

1973 Bill 209

Second Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 209

The Prepaid Consumer Contracts Act

MR. YOUNG

First Reading

Second Reading

Third Reading

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Bill 209
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THE PREPAID CONSUMER CONTRACTS ACT

(Assented to , 1973)

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

1. In this Act,

(a) "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 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);

but does not include commercial transactions between wholesalers and retailers;

(b) "goods" includes

- (i) goods to be manufactured or acquired by the seller after a sales contract is entered into, or
- (ii) things that are intended to be affixed to the buyer's land;

(c) "consumer" means a person who is the buyer or offerer under a sales contract, and includes an assignee of that person, but does not include a person who is in the business of purchasing for resale;

Explanatory Notes

The Prepaid Consumer Contracts Act would require sellers to treat down payments in certain retail sales contracts as trust moneys which must be kept aside from operating funds of the firm until goods and services have been delivered according to the contract.

Any seller who fails to treat down payments as trust funds, until the goods and services have been provided, would be in violation of the Act and open to substantial penalty. The Act also provides authority for the Minister of Consumer Affairs to check the records of the seller to assure that the Act is observed. It further sets out a simple procedure for the consumer to institute proceedings for recovery of down payment when there has been a violation of the Act.

- (d) "seller", with reference to a sales contract, means the person who is specified in the sales contract as the seller of the goods or as the person obligated to perform the services or to cause the services to be performed;
- (e) "prepaid sales contract" means a sales contract under which
 - (i) the buyer pays to the seller a minimum of at least \$100 in advance of delivery or performance of the contract by the seller, and
 - (ii) the value of the contract is for a total sum of money not less than \$200 nor more than \$35,000;
- (f) "Minister" means the Minister of Consumer Affairs.

2. A seller who enters into a prepaid sales contract with a consumer shall hold all moneys paid under the contract in trust for the purposes for which they have been paid until

- (a) the goods and services mentioned in the contract have been provided or performed in accordance with the contract, or
- (b) the moneys or any unused balance thereof have been refunded to the person who made the payment or payments or paid to his personal representative, as the case may be.

3. Every seller shall

- (a) maintain a ledger account in which shall be entered full details of all trust moneys so received and disbursements therefrom;
- (b) keep all trust moneys retained by him separate and apart from his own moneys;
- (c) maintain such other records as may be required by the regulations to show the amount of money paid in advance by each buyer who is a party to a prepaid sales contract.

4. Trust moneys referred to in section 3 may be invested in any investments authorized as trustee investments under *The Trustee Act*.

5. (1) The Minister, or any person authorized by him, may investigate and inquire into any matter, the investigation of which he considers expedient for the administration of this Act.

(2) The person making an investigation may at all reasonable times demand the production of and inspect all or

any of the books, documents, papers, correspondence and records of the person in respect of whom the investigation is being made, and any person who has custody, possession or control of any such books, documents, papers, correspondence or records shall produce them and permit the inspection thereof by the person making the investigation; and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the investigation.

6. (1) A person who contravenes section 2, 3 or 5 is guilty of an offence in respect of each contract and liable to a fine of not less than \$100 nor more than \$2,000 for each offence.

(2) A seller who contravenes section 2 may be ordered by the convicting court or judge to pay to the consumer an amount equal to any amount of money received, obtained or held by him in violation of this Act.

(3) Where an amount that is ordered to be paid under subsection (2) is not paid forthwith, the applicant may file the order in the district court and thereupon the order may be enforced as a judgment of the district court.

7. The Lieutenant Governor in Council may make regulations

- (a) prescribing the records required to be maintained under section 3, clause (c) ;
- (b) governing any other matter in connection with the administration of this Act and not otherwise provided for in this Act.

8. This Act comes into force on the day upon which it is assented to.