealer and the Minister of Agriculture as well as to the vendor, i.e. the manufacturer.

(5) Where the dealer or vendor is required to return a trade-in in accordance with subsection (4), clause (b) but has, prior to the termination of the sale agreement, incurred costs or performed work in repairing or reconditioning the trade-in, the dealer or vendor may refuse to return the trade-in until he has been paid for the reasonable costs of such repairs or reconditioning or until arrangements satisfactory to the dealer or vendor have been made for payment of those costs.

(6) Where the dealer or vendor is unable or refuses to return the trade-in in accordance with subsection (4), clause (b), the dealer or vendor shall pay to the purchaser an amount equal to the fair market value of the trade-in as of the date the sale agreement was made.

(7) Where the sale agreement relates to more than one farm implement and is terminated only as to one of the implements (in this subsection called the "defective implement") pursuant to subsection (3), clause (b),

(a) the vendor or dealer shall refund to the purchaser that portion of the moneys paid under the sale agreement that the purchase price of the defective implement bears to the total purchase price of the defective implement and the other farm implements purchased under the agreement,

(b) in any case where a trade-in arrangement was made, the vendor or dealer shall pay to the purchaser (unless the purchaser otherwise agrees) a sum of money equal to that portion of the fair market value of the trade-in that the purchase price of the defective implement bears to the total purchase price of the defective implement and the other farm implements under the agreement, and

(c) unless the purchaser otherwise agrees, the sale agreement shall be deemed to be amended so that the trade-in allowance for the farm implement or implements remaining under the agreement is an amount equal to that portion of the trade-in allowance that the purchase price of the other farm implement or implements under the agreement bears to the total purchase price of the defective implement and those other farm implements.

(8) For the purposes of determining the fair market value of a trade-in under subsection (6) or subsection (7), clause (b)

(a) regard may be had to any publication of farm implement prices of general use in the farm implement industry in Canada, and

(b) the fair market value of the trade-in may be less than the trade-in allowance, and the dealer or vendor is not estopped from proving that fact.

(9) In this section

- (a) "trade-in" means a farm implement or other property which is purchased by the dealer or vendor under a trade-in arrangement;
- (b) "trade-in allowance" means the amount shown in a sale agreement as the amount accepted by the dealer or vendor as the value of a trade-in under a trade-in arrangement;
- (c) "trade-in arrangement" means an agreement or arrangement, whether contained in a sale agreement or made by a separate agreement or arrangement in conjunction with or incidental to a sale agreement, whereby the purchaser agrees to sell his own farm implement or other property to the dealer or vendor and the farm implement or other property is accepted as the whole or part of the consideration under the sale agreement.

(10) This section does not abrogate or restrict any other remedies of a purchaser against a dealer or vendor.

6. Section 16 is struck out.

7. Section 18 is struck out and the following is substituted:

18. A person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$500.

8. Section 19 is amended by striking out the word "and" at the end of clause (b), by striking out clause (c) and by substituting the following:

- (c) prescribing the fee payable to a provincial judge in respect of an application under section 21,
- (d) governing any matter in connection with or incidental to section 22 or 23,
- (e) requiring vendors or any class of vendors to be registered with the Minister,
- (f) governing any matter pertaining to the registration of vendors including the registration fees payable to the Minister,
- (g) authorizing the Minister to require any vendor to furnish to the Minister on request

6. Section 16 presently reads:

16. Upon the request of the Minister of Agriculture, any vendor selling or offering for sale farm implements in Alberta shall provide the Minister with

- (a) lists of all types of farm implements offered for sale,
- (b) lists by category or group of parts maintained in stock by them in Alberta,
- (c) a statement or true copy of the current published suggested retail prices for those implements and parts, and
- (d) copies of specific sale agreements of farm implements.

The content of the section will be included in the regulations made under section 19 of the Act as amended by section 7 of this Bill.

7. Section 18 presently reads:

18. A person who contravenes this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$100.

8. Section 19 deals with the regulation-making powers of the Lieutenant Governor in Council. The amendment will, among other things, enable regulations to be made requiring the registration of farm implement manufacturers and suppliers.

- (i) information relating to the farm implements manufactured or supplied by the vendor,
 - (ii) information relating to parts for the vendor's farm implements maintained in stock in Alberta,
 - (iii) a statement or true copy of the current published suggested retail prices for its implements and parts,
 - (iv) copies of specific sale agreements of farm implements, and
 - (v) any other specified information pertaining to the vendor's business in Alberta, and
- (h) respecting any other matter necessary to carry out this Act.

9. The following sections are added after section 19:

20. No person shall

- (a) obliterate, deface, alter, render illegible, or remove, the manufacturer's serial number on a farm implement or on the engine thereof, or
- (b) buy, sell or otherwise deal in, a farm implement if the manufacturer's serial number placed thereon or on the engine thereof has been obliterated, defaced, altered, rendered illegible, or removed, or is not readily recognizable unless a new number has, on authorization by the Minister, been stamped on the engine as provided in section 21.

21. (1) Where the manufacturer's serial number on a farm implement or on the engine thereof has been obliterated, defaced, altered, rendered illegible, or removed, the owner may apply to a provincial judge to make a recommendation, as provided in subsection (3).

(2) The provincial judge shall make an inquiry as to the ownership of the farm implement and the circumstances under which the serial number or engine number was obliterated, defaced, altered, rendered illegible, or removed, and shall hear the testimony given by or on behalf of the applicant and make such other inquiries and receive such other evidence under oath, as in the circumstances he considers necessary.

(3) The provincial judge, if he is satisfied that the applicant is the owner of the farm implement and that the serial number or engine number was not obliterated, de-

20. Obliteration of a farm implement serial number.

21. Procedure to obtain a new serial number to replace one that has been obliterated.

faced, altered, rendered illegible, or removed, by or on behalf of the applicant for any unlawful or fraudulent purpose,

- (a) may recommend to the Minister, in writing signed by him, that the applicant be authorized to have a new serial number stamped on the farm implement or the engine thereof, and
- (b) shall send the recommendation to the Minister together with all papers and documents produced to him in support of the application and a summary of the evidence adduced at the inquiry.

(4) The Minister is not bound to follow the recommendation, but may make such further inquiries as he considers necessary and if he is satisfied that it is proper to do so, he may issue to the applicant a certificate authorizing him to have stamped on the farm implement or the engine thereof such new serial number as is stated in the certificate, subject to such conditions as the Minister may prescribe.

(5) On receipt of the certificate the applicant may cause the new serial number stated therein to be stamped with steel dies on the farm implement or engine in the manner prescribed in the certificate.

(6) Where a farm implement on which a new serial number has been stamped as provided in subsection (5) is sold, the seller shall deliver to the buyer the certificate authorizing the stamping of that new serial number.

(7) The applicant shall pay to the provincial judge who makes an inquiry under this section the fee prescribed in the regulations for all things done by him under this section.

22. (1) In this section and in section 23

- (a) "agreement" means a written or oral agreement between a dealer and a vendor that is in force on or after October 1, 1970;
- (b) "notice to purchase" means the notice to purchase mentioned in subsection (6).

(2) Where an agreement expires or is otherwise terminated by the dealer or the vendor for any reason, the vendor shall, subject to this Act and the regulations, purchase from the dealer all unused farm implements or unused parts or unused farm implements and unused parts obtained by that dealer from the vendor.

(3) A vendor shall pay to a dealer

- (a) for each unused farm implement and attachments thereto as listed on the original invoice for that implement, 100 per cent of the invoice price to-

22. Repurchase by manufacturer of unused farm implements and parts following cancellation of dealers franchise.

gether with the transportation costs paid by the dealer from the point of manufacture of the farm implement to the dealer's place of business;

- (b) for each unused part, 85 per cent of the current net price,

together with interest on any amount payable, calculated from the first day of the second month following the day the amount becomes due and owing.

(4) The amount payable by a vendor for an unused implement or unused part becomes due and owing

- (a) on the day that immediately follows the expiry of 90 days after the day the vendor receives the notice to purchase from the dealer, or
- (b) on the day that the vendor removes the unused implement or unused part from the possession of the dealer,

whichever day first occurs.

(5) In addition to any other remedy available to him

- (a) a dealer may recover an amount owing to him under this section by a vendor by deduction from any amount he owes to the vendor, and
- (b) a vendor may recover an amount owing to him by a dealer by deduction from any amount he owes to the dealer under this section.

(6) A dealer may, within 90 days after the day an agreement expires or is terminated,

- (a) personally serve on the vendor or an officer of the vendor, or
- (b) send by prepaid registered mail to the vendor,

a written or printed notice to purchase containing a request by the dealer that the vendor purchase the unused implements or unused parts or unused implements and unused parts obtained from the vendor, and where the dealer has not complied with this subsection the vendor is not required to purchase the unused implements or unused parts or unused implements and unused parts from the dealer.

(7) A vendor is not required to purchase

- (a) an unused part that is not clearly identified either by means of a ticket or tag or box or other container or by an imprint on the part itself, or
- (b) an unused part that is not listed in a vendor's current price list.

(8) A dealer is responsible for the care and custody of an unused implement or unused part until

- (a) the day the vendor removes it from his possession, or

(b) the day following the expiry of 90 days after the day the vendor receives the notice to purchase from the dealer,
whichever day first occurs, and thereafter the vendor is responsible.

(9) The Bulk Sales Act does not apply to a sale to a vendor under this section.

(10) This section applies to a vendor and a dealer notwithstanding anything in an agreement or any other contract or arrangement between the vendor and dealer.

(11) Any waiver or release given by a dealer of his rights under this section is against public policy and void.

(12) In this section "unused farm implement" includes a farm implement returned to the vendor or dealer under section 6 following the giving of a notice in respect of that implement under that section.

23. A vendor shall, upon the request of the Minister, furnish the Minister in accordance with the request, with

- (a) a copy of each or any franchise or other agreement in effect between a vendor and a dealer;
- (b) particulars of each or any unwritten agreement with any or all of his dealers;
- (c) a copy of a written agreement or particulars of an unwritten agreement with any or all of his dealers with respect to the return of implements or parts to the vendor.

24. (1) No person shall after December 31, 1971 carry on the business of a dealer unless he is the holder of a licence issued to him by or on behalf of the Minister under this Act.

(2) A licence shall not be issued under this Act unless the applicant furnishes to the Minister a bond in favour of the Crown in right of Alberta

- (a) in a form acceptable to the Minister,
- (b) in the amount of \$10,000 or such greater amount as the regulations require or as the Minister may in any particular case require, and
- (c) conditioned on the payment by the dealer of all moneys which the dealer becomes liable to pay to his purchasers under this Act or any sale agreements.

(3) The Minister may at any time require a licensee to furnish a bond in a greater amount than the bond already furnished.

23. Information to be supplied by manufacturer to the Minister.

24. Licensing and bonding of dealers.

(4) Where a bond under this section is forfeited by reason of a breach of the condition of the bond, the proceeds of the bond may be used for the benefit of purchasers who have claims against the dealer for the payment of money owing to them by the dealer under this Act.

(5) Notwithstanding that the Crown in right of Alberta has not suffered any loss or damages, a bond furnished under this section shall be considered as a penal bond and upon forfeiture the amount owing to the Crown by a 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.

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

(7) The Lieutenant Governor in Council may make regulations

- (a) governing applications for dealers' licences or renewals thereof and the requirements to be met by applicants therefor;
- (b) prescribing the fees to be paid upon applications for, or for the issue of, a licence or a renewal thereof;
- (c) designating the officers of the Department of Agriculture who may issue a licence on behalf of the Minister;
- (d) governing the issue of licences and the duration of licences or renewals thereof;
- (e) prescribing the duties of holders of licences;
- (f) prescribing the circumstances under which a licence may be suspended or cancelled by the Minister or under which a renewal of a licence may be refused;
- (g) prescribing the duties of the holder of a licence that has been suspended or cancelled or has terminated and not been renewed;
- (h) providing for the reinstatement of a licence that has been suspended or cancelled;
- (i) providing for
 - (i) the filing of claims by claimants against the bond furnished by a licensee,
 - (ii) the manner of proving the claims,
 - (iii) the conditions on which the proceeds of the bond are to be used to satisfy the claims filed, and
 - (iv) the pro rata payment of claims where the proceeds of the bond are insufficient to meet all claims;

(j) providing for any other matter or procedure pertaining to the licensing or bonding of dealers or the claims of purchasers against bonds furnished by dealers.

(8) An application for a licence under this section may not be made until October 1, 1971.

10. Where an agreement to which section 22 of The Farm Implement Act (as enacted by section 9 of this Act) applies, expired or was terminated prior to the day upon which this Act is assented to, the agreement shall be deemed to have expired or to have been terminated for the purposes of the said section 22 on the day upon which this Act is assented to.

11. The Garagemen's Lien Act is amended as to section 2, clause (b), subclause (iii) by striking out the words "a tractor used for agricultural purposes or".

12. This Act comes into force on the day upon which it is assented to and upon so coming into force, section 3 of this Act and section 22 of The Farm Implement Act (as enacted by section 9 of this Act) shall be deemed to have been in force at all times on and after October 1, 1970.

10. Transitional provisions re proposed section 22.

11. This section amends chapter 155 of the Revised Statutes of Alberta 1970. Section 2 (b) reads:

- (b) "motor vehicle"
 - (i) means a vehicle propelled by any power other than muscular power, and
 - (ii) includes an aeroplane, but
 - (iii) does not include a tractor used for agricultural purposes or a motor vehicle that runs only on tracks or rails;

The Garagemen's Lien Act will now apply to farm tractors. At present, a person who furnishes repairs to a farm tractor, on the basis of his possessory lien, can refuse to release the tractor until his bill is paid, resulting often in the loss of use of the tractor to the farmer in critical periods. The amendment will enable the tractor to be released without an automatic loss of the repairman's lien.