

Significant Changes to Alberta's Consumer Protection Legislation

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On December 13, 2017, Bill 31, A Better Deal for *Consumers and Businesses Act* (Bill 31) received Royal Assent in Alberta, with significant amendments to Alberta's *Fair Trading Act* (the Act).

A summary of the key changes to the Act are below, which will be effective once the regulations are developed and the provisions of Bill 31 come into force, which is anticipated in early 2018. The Government of Alberta has announced that the changes to the Act in the areas of ticket sales, high-cost credit, and auto sales and repairs are in the regulation development stage.

A New Name and Consumer Bill of Rights

Bill 31 changes the name of the Act to the *Consumer Protection Act*. A preamble has been added to clarify the legislative purpose of the Act, which will guide courts in their interpretation of the Act. A Consumer Bill of Rights will be established, highlighting consumer rights and protections under the Act. Failure to comply with the Bill of Rights will not result in an automatic offence or cause of action under the Act, but will likely inform enforcement actions on contravention of the Act.

Arbitration Clauses in Consumer Agreements

Mandatory arbitration clauses are prohibited under the consumer protection legislation in Ontario and Quebec, and other Canadian jurisdictions grant consumers the right to bring an action. The Supreme Court of Canada has affirmed that, absent legislation to the contrary, arbitration clauses should be enforced.

Currently under the Act (i.e., before the changes are effective), a mandatory arbitration clause is prohibited unless the consumer has agreed in writing and the arbitration agreement has ministerial approval. Bill 31 repeals this provision of the Act and provides that mandatory arbitration clauses are void and unenforceable unless (i) the arbitration agreement was entered into *after* the dispute arose, or (ii) the arbitration provision or agreement provides the consumer with the right to decide *after* a dispute has arisen whether to arbitrate or take the matter to court.

Unilateral Amendments to Ongoing Consumer Transactions

Bill 31 prohibits unilateral amendments of "substantive terms" in ongoing consumer transactions, where goods or services are provided to the consumer on a continuing or periodic basis. Contravention of the provisions respecting unilateral amendments would constitute an unfair practice under the Act, exposing businesses to liability and providing consumers with rights and remedies, including commencing a court action to sue for damage or loss.

"Substantive terms" are terms relating to price, renewals or extensions, or any other terms that may be prescribed by regulations. Unilateral amendments to substantive terms are prohibited unless:

- i. the consumer has expressly consented to the specific change to the substantive term not more than 120 days before the change takes effect; or
- ii. the ongoing consumer transaction provides, in writing, for changes to the substantive term without the consumer's express consent, the consumer is provided with a prescribed form of written notice between 60-120 days before the change is effective, and any prescribed conditions in regulations are met.

Bill 31 prescribes a form of notice of unilateral amendments, including disclosure to the consumer of every term proposed to be changed, the date of the change, and providing the consumer with the option to cancel the ongoing consumer transaction, at no cost or penalty.

High-cost Credit Products

High-cost credit businesses will be regulated, being businesses that offer, arrange for, or enter into high-cost credit agreements.

Cassels

High-cost credit agreements are defined as credit agreements with a rate of 32% or higher, as calculated in accordance with the regulations to be made under the Act. A high-cost credit business would be required to be licensed (a license may be required for each location the business operates out of), adhere to prescribed information disclosure and prescribed agreements or agreement terms.

Auto Sales and Repairs

Automotive businesses will be subject to the Act, requiring prescribed information to be disclosed to consumers, the use of a standard bill of sale, the provision of a warranty for repairs, authorization from consumers for specified work and, on request by a consumer, the provision of an estimate of cost of work. Notably, for the purposes of this amendment to the Act, a consumer is defined to include a business with a commercial fleet of five or fewer vehicles.

Negative Reviews

Businesses would be prohibited from preventing consumers from publishing negative reviews of the business or consumer transaction, and would not have action against a consumer for any remedy for loss or damage as a result of a negative review, unless the review is malicious, vexatious, harassing, or otherwise made in bad faith.

Ticket Sales

Ontario recently passed the *Ticket Sales Act*, regulating ticket selling and the use of certain software in ticket selling. Bill 31 contains similar amendments to the Act. Consumers would be provided with rights and remedies against secondary ticket sellers. The use of certain software (e.g., bots) to circumvent security measures, systems, and impact ticket availability is prohibited. Primary ticket sellers would be responsible for exercising reasonable diligence to detect ticket purchases made through such prohibited software. Ticket purchasers will have a right of action in court for any loss suffered as a result of the use of bots.

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