

CONSUMER PROTECTION ACT, 1967

[*Repeal to be proclaimed*]

CHAPTER 64

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PART 1

Interpretation

1. In this Act

- “borrower” means a person who receives credit;
- “buyer” means a person who purchases goods or services under an executory contract, and includes his agent;
- “cash” includes cheques, bills of exchange, money orders and sums credited to an account on which the borrower has an unrestricted power of drawing;
- “cost of borrowing” means,
 - (a) when used in relation to variable credit, the charges that the borrower or buyer is required to pay monthly or periodically on the unpaid balance from time to time; and
 - (b) when used in relation to a form of credit other than variable credit, the amount by which the total sum that the borrower is required to pay, if the payments required are made as they become due, exceeds the principal sum;
- “credit” means credit for which the borrower incurs a cost of borrowing and given under an executory contract or by the advancement of money, but does not, unless otherwise provided in this Act or by regulation, include credit extended in respect of the sale of goods intended for resale;
- “creditor” includes the lender and the assignee of any claim arising or security given in respect of any credit transaction;
- “debtor” includes a borrower or buyer, and includes every surety and endorser or other person liable for the payment or repayment of the money owing or on any agreement or collateral or other security given for it;
- “executory contract” means a contract between a buyer and a seller for the purchase and sale of goods or services, or of goods and services, for which delivery of the goods or performance of the services or payment in full of the consideration is not made at the time the contract is made;
- “goods” means personal property;
- “itinerant seller” means a seller whose business includes the sale or offering for sale of goods or soliciting of orders for goods at a place other than his permanent place of business, whether personally or by his agent or employee;
- “lender” means a person, including a seller, who extends credit;
- “official fees” means search, filing or registration fees to be paid by or under a statute of the Province or of Canada in connection with the filing or registration of an instrument relating to a credit transaction;

- “principal sum” means the aggregate of the sums referred to in section 11 (a), (b), (c), (d) and (e) (so far as they are applicable to the transaction) less the sum, if any, referred to in section 11 (g);
- “salesman”, with reference to a contract, means any person, other than the seller, who solicits, negotiates or arranges for the signing by the buyer of the contract or who in any way participates in soliciting, negotiating or arranging for the signing by the buyer of the contract;
- “seller” means a person who is in the business of selling goods or services to buyers, and with reference to any contract means the person who is the seller of goods under the contract or the person obligated to perform the services or to cause the services to be performed, and includes his agent or assignee;
- “trade-in” means consideration given by a buyer in a form other than money or an obligation to pay money;
- “trade-in allowance” means
- (a) the sum which, under a trade-in arrangement, is agreed to be allowed in payment or in part payment for the goods or services sold or to be sold under the executory contract; or,
 - (b) if that sum is not agreed on, an amount that would, in all the circumstances, have been reasonable to allow in payment or in part payment for the goods or services if no notice or rescission had been given;
- “trade-in arrangement” means an agreement or arrangement, whether contained in an executory contract or not, whereby the buyer sells or agrees to sell goods to the seller or any other person and the goods are or will be accepted as the whole or part of the consideration under the executory contract;
- “variable credit” means credit made available under an agreement whereby the lender agrees to make credit available to be used from time to time, at the option of the borrower and, without limiting the generality of the foregoing, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature.

1967-14-2; 1968-10-2.

PART 2

Exceptions

2. This Part does not apply to an executory contract for the sale of goods, or for goods and services

- (a) by and under which the consideration, excluding the cost of borrowing, is less than \$50;
- (b) being purchased for resale;
- (c) purchased by a retailer who intends to use the goods, or goods and services, in his business but not for resale; or
- (d) where the buyer is a corporation.

1971-11-3.

Seller

3. (1) Where the seller is not specified in an executory contract at the time it is signed by the buyer, then any person by whom or on whose behalf the executory

contract is signed at any subsequent time and who is then specified in the executory contract as the seller shall be deemed to be and at all material times to have been the seller under that executory contract.

(2) Any oral or written representation, statement or undertaking, whether constituting a condition or warranty or not, made to the buyer by a salesman with respect to goods covered by an executory contract shall be deemed to have been made by the salesman as agent of the seller, but nothing in this subsection exonerates any person from any liability to which he would be subject apart from this subsection.

1967-14-5.

Referral selling

4. An executory contract is not binding on the buyer if with respect to it the seller gives, or offers to give, a rebate or discount to the buyer in consideration of his giving to the seller the names of prospective purchasers, or otherwise aiding the seller in making a sale to another person, if the earning of the rebate, discount or other value is contingent on the occurrence of an event subsequent to the time the buyer agrees to buy.

1969-5-3.

Contents of contract

- 5.** (1) An executory contract is not binding on the buyer unless it contains
- (a) the name and address of the seller and the buyer;
 - (b) a description of the goods sufficient to identify them with certainty;
 - (c) the price of the goods and a detailed statement of the terms of payment;
 - (d) where credit is extended, a statement of any security for payment under the contract, including the particulars of any negotiable instrument, conditional sale agreement, chattel mortgage or any other security;
 - (e) where credit is extended, the statement required to be furnished by section 11 or 12;
 - (f) any warranty or guarantee applying to the goods and, where there is no warranty or guarantee, a statement to this effect; and
 - (g) any other matter required by regulation.

(2) An executory contract is not binding on the buyer and no action against the buyer in respect of it may be commenced unless

- (a) it is signed by the buyer;
- (b) if it is a contract to which sections 7 to 10 apply, it contains a notice in the form in the Schedule, with paragraph 4 completed, and the notice is at least as prominent as the other contents of the contract; and
- (c) a copy has been received by the buyer by personal delivery or mail.

1967-14-6; 1969-5-3A.

Exceptions to application of ss. 7 to 10

6. Sections 7 to 10 do not apply

- (a) to a contract under which the goods to be delivered consist only of food or food products in a perishable state at the time of delivery; or
- (b) to a contract solicited, negotiated or concluded by a seller or salesman who occasionally carries on business outside of his permanent place of business located in commercial premises in the Province.

1969-5-4.

Rescission of door to door transactions

7. (1) Where an executory contract is solicited, negotiated or concluded by a seller or salesman present at the dwelling place of another, the buyer may rescind the executory contract by giving notice of rescission not later than

- (a) the third day after the date on which the copy of the contract was received by him; or
- (b) one year after the date on which the copy of the contract was received by him if all of the goods to be supplied under the contract are not supplied within 30 days of the date specified in the contract for delivery, or if no delivery date is specified then within 120 days of the day on which the contract was signed by the buyer.

(2) A notice of rescission under this section is sufficient if, however expressed, it indicates the intention of the buyer to rescind the executory contract, and may be given by delivering or causing it to be delivered, by mail or otherwise,

- (a) to the seller or to the address shown in the contract for the person named as a person to whom notice of rescission may be given; or,
- (b) if no address of the seller or other person is shown in the contract, to any salesman or to any address of the seller known to the buyer.

(3) For the purposes of this section, a notice of rescission sent by mail shall be deemed to be given at the time it is mailed.

1967-14-7; 1969-5-5.

Return of goods and money

8. (1) Where a buyer rescinds a contract under section 7,

- (a) the buyer shall, subject to section 9, return any goods received under the contract by
 - (i) delivering the goods to a person authorized to receive them in a written request signed or purporting to be signed by the seller; or
 - (ii) delivering the goods to the seller or to a person named in the contract as a person to whom notice of rescission may be given;
- (b) the seller shall, within 15 days from the giving of the notice of rescission, refund to the buyer without any deduction all money received or realized in respect of the contract, whether from the buyer or any other person, and return to the buyer any trade-in received under a trade-in arrangement.

(2) Return of the goods by the buyer under subsection (1) discharges the buyer from any obligation or liability in respect of the goods after that.

(3) Where goods are returned by a buyer under subsection (1) he is liable to the seller for any damage to them caused by failure by the buyer to take reasonable care of the goods.

1967-14-8.

Retention of goods on rescission

9. Where a buyer rescinds an executory contract under section 7, the buyer is entitled to retain possession of goods delivered to him under the contract

- (a) until all money is refunded as required by that section; 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.

1967-14-9.

Refunds recoverable

10. (1) A refund required to be made by a seller to a buyer under section 8 is recoverable as a simple contract debt.

(2) Where a trade-in is not returned to a buyer as required under section 8, the buyer may recover from the seller as a simple contract debt an amount equal to the trade-in allowance for the trade-in.

(3) When a buyer receives the amount equal to the trade-in allowance, the title of the buyer to the goods delivered by him under the trade-in arrangement, if it did not pass from the buyer, vests in the person entitled to them under the trade-in arrangement.

1967-14-10.

PART 3

Disclosure of cost of borrowing

11. Except as provided in section 12, every lender shall furnish to the borrower or buyer, before extending credit, a clear statement in writing showing

- (a) the sum, expressed as one sum in dollars and cents, actually to be received in cash by the borrower or, where the lender is a seller, the amount of the cash price of the goods or services;
- (b) any sum to be paid to a third party by a lender on behalf of, and at the request of, the borrower;
- (c) any sum remaining unpaid under a previous extension of credit by the lender to the borrower or buyer, less any rebate to which the borrower or buyer is entitled under section 14, that the borrower or buyer and lender agree is to be consolidated with the proposed extension of credit;
- (d) any sum actually to be paid by the lender on account of official fees;
- (e) any sum actually to be paid by the lender on account of the cost of insurance if the insurance is effected at the express request of the borrower;
- (f) any sum to be paid on account of the cost of other insurance;
- (g) where the lender is a seller, the sums, if any, to be credited as a down payment, for a trade-in and for any other matter.
- (h) where the lender is a seller, the difference between the total of the sums stated under paragraphs (a) to (f) and the total of the sums stated under paragraph (g);
- (i) the cost of borrowing expressed as one sum in dollars and cents, and also itemized;
- (j) the percentage that the cost of borrowing bears to the principal sum, expressed as an annual percentage rate calculated in the manner prescribed by regulation; and
- (k) the basis on which additional charges are to be made in the event of default.

1967-14-11; 1968-10-5; 1969-5-6.

Requirements when extending variable credit

12. A lender extending variable credit shall,

- (a) before agreeing to extend variable credit, furnish the borrower or buyer with a clear statement in writing setting forth the cost of borrowing
 - (i) as an annual rate or a scale of annual rates, calculated and expressed in the manner prescribed by regulation, that the borrower or buyer is required to pay monthly or periodically on the unpaid balance, subject to a minimum charge, if any; and
 - (ii) expressed in dollars and cents in an illustrative schedule of amounts of outstanding balances and the corresponding charges for the cost of borrowing;
- (b) not less frequently than every 5 weeks during the extension of credit, furnish the borrower or buyer with a clear statement in writing showing in respect of the period covered by the statement
 - (i) the outstanding balance in the account of the borrower or buyer at the beginning of the period;
 - (ii) the amount and date of each extension of credit to the borrower or buyer during the period;
 - (iii) the total sums received from or credited to the account of the borrower or buyer during the period;
 - (iv) the cost of borrowing, expressed in dollars and cents, charged during the period;
 - (v) the statement referred to in paragraph (a).

1967-14-12; 1968-10-6.

Increase cost of borrowing: variable credit

13. A lender extending variable credit may increase the cost of borrowing from that which is set out in the statements referred to in section 12; provided

- (a) the borrower or buyer may, notwithstanding any agreement to the contrary, repay his total indebtedness at any time; and
- (b) the increase shall not take effect before the expiration of at least 6 months after the lender has given the borrower or buyer notice in writing of his intention to increase the cost of borrowing and has set out in the notice a statement of the new cost of borrowing in terms of section 12.

1968-10-7.

Prepayment

14. (1) Where, under an agreement extending credit, the cost of borrowing for the full term is added to the principal sum and, before the due date, the balance outstanding is paid in full, the lender is only entitled to that portion of the cost of borrowing determined under subsections (2) and (3), and the remainder shall be credited the borrower as a rebate.

(2) The portion of the cost of borrowing to which a lender is entitled under subsection (1) shall be not more than the amount which is in the same proportion to the cost of borrowing as the sum of the scheduled periodic balances due up to the date of prepayment, which, if other than an instalment due date, may be calculated by the lender to be the date of the scheduled instalment due immediately following the time of the prepayment in full, is to the sum of all the scheduled periodic balances under the

schedule of instalments provided for by the credit transaction, the method of computation being known as the sum of the digits, rule of 78ths, method

(3) Where the prepayment is made otherwise than under an arrangement for refinancing or for the extending of additional credit, in addition to the sum to which the lender is entitled under subsection (2), the lender is entitled to the sum of \$15 or 1/2 of the rebate, whichever is the lesser

1967 14 13 1968 10 8

Advertising cost of borrowing and other terms of credit

15. (1) No lender shall advertise or cause to be advertised his charge for credit in terms of a percentage rate unless the advertisement discloses the full cost of borrowing stated as an annual percentage rate expressed in the manner required by regulation made under section 11 or 12

(2) Unless permitted by regulation, where a lender advertises or causes to be advertised any terms of credit other than that referred to in subsection (1), the advertisement shall include all of the following

- (a) the sum to be actually received in cash by a borrower or the actual cash price of the goods,
- (b) the amount of the down payment, if any,
- (c) the amount of each instalment, and
- (d) the number of instalments required to repay the total indebtedness, including the cost of borrowing

1967 14 14 1968 10 9

Credit cards

16. (1) In this section, unless the context otherwise requires,

- (a) "unsolicited credit card" means a card, document or similar instrument, the receipt of which has not been requested in writing by the person named in it, by which goods or services may be purchased on deferred payment, or by means of which cash may be received,
- (b) "unsolicited goods" means personal property, the receipt of which has not been requested by the recipient, but does not include personal property delivered to the recipient that the recipient knew or ought to have known was intended for delivery to another person

(2) Where unsolicited credit cards or unsolicited goods are received, the recipient has no legal obligation to the sender in respect to them, and, in the case of unsolicited credit cards, in respect to any transaction made, unless and until the recipient expressly acknowledges to the sender in writing his intention to accept the unsolicited credit card or the unsolicited goods

(3) In the absence of an acknowledgment referred to in subsection (2), no action shall lie in the event of loss, misuse, damage, misappropriation or otherwise of the unsolicited credit card or unsolicited goods or for the value of goods, services or cash obtained by use of the unsolicited credit card

(4) A credit card that renews or replaces another credit card previously used by the recipient shall not be considered to be an unsolicited credit card within the meaning of this section

(5) This section does not apply to unsolicited credit cards or unsolicited goods in the hands of a recipient prior to the coming into force of this section

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Assignee's obligations

17. (1) Subject to subsection (2), the assignee of any rights of a lender in any transaction to which this Part applies has no greater rights than, and is subject to the same obligations, liabilities and duties as, the assignor.

(2) No borrower shall receive from, or be entitled to set off against, an assignee of the lender an amount greater than the balance owing on the contract at the time of the assignment; and, if there have been 2 or more assignments, no borrower shall recover from an assignee who no longer holds the benefit of the contract, an amount that exceeds the payments made by the borrower to that assignee.

1971-11-5.

PART 4**Contracts relief**

18. Where a court or a judge finds that, having regard to the risk, and to all the circumstances,

(a) the cost of borrowing is excessive and the transaction is harsh and unconscionable; or

(b) the transaction is otherwise inequitable,

the court or judge may, whether or not this section is pleaded or otherwise invoked by any party,

(c) reopen the transaction, take an account between the creditor and the debtor, and relieve the debtor from payment of any sum in excess of the sum adjudged by the court or judge to be fairly due for principal and the cost of borrowing;

(d) notwithstanding any statement or settlement of account, or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court or judge to be fairly due for principal and the cost of borrowing;

(e) order the creditor to repay any excess under paragraph (d), if it has been paid or allowed on account by the debtor; and

(f) set aside wholly or in part, or revise or alter, any security given, or agreement made, in respect of the transaction, and, if the creditor has parted with the security, order him to indemnify the debtor.

1971-11-6.

Contracts relief

19. Where, having regard to all conditions and circumstances of an executory contract, or a borrowing transaction, and the state of account between buyer and seller, or borrower and lender, it is shown that the exercise of the seller's or lender's rights against a buyer or borrower in default is harsh and unconscionable, or otherwise inequitable, the court or a judge may impose terms and conditions on the parties to the executory contract, or borrowing transaction, so as to relieve against an inequitable exercise of legal rights by the seller, or lender, or avoidable loss to either party.

1971-11-7.

Exercise of powers of court or judge

20. The powers conferred by sections 18 and 19 may be exercised in any action or proceeding before a court or a judge notwithstanding any provision or agreement to the contrary and notwithstanding that the time for payment or repayment of any sum or sums pursuant to the transaction has not arrived, and nothing in sections 18 and 19 shall derogate from the existing powers or jurisdiction of any court or judge.

1967-14-19; 1968-10-12; 1971-11-8.

Saving

21. (1) Subject to subsection (2), nothing in sections 18 or 19 affects the rights of a bona fide assignee without notice, or holder for value without notice.

(2) An assignee or holder for value who, within the year preceding an assignment, has taken from the creditor or seller on more than one occasion other assignments in respect of any borrowing transaction, or executory contract, shall be deemed not to be an assignee or a holder within the meaning of subsection (1).

(3) The onus shall be on an assignee, or holder for value to prove that he is a bona fide assignee without notice, or a holder for value without notice.

1971-11-9.

Credit on land

22. The scope of this Part includes credit extended on the security of a mortgage, or agreement for sale, of land or leasehold property.

1969-5-7.

PART 5**Agreements and waivers contrary to Act**

23. This Act applies notwithstanding any agreement of waiver to the contrary.

1967-14-21.

Rights of purchaser preserved

24. The rights of a buyer or borrower under this Act are in addition to any rights of the buyer or borrower under any other Act or by the operation of law, and nothing in this Act shall be construed to derogate from such rights.

1967-14-22.

Civil consequences of failure to comply with Part 3

25. (1) A failure to comply with Part 3 of this Act does not avoid, or render unenforceable, an agreement between a lender and a borrower or buyer.

(2) If the failure to comply is due only to a bona fide error, or omission, other than in the quotation of the cost of borrowing, and the error or omission did not prevent the prospective borrower or buyer from obtaining a knowledge of the essential elements of the proposed agreement, the burden of proving which lies on the lender or a person claiming through him, the rights of the lender or a person claiming through him to recover according to the agreement shall not be affected.

(3) If the failure to comply is due to a bona fide error, the burden of proving which lies on the lender or a person claiming through him, in the quotation of the cost of borrowing either in the dollar and cent expression or in the annual percentage rate or scale of annual percentage rates, the lender or a person claiming through a lender may

recover only the principal sum together with the lesser of the dollar and cent cost expression, or the amount determined from the annual percentage rate or scale of annual percentage rates.

(4) If the failure to comply is due to any other error or omission, the lender or a person claiming through a lender is not entitled to recover any amount in excess of the principal sum.

(5) The borrower or buyer is entitled to recover any amount paid by him in excess of the amounts recoverable by the lender as described in subsections (3) or (4).

(6) In determining whether or not there has been a failure to comply with Part 3, due regard shall be had to any tolerance permitted by the regulations and no quotation shall be held to be erroneous if it is within the limits of an applicable permitted tolerance.

(7) This section does not affect the jurisdiction conferred on a court or judge by Part 4.

1968-10-13

Offence

26. (1) Every person who contravenes this Act or the regulations and every director or officer of a corporation who knowingly concurs in a contravention of this Act or the regulations commits an offence and, on conviction, is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

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

(3) No proceeding under this section shall be instituted more than 3 years after the time when the subject matter of the proceeding arose.

1967-14-23

Regulations

27. The Lieutenant Governor in Council may make regulations which may include

- (a) requiring itinerant sellers and their employees to provide security under the *Bonding Act*;
- (b) prescribing the form of executory contracts and statement of the cost of borrowing and the size, type, and colour of lettering used in any provision of them;
- (c) requiring and governing the maintenance of trust accounts by sellers or any class of them, and prescribing the money that shall be held in trust and the terms and conditions of the trust;
- (d) prescribing the manner in which the cost of borrowing stated as a percentage shall be calculated, expressed and applied;
- (e) prescribing the manner of determining the apportionment of the cost of borrowing for the purposes of section 14;
- (f) exempting any class of buyer, seller, itinerant seller, lender or borrower from the application of this Act;
- (g) prescribing forms and providing for their use, and requiring the information in any form to be verified by affidavit;

- (h) for the inclusion of credit
 - (i) extended on the security of a mortgage of land; or
 - (ii) in respect of the sale of goods intended for resale, or both, in the definition of "credit" to the extent prescribed;
- (i) for the modification of the definitions in section 1 and of the provisions of Part 3 for extension of credit on the security of land;
- (j) prescribing any additional matter to be contained in an executory contract.

1967-14-24, 1968-10-14

Repeal

- 28.** (1) This Act is repealed.
 (2) Subsection (1) comes into force on proclamation.

1977-6-61

SCHEDULE

CONSUMER PROTECTION ACT, 1967

STATUTORY NOTICE

1 This is a contract to which the *Consumer Protection Act, 1967* of British Columbia applies

2 The buyer may rescind this contract by giving notice of rescission not later than the third day after the date on which a copy of the contract is received by him, without giving reasons for the rescission

3 The buyer may also rescind this contract by giving notice of rescission not later than one year after the date on which a copy of the contract is received by him, without giving reasons for the rescission in the following cases

If the goods to be supplied under this contract are not supplied within 30 days of the date specified in this contract for their delivery, or

If no such date is specified and the goods are not delivered within 120 days of the day on which the contract is signed by the buyer

4 A notice of rescission may be delivered or sent by mail to _____, and if sent by mail is deemed to be given at the time of mailing

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