

1991 BILL 265

Third Session, 22nd Legislature, 40 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 265

TELEMARKETING ACT

MR. BRUSEKER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 265
Mr. Bruseker

BILL 265

1991

TELEMARKETING ACT

(Assented to , 1991)

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

Definitions

1(1)In this Act,

- (a) "buyer" means a person who is the buyer or offeror under a sales contract, and includes an assignee of that person;
- (b) "call" means make a telephone call or send a facsimile message;
- (c) "Minister" means the Minister of Consumer and Corporate Affairs;
- (d) "sales contract" means
 - (i) an agreement for the sale of goods and services or both for future delivery or performance in whole or in part,
 - (ii) an agreement under which the buyer, at some future time, on 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,
 - (iii) an agreement under which the buyer does some act or pays a price in excess of \$25 and thereupon becomes entitled to be the owner of goods or to have services performed,

(iv) 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,

(v) a sale of goods effected by way of a lien note or by way of an agreement or arrangement made at the time of the sale or subsequent thereto whereby the buyer gives to the seller a chattel mortgage or a bill of sale covering the whole or part of the purchase price of the goods sold, or

(vi) an offer to buy goods or services or services or to enter into any agreement of the kinds mentioned in subclauses (i) to (v);

(e) "telemarketer" means a person who owns or operates a telemarketing business;

(f) "telemarketing" means marketing by telephone or facsimile machine whether done

(i) by a personal call,

(ii) by computer, or

(iii) by an automated recorded message device,

and that involves a call to a residence.

(2) For the purposes of this Act, a sales contract to which this Act applies is deemed to be made in the Province if

(i) the buyer is resident in Province,

(ii) the contract is concluded in the Province.

(3) For the purposes of this Act, a sales contract is concluded when it is signed by the buyer.

Responsibility for employees

2 A person who operates a telemarketing business shall ensure that anyone employed, contracted to or acting on behalf of the business in telemarketing and any equipment used in telemarketing complies with the provisions of this Act.

3 A telemarketer shall be licensed and bonded in accordance with the provisions of the *Licensing of Trades and Business Act*.

Hours permitted

4 No telemarketer or anyone employed by, contracted to him or acting on behalf of his business shall make, cause or permit any call to be initiated for the purpose of telemarketing except

between 9:00 a.m. and 11:00 a.m., 2:00 p.m. and 5:00 p.m., and 7:00 p.m. and 9:00 p.m. nor at any time on a holiday.

Identification

5 A telemarketing call shall identify the name of the caller and the person the caller represents

(a) as the first part of the telemarketing message, and

(b) within 10 seconds of the commencement of contact with the person answering at a residence.

No further calls

6 A telemarketer who receives an oral or written request from a person who has received a telemarketing call not to call the same number again, shall keep a written record of the request, comply with the request and not call the number again for a period of 12 months from the date the request is received.

Disconnect

7 Where telemarketing is done by computer or by an automated recorded message device

(a) all calls shall be made from a prepared list and not as a result of a program providing for the automatic dialling of sequentially or of randomly generated numbers,

(b) the computer or device shall be designed so that it disconnects automatically within 10 seconds after the person being called hanging up the telephone or cancelling the facsimile receiving function, and

(c) the computer or device shall not redial a number called a second time until a period of 48 hours has elapsed.

8 Where telemarketing is done by computer or by an automated recorded message device the message shall include complete information regarding

(a) total cost of the goods or services to which the message pertains,

(b) any extra charges not included in the price of the goods or services and for which the buyer will be responsible in order to receive the goods or services,

(c) any warranties provided under or collateral to the terms of the sales agreement, and

(d) any guarantees provided under or collateral to the terms of the sales agreement.

Rescission of Sales
Contract

9(1)A buyer may rescind a sales contract by giving a notice of cancellation,

(a) not later than the seventh day after the date on which the copy of the sales contract is received by him by personal delivery or by mail,

(b) not later than one year after the date on which the copy of the sales contract is received by him by personal delivery or by mail, if

(i) all of the goods or services to be supplied under the sales contract are not supplied within 21 days after the date the sales contract was signed by the buyer,

(ii) all of the goods or services are not supplied within 21 days after that date,

(iii) the buyer does not receive a copy of the sales contract by personal delivery or by mail within 10 days after the date it is signed by him.

(2) A notice of cancellation under this section is sufficient if, however expressed, it indicates the intention of the buyer to cancel, terminate or withdraw from the sales contract.

(3) A notice of cancellation under this section may be given by delivering it or sending it by mail,

(a) to the seller or a person named in the sales contract as a person to whom a notice of cancellation may be given, at the address shown in the sales contract, or

(b) if the buyer's copy of the sales contract was not received by him, by personal delivery or by mail, or if no address of the seller or other person is shown in the sales contract

(i) to any salesman,

(ii) to any address of the seller known to the buyer, or

(iii) to the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act.

Effect of
cancellation of
contract

10(1) A notice of cancellation given in accordance with section 9 operates,

- (a) to cancel the sales contract, or
- (b) when the sales contract is an offer to buy, to withdraw the offer,

as if the sales contract never existed.

(2) A notice of cancellation given in accordance with section 6 also operates to cancel

- (a) any related sale,
- (b) any guarantee given in respect of money payable under the sales contract, and
- (c) any security given by the buyer or a guarantor in respect of money payable under the sales contract,

as if it never existed.

Refund and return
of goods

11(1) The seller shall within 15 days of the giving of a notice of cancellation in accordance with section 9

- (a) refund to the buyer all money paid under the sales contract, any related sale and any pre-existing contract, and
- (b) return to the buyer's premises any goods delivered by the buyer under a trade-in arrangement.

(2) When a notice of cancellation is given in accordance with section 9, the buyer shall return to an authorized person goods that came into the buyer's possession under the sales contract or a related sale or pre-existing contract if a written request is given to the buyer by an authorized person which is signed or purports to be signed by or on behalf of the seller, but the obligation of the buyer under this subsection is subject to any lien or right to retain the goods that he may have under section 12 and his right to enforce the lien.

(3) The buyer may

- (a) return the goods to an authorized person or to a person designated for the purpose by an authorized person, at a place elsewhere than at the buyer's premises, or
- (b) return the goods at his own expense to the seller or to a person specified in the sales contract as a person to whom a notice of cancellation may be sent.

(4) A return of the goods in accordance with subsection (2) or (3) shall be deemed to be made with the consent of the seller or, if the seller is not entitled to possession of the goods, with the consent of the person entitled, and operates to discharge the buyer from any obligation to retain the goods or deliver them to the person so entitled.

(5) The buyer is under an obligation to take reasonable care of goods delivered to him under a sales contract or related agreement until

(a) the return of the goods in accordance with subsection (2) or (3), or

(b) the expiration of the period of 21 days after the giving of the notice of cancellation,

whichever event occurs first, and if he sends them to the seller or other person in accordance with subsection (3)(b), he is under an obligation to take reasonable care to see that they are received by the person to whom they are sent and are not damaged in transit to him.

(6) Any obligation under subsection (5) is owed to the person for the time being entitled to possession of the goods and any breach of that obligation is actionable, at the suit of that person, as a breach of statutory duty.

(7) The buyer is under no obligation under this section to return the goods elsewhere than at the buyer's premises.

(8) Except as provided by this section, the buyer is not under any obligation, whether arising by contract or otherwise, to take care of the goods.

(9) In this section,

(a) "authorized person" means

(i) the seller or any salesman,

(ii) the person for the time being entitled to possession of the goods, or

(iii) a person specified in the sales contract as a person to whom a notice of cancellation may be given;

(b) "buyer's premises" means the place specified in the sales contract as the buyer's address, or, if the address shown does

not specifically identify that place by a municipal address, land description or other description sufficient to distinguish that place from any other, the place where the buyer actually resided at the time the sales contract was made.

Buyer's right to
retain goods

12 When a notice of cancellation is served in accordance with section 9 the buyer is entitled to retain possession of goods delivered to him under a sales contract, related sale or pre-existing contract

(a) until all money paid under the sales contract, related sale or pre-existing contract is refunded, and

(b) in the case of a trade-in arrangement, until either

(i) the goods delivered by the buyer under the trade-in arrangement are returned to him in a condition substantially the same as when they were delivered by him, or

(ii) a sum equal to the trade-in allowance is paid to him,

and the buyer while in possession has a lien on those goods for any money so owing to him.

13 When pursuant to regulations under the *Licensing of Trades and Businesses Act* the proceeds of a bond are used for the benefit of buyers who have not recovered money owing to them following the cancellation of sales contracts, any money paid to a buyer from the proceeds of the bond shall be deemed to have been recovered from the seller.

14 Notwithstanding any other provision of this Act, where a seller receives payment for goods or services in accordance with a sales contract, the seller shall not cash, pledge, hypothecate, assign or otherwise deal with a cheque or process a payment made by credit card until

(a) the goods are shipped, or

(b) the services are performed.

Inspections

15 (1) The Minister may appoint inspectors to visit the business premises of any person who carries out telemarketing as a normal part of their business.

(2) The person shall provide an inspector upon request made during the normal hours of the business with

(a) access to the part of the premises where telemarketing is carried out, and

(b) access to information and equipment to satisfy the inspector that this Act is being complied with and that procedures and equipment are in place to ensure that the person and anyone employed by, contracted to or acting on his behalf will comply with this Act.

Offences and Penalties

16 A person who contravenes a provision of this Act is guilty of an offence and liable on summary conviction to a fine of not less than \$100 and not more than \$1000 in the case of an individual and of not less than \$500 and not more than \$10000 in the case of a corporation.

17 Any waiver or release of the rights, benefits or protection given by this Act is void.

18 Section 7 of the *Licensing of Trades and Business Act* is amended by renumbering it as section 7(1) and by adding the following after subsection (1):

"7 If the business of negotiating, soliciting and concluding sales contracts to which the *Telemarketing Act* applies is designated by the Minister as a business or a description or class of business to which this Act applies and a bond given to the Minister in respect of a seller or salesman is forfeited by reason of breach of a condition of the bond requiring compliance with the *Telemarketing Act*, the proceeds of the bond may be used for the benefit of persons who, as buyers under the sales contracts, have claims against the seller following cancellation of the sales contracts in accordance with section 9 of that Act."

Commencement

19 This Act comes into force on July 1, 1991.