

1974 Bill 78

Third Session, 17th Legislature, 23 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 78

THE UNFAIR TRADE PRACTICES ACT

THE MINISTER OF CONSUMER AFFAIRS

First Reading

Second Reading

Third Reading

BILL 78

1974

THE UNFAIR TRADE PRACTICES ACT

(Assented to _____, 1974)

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

1. In this Act,

- (a) "consumer" means
 - (i) a person who receives or has the right to receive goods or services or both under a consumer transaction, or
 - (ii) an individual who receives goods or services or both as a gift to him from a person who obtained or has the right to obtain the goods or services or both from a supplier, or
 - (iii) a person who is or may become obligated at law to pay all or part of the consideration under a consumer transaction to a supplier or to otherwise compensate a supplier for goods or services or both, whether or not he is the recipient of or has the right to receive the goods or services;
- (b) "consumer organization" means any corporation that has as one of its objects the protection or advancement of the interests of consumers and is not incorporated for the purpose of acquiring gain for its members;
- (c) "consumer transaction" means
 - (i) a sale or lease of goods or any other disposition of goods for a consideration, whether or not the sale, lease or disposition includes any agreement or arrangement under which services are provided, or
 - (ii) an agreement or arrangement under which services are provided for a consideration, or

Explanatory Notes

General. This Bill is aimed at preventing unfair acts and practices in connection with certain consumer purchases of goods and services. A Director of Trade Practices will administer the Bill as an officer of the Department of Consumer Affairs. Unfair acts and practices are enumerated in section 4.

The Bill also provides remedies available in the courts by consumers, consumer organizations and the Director of Trade Practices where unfair acts or practices have been committed.

I. Definitions.

- (iii) an award by chance of goods or services or both;
 - (d) "court" means the Supreme Court of Alberta or a district court;
 - (e) "Director" means the Director of Trade Practices appointed under section 3, and includes a person authorized in writing by the Director to perform all or any of his duties and exercise all or any of his powers under this Act;
 - (f) "goods" means tangible personal property that is to be used by an individual for purposes that are primarily personal, family or household, or any right in that property;
 - (g) "Minister" means the Minister of Consumer Affairs or other member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
 - (h) "services" means services
 - (i) provided in respect of the maintenance or repair of goods or of real property used as a private dwelling by an individual, or
 - (ii) provided to an individual in conjunction with the use of social or recreational facilities, or
 - (iii) that are in their nature instructional or educational;
 - (i) "supplier" means
 - (i) a person who in the course of his business becomes liable under consumer transactions to sell, lease or otherwise dispose of goods or to provide services or both, or in the case of an award by chance of goods or services or both, to provide the goods or services awarded, or
 - (ii) a person who in the course of his business
 - (A) manufactures, assembles or produces goods that are the subject of a consumer transaction, or
 - (B) acts as a wholesaler or distributor of goods that are the subject of a consumer transaction, or
 - (C) solicits, advertises or otherwise promotes the use, purchase or acquisition in any manner of goods or services that are the subject of a consumer transaction,
- or

- (iii) a person who receives or is entitled to receive all or part of the consideration paid or payable under a consumer transaction, whether as a party thereto or as an assignee or otherwise, or who is otherwise entitled to be compensated by a consumer for goods or services or both.

2. (1) Except as provided in the regulations, this Act applies

- (a) to all consumer transactions arising on or after the date this Act comes into force, and
- (b) to those consumer transactions arising before the date this Act comes into force that are renegotiated, revised, extended, renewed or otherwise modified on or after the date this Act comes into force.

(2) For the purpose of subsection (1), clause (b), a consumer transaction shall be deemed not to be renegotiated, revised, extended, renewed or otherwise modified solely by reason of an extension of time for payment under the consumer transaction.

(3) This Act does not apply to services provided by

- (a) a person who, on behalf of another person, prints, publishes, distributes, broadcasts or telecasts a representation or an advertisement that he accepts in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of his business, or
- (b) a person employed in domestic work in a private dwelling, or
- (c) a person employed in casual employment.

3. In accordance with *The Public Service Act*, there may be appointed a Director of Trade Practices, inspectors and such other persons as may be necessary for the administration of this Act.

4. (1) For the purposes of this Act, the following are unfair acts or practices:

- (a) the subjection of the consumer to undue pressure by a supplier to enter into a consumer transaction;
- (b) the entering into a consumer transaction by a supplier where
 - (i) the consumer's ability was such that he was not reasonably able to understand the character or nature of that consumer transaction, and

2. Application of Act.

3. Staff.

4. Unfair acts or practices.

- (ii) that supplier took unfair advantage of that consumer's inability to understand the character or nature of that consumer transaction;
- (c) the entering into a consumer transaction by a supplier in circumstances where
 - (i) the supplier knew that there was a defect in the goods or that the services could not be provided,
 - (ii) the supplier knew that the consumer was not aware of or could not reasonably become aware of the defect in the goods or the fact that the services could not be provided, and
 - (iii) the defect in the goods or the failure to provide the services causes or is likely to cause the consumer to be substantially deprived of the benefit or benefits reasonably anticipated by that consumer under that consumer transaction;
- (d) any representation or conduct that has the effect or might reasonably have the effect, of deceiving or misleading a consumer or potential consumer which, without limiting the generality of the foregoing, includes the following:
 - (i) a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have;
 - (ii) a representation that the supplier has a sponsorship, approval, status, affiliation or connection that he does not have;
 - (iii) a representation that the goods are of a particular standard, quality, grade, style or model if they are not;
 - (iv) a representation that the goods have been used to an extent that is different from the fact;
 - (v) a representation that the goods are new or unused if they are not;
 - (vi) a representation that the goods are new or unused if they are deteriorated, altered, reconditioned or reclaimed;
 - (vii) a representation that the goods have a particular prior history or usage if they do not;
 - (viii) a representation that the goods or services are available for a reason that is different from the fact;

- (ix) a representation that the goods or services have been made available in accordance with a previous representation if they have not;
- (x) a representation that the goods or services are available if the supplier has no intention of supplying or otherwise providing the goods or services as represented or if the supplier does not have any reasonable grounds on which to believe that he has the ability to supply or otherwise provide the goods or services as represented;
- (xi) a representation that a specific price benefit or advantage exists if it does not;
- (xii) a representation that a part, replacement, repair or adjustment is needed if it is not;
- (xiii) a representation to a consumer by a supplier that a solicitation made by that supplier to a consumer is for a purpose or made for an intent if it is not in fact made for that purpose or intent;
- (xiv) a representation that a consumer transaction involves or does not involve rights, remedies or obligations if the representation is deceptive or misleading;
- (xv) a representation such that a consumer might reasonably conclude that the goods are available in greater quantities than are in fact available from the supplier;
- (xvi) a representation as to the authority of a salesman, representative, employee or agent to negotiate the final terms of a consumer transaction if the representation is different from the fact;
- (xvii) giving an estimate or quotation of the price of the goods or services which is materially less than the price of the goods or services as subsequently determined or demanded by the supplier and the supplier has proceeded with his performance of the consumer transaction without the express consent of the consumer;
- (xviii) giving, in any advertisement or display, less prominence to the total price of the goods or services than to the price of any part of the goods or services.

(2) An unfair act or practice may occur in the course of inducing persons to enter into a consumer transaction, notwithstanding that the consumer transaction is not completed or did not take place.

5. The Director may

- (a) inquire into matters in respect of which he has reason to believe that an unfair act or practice has taken place or is taking place;
- (b) require written information from a consumer or supplier or the officers or servants of the supplier that is relevant to determining whether an unfair act or practice has taken place or is taking place.

6. The Director shall not publicly disclose the name of a person whose conduct is the subject of an inquiry under this Act unless

- (a) that conduct already is the subject of an action or prosecution or is the subject of a document of public record and that person's identity has been revealed in that action, prosecution or document, or
- (b) that person consents to the disclosure.

7. (1) Where the Director has reasonable and probable grounds to believe that a supplier has engaged in or is engaging in an unfair act or practice the Director may, notwithstanding that an action may not have been commenced, apply ex parte to a court for an order permitting him to enter any building, dwelling, receptacle or place to search for, examine and remove, take extracts from or obtain reproduced copies of any books, files, papers, documents or things of that supplier.

(2) Upon an application under subsection (1) being made, the court may make an order upon such terms and conditions as the court considers proper.

(3) Upon the order being granted under subsection (2), any person affected by the order may, upon notice to the Director apply to the court to have the order varied or set aside and upon hearing the matter the court may refuse the application or vary or set aside the order upon such terms and conditions as the court considers proper.

8. A person who, acting under an order granted under section 7, removes any books, files, papers, documents or things shall

- (a) give to the person from whom the items were taken a receipt for the items taken, and
- (b) forthwith make copies of, take photographs of or otherwise record the items removed and forthwith return the items to the person to whom the receipt was given under clause (a).

5. Powers of the Director.

6. Confidentiality.

7. Entering premises, investigating records and verification of information.

8. Removal of records and other items.

9. (1) Where a supplier who has been paid money or been given security by a consumer in respect to a consumer transaction is the subject of an inquiry under this Act or is a party to an action commenced under this Act, and that supplier has absconded from Alberta, or the Director has reasonable and probable grounds to believe that the supplier is about to abscond from Alberta or that the supplier is dissipating his assets or money paid or security given to him by the consumer, the Director may, notwithstanding that an action may not have been commenced, apply ex parte to a court for an order

- (a) prohibiting any person
 - (i) holding funds of that supplier, or
 - (ii) having possession of or control over any real or personal property or other assets of that supplier, or
 - (iii) who has any debt or other choses in action payable to that supplier,
from dispersing or otherwise dealing with the funds, property, assets, debts or choses in action except as approved by the court;
- (b) appointing a trustee or receiver or both to hold or take possession of the funds, property, assets, debts or choses in action of that supplier upon such terms and conditions as the court approves.
- (c) directing any supplier who is the subject of an inquiry under this Act not to dispense any funds or deal with any property, assets or debts or choses in action owing to him except as approved by the court or directed by the trustee or receiver.

(2) Upon an application under subsection (1) being made, the court may make an order upon such terms and conditions as the court considers proper.

(3) Upon the order being granted under subsection (2), any persons affected by the order may, upon notice to the Director, apply to the court to have the order varied or set aside and upon hearing the matter the court may refuse the application or vary or set aside the order upon such terms and conditions as the court considers proper.

10. (1) Where a consumer has suffered damage or loss due to an unfair act or practice, that consumer may, on behalf of himself or on behalf of himself and other consumers who have suffered similar damage or loss due to similar unfair acts or practices, commence and maintain an action in court against any supplier of the goods or services that are the subject of the consumer transaction who engaged in or acquiesced in those unfair acts or prac-

9. Order affecting supplier's assets.

10. Actions by individual consumers and consumer class actions.

tices that caused that damage or loss, for relief from that damage or loss under this section.

- (2) In an action under this section, the court may
 - (a) award damages for damage or loss suffered;
 - (b) award punitive or exemplary damages;
 - (c) make an order for
 - (i) specific performance of the consumer transaction, or
 - (ii) restitution of property or funds, or
 - (iii) rescission of the consumer transaction;
 - (d) make an order declaring that the act or practice is an unfair act or practice;
 - (e) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair act or practice;
 - (f) make such directions and grant such other relief as the court considers proper.

(3) The court may award party and party costs and solicitor and client costs or either of them.

(4) When an action is commenced under subsection (1), the plaintiff shall serve the Director with a copy of the statement of claim within 15 days after the date on which the statement of claim was served upon the defendant.

(5) Upon being served under subsection (4), the Director may, upon notice to all parties to the action, make application to the court to be added as a party and upon the order being made the Director may take any steps he could have taken had he commenced an action under section 11.

11. (1) Where the Director is of the opinion that a supplier has engaged in or is engaging in an unfair act or practice, he may commence and maintain an action in a court against the supplier.

- (2) In action brought under this section, the court may
 - (a) make an order declaring that the act or practice is an unfair act or practice;
 - (b) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair act or practice;
 - (c) grant such other relief as the court considers proper.

12. (1) Subject to this section, the Director may, where it is in the public interest to do so,

- (a) commence and maintain an action under section 10 where a consumer has a cause of action under that section, or

11. Actions by the Director.

12. Actions by the Director on behalf of consumers.

- (b) maintain an action under section 10 after it has been commenced, or
- (c) bring and maintain an appeal in an action under section 10.

(2) Where pursuant to subsection (1) the Director brings or maintains an action or an appeal under section 10, he shall do so in the name of and on behalf of that consumer or class of consumers and he shall be entitled to take the same steps in and have the same control over the action or appeal including the right to settle the action or appeal or any part thereof, as that consumer or class of consumers would have had in respect of that action or appeal.

(3) The Director shall not bring or maintain an action or an appeal under this section without first obtaining the written consent of the consumer in whose name the action is brought.

(4) Upon the consumer giving written consent under subsection (3), the Director may, without consulting or seeking any further consent of the consumer, conduct the action or appeal in such a manner as the Director considers appropriate and proper.

(5) In any action or appeal commenced, brought or maintained by the Director pursuant to subsection (1),

- (a) any moneys recovered, excluding costs of the action or appeal, shall be paid to the consumer where reasonable and practicable;
- (b) any moneys payable by the consumer, excluding costs of the action or appeal, are not recoverable from the Director or the Government of Alberta;
- (c) the costs of the action or appeal shall be paid to or borne by the Director.

(6) Nothing in this section abrogates or restricts any right of set-off that a supplier has or may have against a consumer on whose behalf the Director is acting under this section.

(7) Where the Director, while acting on behalf of a consumer or class of consumers under this section, releases a supplier from a liability or an obligation arising out of the cause of action, that release shall extinguish that claim to that liability or obligation referred to in that release which that consumer or class of consumers may have against that supplier.

(8) Where money is paid to the Director in an action referred to in subsection (1) and

- (a) it is not reasonable or practicable to pay the money to the consumer, or

(b) the consumer to whom the money is payable cannot be located,
the Director may apply to the court for directions respecting the payment of the money and, upon complying with the directions of the court, pay any remaining balance into the General Revenue Fund.

13. (1) A consumer organization may commence and maintain an action in a court against a supplier who is engaging in or has engaged in an unfair act or practice.

(2) In an action under this section, the court may

- (a) make an order declaring that the act or practice is an unfair act or practice, and
- (b) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair act or practice.

(3) A consumer organization bringing an action under this section shall not be required to have an interest in or be affected by the matter in issue in order to commence and maintain the action.

14. (1) Upon the commencement of an action under section 10, 11, 12 or 13, a plaintiff may apply ex parte for an order in the nature of an interim injunction and if the court is satisfied that

- (a) there are reasonable and probable grounds for believing that there exists an immediate threat to the interests of persons dealing with the defendant supplier by reason of an alleged unfair act or practice, or
- (b) the applicant has established a prima facie case of the existence of an unfair act or practice being committed by the defendant supplier,

the court may grant an order in the nature of an interim injunction, on such terms and conditions as the court considers proper, restraining the supplier from carrying on that act or practice that is alleged to be unfair.

(2) In any application for an order in the nature of an interim injunction,

- (a) the applicant need not establish that irreparable harm will be done to himself or all other consumers or any designated class of consumers in Alberta, if the interim injunction is not granted, and
- (b) the court may dispense with any requirement by the applicant to post a bond or give any undertaking as to damages.

13. Actions by consumer organizations.

14. Interim injunction.

15. (1) Where the court grants relief under section 10, 11, 12 or 13 the court may make a further order requiring the supplier to advertise to the public particulars of any order, judgment or other relief granted by the court.

(2) In making an order under subsection (1), the court may prescribe

- (a) the methods of making the advertisement so that it will assure prompt and reasonable communications to consumers;
- (b) the content or form or both of the advertisement;
- (c) the number of times the advertisement is to be made;
- (d) such other conditions as the court considers proper.

16. (1) Every person and every director, officer or employee of a person who

- (a) refuses to provide information required under this Act, or
- (b) provides false information when providing information under this Act,

is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where any regulation is made pursuant to section 19, clause (a), every supplier, and every director, officer or employee of a supplier who makes a representation to which the regulation applies and that does not contain as part thereof the information prescribed by the regulation, is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 or to imprisonment for a term of not more than three months, or both.

17. Any copy made under section 8 and certified to be a true copy by the person making the inquiry shall be admitted in evidence in any action, proceeding or prosecution as prima facie proof of the original book, file, paper, document or thing and its contents.

18. (1) The provisions of this Act apply notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided under this Act is against public policy and void.

(2) Nothing in this Act shall restrict, limit or derogate from any remedy that a person has at common law or under statute.

15. Advertisement of judicial decisions.

16. Offences.

17. Evidence.

18. Effect of Act.

19. The Lieutenant Governor in Council may make regulations

- (a) prescribing information that must be part of a representation made by a supplier or class thereof in respect of any consumer transaction or class thereof;
- (b) respecting the form of and manner of filing complaints under this Act;
- (c) exempting any class of consumer transaction from the operation of all or any of the provisions of this Act;
- (d) generally respecting any other matter necessary for carrying out the purpose and intent of this Act.

20. This Act comes into force on a date to be fixed by Proclamation.

19. Regulations.