

1978 BILL 228

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 228

**AN ACT RESPECTING CONSUMER ACCOUNTS AND
RECORDS**

MR. TAYLOR

First Reading -----

Second Reading -----

Committee of the Whole -----

Third Reading -----

Royal Assent -----

Bill 228
Mr. Taylor

BILL 228

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AN ACT RESPECTING CONSUMER ACCOUNTS AND RECORDS

(Assented to _____, 1978)

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

1. In this Act,
 - (a) "creditor" means the person who is
 - (i) the lender in a loan agreement, or
 - (ii) the supplier in a sale agreement;
 - (b) "debtor" means
 - (i) the borrower in a loan agreement, or
 - (ii) the user in a sale agreement;
 - (c) "record" means information stored or available by any means whatsoever;
 - (d) "statement" means a time sale agreement, memorandum of revision, or periodic statement issued pursuant to section 5 of *The Credit and Loan Agreement Act*, and includes a statement generated partly or completely from records stored in a computer, but, for the purposes of this Act, section 4(a) of *The Credit and Loan Agreements Act* shall not apply.

Explanatory Notes

General. The purpose of this Act is to provide a channel through which consumers and creditors may handle errors in billing. It is also to ensure to the consumer a standard of privacy in regard to any information held by the creditor relating to the consumer, and to establish a course of action which will allow the debtor to have any personal information relating to him removed from the creditor's possession.

1. Definitions.

Sections 4 and 5 of *The Credit and Loan Agreements Act* presently read:

4. This Part does not apply to
 - (a) a sale for an amount less than \$50, or
 - (b) a sale made
 - (i) by a manufacturer or dispatcher to a wholesaler, or
 - (ii) by a manufacturer, distributor or wholesaler to a retailer,
 - (c) any sale or type of sales to which this Act is declared by the regulations not to be applicable.
5. (1) A time sale agreement shall set out,
 - (a) the cash selling price as it appears at the date of the sale in advertisements, labels, price lists, catalogues and other price marks of the seller or as required from a cash buyer including the cost of transportation and installation of the thing sold, if that cost is charged separately to the buyer,
 - (b) to the amount of the initial payment by the buyer with separate mention of
 - (i) the amount paid in money by the buyer, and
 - (ii) the amount credited to the buyer on the giving by the buyer of any article or thing to the seller,
 - (c) the amount of the balance of the price on the time sale to be paid by the buyer,
 - (d) the amount if any charged separately at the buyer's request for physical damage and liability insurance in respect of the goods sold,
 - (e) the amount, if any, charged separately for life and for health and accident insurance protection for the buyer at his request,
 - (f) the official fee, if any,
 - (g) the credit charges expressed
 - (i) as a money charge, and
 - (ii) as the annual percentage rate that the credit charge bears to the sum of the amounts stated under clauses (c), (d), (e) and (f),
 - (h) the total of the amounts stated under clauses (c), (d), (e), (f) and (g) to be paid the seller with mention of
 - (i) the amounts by which the total is to be paid, and
 - (ii) the period or periods at which these amounts are to be paid,
 - (i) the total additional charge, if any, other than court costs, to be paid by the buyer in the event of default, expressed as a rate per centum per annum in the manner prescribed by the regulations, and
 - (j) a clear description of the goods sold.
- (2) If the transportation or installation costs referred to in subsection (1), clause (a) are charged separately to the buyer, these costs shall be separately set out in the time sale agreement.
- (3) Where any of the terms of a time sale agreement (whether entered into before, on or after June 1, 1968) are varied or revised other than by the extension of new additional credit, the seller, or his assigns, shall give to the buyer a memorandum of revision setting out, where applicable,
 - (a) the amount remaining unpaid under the original agreement.

2. Where a debtor receives a statement that he has grounds to believe is incorrect, he may, within 10 days of receipt of the statement, send a notice of error by registered mail to the creditor, including the following information:

- (a) the debtor's name and address;
- (b) the date of the statement;
- (c) file or account number shown on the statement, if any;
- (d) the amount shown to be due on the statement;
- (e) the amount that the debtor alleges is due; and
- (f) any other detail of the account that the debtor alleges to be incorrect;

and accompanied by payment of that part of the amount due that the debtor alleges is due.

3. Upon receipt of a notice of error from a debtor, the creditor shall, within 5 days of receipt of the notice, send to the debtor by registered mail an acknowledgement of such notice.

4. Within 14 days of receipt of the notice of error, the creditor shall carry out an examination of the debtor's statement and any records from which it has been produced in order to verify or disprove the debtor's allegation, and send to the debtor, by registered mail, either

- (a) a corrected statement, or
- (b) information sufficient to demonstrate to the debtor that the original statement was correct.

5. If the creditor does not send a corrected statement pursuant to section 4(a) or if the creditor sends information pursuant to section 4(b), and the debtor does not thereafter acknowledge in writing that the original statement was correct, nothing in this Act shall oblige the debtor to pay the disputed amount in the statement, nor shall this Act prevent the creditor from exercising other legal remedies to collect the debt.

6. (1) No creditor or agent or employee of a creditor shall release information relating to a debtor, his purchases, payments or credit rating which is stored in a computer or any other record kept by the creditor, to any person other than a law enforcement agency, without the written consent of the person regarding whom the information is being kept.

(2) The release of any such information to a collection agency for the purpose of collecting an overdue debt shall be deemed to be release by permission of the debtor.

- (h) the rebate of credit charge, if any, computed as required by the regulations as though the original agreement was being fully paid in advance.
- (c) the balance resulting from subtracting the rebate stated under clause (b) from the amount stated under clause (a),
- (d) the official fee, if any.
- (e) the new credit charges expressed
 - (i) as a money charge, and
 - (ii) as the annual percentage rate that the credit charge bears to sum of the amounts stated under clauses (c) and (d),
- (f) the total of the amounts stated under clauses (c), (d) and (e) with mention of
 - (i) the amounts by which the total is to be paid, and
 - (ii) the period or periods at which these amounts are to be paid, and
- (g) the total additional charge, if any, other than court costs, to be paid by the buyer in the event of default, expressed as a rate per centum per annum in the manner prescribed by the regulations.

(3.1) A time sale agreement and any variation or revision of a time sale agreement shall be signed by the buyer.

(4) The information required to be given by this section shall be set out in the agreement or memorandum before or above the space intended for the signature of the buyer.

(5) Where goods are purchased under a continuous deferred payment plan, the seller shall be deemed to have complied with the requirements of this Act if the terms of the plan are in writing and if the plan and the periodic statements and the other documents supplied by the seller to the buyer or, any one or more of them, clearly set out

- (a) the particulars mentioned in subsection (1), clause (a),
- (b) where applicable the particulars mentioned in subsection (1), clauses (b), (c), (d), (e) and (i),
- (c) the total balance owing to the seller by the buyer as of the date of each statement supplied by the seller and the amount of the next instalment payable under the plan and the date by which it is required to be paid, and
- (d) the credit charge, if any,
 - (i) in the written agreement as a scale of money charges shown in a schedule of amounts of outstanding balances and the applicable charges, and as an annual percentage rate or a scale of annual percentage rates, and
 - (ii) in the periodic statement as the actual amount of money charged with a clear indication of the balance on which the charge is calculated and as an annual percentage rate or a scale of annual percentage rates.

2. Notice of error.

3. Acknowledgement of notice of error.

4. Corrected statement or explanation.

5. Remedies at law not affected.

6. Confidentiality of information relating to a debtor.

7. A debtor who has discharged all his debt to a creditor may notify the creditor in writing that he no longer wishes to deal with the creditor and that he wishes all records relating to the debtor to be destroyed, and the creditor, unless subject to a court order or a demand by a law enforcement agency to retain such records as evidence, shall, within a period of 30 days, destroy or erase all records he holds in any location pertaining to the debtor from all records in his possession or control.

8. The creditor shall, within 30 days of receipt of a notification sent pursuant to section 7, notify the debtor by mail of the course of action taken in regard to his file and computer data.

9. Where a debtor sends a notification pursuant to section 7, and the result is that all records pertaining to any agreement between the debtor and the creditor are destroyed, the debtor shall be deemed to have forfeited the right to challenge any statement issued by the creditor under this or any other Act.

10. The creditor, by destroying records pursuant to section 7, shall thereby be deemed to have forfeited the right to enforce any debt against the debtor which was evidenced by such records.

11. Any creditor who fails to comply with section 3 and 4 forfeits the right to collect the amount disputed in the debtor's notice referred to in section 2.

12. Any creditor who, without just cause, fails to comply with section 7 or 8 of this Act, shall be liable for a first offence to a fine of not less than \$500 or imprisonment for not less than six months, or to both fine and imprisonment, and, for a subsequent offence, to a fine of not less than \$1000 or imprisonment for not less than 3 years, or to both fine and imprisonment.

13. The following records are exempt from this Act:

- (a) records kept by law enforcement agencies,
- (b) records kept by the Government, a municipal government or their agencies,
- (c) records kept by the Better Business Bureau of Edmonton,
- (d) records kept by the Better Business Bureau of Calgary, and
- (e) such other agencies as are named in the regulations.

14. The Lieutenant Governor in Council may make regulations

- (a) exempting any person from this Act;

7. Records destroyed at creditor's request.

8. Confirmation of action.

9. Debtor may not challenge statement after records destroyed.

10. Creditor may not claim a debt after records destroyed.

11. Forfeit of debt.

12. Offences and penalties.

13. Exempt records.

14. Regulations.

- (b) exempting any records from this Act;
- (c) for the inspection of the records of any creditor where there is reasonable cause to believe that there has been a breach of a provision of this Act.

15. Nothing in this Act shall be construed as limiting or removing any right or remedy existing in law at the coming into force of this Act relating to the dispute of an account between a debtor and a creditor.

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

15. Remedies existing at law not affected.