A new consumer protection act is proposed for Ontario

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The Ontario government recently proposed legislation to replace the existing *Consumer Protection Act, 2002* with Bill 142, the *Better for Consumers, Better for Businesses Act, 2023*.

The *Better for Consumers, Better for Businesses Act, 2023* will keep some aspects of the old *Consumer Protection Act, 2002*, but also introduces new components. There is currently no timing for when Bill 142 will come into effect and many details are still unknown; however, in a Consultation Paper released earlier this year in February, the Government set about the task of examining how to update the *Consumer Protection Act, 2002* to strengthen protection for consumers, adapt to changing technology and marketplace innovations, and streamline and clarify requirements to improve consumer and business understanding and compliance. These changes are anticipated to support Ontario's continued economic growth.

Some of the key changes and additions to the new *Better for Consumers, Better for Businesses Act, 2023*, include the following:

1. **Addressing unfair business practices:** The new Act will clarify and strengthen prohibitions against unconscionable conduct by explicitly prohibiting specific unfair business practices such as price gouging or taking advantage of a consumer's inability to understand language in a contract. It would also update the list of examples of prohibited false, deceptive or misleading representations to expressly forbid practices that businesses may use, such as false claims of government oversight and false prize offers. Consumers would also have an ongoing right to rescind a contract for one year after entering that contract if an unfair practice has taken place or one year after an unfair practice takes place – whichever is later.
2. **Addressing predatory practices by some suppliers leasing equipment to homeowners**: Targeting the lease or rental of water heaters, furnaces and other home comfort equipment on a long-term basis, the proposed legislation would establish specific rules for a new category of long-term leases for heating, ventilation and air conditioning (HVAC), and other home comfort appliances, called "purchase-cost-plus leases." It would also establish a 10-day cooling-off period and would set limits on termination costs for purchase-cost-plus leases if a consumer wanted to end a contract early.

3. **Providing an exit for timeshares:** After 25 years have passed, a right for consumers to exit a timeshare contract.
4. **Helping consumers with discharging certain Notices of Security Interest (NOSI):** Clarify a business' obligation to discharge a NOSI, and allow consumers to receive assistance from the Ministry of Public and Business Service Delivery in enforcing a business' obligations to discharge a NOSI.
5. **Clarifying rules for gift cards**: Make it even clearer that gift cards and other forms of prepaid purchase cards cannot expire, regardless of whether the gift card is electronic or physical and regardless of how it is purchased (*e.g*., in a store, online or via an app).
6. **Protecting consumers' right to take action in Ontario courts**. Clarifying that businesses cannot include terms in a contract that mislead consumers about their right to have disputes adjudicated in an Ontario court.
7. **Larger fines for illegal business activity**: Doubling fines for individuals and corporations convicted of an offence from $50,000 and $250,000, respectively, to $100,000 and $500,000.
8. **Deterring businesses from refusing to provide statutory refunds:** Refunds, where entitled, are to be provided within 15 days of the consumer giving notice, and the right to sue when a business does not provide a full refund, and then the right to recover 3 times the original refund amount.
9. **Addressing automatic contract or service renewals:** Limit when businesses can make unilateral contract amendments, renewals, and extensions without express consumer consent. It is anticipated that regulations will require that automatic renewals or extensions of contracts, where permitted, must include an ongoing right for the consumer to cancel.
10. **Right to provide negative reviews:** Prohibiting businesses from including terms in a contract that try to deter consumers from publishing reviews or that bill consumers in response to the contents of reviews.
11. **Making it easier to cancel subscriptions:** Regulations are anticipated to prohibit businesses from creating unnecessary barriers when consumers try to cancel a contract, particularly a subscription or membership-based contract.
12. **Greater consumer access to credit information**: Proposed amendments to the *Consumer Reporting Act* would enable consumers to receive free electronic access to their consumer reports and credit scores once per month.

While the passage of Bill 142 is still some ways off, businesses should become familiar with the new requirements, as there is no transition period and the regulatory sections suggest retroactive effect to consumer contracts. For any questions, please contact the authors or key contacts listed below to discuss and assess your consumer practices and to prepare for the future.

By

George R. Wray, Cindy Y. Zhang

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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