

1978 BILL 212

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 212

**AN ACT TO PROVIDE FOR WARRANTIES IN THE SALE OF
CONSUMER PRODUCTS**

MRS. CHICHAK

First Reading -----

Second Reading -----

Committee of the Whole -----

Third Reading -----

Royal Assent -----

Bill 212
Mrs. Chichak

BILL 212

1978

AN ACT TO PROVIDE FOR WARRANTIES IN THE SALE OF CONSUMER PRODUCTS

(Assented to _____, 1978)

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

1. (1) In this Act,
 - (a) "consumer" means
 - (i) an individual who receives or has the right to receive a consumer product under a consumer transaction,
 - (ii) an individual who receives a consumer product as a gift to him from a person who obtained or has the right to obtain the consumer product from a manufacturer, or retail seller or seller, or
 - (iii) with respect to statutory warranties of a retail seller or manufacturer referred to in this Act, includes the immediate family of an individual within the meaning of subclauses (i) or (ii) and any person who may reasonably be expected to use, consume or be affected by a product acquired by such individual and who suffers personal injury as a result of a breach of the warranty;
 - (b) "consumer product" means personal property or any right or interest therein that are to be used by a consumer for the purposes that are primarily personal, family or household and includes personal property that becomes a fixture subsequent to a consumer transaction, but does not include
 - (i) choses in action,
 - (ii) money,
 - (iii) securities as defined in *The Securities Act*, or
 - (iv) personal property acquired by a person for the purpose of sale or in the course of carrying on a business;
 - (c) "consumer transaction" means
 - (i) a sale, lease or any other disposition of a consumer product for a consideration, other than a transfer for resale or in the course of carrying on a business, or

Explanatory Notes

General: This Bill provides for extended warranties in the case of a sale of consumer products in place of the warranties that presently apply under The Sale of Goods Act. It voids any agreement to waive such warranties.

I. Definitions.

- (ii) an award by chance of a consumer product;
- (d) “retail buyer” means a person who buys a consumer product from a retail seller in a consumer transaction;
- (e) “retail seller” means a person who engages in the business of selling consumer products to consumers;
- (f) “seller” means a person who sells a consumer product to a consumer;
- (g) “manufacturer” means
 - (i) a person who manufactures or assembles a consumer product,
 - (ii) a person who describes himself or holds himself out as the manufacturer of a consumer product,
 - (iii) a person who is the registered owner of the brand name under which the consumer product is offered for sale,
 - (iv) where a consumer product is imported into Canada and there is not a manufacturer as defined in subclauses (i), (ii) or (iii) with a place of business in Canada, the person who imported a consumer product; and

more than one person may be manufacturers of the same consumer product;

- (h) “warranty” means an express or implied warranty;
 - (i) “express warranty” means an affirmation of fact or promise relating to the quality, condition, quantity, performance or efficiency of a consumer product or relating to its use and maintenance where the tendency of such affirmation is to induce the buyer to purchase the consumer product;
 - (ii) “implied warranty” means a warranty which by this Act is deemed to be an implied warranty.

(2) This Act does not apply in respect of a disposition of a consumer product where the consideration therefor is less than \$25.

(3) Section 14 to 18 and 53 to 55 of *The Sale of Goods Act* do not apply to a consumer transaction.

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 modified on or after the date this Act comes into force.

(2) For the purpose of subsection (1)(b), a consumer transaction shall not be deemed to be renegotiated, revised, exten-

2. Application of Act.

ded, renewed or otherwise modified solely by reason of an extension of time for payment under the consumer transaction past the time that the payment is due.

3. In accordance with *The Public Service Act*, there may be appointed to the Department of Consumer and Corporate Affairs, inspectors and other such persons as may be necessary for the administration of this Act, providing that money has been appropriated to that purpose by the Legislature.

4. There is an applied warranty by the seller of a consumer product to the consumer to whom the consumer product is sold,

- (a) that the seller has a right to sell the consumer product,
- (b) that the consumer will have and enjoy quiet possession of the consumer product, and
- (c) that the consumer product is free from any charge or encumbrance not declared or known to the consumer before or at the time the sale is made.

5. (1) Where there is a consumer transaction by description made by the retail buyer, there is an implied warranty by the retail seller that the consumer product conforms to the description.

(2) Where there is a sale of a consumer product to a retail buyer,

- (a) by sample,
- (b) by description made by the retail seller, or
- (c) by description made by the manufacturer or a person acting on behalf of the manufacturer,

there is an implied warranty,

- (d) by the retail seller in a case to which clause (a) or (b) applies, or
- (e) by the manufacturer and retail seller jointly in a case to which clause (c) applies,

to the retail buyer that the consumer product corresponds to the description or sample.

(3) For the purposes of subsection (2), the description of a consumer product includes description by advertisement or by label or associated with the production orally or in writing.

(4) For the purpose of subsection (2), where a sale is by sample as well as description, it is not sufficient that the consumer product corresponds with the sample if the consumer product does not also correspond with the description.

6. There is an implied warranty by the manufacturer and retail seller jointly to the consumer of a consumer product that,

3. Staff.

4. Warranty as to title.

5. Warranty as to conformance to description.

6. Warranty of performance.

- (a) the consumer product and its components will perform for a reasonable length of time, having regard to the price and all surrounding circumstances;
- (b) the consumer product is in a state and condition such that a buyer fully acquainted with its state and condition and knowing what hidden defects existed, would buy it for any purpose for which the consumer product is normally used without abatement of the price normally obtainable for such consumer product if in a reasonably sound state and condition and without special terms, unless
 - (i) the retail seller or manufacturer has disclosed to the retail buyer all significant defects in the consumer product or advised him that the consumer products are not suitable for all purposes for which they are normally used,
 - (ii) the defect should have been apparent to the consumer where he has examined the consumer product prior to purchase, or
 - (iii) it is common knowledge among consumers that the consumer product is not suitable for the purpose to which it was put.

7. With respect to sales of second-hand or substandard, or otherwise inferior consumer products, the fact that the consumer products are so described or that the price is significantly lower than that at which new consumer products of that type are obtainable in the market shall be taken into account in determining the characteristics and qualities which are reasonable to expect in the consumer product.

8. There is an implied warranty by the manufacturer and retail seller jointly to the consumer of a consumer product that spare parts and reasonable repair facilities will be available for a reasonable period of time.

9. (1) There is an implied warranty by the retail seller to the retail buyer of a consumer product that the consumer product is reasonably fit for the particular purpose for which it is required, unless the circumstances are such as to show that the retail buyer did not rely, or that it was unreasonable for the retail buyer to rely on the retail seller's skill and judgement.

(2) For the purpose of this section, a particular purpose for which the consumer product is required includes not only an unusual or special purpose but also a normal or usual purpose.

10. (1) An express warranty made by a retail seller in connection with the sale of a consumer product to a retail buyer,

7. Used consumer products.

8. Warranty as to spare parts and repairs.

9. Warranty as to fitness for purpose.

10. Express warranties.

- (a) if made in writing or published or broadcast, is an express warranty by the retail seller to the consumer of the consumer product; and
 - (b) if not made in writing or published or broadcast, is an express warranty by the retail seller to the retail buyer of the consumer product.
- (2) An express warranty made in writing or published or broadcast by a person other than a retail seller in connection with the sale of a consumer product to a retail buyer, is a warranty by the retail seller and the manufacturer, jointly, to the consumer of the consumer product.
- (3) An express warranty does not negative or reduce an implied warranty.
- (4) For the purposes of this section “made in writing or published or broadcast” means a statement
- (a) made in writing and accompanying the product, whether on the package or separately, or handed to the buyer in the process of completing the sale,
 - (b) made in writing and distributed or displayed to the general public, whether by advertisement, sign, display or other means, or
 - (c) made by television or radio broadcast to the general public,
- and the person who causes the statement to be printed, distributed, displayed, published or broadcast shall be deemed to be the person who makes the statement.

11. (1) Any term or acknowledgement relating to a consumer transaction whether written or otherwise and whether part of the agreement or sale or not, that purports to negate, disclaim, restrict or diminish any remedy otherwise available for the breach thereof is void and of no effect and, if a term of a contract, is severable therefrom, and such term or acknowledgement shall not be evidence of circumstance showing an intent that any warranty was not to apply.

(2) No person shall include in a written agreement relating to a consumer transaction anything that purports to be a term or acknowledgement that is void and of no effect under subsection (1).

(3) Any act or representation by an employee or agent of a retail seller or manufacturer having apparent authority shall be deemed to be an act or representation of the retail seller or manufacturer.

12. (1) Where a warranty is given by this Act to a consumer, the person by whom the warranty is given owes a duty to the consumer to perform the warranty and is liable to the consumer in

11. Agreement waiving warranty or remedy.

12. Breach of warranty.

damages for any breach thereof or, where the warranty is given in connection with a contract of sale between them, to rescission of the contract, or both.

(2) Where a consumer has entered into a consumer transaction, and in respect of that consumer transaction, has suffered loss, damage or injury because the manufacturer, retail seller or seller is in breach of a warranty, that consumer may

- (a) refer the dispute to an inspector appointed to the Department of Consumer and Corporate Affairs pursuant to section 3, who may endeavour by mediation to settle the dispute, or
- (b) commence an action in a court against any manufacturer or retail seller or seller who engaged in the breach of warranty that caused the loss, damage or injury, for relief from that loss, damage or injury.

(3) In the trial of an issue under subsection (2), oral evidence respecting the facts necessary to establish an implied or express warranty is admissible notwithstanding that there is a written agreement and notwithstanding that the evidence pertains to a representation or undertaking that is or is not provided for in the agreement.

(4) The measures of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty.

(5) No action shall be brought under subsection (2) after the expiration of 2 years from the time the breach of warranty is first alleged.

13. When a consumer has suffered loss, damage or injury which prima facie appears to be caused by the fact that the manufacturer is in breach of a warranty, the onus of proving on the balance of probabilities that he is not in breach of those warranties shall lie on the manufacturer or retail seller.

14. (1) Where by this Act the retail seller and manufacturer give or are deemed to give a warranty jointly, the retail seller and all manufacturers of the consumer product are jointly and severally liable under section 12 but as between themselves in the absence of any contract, express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be responsible for the creation of the circumstances leading to the creation of the warranty and its breach.

(2) Where a claim for damages under section 12 is settled, for the purposes of an action for contribution or indemnity in respect of the amount paid under the settlement, the person settling shall satisfy the court that the amount of the settlement was reasonable, and in the event that the court finds the amount of the settlement was excessive it may fix the amount at which the claim should have been settled and base the contribution thereon.

13. Onus of proof.

14. Indemnity or contribution between persons jointly liable.

(3) Where the right of contribution or indemnity under this section is disclaimed or restricted by the terms of an agreement and it appears to the court that the disclaimer or restriction is unreasonable or unfair for the reason that the person against whom the disclaimer or restriction is imposed has no means to avoid liability or for any other reason, the court may declare the term void and of no effect, and the term shall be deemed to be severable from the agreement for the purpose.

15. The Lieutenant Governor in Council may make regulations

- (a) governing the form, content and use of written express warranties that accompany the consumer product,
- (b) prescribing information that must be part of a representation made by a manufacturer or retail seller or seller in respect of any consumer transaction or class thereof,
- (c) respecting the form and manner of filing complaints under this Act,
- (d) exempting any class of consumer transaction or consumer product from the operation of all or any of the provisions of this Act,
- (e) generally respecting any other matter necessary for carrying out the purpose and intent of this Act.

16. (1) Every person who knowingly

- (a) contravenes section 11(2), or
- (b) gives an express warranty that is in contravention of a regulation made under section 15(a)

is guilty of an offence and on summary conviction is liable to a fine of not more than \$5000 or to imprisonment for a term of not more than one year, or to both fine and imprisonment.

(2) No proceeding under this section shall be commenced more than 2 years after the time when the subject matter of the proceeding arose.

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

15. Regulations.

16. Penalty.