

1996 BILL 212

Fourth Session, 23rd Legislature, 45 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 212

CONSUMER PROTECTION ACT

MRS. ABDURAHMAN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 212
Mrs. Abdurahman

BILL 212

1996

CONSUMER PROTECTION ACT

(Assented to , 1996)

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

Definitions

1 In this Act,

- (a) "Bureau" means the Consumer Services Bureau established under this Act;
- (b) "Director" means the Director of Consumer Services appointed under this Act;
- (c) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act.

2 The purposes of this Act are

- (a) to establish a consumer services bureau,
- (b) to require all consumer reporting agencies to be registered with the consumer services bureau,
- (c) to control the manner in which a consumer reporting agency may collect personal information from individuals and to control the disclosure by a consumer reporting agency of that information,

- (d) to allow individuals a right of access to personal information about themselves that is held by a consumer reporting agency,
- (e) to allow individuals a right to request corrections to personal information about themselves that is held by a consumer reporting agency,
- (f) to provide for independent reviews of decisions made by consumer reporting agencies under this Act and the resolution of complaints under this Act, and
- (g) to prohibit the use of a negative-option strategy in the delivery of unsolicited goods or services.

PART 1

**ESTABLISHMENT OF
CONSUMER SERVICES BUREAU**

Consumer
Services
Bureau

3(1) Provided that money is appropriated to the purpose from the General Revenue Fund by an Act of the Legislature, there shall be a branch of the public service of Alberta called the Consumer Services Bureau consisting of the Director of Consumer Services and the employees appointed pursuant to the *Public Service Act*.

(2) The Bureau shall be attached to and shall form part of the public service of Alberta prescribed by the Lieutenant Governor in Council.

Director of
Consumer
Services

4(1) The Lieutenant Governor in Council shall appoint a person in the public service of Alberta to be the Director of Consumer Services.

(2) The Director shall be the chief officer of the Bureau and, subject to the direction of the Minister, shall supervise the work of the Bureau.

Duties of
Bureau

5 The duties of the Bureau may include the following:

- (a) to initiate, recommend or undertake programs designed to promote the interests of consumers in the Province;

- (b) to co-ordinate programs of the Government that are designed to promote the interests of consumers;
- (c) to promote and encourage the institution of practices and conduct tending to the better protection of consumers and co-operate with other governments or agencies of governments or any bodies, organizations or persons in programs having similar objects;
- (d) to undertake, recommend or assist in programs to assist consumers to be more fully informed about goods and services offered to them;
- (e) to undertake research into matters that are within the scope of the functions of the Bureau and co-operate with other governments or agencies of government and other bodies, organizations or persons in carrying out such research;
- (f) to investigate, receive and act upon complaints of alleged contravention of Acts designed to protect consumers, including this Act, the *Consumer Credit Transactions Act*, the *Direct Sales Cancellation Act*, the *Unconscionable Transactions Act* and the *Unfair Trade Practices Act*, respecting practices that are alleged to be contrary to the interests of consumers and endeavour to obtain compliance with any of the Acts and desirable changes in practices to the benefit of consumers;
- (g) to counsel persons and groups on their rights and duties under Acts referred to in clause (f);
- (h) to establish programs for the education of consumers with respect to credit practices and problems;
- (i) to foster and encourage the establishment and operation of non-profit consumer credit counselling agencies;
- (j) to perform such other functions and duties relating to the protection or benefit of consumers as are from time to time assigned to the Bureau by the Lieutenant Governor in Council or the Minister.

Administration
of Acts

6(1) The administration of the *Consumer Credit Transactions Act* and the *Unfair Trade Practices Act* is assigned to the Bureau.

(2) The Director under this Act has and may exercise the functions, duties and powers of the Director of Consumer Credit under the *Consumer Credit Transactions Act* and the Director of Trade Practices under the *Unfair Trade Practices Act*.

Establishment
of boards and
committees

7(1) The Lieutenant Governor in Council may establish boards, committees or councils representative of consumers to keep the Minister and the Bureau advised as to

- (a) business practices that appear to be unjustified and adverse to the interest of consumers,
- (b) charges to consumers that appear to be unjustified,
- (c) advertising of consumer goods that appears to be misleading,
- (d) alleged contravention of any Acts administered by the Bureau, and
- (e) any other matter of interest to consumers.

(2) The Lieutenant Governor in Council may, with respect to any board, committee or council established under this section,

- (a) appoint or provide for the manner of appointment of its members, and
- (b) prescribe the term of office of a member and provide for the payment of remuneration and expenses to its members.

Regulations

8 The Lieutenant Governor in Council may make regulations relating to the functions, duties and powers of the Bureau, the Director and members of the staff of the Bureau and prescribing procedures and practices to be observed and followed by them in the performance of their functions and duties and the exercise of their powers under this Act or any Act administered by the Bureau or the Director.

PART 2
STORAGE AND SUPPLY
OF PERSONAL INFORMATION

Definitions

9(1) In this Part,

- (a) "consumer" means a natural person;
- (b) "consumer report" means a written, oral or other communication by a consumer reporting agency of information pertaining to a consumer for consideration in connection with a purpose set out in section 16;
- (c) "consumer reporting agency" means a person who for gain or profit furnishes consumer reports;
- (d) "Court" means the Court of Queen's Bench;
- (e) "file", when used as a noun, means all of the information pertaining to a consumer that is recorded or retained by a consumer reporting agency, regardless of the manner or form in which the information is stored;
- (f) "information" means information respecting a consumer's identity, residence, dependents, marital status, employment, borrowing and repayment history, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics or mode of living;
- (g) "person" means an individual, unincorporated association, unincorporated organization, syndicate, trustee, executor, administrator or other legal representative, corporation or company;
- (h) "user" means a person who prepares a consumer report for the person's own use or causes a consumer reporting agency to prepare a consumer report for the person's own use.

(2) This Part applies notwithstanding any agreement or waiver to the contrary.

Division 1 Registration

Contents of
register

10 The Director shall keep a register, to be called the Consumer Reporting Agencies Register, in which the Director shall enter the name of every consumer reporting agency which is registered under this Act, the name under which the business is carried on, the address or the addresses, if more than one, at or from which the business is carried on and such other matters as are prescribed by the regulations.

Registration
required

11 No person shall conduct or act as a consumer reporting agency unless the person is registered by the Director under this Act.

Applicant not
entitled to
registration

12(1) An applicant is entitled to registration or renewal of registration by the Director except where

- (a) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's business,
- (b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty,
- (c) the applicant is a corporation and
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty, or
- (d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the

applicant or prescribed by the regulations.

(3) A registration is not transferable.

Director may
refuse
registration

13(1) The Director may refuse to register an applicant where in the Director's opinion the applicant is disentitled to registration under section 12.

(2) The Director may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 12 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.

Director may
cancel
registration

14(1) The Director may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering the registration.

(2) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of the registration, a registrant has applied for renewal of a registration and paid the prescribed fee, the registration shall be deemed to continue until

(a) the renewal is granted, or

(b) the renewal is refused.

(3) A person aggrieved by a decision of the Director may appeal the Director's decision to the Court and the Court may confirm, vary or set aside the decision.

New application

15 A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

Division 2 Regulation of Consumer Reporting Agencies

Exceptions to
confidentiality

16(1) No consumer reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the

consumer reporting agency except in a consumer report given

- (a) in response to the order of a court having jurisdiction to issue such an order,
- (b) in accordance with the written instructions of the consumer to whom the information relates, or
- (c) to a person who it has reason to believe
 - (i) intends to use the information in connection with the extension of credit to or the collection of a debt of the consumer to whom the information pertains,
 - (ii) intends to use the information in connection with the entering into or renewal of a tenancy agreement by the consumer,
 - (iii) intends to use the information for employment purposes,
 - (iv) intends to use the information in connection with the underwriting of insurance involving the consumer,
 - (v) intends to use the information to determine the consumer's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law, or
 - (vi) has a direct business need for the information in connection with a business transaction involving the consumer.

(2) No person shall knowingly obtain any information from the files of a consumer reporting agency respecting a consumer except for the purposes referred to in subsection (1).

(3) Notwithstanding subsections (1) and (2), a consumer reporting agency may furnish identifying information respecting any consumer, limited to the consumer's name, address, former addresses, places of employment, or former places of employment, to any department of the Province or of Canada or any province thereof, notwithstanding that such information is not to be used for a purpose mentioned in clause (c) of subsection (1).

(4) A consumer reporting agency shall not sell, lease or transfer title to its files or any of them except to another consumer reporting agency registered under this Act.

Procedures to ensure accuracy of reports

17(1) Every consumer reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its consumer reports.

(2) A consumer reporting agency shall not report

- (a) any information that is not stored in a form capable of being produced under section 19, or
- (b) any information that is not extracted from information appearing in files stored or collected in a repository located in Canada.

(3) A consumer reporting agency shall not include in a consumer report

- (a) any information unless the name and address of the source of the information is recorded or retained in its files or can be readily ascertained by the consumer,
- (b) any information concerning the consumer unless it has made reasonable efforts to verify the information and unless it has recorded in its files the efforts taken to verify the information,
- (c) information regarding any actions, judgments, accounts or debts that are on their face statute barred unless it is accompanied by evidence appearing in the file that recovery is not statute barred,
- (d) information as to any outstanding judgment against the consumer unless the following information is also included:
 - (i) the name and address of the judgment creditor,
 - (ii) the amount of the judgment, and
 - (iii) where the judgment is known to have been assigned, the name and address of the assignee,

- (e) information as to the bankruptcy of a consumer after 6 years from the date of the discharge of the consumer unless the consumer has been bankrupt more than once;
- (f) information regarding any criminal or summary conviction charges against the consumer where the charges have been dismissed, set aside, withdrawn or in respect of which a stay of proceedings has been entered,
- (g) information as to a consumer's convictions for crimes or summary offences after 7 years from the date of conviction or, where the conviction resulted in imprisonment, from the date of the termination of the sentence, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted,
- (h) any information given orally unless the content of the oral report is noted in writing in the file, or
- (i) any other information prescribed by the regulations.

Requirements
for preparation
of report

18(1) No person shall procure or cause to be prepared a consumer report respecting a consumer

- (a) without the express written consent of the consumer, or
- (b) unless the person notifies the consumer in writing that a consumer report has been or will be requested and advises the person not later than 10 days after the report has been requested of the name and address of the consumer reporting agency.

(2) The notice and consent referred to in this section may be contained in an application for credit, insurance, employment or tenancy if it is clearly set forth in type not less than 10 point in size above the signature of the consumer.

(3) Where a user of information contained in a consumer report denies a benefit in whole or in part to a consumer, or increases the cost of the benefit to a consumer, the user shall advise the consumer in writing immediately

- (a) that a benefit has been denied to the consumer in whole or

in part or increased in cost,

- (b) of the consumer's right to have disclosed to the consumer all information pertaining to the consumer in the files of the consumer reporting agency from whom the report was obtained,
- (c) of the name and address of the consumer reporting agency, and
- (d) of the source and nature of information obtained elsewhere than from a consumer reporting agency.

Disclosure of
information to
consumer

19(1) Every consumer reporting agency shall, at the written request of a consumer and during normal business hours, clearly and accurately disclose to the consumer, without charge,

- (a) the nature and substance of all information in its files pertaining to the consumer at the time of the request,
- (b) the sources of its information unless they can be readily ascertained by the consumer,
- (c) the names of the recipients of any consumer report pertaining to the consumer that it has furnished within the preceding 12 months, and
- (d) copies of any written report made pertaining to the consumer to any other person or, where the report was oral, particulars of the content of such oral report,

and shall inform the consumer of the consumer's right to protest any information contained in the file under sections 21 and 22 and the manner in which a protest may be made.

(2) A consumer reporting agency may withhold from the disclosures required by subsection (1) any medical information obtained from the consumer's own physician and which the physician has specifically requested in writing be withheld from the consumer in the consumer's own best interest.

(3) The disclosures required under this section shall be made to the consumer

- (a) in person if the consumer appears in person and furnishes proper identification, or
- (b) by telephone if the consumer has made a written request, with sufficient identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(4) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to the consumer under this section.

(5) The consumer shall be permitted to be accompanied by one other person of the consumer's choosing to whom the consumer reporting agency may be required by the consumer to disclose his file.

(6) The consumer reporting agency shall permit the consumer to whom information is disclosed under this section to make an abstract of the information.

(7) A consumer reporting agency shall require reasonable identification of the consumer and a person accompanying the consumer before making disclosures under this section.

(8) A consumer reporting agency shall not require a consumer to give any undertaking or waive or release any right to chose in action as a condition precedent to the consumer's access to the consumer's file under the section.

Annual reports

20(1) Notwithstanding section 19, every consumer agency shall send to each consumer for whom a file has been created a report annually in the prescribed form that summarizes the nature and substance of the information contained in the consumer's file

(2) A report referred to in subsection (1) may be sent by ordinary mail addressed to the consumer at the consumer's latest address as shown in the consumer's file.

Consumer
disputes
accuracy of
information

21(1) Where a consumer disputes the accuracy of any information in the files of a consumer reporting agency the consumer may file a statement of protest with the consumer reporting agency or the user or both.

(2) Where a statement of protest is filed in accordance with subsection (1), the consumer reporting agency or the user shall immediately

- (a) attempt to verify the information and where the information cannot be verified, expunge the information from the consumer's file, or
- (b) where the veracity of the information is sustained, record the protest in the consumer's file,

and report the action taken

- (c) to the consumer, and
- (d) to any person to whom it furnished a consumer report within the preceding 60 days.

(3) Where a consumer report is made by a consumer reporting agency to a user in the Province and the office of the consumer reporting agency is not located in the Province, the user is responsible for complying with subsection (2).

(4) Where a consumer reporting agency makes a report to a user whose office is located outside the Province, the consumer reporting agency is responsible for complying with subsection (2).

(5) Where a consumer is dissatisfied by the action taken by the consumer reporting agency or the user under this section the consumer may appeal to the Director who shall investigate the matter.

Division 3 Enforcement

Director may
order changes
in information

22(1) The Director may order a consumer reporting agency to amend or delete any information, or by order restrict or prohibit the use of any information, that in the Director's opinion is inaccurate or incomplete or that does not comply with the provisions of this Act or the regulations.

(2) The Director may order a consumer reporting agency to furnish notification to any person who has received a consumer report of any amendments, deletions, restrictions or prohibitions imposed by

the Director.

(3) If a consumer or a consumer reporting agency disagrees with a decision of the Director under this section, the consumer or consumer reporting agency may apply to the Court and the Court may confirm, vary or set aside the decision.

Agency to
notify Director
of changes

23 Every consumer reporting agency shall, within 5 days after the event, notify the Director in writing of

- (a) any change in its address for service,
- (b) any change in the officers in the case of a corporation or of the members in the case of a partnership, and
- (c) in the case of a corporation, any change in the ownership of its shares.

Complaint
received by
Director

24(1) Where the Director receives a complaint in respect of a consumer reporting agency and so requests in writing, the consumer reporting agency shall, where it has received the consumer's consent in writing, furnish the Director with such information respecting the matter complained of as the Director requires.

(2) The request under subsection (1) shall indicate the nature of the inquiry involved.

(3) For the purposes of subsection (1), the Director or any person designated in writing by the Director may on notice at any reasonable time enter upon the business premises of the consumer reporting agency to make an inspection in relation to the complaint.

Minister may
order
investigation

25(1) The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of the person's investigation to the Minister.

(2) For the purposes of an investigation under this section, the person making it has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

Director may
order
investigation

26(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has

- (a) contravened any of the provisions of this Act or the regulations, or
- (b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to the person's fitness for registration under this Act,

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence has occurred and the person appointed shall report the result of the person's investigation to the Director.

(2) For the purposes relevant to the subject matter of an investigation under this section, and notwithstanding section 16, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may

- (a) enter at any reasonable time the business premises of the person and examine books, papers, documents, consumer files and things relevant to the subject-matter of the investigation, and
- (b) inquire into negotiations, transactions, loans or borrowings made by or on behalf of or in relation to the person and into property, assets or things owned, acquired or alienated in whole or in part by the person or any other person acting on the person's behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry the person making the investigation has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

(3) No person shall obstruct a person appointed to make an investigation under this section or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

(4) Where a judge of the Court is satisfied, upon an *ex parte*

application by the person making an investigation under this section, that

- (a) the investigation has been ordered,
- (b) the person has been appointed as an investigator under this Act, and
- (c) there is reasonable ground for believing that there are in any building or other place any books, papers or other things relating to the person whose affairs are being investigation and to the subject-matter of the investigation,

the Court may by order authorize the person making the investigation to enter and search, if necessary by force, the building, or other place for the books, papers or other things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the Court, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers or other things examined under subsection (2)(a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making photocopies, but such copying shall be carried out with reasonable dispatch and the books, papers or other things in question shall be promptly returned to the person whose affairs are being investigated.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

(7) The Minister or Director may appoint any expert to examine books, papers or other things examined under clause (a) of subsection (2) or under subsection (4).

Exceptions to
confidentiality

27(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 24, 25 or 26 shall preserve secrecy in respect of all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any

other person except

- (a) as may be required in connection with the administration of this Act, and the regulations or any proceedings under this Act or the regulation,
- (b) to the person's counsel, or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of the person's duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

Service of documents

28(1) Any notice or order required to be given, delivered or served under this Act or the regulations is sufficiently given, delivered or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last-known address.

(2) Where service is made by registered mail, the service shall be deemed to be made on the 3rd day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other causes beyond the person's control, receive the notice or order until a later date.

Order to comply with Act

29(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights the Director may have, the Director may apply to the Court for an order directing the person to comply with the provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Court of Appeal of Alberta from an order made under subsection (1).

Supplying of
false
information
prohibited

30 No person shall knowingly supply false or misleading information to another who is engaged in making a consumer report.

Offence and
penalty

31(1) Every person who

- (a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations,
- (b) fails to comply with any order, direction or other requirement made under this Act, or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention, is guilty of an offence and liable to a fine of not more than \$2 000 or to imprisonment for a term not exceeding 1 year, or to both fine and imprisonment.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25 000.

(3) No proceeding under clause (a) of subsection (1) shall be commenced more than 1 year after the facts upon which the proceeding is based first came to the knowledge of the Director.

(4) No proceeding under clause (b) or (c) of subsection (1) shall be commenced more than 2 years after the time when the subject-matter of the proceeding arose.

Statement
prima facie
proof of facts

32(1) A statement as to

- (a) the registration or non-registration of any person,
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Director,
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Director, or
- (d) any other matter pertaining to such registration, non-

registration, filing or non-filing,

purporting to be certified by the Director is, without proof of purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

(2) Any document under this Act purporting to be signed by the Minister, or any certified copy thereof, is receivable in evidence in any action, prosecution or other proceedings as *prima facie* proof that the document is signed by the Minister without proof of the office or signature of the Minister.

Regulations

33 For the purpose of carrying out the provisions of this Act, the Lieutenant Governor in Council may make regulations

- (a) exempting any class of persons from this Act or the regulations or any provision thereof;
- (b) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;
- (c) requiring the payment of fees on application for registration or renewal of registration, and prescribing the amounts thereof;
- (d) requiring registered consumer reporting agencies to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;
- (e) requiring and governing the books, accounts and records that shall be kept by consumer reporting agencies;
- (f) prescribing information that may not be reported by a consumer reporting agency or contained in its files;
- (g) prescribing information that must be contained in a consumer report;
- (h) prescribing information that must be contained in a report under section 20;

- (i) requiring consumer reporting agencies to make returns and furnish information to the Director;
- (j) prescribing forms for the purposes of this Act and providing for their use;
- (k) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (l) respecting such other matters as are necessary for the carrying out of the intent and purposes of this Act.

PART 3

NEGATIVE-OPTION STRATEGY

Definitions

34 In this Part,

- (a) "goods" includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for other goods or services;
- (b) "negative-option strategy" means a strategy where the seller delivers unsolicited goods or services to an individual after having first notified the individual to the effect that
 - (i) the seller proposes to deliver the goods or services, and
 - (ii) the goods or services will be delivered and the individual will be billed for the goods or services unless the individual, on or before a particular time period, instructs the seller not to deliver the goods or services.
- (c) "services" means the benefits to an individual of work done by a person and includes the delivery of, or provision of access to, electricity, gas, water, cable television and other telecommunications;
- (d) "seller" means a person who is in the business of selling goods or services to others;

- (e) "unsolicited goods or services" means goods or services provided to an individual who did not request the goods or services.

Prohibition **35(1)** No seller shall use a negative-option strategy in the delivery of unsolicited goods or services.

(2) For the purposes of this section, unsolicited goods or services are not sold by means of a negative-option strategy if the individual instructs the seller, orally or in writing, that the individual consents to the purchase of the goods or services.

Consent **36** Consent under subsection 35(2)

- (a) cannot be given before the individual receives notice of
 - (i) a description of the goods or services that are the subject of the negative-option offer, and
 - (ii) the price of the goods or services; and
- (b) cannot be inferred from the individual's
 - (i) inaction,
 - (ii) use of the goods or services,
 - (iii) consent to purchase another similar goods or services, or
 - (iv) payment for the goods or services.

Existing services **37(1)** Section 35 applies to a change to an individual's existing services only if

- (a) the change is made pursuant to a negative option strategy, and
- (b) without the consent of the individual, the change
 - (i) provides a new, unsolicited service for which an extra charge is made, or

(ii) reduces an existing service without reducing the price proportionately.

(2) Section 35 does not apply to

(a) a change to the price of an existing service, or

(b) a renewal of an existing service if the service is not otherwise changed.

No action **38** Where a negative-option strategy is used in the delivery of an unsolicited goods or services, no action lies for the payment of any fee or purchase price for the goods or services.

Offence **39** Every person who contravenes section 35(1) is guilty of an offence and liable to a fine not exceeding \$2 000.

PART 4

GENERAL

Act binds Crown **40** This Act binds the Crown.

Non-appropriation **41** No payment shall be made out of the General Revenue Fund to defray any expense necessary for the implementation of this Act without the authority of an appropriation made by the Legislature for such purpose.

Coming into force **42** This Act comes into force on Proclamation.