

2000 BILL 213

Fourth Session, 24th Legislature, 49 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 213

FARM IMPLEMENT AMENDMENT ACT, 2000

MR. MARZ

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 213
Mr. Marz

BILL 213

2000

FARM IMPLEMENT AMENDMENT ACT, 2000

(Assented to , 2000)

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

Amends SA
1982 cF-4.1

1 The *Farm Implement Act* is amended by this Act.

**2 Section 1(g) is amended by striking out “for his own use”
and substituting “for his own farming use”.**

**3 Section 3(1)(e) is amended by striking out “that has a
value greater than \$200”.**

Explanatory Notes

1 Amends chapter F-4.1 of the Statutes of Alberta, 1982.

2 Section 1 presently reads in part:

1 In this Act,

(g) "purchaser" means a farmer who purchases a farm implement for his own use.

3 Section 3(1) presently reads:

3(1) Every sale agreement of a farm implement, whether new or used,

(a) shall be in writing,

(b) shall contain an address for the dealer and the distributor,

(c) shall set out the nature and duration of all warranties given in connection with the farm implement,

(d) shall contain a description of the farm implement, including the serial number and model number, if available, by which it may be readily known and distinguished,

(e) if the sale agreement relates to more than one farm implement, shall show a purchase price for each farm implement, including any attachment and accessory that has a value greater than \$200,

4 Section 4 is amended by repealing subsection (1) and substituting the following:

4(1) A sale agreement for a new farm implement which

(a) is an engine or motor, or

(b) has an engine or motor as a part of it,

shall state the net power of the farm implement, as shown in the manufacturer's specifications or advertising, and that farm implement shall be deemed to be warranted as being capable of developing the power as stated in the sale agreement if it is properly used and maintained and used under reasonable operating conditions.

5 Section 6(2)(b) is amended by striking out "100 hours" and substituting "50 hours".

- (f) *if the sale agreement relates to a farm implement that is supplied by one distributor but has an attachment to it supplied by another distributor, shall show separately the purchase price for the attachment, and*
- (g) *shall contain any other information prescribed in the regulations.*

4 Section 4(1) presently reads:

4(1) A sale agreement shall state,

- (a) *in the case of a new tractor, the drawbar power or the power takeoff power, and*
- (b) *in the case of a new farm implement other than a tractor, which*
 - (i) *is an engine or motor, or*
 - (ii) *has an engine or motor as a composite part of it,*

the net power of the farm implement,

as shown in the manufacturer's specifications or advertising, and that tractor or other farm implement shall be deemed to be warranted as being capable of developing the power as stated in the sale agreement if it is properly used and maintained and used under reasonable operating conditions.

5 Section 6(2) presently reads:

6(2) When a new farm implement that is properly used and maintained and used under reasonable operating conditions fails to perform the work for which it is intended in a satisfactory manner during

- (a) *any of the first 10 days of actual use of the farm implement, whether or not those days are consecutive, or*
- (b) *the first 100 hours of actual use of the farm implement, whether or not that period is continuous,*

whichever occurs first, from the time the farm implement is first used within the first normal season of use after it is delivered to the purchaser, the purchaser may, within that season, give notice under subsection (3) of the farm implement's failure to perform that work.

6 Section 22 is amended

(a) in subsection (1)(e)(i) by striking out “severely”;

(b) in subsection (4) by repealing clause (b) and substituting the following:

(b) for each unused part,

(i) if the dealer terminates the agreement or the agreement expires, 90% of the current net price, or

(ii) if the distributor terminates the agreement, 100% of the current net price,

(c) by adding the following after subsection (10):

(10.1) The distributor is responsible for the removal of all unused farm implements and unused parts from the possession of the dealer.

6 Section 22 presently reads:

22(1) *In this section and in section 23,*

- (a) *“agreement” means a written or oral agreement between a dealer and a distributor that is in force on or after October 1, 1970;*
- (b) *“notice to purchase” means the notice to purchase mentioned in subsection (2);*
- (c) *“unused farm implement” means*
 - (i) *a farm implement that is not a used farm implement, whether or not it has received pre-delivery services,*
 - (ii) *a farm implement returned to the distributor or dealer under section 6 following the giving of a notice in respect of that farm implement under that section, unless that farm implement was sold to the dealer as a demonstrator and was invoiced and used by him as a demonstrator, and*
 - (iii) *a farm implement that is not a used farm implement and that is transferred from one dealer to another dealer with the knowledge of the distributor;*
- (d) *“used farm implement” means*
 - (i) *a farm implement that was sold to the dealer as a demonstrator and was invoiced to him and used as a demonstrator, and*
 - (ii) *a farm implement, other than one referred to in clause (c)(ii) or (iii), that has been operated for a distance or for a period of time in excess of that required to deliver it to the dealer and to enable the dealer to service, prepare and operate it for the purposes of sale;*
- (e) *“unused part” means a part or parts assembly that has not been used, but does not include*
 - (i) *a part that has been broken or severely damaged,*
 - (ii) *a parts assembly that is incomplete and cannot be completed at reasonable expense as provided for in subsection (9)(a),*
 - (iii) *a part or parts assembly that has been removed from a farm implement and replaced at no cost to the dealer for parts under a modification or warranty substitution program, or*

(iv) a seal or hose made of rubber, a gasket made of cork or a composition of materials, a seal made of leather, a liquid chemical that has deteriorated and is of limited use, or paint.

(2) A dealer may, within 90 days after the day an agreement expires or is terminated by the dealer or the distributor for any reason, give to the distributor a written or printed notice to purchase containing a request by the dealer that the distributor purchase all the unused farm implements and unused parts obtained from the distributor.

(3) If a notice to purchase is given to the distributor in accordance with subsection (2) the distributor shall, subject to this Act and the regulations, purchase from the dealer

(a) all the unused farm implements, and

(b) all unused parts purchased as parts,

obtained by the dealer from the distributor.

(4) A distributor shall pay to a dealer

(a) for each unused farm implement as listed on the original invoice for that farm implement, an amount equal to the sum of

(i) 100% of the invoice price less any discounts allowed by the distributor, and

(ii) transportation costs paid by the dealer from the point of manufacture of the farm implement to the dealer's place of business, as evidenced by an invoice of the carrier of the farm implement,

and

(b) for each unused part, 85% of the current net price,

together with interest at the rate prescribed in the regulations on any amount payable, calculated from the 1st day of the 2nd month following the day the amount becomes due and owing.

(5) Subject to subsection (6), the amount payable by a distributor for an unused farm implement or an unused part becomes due and owing

(a) on the 91st day after the day the distributor receives the notice to purchase, or

(b) on the 30th day after the day that the distributor removes all the unused farm implements and unused parts from the possession of the dealer,

whichever day occurs first.

(6) The due date for payment under subsection (5) and the 90-day period referred to in subsection (10)(a)(ii) may be extended

- (a) by agreement between the distributor and the dealer, or*
- (b) by an order of the Court of Queen's Bench on the application of the distributor by way of originating notice returnable on a day not later than 120 days after the day on which the distributor received the notice to purchase, if the Court is satisfied that the distributor's failure to remove all the unused farm implements and unused parts from the possession of the dealer was caused by circumstances beyond the distributor's control or by the fault of the dealer.*

(7) In addition to any other remedy available to him

- (a) a dealer may recover an amount owing to him under this section by a distributor by deduction from any amount he owes to the distributor, and*
- (b) a distributor may recover an amount owing to him by a dealer by deduction from any amount he owes to the dealer under this section.*

(8) A distributor is not required to purchase any of the following:

- (a) an unused part that is not clearly identified either by means of a ticket or tag or box or other container or by an imprint on the part itself;*
- (b) an unused part that
 - (i) is not listed in the distributor's current price list, and*
 - (ii) is for use in a farm implement which was manufactured more than 10 years before the expiry or termination of the agreement;**
- (c) an unused part specially ordered by the dealer from the distributor on the understanding, in writing and signed by or on behalf of the dealer, that the part was not returnable to the distributor;*
- (d) an unused farm implement or unused part that is subject to a lien, charge, encumbrance or mortgage in favour of a third party in an amount in excess of the amount that the distributor would otherwise be required to pay to the dealer for it under this section;*
- (e) an unused farm implement or unused part that has not been adequately prepared for shipment in accordance with*

subsection (10)(b) within the 90-day period referred to in subsection (10)(a)(ii) or any extension under subsection (6);

- (f) an unused farm implement that was shipped to the dealer on or before the earlier of*
 - (i) the date that is 24 months before the expiry or termination of the agreement, or*
 - (ii) the commencement date of the first of 2 full seasons of use immediately before the expiry or termination of the agreement*

unless

- (iii) the agreement is terminated by the distributor, or*
- (iv) the dealer has ceased to be a dealer;*
- (g) an unused farm implement for which the dealer has paid the distributor in full, unless*
 - (i) the agreement is terminated by the distributor, or*
 - (ii) the dealer has ceased to be a dealer;*
- (h) an unused part in respect of which the dealer has not made reasonable use of a surplus or obsolete parts return program, if any, offered by the distributor.*

(9) A distributor may deduct from the amount he is required to pay to the dealer under this section

- (a) an amount equal to the cost to the distributor of supplying and installing a replacement for any missing or damaged part at the current net price, including a reasonable charge for necessary labour for the installation of the part, and*
- (b) the amount of any liens, charges, encumbrances or mortgages in favour of third parties to which the unused farm implements or unused part or parts are subject.*

(10) The dealer

- (a) is responsible for the care and custody of an unused farm implement or unused part that the distributor is required to purchase until*
 - (i) the day the distributor removes it from the dealer's possession at his place of business,*
 - (ii) the 91st day after the day the distributor receives the notice to purchase from the dealer, or*

7 This Bill comes into force on Proclamation.

(iii) if the time period in subclause (ii) has been extended, the day the extension expires,

whichever day first occurs, and after that day the distributor is responsible;

(b) is responsible for doing the acts necessary

(i) to adequately prepare each unused farm implement so that it is acceptable by a carrier for shipment from the dealer's place of business, and

(ii) to adequately package, crate or otherwise prepare all unused parts so that they are acceptable by a carrier for shipment from the dealer's place of business.

(11) Repealed 1996 c28 s16.

(12) This section applies to a distributor and a dealer notwithstanding anything in an agreement or any other contract or arrangement between the distributor and dealer, except that if a provision of the agreement is more advantageous to the dealer than the provision of this section pertaining to the same subject matter, the provision of the agreement applies.

(13) Any waiver or release given by a dealer of his rights under this section is void.

7 Coming into force.