

2002

CHAPTER 16

An Act to amend *The Consumer Protection Act*

(Assented to June 20, 2002)

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

Short title

1 This Act may be cited as *The Consumer Protection Amendment Act, 2002*.

S.S. 1996, c.C-30.1 amended

2 *The Consumer Protection Act* is amended in the manner set forth in this Act.

Section 43 amended

3 **Subsection 43(1) is amended in the portion preceding clause (a) by adding “product” after “consumer”.**

New section 72

4 **Section 72 is repealed and the following substituted:**

“Interpretation of Parts IV and IV.1

72 In this Part and in Part IV.1:

- (a) **‘credit card’** means a card, document or similar instrument by which goods or services may be purchased on deferred payment or by means of which cash may be obtained;
- (b) **‘credit card holder’** means a person to whom a credit card has been issued;
- (c) **‘credit card issuer’** means a person who issues credit cards;
- (d) **‘unsolicited credit card’** means a credit card, the receipt of which has not been requested in writing by the person to whom the credit card was sent;
- (e) **‘unsolicited goods’** means personal property, the receipt of which has not been requested by the recipient, but does not include personal property delivered to a person who knows or ought to know that the goods are intended for delivery to another person.”

New sections 75.1 to 75.4

5 **The following sections are added after section 75:**

“Surrender of credit card

75.1(1) A credit card holder may surrender a credit card to a credit card issuer by notifying the credit card issuer, or an agent of the credit card issuer, that the credit card holder:

- (a) is giving up possession and control of the credit card; and
- (b) undertakes to no longer use the credit card.

- (2) Notice pursuant to subsection (1) may be given orally or in writing.
- (3) After giving notice pursuant to subsection (1), the credit card holder:
 - (a) shall follow the credit card issuer's instructions respecting disposal of the credit card; and
 - (b) is not liable for any future use of the credit card by any person other than the credit card holder.

“Limitation of liability for unauthorized use of credit card

75.2(1) This section applies notwithstanding any agreement to the contrary that:

- (a) was entered into before the coming into force of this section; or
 - (b) is entered into on or after the coming into force of this section.
- (2) If a credit card is lost or stolen and the credit card issuer is notified of the loss or theft, the credit card holder is not liable for any debt incurred through the unauthorized use of the credit card after the credit card issuer is notified of the loss or theft.
 - (3) If a debt is incurred in the name of a credit card holder through the unauthorized use of credit card information and the credit card issuer receives notice of the unauthorized use within 30 days after the date of issuance of the first credit card statement that includes the debt, the credit card holder is not liable for that debt.
 - (4) Notice pursuant to subsection (2) or (3) may be given orally or in writing.
 - (5) Subject to subsection (6) and the regulations, the maximum liability of a credit card holder arising from the unauthorized use of a lost or stolen credit card before the credit card issuer receives notice of the loss or theft pursuant to subsection (2) is the lesser of:
 - (a) \$50 or any greater amount prescribed in the regulations; and
 - (b) the amount fixed or agreed to by the credit card issuer as the maximum amount for which the credit card holder is liable in the event of the unauthorized use of the credit card after its loss or theft.
 - (6) Subsection (5) does not apply to any transaction or category of transactions exempted by the regulations.

“Burden of proof

75.3 If a dispute respecting a debt arises between a credit card holder and a credit card issuer pursuant to this Part, the burden of proof is on the credit card issuer to show that the debt was incurred by:

- (a) the credit card holder; or
- (b) a person authorized by the credit card holder to use the credit card or credit card information.

“Regulations

75.4 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Part but not defined in this Part;
- (b) prescribing an amount for the purposes of clause 75.2(5)(a);
- (c) exempting any transaction or category of transactions from the application of subsection 75.2(5);
- (d) prescribing any other matter or thing that is required or authorized by this Part to be prescribed in the regulations;
- (e) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part”.

New Part IV.1

6 The following Part is added after Part IV:

“PART IV.1
Internet Sales Contracts

“Interpretation of Part

75.5 In this Part:

- (a) **‘consumer’** means an individual who receives or has the right to receive goods or services from a supplier as a result of a purchase, lease or other arrangement;
- (b) **‘consumer transaction’** means the supply of goods or services by a supplier to a consumer as a result of a purchase, lease or other arrangement;
- (c) **‘goods’** means personal property, including fixtures, ordinarily used for personal, family or household purposes, that have been or may be sold, leased or otherwise provided by a supplier to a consumer;
- (d) **‘Internet’** means the decentralized global network connecting networks of computers and similar devices to each other for the electronic exchange of information using standardized communication protocols;
- (e) **‘Internet sales contract’** means a consumer transaction that is a contract in which:
 - (i) the consideration for the goods or services exceeds the prescribed amount; and
 - (ii) the contract is formed by text-based Internet communications;

- (f) **'prescribed'** means prescribed in the regulations;
- (g) **'services'** means services offered or provided primarily for personal, family or household purposes;
- (h) **'supplier'** means a person who, in the course of his or her business, provides goods or services to consumers.

“Application of Part

75.51(1) Subject to subsection (2) and the regulations, this Part applies to Internet sales contracts.

- (2) This Part does not apply to Internet sales contracts involving:
 - (a) any goods, services or businesses or category of goods, services or businesses exempted by the regulations; or
 - (b) any consumer transactions or category of consumer transactions exempted by the regulations.

“Disclosure of information

75.52(1) Before entering into an Internet sales contract with a consumer, a supplier must:

- (a) disclose to the consumer the information prescribed for the purposes of this section; and
- (b) provide to the consumer an express opportunity:
 - (i) to accept or decline the Internet sales contract; and
 - (ii) to correct errors immediately before entering into the Internet sales contract.
- (2) A supplier is considered to have disclosed to the consumer the information prescribed pursuant to clause (1)(a) if the information is:
 - (a) prominently displayed in a clear and comprehensible manner; and
 - (b) made accessible in a manner that ensures that the consumer:
 - (i) has accessed the information; and
 - (ii) is able to retain and print the information.

“Copy of Internet sales contract

75.6(1) Within 15 days after a supplier and a consumer enter into an Internet sales contract, the supplier must provide to the consumer a copy of the Internet sales contract, in writing or in electronic form.

- (2) A copy of the Internet sales contract provided pursuant to subsection (1) must include:
 - (a) the consumer's name;
 - (b) the date on which the Internet sales contract was entered into; and
 - (c) any other prescribed information.
- (3) A supplier is considered to have provided to the consumer a copy of the Internet sales contract in accordance with subsection (1) if the copy is sent or otherwise provided to the consumer in the prescribed manner.

“Cancellation of Internet sales contract

75.61(1) A consumer may cancel an Internet sales contract:

(a) at any time after the Internet sales contract is entered into until seven days after the consumer receives a copy of the Internet sales contract, if the supplier fails:

(i) to disclose to the consumer the information prescribed pursuant to clause 75.52(1)(a); or

(ii) to provide to the consumer an express opportunity:

(A) to accept or decline the Internet sales contract; or

(B) to correct errors immediately before entering into the Internet sales contract; or

(b) within 30 days after the date the Internet sales contract is entered into, if the supplier does not provide to the consumer a copy of the Internet sales contract in accordance with section 75.6.

(2) In addition to the cancellation rights mentioned in subsection (1), a consumer may cancel an Internet sales contract at any time before delivery of the goods or commencement of the services under the Internet sales contract if:

(a) in the case of goods, the supplier does not deliver the goods within 30 days after:

(i) the delivery date specified in the Internet sales contract; or

(ii) an amended delivery date agreed to, in writing or in electronic form, by the consumer and the supplier;

(b) in the case of travel, transportation or accommodation services, the supplier does not begin the services:

(i) on the commencement date specified in the Internet sales contract; or

(ii) on an amended commencement date agreed to, in writing or in electronic form, by the consumer and the supplier; or

(c) in the case of services other than those services mentioned in clause (b), the supplier does not begin the services within 30 days after:

(i) the commencement date specified in the Internet sales contract; or

(ii) an amended commencement date agreed to, in writing or in electronic form, by the consumer and the supplier.

(3) A consumer may cancel an Internet sales contract at any time before the delivery of the goods or the commencement of the services pursuant to the Internet sales contract if:

(a) a delivery date or a commencement date is not specified in the Internet sales contract; and

(b) the supplier does not deliver the goods or begin the services within 30 days after the date on which the Internet sales contract is entered into.

(4) For the purposes of subsections (2) and (3):

(a) a supplier is deemed to have delivered the goods pursuant to an Internet sales contract if:

(i) delivery was attempted but was refused by the consumer at the time delivery was attempted; or

(ii) delivery was attempted but not made because no person was available to accept delivery for the consumer on the day for which reasonable notice was given to the consumer that the goods were available to be delivered; and

(b) a supplier is deemed to have commenced the services pursuant to an Internet sales contract if:

(i) commencement was attempted but refused by the consumer at the time that commencement was attempted; or

(ii) commencement was attempted but did not occur because no person was available to enable the services to begin on the day for which reasonable notice was given to the consumer that the services were available to begin.

“Court may provide relief against cancellation

75.62 If, in the opinion of the court, it would be inequitable for an Internet sales contract to be cancelled pursuant to section 75.61, the court may make any order it considers appropriate.

“Notice of cancellation

75.7(1) An Internet sales contract is cancelled pursuant to section 75.61 on the giving of a notice of cancellation in accordance with this section.

(2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the Internet sales contract.

(3) A notice of cancellation may be given to a supplier by any prescribed means.

(4) If a notice of cancellation is given other than by personal service, the notice of cancellation is deemed to be given at the prescribed time.

“Effect of cancellation

75.71(1) The cancellation of an Internet sales contract pursuant to section 75.61 operates:

- (a) to cancel the Internet sales contract as if the Internet sales contract never existed; and
- (b) to cancel, as if the Internet sales contract never existed:
 - (i) any consumer transaction that was related to the Internet sales contract;
 - (ii) any guarantee given with respect to the consideration that was payable pursuant to the Internet sales contract; and
 - (iii) any security given by the consumer or guarantor with respect to the consideration that was payable pursuant to the Internet sales contract.

(2) If credit is extended or arranged by a supplier with respect to an Internet sales contract:

- (a) the credit contract is conditional on the Internet sales contract, whether or not the credit contract is part of or attached to the Internet sales contract; and
- (b) if the Internet sales contract is cancelled, that cancellation has the effect of cancelling the credit contract as if the Internet sales contract never existed.

“Responsibilities on cancellation

75.72(1) Within 15 days after an Internet sales contract is cancelled pursuant to section 75.61, the supplier must refund to the consumer all consideration paid by the consumer pursuant to the Internet sales contract and any related consumer transaction, whether the consideration was paid to the supplier or to another person.

(2) If goods are delivered to a consumer pursuant to an Internet sales contract that is cancelled pursuant to section 75.61, within 15 days after the date of cancellation or delivery of the goods, whichever is later, the consumer must return the goods to the supplier unused and in the same condition in which the goods were delivered to the consumer.

(3) The consumer may return the goods pursuant to subsection (2) by any method that provides the consumer with confirmation of the delivery of the goods to the supplier.

(4) The supplier must accept a return of goods by a consumer pursuant to subsection (2).

(5) The supplier is responsible for the reasonable cost of returning goods pursuant to subsection (2).

(6) Goods that are returned by the consumer pursuant to subsection (2) otherwise than by personal delivery are deemed for the purposes of that subsection to have been returned when sent by the consumer to the supplier.

(7) Any breach of the consumer's obligations pursuant to this section is actionable by the supplier as a breach of statutory duty.

“Recovery of refund

75.8 If a consumer has cancelled an Internet sales contract pursuant to section 75.61 and the supplier has not refunded all of the consideration within the 15-day period mentioned in subsection 75.72(1), the consumer may recover the consideration from the supplier as an action in debt.

“Consumer's recourse re credit card charges

75.81(1) A consumer who has charged to a credit card account all or any part of the consideration payable pursuant to an Internet sales contract or related consumer transaction may request that the credit card issuer cancel or reverse the credit card charge and any associated interest or other charges if:

(a) the consumer has cancelled the Internet sales contract pursuant to section 75.61; and

(b) the supplier has not refunded all of the consideration within the 15-day period mentioned in subsection 75.72(1).

(2) A request made pursuant to subsection (1) must:

(a) be in writing or in electronic form;

(b) contain the prescribed information;

(c) be made within the prescribed period; and

(d) be given to the credit card issuer by the prescribed means.

(3) A credit card issuer may require a consumer to verify the content of a request made pursuant to subsection (1) by affidavit or declaration.

(4) The credit card issuer must:

(a) acknowledge a request made pursuant to subsection (1) within 30 days after receiving the request; and

(b) if the request meets the requirements set out in subsection (2), cancel or reverse the credit card charge and any associated interest or other charges within two complete billing cycles of the credit card issuer or within 90 days after receiving the request, whichever occurs first.

(5) If a request pursuant to subsection (1) is given other than by personal service, the request is deemed to be given at the prescribed time.

“Offence and penalties

75.82(1) No person shall fail to comply with any provision of this Part or the regulations made pursuant to this Part.

(2) Every person who contravenes any provision of this Part or the regulations made pursuant to this Part is guilty of an offence and liable on summary conviction:

- (a) for a first offence:
 - (i) in the case of an individual, to a fine of not more than \$5,000, to imprisonment for a term of not more than one year or to both; and
 - (ii) in the case of a corporation, to a fine of not more than \$100,000; and
- (b) for a second or subsequent offence:
 - (i) in the case of an individual, to a fine of not more than \$10,000, to imprisonment for a term of not more than one year or to both; and
 - (ii) in the case of a corporation, to a fine of not more than \$500,000.

“Directors, etc. of corporations

75.9 Every officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence and is liable on summary conviction to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

“Regulations

75.91 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Part but not defined in this Part;
- (b) prescribing an amount for the purposes of subclause 75.5(e)(i);
- (c) exempting from the application of this Part Internet sales contracts involving:
 - (i) any goods, services or businesses or category of goods, services or businesses; or
 - (ii) any consumer transactions or category of consumer transactions;
- (d) prescribing the information that a supplier must provide to a consumer before entering into an Internet sales contract to which this Part applies;

- (e) prescribing for the purposes of section 75.6:
 - (i) the information that must be included in the copy of the Internet sales contract provided to the consumer; and
 - (ii) the manner in which the copy of the Internet sales contract must be given to the consumer;
- (f) prescribing for the purposes of section 75.7:
 - (i) the manner in which a notice of cancellation of an Internet sales contract must be given to the supplier; and
 - (ii) the time in which a notice of cancellation of an Internet sales contract is deemed to be given if it is given other than by personal service;
- (g) prescribing for the purposes of section 75.81:
 - (i) the information that must be included in a request to a credit card issuer to cancel or reverse a credit card charge and any interest or other charges;
 - (ii) the period in which the request must be made;
 - (iii) the manner in which the request must be given to the credit card issuer; and
 - (iv) the time in which the request is deemed to be given if it is given other than by personal service;
- (h) prescribing any other matter or thing that is required or authorized by this Part to be prescribed in the regulations;
- (i) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part”.

Coming into force

7 This Act comes into force on proclamation.