

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Monday, March 5, 1990

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Helmut Pankratz (La Verendrye)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Connery, Driedger (Emerson),
Neufeld

Messrs. Angus, Gillieshammer, Kozak,
Maloway, Pankratz, Patterson, Storie, Mrs.
Yeo

MATTERS UNDER DISCUSSION:

Bill No. 63—The Consumer Protection
Amendment Act (3)

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Mr. Chairman: The Committee on Law Amendments is called to order. It was agreed when last we met on February 28, 1990, to hear presentations on Bill No. 63. It was agreed at the beginning of that committee that we would sit one more meeting to hear the remaining numbers of public presenters. I have a list of 11 people wanting to present. They are on the list. I will read them to you at this time. Mr. Kozak.

Mr. Richard Kozak (Transcona): Mr. Chairman, I wonder if, for the benefit of the committee, it would be possible for the Clerk to circulate a copy of the Bill to committee Members, as it appears we will be having very few presenters from the visual evidence.

Mr. Chairman: I will read out this list at this time. We will ask the Clerk of Committees to distribute the Bill. Ms. Alice Balsillie, is she here? No. Mr. Maury Bay; Mrs. Mavis Bleasdale; Mr. Len Roy; Ms. Maryann Mihychuk; Mr. Len Sawatsky; Mr. Lionel Orlikow; Ms. Christine Burton; Ms. Bev Nicol; Dr. Wendy Josephson; Mrs. Karen Burgoyne.

I have read the names of all the people who have been notified that were on the list from last time. They have been contacted and none of them are here to make presentations. Is it the will of the committee to go into the Bill clause by clause? Agreed.

At the committee meeting on February 6, 1990, this committee heard a presentation from Mr. Bill Hanson who referred to other materials which he would pass on at a later date. We are circulating the covering letter for your information at this time. Included with the package was a number of other articles on the Children's Broadcast Institute. Due to a large number of booklets and other reference material, it is impossible

to photograph this information. The Members of the committee who are interested in this material, please advise the Committee Clerk, and she will let you review the material at this time.

* (2005)

It was the will of the committee to go clause by clause? As all presentations have been heard regarding Bill No. 63, we will proceed. Does the Minister have an opening statement? Mr. Minister, you do not have an opening statement? Could I have a copy of the Bill, please? Does the official Opposition Critic have a response?

Mr. Allan Patterson (Radisson): Can I have a moment, please, Mr. Chairman?

Hon. Albert Driedger (Minister of Highways and Transportation): On a point of order, Mr. Chairman. I have just a question of clarification. Since when is it a process that the Minister and critics make opening statements when we deal with a Bill? I thought that if presenters were finished, we would go clause by clause.

Mr. Chairman: That is what we are about to start.

Bill No. 63, Clause 1—pass; Clause 2—pass; Clause 3—pass; Clause 4—pass; Clause 5—pass; Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass.

Clause 10—Mr. Maloway.

Mr. Jim Maloway (Elmwood): Mr. Chairman, I move THAT Bill 63 be amended by adding the following after section 10:

Section 27.1 and 27.2 added

10.1 The following is added after section 27:

Advertising re cheques issued by government

27.1 No person carrying on business in Manitoba shall advertise that he or she exchanges or accepts as payment cheques or other orders to pay issued by the government of Manitoba, the government of Canada or a municipality.

No charge for cashing or exchanging cheque issued by government

27.2 No person shall charge another person for exchanging or cashing a cheque or other order to pay issued by the government of Manitoba, the government of Canada or a municipality.

(French version)

Il est proposée que le projet de loi 63 soit amendé par adjonction, après l'article 10, de ce qui suit:

Adjonctions des articles 27.1 et 27.2

10.1 La Loi est modifiée par adjonction, après l'article 27, de ce qui suit:

Publicité concernant les chèques du gouvernement

27.1 Il est interdit aux personnes qui exploitent une entreprise au Manitoba d'annoncer par voie de publicité qu'elles permettent l'encaissement des ordres de paiement, y compris les chèques, que le gouvernement du Manitoba, le gouvernement du Canada ou une municipalité émet ou qu'elles acceptent ces ordres de paiement.

Frais d'encaissement

27.2 Il est interdit d'exiger d'une personne le paiement de frais en ce qui concerne l'encaissement des ordres de paiement, y compris les chèques, que le gouvernement du Manitoba, le gouvernement du Canada ou une municipalité émet.

Mr. Chairman: Mr. Maloway, I have a ruling for the committee regarding Mr. Maloway's proposed amendments to Bill No. 63. The purpose of each of these amendments is to amend a section of the original Act or to add new sections to the original Act. These amendments do not address sections of the Act which are dealt with in the Bill before the committee.

Beauchesne's Citation 698(8)(b), referring to an amendment in committee, states that: "An amendment may not amend sections from the original Act unless they are specifically being amended in a clause of the bill before the committee." I am therefore ruling the amendment out of order. The correct way for the Honourable Member to bring forward these amendments, would be in a separate Private Member's Bill.

Mr. Jerry Storie (Flin Flon): Mr. Chairperson, on a point of order.

Mr. Chairman: Mr. Storie, on a point of order.

Mr. Storie: Mr. Chairperson, I recognize the section that you have quoted from Beauchesne's and from our Rules. However, on numerous occasions in the past few years there has been agreement where an amendment was viewed as a friendly amendment, where it was agreed to by committee Members that this committee can provide amendments where that is viewed as advisable and desirable. I believe this is one of those amendments. I was here when a number of presenters recommended amendments in this particular vein, so I would argue that if there is leave of the committee, we can certainly do this by leave of the committee. It seems to me to be a very positive amendment and one that would be well received.

Mr. Chairman: Mr. Storie, I believe that a dispute over the facts is not a point of order.

* (2010)

Mr. Storie: Mr. Chairperson, it is a point of order. It is a point of order referencing how we do business in

this committee. There will be many people around this table who recall that last year when we passed the conflict of interest legislation, we had this discussion about whether in fact the amendments we were talking about, amendments which were dealing with untendered contracts, were in fact the subject matter of the Bill. It was acknowledged at the time that it was not specifically referenced, but the committee nonetheless in its wisdom went ahead and passed the amendment.

I am saying that there are a number of amendments that deal with consumer protection—and that is the title of this Bill—that are sufficiently important that this committee should be considering passing them. Certainly I would not expect a preliminary statement from the Chair to dismiss them.

If they are going to be dismissed, then I would like to hear from the Minister as to why they are being dismissed, why they cannot be considered at this time. I would like to hear from the Liberal Party why they are not going to be supporting consumers when it comes to manufacturers' retail prices or when it comes to lemon laws or when it comes to any of the other amendments that this Chair may rule out of order. It seems to me they are practical, common-sense amendments to protect consumers. That is what we are here to do; this is The Consumer Protection Act. I would ask for the committee to use a little common sense.

Mr. Chairman: Well, you addressed it as a point of order, and I would have to again remind you I do not think that is a point of order. If it—

Mr. Storie: Mr. Chairperson, it is a point of order. The fact is that precedent is used in this committee and in the Legislature to establish new ways of doing business—precedent. The precedent is that we have on other occasions at this legislative sitting passed amendments which were not contemplated in the original Bill. They are amendments that are consistent with The Consumer Protection Act and that is what we are trying to do.

Mr. Chairman: Mr. Storie, it is not a point of order, but if you would want to make a motion, then we can call the question as far as the committee is concerned on that issue.

Mr. Chairman: Mr. Minister, would you want to respond? Mr. Storie.

Mr. Storie: Mr. Chairperson, I move that this committee consider the amendment presented by my colleague, amendment to Section 27(3).

Mr. Chairman: Would you please give that in writing, please? I need a motion in writing, please, Mr. Storie. On the motion moved by Mr. Storie, seconded by the Member for Elmwood (Mr. Maloway), that the amendment introduced by the Member for Elmwood preventing the taking of payment to cash Government cheques be considered at this time, all those in favour of that motion, please raise your hands.

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Mr. Lamoureux, on a point of order.

Mr. Kevin Lamoureux (Inkster): Yes, Mr. Chairperson, on a point of order. Would a vote on that particular motion then in fact be a challenge to the Chair?

Mr. Chairman: Yes.

Mr. Lamoureux: Mr. Chairperson, on that point or order, the Member for Flin Flon (Mr. Storie) has stated that you have not made a ruling.

Mr. Chairman: Mr. Lamoureux, that is not a point of order.

Mr. Lamoureux: Okay, fine.

Mr. Chairman: Is it clarification that you need, additional clarification?

Mr. Lamoureux: No.

Mr. Patterson: Would you mind just reading the motion again, please?

* (2015)

Mr. Chairman: Moved by Mr. Storie, that the amendment introduced by the Member for Elmwood (Mr. Maloway) preventing the taking of payment for cashing Government cheques be considered at this time.

What is the will of the committee? Question? All those in favour of this motion, please say aye. All those opposed, please say nay. I will ask for a raise of hands. All those in favour, raise your hands.

Clerk of Committees (Ms. Bonnie Greschuk): One, two.

Mr. Chairman: All those opposed, please raise your hands. Mr. Maloway, are you raising your hand both times?

All those opposing this—

Mr. Storie: Can the Clerk identify the Members of the committee?

Mr. Chairman: I have asked the question and I want all those who are opposing this motion now to raise your hands for a count.

Madam Clerk: One, two, three.

Mr. Chairman: I rule that this is defeated. Now, if you want to know who the Members are, Mr. Storie, the Members on the committee—

Mr. Storie: You have only asked one side of the question. Could we have the other side of the question?

Mr. Chairman: I asked, those in favour; there were two.

Mr. Storie: There were two or three people who had their hands up.

Mr. Chairman: Two. When I asked for the question—okay, I will do it. Does the committee want—(interjection)—Mr. Storie, did you want me to read out the Members on the committee?

Mr. Storie: Yes, I did. Thank you.

Mr. Chairman: Angus, Connery, Driedger (Emerson), Gilleshammer, Kozak, Maloway, Neufeld, Pankratz, Patterson, Storie, Yeo. So that was defeated. Can we carry on now with Clause No. 10? Shall Clause No. 10 pass—Mr. Maloway.

Mr. Maloway: Mr. Chairman, I move

THAT Bill 63 be amended by adding the following after section 10.1:

Section 27.3 added

10.2 The following is added after section 27.2:

Advertising by means of facsimile communication 27.3 No person carrying on business in Manitoba shall advertise for sale or promote any goods or services, by means of an unrequested facsimile communication through a telephone network.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l'article 10.1, de ce qui suit:

Adjonction de l'article 27.3

10.2 La Loi est modifiée par adjonction, après l'article 27.2 de ce qui suit:

Publicité par télécopie

27.3 Au Manitoba, il est interdit de faire, par télécopie au moyen d'un réseau téléphonique, de la publicité non sollicitée concernant la vente d'objets ou de services.

Mr. Chairman: Has this amendment been circulated to all Members? Have you all seen the amendment?

On the proposed motion of Mr. Maloway, it appears that I will have to rule this amendment out of order. We can discuss this amendment in principle before I rule on it. Is there any discussion on it? Mr. Storie.

Mr. Storie: If the Chair is going to continue to rule these out of order, if that is the ultimate course of action the Chair decides, then I would make it known that I intend to introduce a motion in each case that the committee decide these things.

This is not a surprise to this committee that these amendments are coming before the—the Member for Elmwood (Mr. Maloway) has had these consumer protection pieces on the Order Paper in one form or another up for discussion for months. There should be no surprise. They are all individually important pieces of legislation to protect consumers, and I will be moving in each case that the amendment be considered by

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committee. So if you have a form to fill out, I will fill out the form.

* (2020)

Mr. John Angus (St. Norbert): Mr. Chairperson, I understand that we are only discussing the relevance of introducing this motion, and you are ruling it out of order. I am not perhaps as familiar with the rules of the committee or Beauchesne's or anything like that as others may be, but it seems to me we should be discussing the relevance of introducing this as opposed to the merits of the amendments. So you have ruled that it is not in order to introduce it.

Mr. Chairman: It appears that I would have to rule this way out of order, but we can discuss this amendment in principle first. So I would wish that the committee Members would be discussing it before I make the ruling on it. Mr. Angus.

Mr. Angus: Mr. Chairman, if I may. Do you want me to discuss the merits of this particular motion or whether or not the committee should be considering it? - (interjection)- Then he is going to rule it is out of order?

Mr. Kozak: Mr. Chairman, just for the edification of all Members of the committee, can we confirm with great certainty that the votes that will be taking place with regard to the admissibility of these amendments are specifically votes on whether or not we sustain the ruling of the Chair?

Mr. Chairman: If it is directly on Mr. Maloway's motion, then you are questioning the ruling of the Chair.

Now, Mr. Storie is going to bring forward a motion. Mr. Storie moves the amendment made by his colleague from Elmwood that no person shall advertise by means of unrequested facsimile communications through a telephone network.

All those in favour of this motion, please raise your hands.

An Honourable Member: Have you ruled it in order or out of order, Mr. Chairman?

Mr. Chairman: This is in order. Mr. Maloway.

Mr. Maloway: Well, Mr. Chairman, I would like to just spend a few seconds to address the question of the amendment itself. I wanted to make reference to a poll that the Canadian Federation of Independent Business did recently, which indicated that 81 percent of small business in Canada supports this kind of a measure.

I would like to also point out to those who think that we never see eye to eye with the Federation of Independent Business that here is one example of where we do.

Mr. Angus: Again, I would like some clarification on whether or not this motion is in order or these proposed amendments are in order.

An Honourable Member: Yes, they are.

An Honourable Member: No, they are not.

Mr. Angus: Well, there seems to be—the Minister says one thing—

Mr. Chairman: Mr. Storie's motion is in order. Mr. Maloway's is not. This motion we have before us, moved by Mr. Storie, the amendment made by my colleague from Elmwood, is that no person shall advertise by means of unrequested facsimile communications through a telephone network. We have that before us as a motion.

* (2025)

Mr. Kozak: On a point of order, Mr. Chairman.

An Honourable Member: That we consider it or that—

Mr. Chairman: That it be considered.

An Honourable Member: Okay, fine.

POINT OF ORDER

Mr. Chairman: Mr. Kozak, on a point of order.

Mr. Kozak: Is there not a certain logical non sequitur in debating a motion that asks us to consider another motion that the Chair has indicated is out of order?

Mr. Chairman: Okay, I think for clarification, on Mr. Kozak's point of order, I would like to just clarify that Mr. Maloway's amendment I ruled out of order, and then I received this motion from Mr. Storie. So we are voting on Mr. Storie's motion after which you can then challenge the Chair on Mr. Maloway's amendment if you like.

Mr. Chairman: I am calling the question on this motion by Mr. Storie. All those in favour of Mr. Storie's motion, please raise your hands.

Madam Clerk: One, two.

Mr. Chairman: Two. All those against, please raise your hands.

Madam Clerk: One, two, three, four, five, six, seven.

Mr. Chairman: I declare Mr. Storie's motion defeated. Number 10—pass; No. 11—pass.

No. 12—Mr. Minister.

Hon. Edward Connery (Minister of Co-operative, Consumer and Corporate Affairs): Number 12.

I move

THAT section 12 of Bill 63 be amended by striking out "10" and substituting "7".

(French version)

Il est proposé que l'article 12 du projet de loi 63 soit amendé par substitution, à "10", de "7".

Mr. Kozak: Mr. Chairman, this particular amendment is in line with the presentations made to this committee by both the Consumer Association of Canada and the Canadian Federation of Independent Business, two very diverse organizations which presented an identical position to us with regard to this particular matter. Their words carry very high credibility with the official Opposition.

Mr. Chairman: Okay. Any more discussion? Mr. Minister.

Mr. Connery: I would move it in both French and English.

Mr. Chairman: Very good. The Honourable Minister has moved that section 12 of Bill 63 be amended by striking out "10" and substituting "7", and that both in English and French. Does the committee agree to the amendment? Agreed.

Section 12 as amended—pass; Section 13—pass; Clause 14—pass; Clause 15—pass; Clause 16—pass; Clause 17—pass; Clause 18—pass; Clause 19—pass; Clause 20—pass; Clause 21—pass.

Clause 22—Mr. Maloway.

* (2030)

Mr. Maloway: Mr. Chairman, I move

THAT Bill 63 be amend by adding the following after section 22:

Part XIV rep. & sub.

22.1 Part XIV is repealed and the following Part is substituted:

**PART XIV
DEPOSITS**

Deposits more than \$500. to be held in trust

118(1) All deposits in excess of \$500. per transaction received by a seller from a purchaser shall be held in trust and credited by the seller to a separate account of the seller maintained for that purpose at a bank, trust company or credit union.

Use of deposit

118(2) The deposit received under subsection (1) shall remain in trust until

- (a) the purchaser receives the goods whereupon the deposit shall be applied to the purchase price; or
- (b) the sale is rescinded whereupon the deposit shall be returned to the purchaser; or
- (c) the purchaser refuses to accept delivery of the goods whereupon the seller may take the deposit as liquidated damages or leave the

deposit in trust pending the outcome of a legal action against the purchaser for damages for breach of contract.

Size of deposits restricted

118(3) No seller may, with respect to any retail sale of goods, demand or accept from a purchaser a deposit that exceeds 20 percent of the selling price of the goods.

Liability where deposit not held in trust

119 The following persons are liable to the purchaser for any loss he incurs as a result of the failure of the seller to comply with section 118:

- (a) the owner where the seller is a sole proprietorship,
- (b) all partners where the seller is a partnership,
- (c) all directors where the seller is a corporation.

Application of Part

120 This Part does not apply to a seller carrying on the business of

- (a) a retail monument dealer; or
- (b) a retail dealer in custom clothing, garments and shoes.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l'article 22, de ce qui suit:

Abr. et rempl. de la partie XIV

22.1 La partie XIV est abrogée et remplacée par ce qui suit:

**PARTIE XIV
DÉPÔTS**

Dépôts de plus de 500\$ détenus en fiducie

118(1) Les dépôts dépassant 500\$ par transaction que le vendeur reçoit d'un acheteur sont détenus en fiducie et portés par le vendeur au crédit d'un compte distinct ouvert à cette fin dans une banque, une compagnie de fiducie ou une caisse populaire.

Utilisation du dépôt

118(2) Tout dépôt reçu en application du paragraphe (1) demeure en fiducie jusqu'à ce que:

- a) l'acheteur reçoit les objets, auquel cas le dépôt est appliqué au prix d'achat;
- b) la vente soit rescindée, auquel cas le dépôt est remis à l'acheteur;
- c) l'acheteur refuse d'accepter la livraison des objets, auquel cas le vendeur peut prendre le dépôt à titre de dommages-intérêts liquidés ou le laisser en fiducie jusqu'à ce qu'une décision ait été rendue relativement à une action en justice intentée contre l'acheteur en vue de l'obtention de dommages-intérêts pour rupture de contrat.

Restriction quant au montant des dépôts

118(3) Il est interdit aux vendeurs, relativement à une vente au détail d'objets, d'exiger ou d'accepter d'un acheteur un dépôt qui excède 20 pourcent du prix de vente des objets.

Dépôt non détenu en fiducie

119 Les personnes suivantes sont responsables envers l'acheteur pour toute perte qu'il subit par suite de l'omission du vendeur d'observer l'article 118:

- a) le propriétaire lorsque le vendeur est une entreprise individuelle;
- b) tous les associés lorsque le vendeur est une société en nom collectif;
- c) tous les administrateurs lorsque le vendeur est une corporation.

Champ d'application

120 La présente partie ne s'applique pas au vendeur qui exploite un commerce:

- a) de détaillant de pierres tombales;
- b) de détaillants de vêtements et de souliers faits sur mesure.

Mr. Chairman: Mr. Maloway, I would again have to rule on this because we are discussing something that is actually part of the original Act and not part of this Bill. I would have to again rule that your amendment is out of order. What is the will of the committee?

An Honourable Member: Out of order.

Mr. Chairman: Out of order? Mr. Storie.

Mr. Storie: Mr. Chairperson, I do not believe that it is out of order. I believe it is consistent with the practice of the committee. I move that the amendment introduced by the Member for Elmwood (Mr. Maloway) that deposits be held in trust if over \$500 and under no circumstances should the deposit be more than 20 percent be now considered.

Mr. Chairman: Moved by Mr. Storie, that the amendment introduced by the Member for Elmwood, that the deposits be held in trust if over \$500 and that under no circumstances should the deposit be more than 20 percent, be now considered. All those in favour of that motion, please raise your hands.

Madam Clerk: One, two.

Mr. Chairman: Two. All those against, please raise your hands.

Madam Clerk: One, two, three, four, five, six.

Mr. Chairman: I rule that this is defeated.

Clause 22—pass; Clause 23—Mr. Maloway.

Mr. Maloway: Mr. Chairman, I move

THAT Bill 63 be amended by adding the following after section 23:

Part XIV added

23.1 The following Part is added after section 126 as Part XVI:

**PART XVI
MANUFACTURER'S SUGGESTED
RETAIL PRICE**

Definitions

127 In this Part,

"dealer" means a person who carries on or is engaged in the business of selling, or of distributing for sale, new motor vehicles; ("concessionnaire")

"manufacturer" means a person who carries on, or is engaged in, the business of manufacturing or assembling new motor vehicles and includes

(a) a person who brings into the province new motor vehicles for sale at retail in the province, and

(b) a person who act for, or at the direction of, a manufacturer, assembler or importer of new motor vehicles with respect to the distribution of the vehicles for sale at retail in the province; ("fabricant")

"manufacturer's suggested retail price" means the retail sale price that is suggested to a dealer by the manufacturer of a product that is to be offered for sale at retail by the dealer; ("prix de détail suggéré par le fabricant")

"new motor vehicle" means a motor vehicle that has never been sold at retail, ("véhicule automobile neuf")

"purchaser" means a purchaser on a retail sale. ("acheteur")

Disclosure requirements

128(1) A dealer shall, before a new motor vehicle is offered for sale at retail, affix to a window of the vehicle a notice that specifies,

- (a) the make, model and model year of the vehicle;
- (b) the serial or identification number of the vehicle;
- (c) the manufacturer's suggested retail price for the vehicle;
- (d) the manufacturer's suggested retail price for each accessory or piece of optional equipment that is placed on or in the vehicle at the time of delivery and that is not included in the price stated under clause (c);
- (e) the amount charged, if any, to the dealer for transportation of the vehicle to the location at which the dealer takes delivery of the vehicle;
- (f) the aggregate of the amounts specified under clauses (c), (d) and (e);
- (g) the retail price of each accessory or piece of optional equipment, if any, that is placed on or in the vehicle by the dealer and that is not included in the price specified under clause (d); and

(h) the costs or charges, if any, for delivery or inspection services that are to be charged to the purchaser of the vehicle.

Prohibition

128(2) A notice affixed to a new motor vehicle under subsection (1) shall not be removed before the vehicle is sold to a purchaser.

Copy to purchaser on request

128(3) Where a purchaser of a new motor vehicle requests a copy of a notice affixed to the vehicle under subsection (1), the dealer shall give the purchaser a copy of the notice at the time the purchaser signs the contract of sale or, with the purchaser's consent, at a later time.

Sale without notice is voidable

129(1) A contract for the sale of a new motor vehicle to which a notice is not affixed in accordance with subsection 128(1) is, for a period of 60 days following the date of the contract, voidable at the election of the buyer.

Return of vehicle and refund

129(2) Where a buyer, upon written notice to a dealer within 60 days of the date of a contract of sale of a new motor vehicle, elects to render the contract void under subsection (1), the dealer shall, within 14 days following the notice, refund to the buyer the moneys paid by the buyer under the contract and the buyer shall, upon receipt of the refund, return the vehicle to the dealer.

Dealer offence

130(1) A dealer who acts in contravention of section 128 is guilty of an offence.

General offence

130(2) A person who causes, directs, authorizes, assents to, acquiesces in or participates in a contravention of section 128 is guilty of an offence.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l'article 23, de ce qui suit:

Adjonction de la partie XVI

23.1 La Loi est modifiée par adjonction, après l'article 126, de ce qui suit:

**PARTIE XVI
PRIX DE DÉTAIL SUGGÉRÉ PAR
LE FABRICANT**

Définitions

127 Les définitions qui suivent s'appliquent à la présente partie.

“acheteur” Acheteur dans le cadre d'une vente au détail. (“purchaser”)

“concessionnaire” Personne qui vend des véhicules automobiles neufs ou les distribue en vue de leur vente. (“dealer”)

“fabricant” Personne qui fabrique ou assemble des véhicules automobiles neufs, y compris:

- a) l'importateur de véhicules automobiles neufs destinés à la vente au détail dans la province;
- b) toute personne qui agit pour le compte ou sous la direction du fabricant, de l'assembleur ou de l'importateur à l'occasion de la distribution de véhicules automobiles neufs en vue de leur vente au détail dans la province. (“manufacturer”)

“prix de détail suggéré par le fabricant” Le prix de vente au détail que le fabricant d'un produit suggère au concessionnaire de ce produit. (“manufacturer's suggested retail price”)

“véhicule automobile neuf” Véhicule automobile qui n'a jamais été vendu au détail. (“new motor vehicle”)

Obligation de divulguer certains renseignements

128(1) Le concessionnaire est tenu, avant qu'un véhicule automobile neuf soit mis en vente au détail, d'apposer sur une des vitres du véhicule un avis contenant les renseignements suivants:

- a) la marque, le modèle et l'année du véhicule;
- b) le numéro de série ou d'identification du véhicule;
- c) le prix de détail suggéré par le fabricant à l'égard du véhicule;
- d) le prix de détail suggéré par le fabricant pour chaque accessoire ou option fixé au véhicule au moment de la livraison et qui n'est pas compris dans le prix indiqué en vertu de l'alinéa c);
- e) le montant demandé, s'il y a lieu, au concessionnaire pour le transport du véhicule jusqu'à l'endroit où il en prend livraison;
- f) le total des montants mentionnés en vertu des alinéas c), d) et e).
- g) le prix de détail de chaque accessoire ou option, s'il y a lieu, fixé au véhicule par le concessionnaire et qui n'est pas compris dans le prix indiqué en vertu de l'alinéa d);
- h) les frais de livraison ou d'inspection, s'il y a lieu, que doit payer l'acheteur du véhicule.

Interdiction d'enlever l'avis

128(2) Il est interdit d'enlever l'avis visé au paragraphe (1) avant que le véhicule automobile neuf ait été vendu à un acheteur.

Copie à l'acheteur

128(3) Le concessionnaire remet à l'acheteur, sur demande, une copie de l'avis visé au paragraphe (1) au moment de la signature du contrat de vente ou, si l'acheteur donne son consentement, à un moment ultérieur.

Vente annulable

129(1) Le contrat de vente d'un véhicule automobile neuf sur lequel un avis n'est pas apposé en conformité avec le paragraphe 128(1) est, pendant une période de 60 jours suivant la date de sa signature, annulable au choix de l'acheteur.

Remise du véhicule et remboursement

129(2) L'acheteur qui, au moyen d'un avis écrit envoyé au concessionnaire dans les 60 jours suivant la signature d'un contrat de vente d'un véhicule automobile neuf, choisit d'annuler le contrat conformément au paragraphe (1) a le droit de recevoir du concessionnaire, dans les 14 jours de l'avis, le remboursement des sommes qu'il a versées en vertu du contrat et il est tenu, sur réception du remboursement, de remettre le véhicule au concessionnaire.

Infraction

130(1) Le concessionnaire qui contrevient à l'article 128 commet une infraction.

Infraction générale

130(2) Quiconque cause une contravention à l'article 128, ordonne ou autorise une telle contravention, ou y consent ou y participe, commet une infraction.

Mr. Chairman: Mr. Maloway, I again would have to rule that this amendment that you are bringing forward, that all of these amendments are out of order because they challenge the original Act. I am therefore ruling that the amendment is out of order.

The correct procedure would be for the Honourable Member to bring forward these amendments in a separate Private Members' Bill. Mr. Storie.

Mr. Storie: Mr. Chairperson, we have gone through this before. I move that the amendment introduced by the Member for Elmwood, including that motor vehicle manufacturer's suggested retail sales price stickers be required to be used by retailers of Manitoba, be now considered.

Mr. Chairman: Mr. Storie moves that the amendment introduced by the Member for Elmwood, including that the motor vehicle manufacturer's suggested retail sales price stickers be required for or be used by retailers in Manitoba be now considered.

Mr. Storie, can I take it then that this shall move all of these amendments that Mr. Maloway read out just prior to my ruling? Okay. All those in favour of Mr. Storie's motion, please raise your hands.

Madam Clerk: One, two.

Mr. Chairman: Two. All those against, please raise your hands.

Madam Clerk: One, two, three, four, five six.

Mr. Chairman: I rule that it is defeated. Mr. Minister.

Mr. Connery: Mr. Chairman, I have an amendment to make to Section 16. It is a new section under 123.

* (2040)

Mr. Storie: We are at 22. Would you like leave, Mr. Chairman, to go back?

Mr. Connery: It is under Section 23. I apologize for my discrepancy. You are absolutely right, as you usually are.

I move

THAT proposed new section 123 of The Consumer Protection Act, as set out in section 23 of Bill 63, be amended

- (a) by striking out "10 days" wherever it appears in subsections (2) and (3) and, in each case, substituting "7 days";
- (b) by striking out "subject to subsections (6) and (7)," in clause (4)(a) and substituting "subject to subsection (6),";
- (c) by striking out clause (4)(b) and substituting the following:
 - (b) on the buyer's demand, the seller shall repay to the buyer immediately all amounts already paid by or on behalf of the buyer in respect of the contract, whether paid for or on account of the contract price or for or on account of any fee, cost of borrowing or other amount paid under or pursuant to or as incidental to the contract, and whether paid to the seller or another person, but the seller may retain any portion of the amounts so paid by the buyer for which services have been provided, and the portion to be so retained by the seller shall be calculated as that proportion of the amounts so paid by the buyer which bears the same mathematical relationship to the total of the amounts so paid as the period of the contract ending on the date of the cancellation bears to the total period of the contract;
- (d) by striking out subsection (7); and
- (e) by renumbering subsections (8) and (9) as subsections (7) and (8) respectively.

(French version)

Il est proposé que l'article 123 de la Loi sur la protection du consommateur, figurant à l'article 23 du projet de loi 63, soit amendé:

- a) par substitution, à "10 jours", aux paragraphes (2) et (3), de "sept jours";
- b) par substitution, à "sous réserve des paragraphes (6) et (7)", à l'alinéa (4)a), de "sous réserve du paragraphe (6),";
- c) par substitution, à l'alinéa (4)b), de ce qui suit:
 - b) le vendeur remet immédiatement à l'acheteur, à la demande de celui-ci, les sommes qui ont été versées par ou pour l'acheteur

relativement au contrat, dans le but d'acquitter le prix du contrat, les frais, notamment les frais d'emprunt, ou tout autre montant découlant du contrat, même si les versements n'ont pas été faits directement au vendeur; toutefois, le vendeur peut retenir toute partie des montants ainsi versés par l'acheteur pour des services fournis, cette partie correspondant à la proportion des montants que l'acheteur a ainsi versés qui est au total des montants versés ce que la durée du contrat jusqu'à la date de résiliation est à la durée totale du contrat.;

- d) par suppression du paragraphe (7);
- e) par substitution, aux désignations de paragraphe (8) et (9), des désignations (7) et (8) respectivement.

I would move it in both French and English.

Just as a very quick reason for what this is, prior to this amendment, when somebody cancelled after so many days, but before, within the period, the business had to refund the total money and then ask the consumer to repay for that portion they used. This way they would just refund that portion that was not used. It saves the businessperson going to small claims court for a little bit of money and it makes it fairer to the seller, that if the person has used 1 percent, then he would refund 99 percent to the consumer.

Mr. Angus: -(inaudible)- on the same mathematical relationship?

Mr. Connerly: It is the same percentage.

Mr. Chairman: Any discussion to this amendment? If not, is it the will of the committee to move this amendment in respect to English and French to Clause 23? Agreed. The amendment has been passed. Now is it the will of the committee to pass 23 as amended—Mr. Maloway.

Mr. Maloway: No, no, Mr. Chairman, I have yet another amendment for 23. I move that Bill 63 be amended by adding the following after Section 23(1). Now this is the lemon law, and it is about six pages long. So I would ask, rather than perhaps me reading it, that you pass it around to the Members, and then I could just highlight it a bit and save us a bit of time here.

Mr. Chairman: What is the will of the committee? It is being circulated at the present. Is it the will of the committee that the Member does not read it all into the records? Agreed. Okay, Mr. Maloway.

Mr. Maloway: Mr. Chairman, we would wish that it be noted in Hansard as read.

I move

THAT Bill 63 be amended by adding the following after section 23.1:

Part XVII added

23.2 The following Part is added after section 130 as Part XVII:

PART XVII MOTOR VEHICLE STANDARDS

Definitions

131 In this Part,

“authorized service agent” means a person who is authorized by a manufacturer to repair or adjust a motor vehicle on behalf of the manufacturer; (“représentant autorisé”)

“manufacturer” means a manufacturer of a motor vehicle that is the subject of a sale to which this Part applies; (“fabricant”)

“motor vehicle” means a motor vehicle, as defined in The Highway Traffic Act, that has never been sold retail; (“véhicule automobile”)

“nonconformity” means, in respect of a motor vehicle, a defect or fault that substantially impairs the use, reduces the safety or diminishes the value of the motor vehicle but does not include a defect or fault that is the result of

- (a) an accident in which the motor vehicle is involved while in the possession of the purchaser,
- (b) abuse or neglect of the motor vehicle by the purchaser or by a person using the motor vehicle with the consent of the purchaser,
- (c) a modification or alteration of the motor vehicle or a part of the motor vehicle by a person other than the manufacturer or an authorized service agent; (“non-conformité”)

“purchase” means a retail purchase of a motor vehicle; (“achat”)

“purchase price” means, in respect of a purchase, the amount of money that is paid or is payable by the purchaser and includes an amount that is allowed in respect of a motor vehicle to which this Part does not apply that the purchaser surrenders to the seller in conjunction with the purchase; (“prix d'achat”)

“replacement motor vehicle” means, in relation to a motor vehicle being replaced, a motor vehicle made by the manufacturer of the motor vehicle being replaced or, if manufactured by a different manufacturer, a motor vehicle of an equivalent manufactured quality that

- (a) is of the same or a more recent model year as that of the motor vehicle being replaced, and
- (b) is in a condition equivalent to, or better than, the condition of the motor vehicle being replaced at the time of the purchase of the motor vehicle being replaced; (“véhicule automobile de remplacement”)

“retail sale” means a sale of a motor vehicle for the personal use of the purchaser and not for resale by the purchaser; (“vente au détail”)

“sale” means a retail sale of a motor vehicle; (“vente”)

“seller” means a person who effects the sale of a motor vehicle; (“vendeur”)

“warranty” means a written affirmation of fact that is made, or a written promise that is given, by a manufacturer in respect of the manufactured quality or performance capability of a specific motor vehicle and does not include an implied warranty. (“garantie”)

Application

132 This Part applies to motor vehicles that are sold or purchased in the province after the coming into force of this Part.

One year warranty repairs

133(1) Where the quality or condition of a motor vehicle does not conform with the warranty given in respect of the motor vehicle and the nonconformity is reported by the purchaser to the manufacturer or an authorized service agent of the manufacturer within twelve months of the purchase, the manufacturer or the authorized service agent to whom the nonconformity is reported shall, at no cost to the purchaser, repair or adjust the motor vehicle to bring the condition or quality of the motor vehicle into conformity with the warranty.

Seller to provide list of agents

133(2) For purposes of subsection (1), the seller of a motor vehicle shall

- (a) provide to the purchaser
 - (i) an owner’s manual published or distributed by the manufacturer of the motor vehicle, and
 - (ii) a list of the names, addresses and phone numbers of authorized service agents of the manufacturer in the province; and
- (b) deliver, on or before January 1st each year, a copy of the warranty and of the owner’s manual to the Department of Co-operative, Consumer and Corporate Affairs.

Duties of agent or seller on sale

133(3) On a sale, the seller shall provide to the purchaser

- (a) an explanation of the procedure to be followed in making a claim under the warranty of the manufacturer;
- (b) a written statement containing a summary of the rights of the purchaser in respect of the sale; and
- (c) a toll-free long distance telephone number where the manufacturer can be reached.

Warranty repair statement

134 When returning a motor vehicle to a purchaser after the completion of repairs or adjustments as required under subsection 133(1), a manufacturer or authorized service agent shall provide to the purchaser an itemized and readable statement that

- (a) contains a general description of the problem as reported by the purchaser;

- (b) indicates the odometer reading of the motor vehicle on the day it is returned by the purchaser for repair or alteration;
- (c) indicates the diagnosis made by the manufacturer or authorized service agent with respect to the condition of the motor vehicle;
- (d) lists the parts that are supplied to the motor vehicle for purposes of the repairs or adjustments;
- (e) describes the labour that is performed on the motor vehicle;
- (f) indicates the dates on which the parts are supplied and the labour is performed;
- (g) confirms that a test drive of the motor vehicle was performed after completion of the repairs or adjustments and indicates the length of the test drive; and
- (h) indicates the dates on which the diagnosis and the repairs or adjustments are done.

Notice of claim by purchaser

135(1) Where repairs or adjustments to a motor vehicle are required four or more times in respect of the same nonconformity or a motor vehicle is out of service for 20 or more days due to a nonconformity, the purchaser may give written notice of a claim by the purchaser under the warranty to the seller of the motor vehicle or to an authorized service agent of the manufacturer.

Notice delivered or mailed

135(2) A purchaser under subsection (1) shall serve the notice on the seller or agent by delivery of the notice to the business office of the seller or agent or by registered mail addressed to the business office of the seller or agent.

Seller to transmit claim

135(3) A seller or agent under subsection (1) shall, upon receipt of the notice, immediately inform the manufacturer of the claim.

Manufacturer has 7 days

135(4) A manufacturer shall, no later than the seventh business day of the seller or agent that follows the day on which notification under subsection (1) is received by the seller or agent, provide the seller or agent with the name and address of a repair facility, reasonably accessible to the purchaser, where the purchaser may deliver the vehicle for the necessary repairs or adjustments under the warranty at no cost to the purchaser and the seller or agent shall immediately inform the purchaser of the name and address of the repair facility.

10 days to make final repair

135(5) Where a motor vehicle is delivered to a repair facility by a purchaser under subsection (4), the repairs or adjustments required to restore the motor vehicle to a condition or quality that conforms with the warranty must be effected by the repair facility within 10 days of the day on which the vehicle is delivered to the facility.

No further repair by manufacturer

135(6) Where a repair facility under subsection (5) fails to effect the required repairs or adjustments within 10 days of the day on which a motor vehicle is delivered to the facility, the manufacturer is in breach of the warranty issued in respect of the motor vehicle.

Election by purchaser

136(1) Where, under subsection 135(6), a manufacturer is in breach of the warranty issued in respect of a motor vehicle, the purchaser may,

- (a) at any time after expiration of the period described in subsection 135(5), demand return of the motor vehicle; or
- (b) demand either
 - (i) a replacement motor vehicle of comparable value based on the purchase price of the motor vehicle less a reasonable offset for use of the motor vehicle by the purchaser, or
 - (ii) a refund of the purchase price of the motor vehicle and the sales tax that was paid by the purchaser, less a reasonable offset for use of the motor vehicle by the purchaser.

Return where option not exercised

136(2) Subject to subsection (5), a manufacturer under subsection (1) shall comply with the demand of the purchaser no later than the tenth day following receipt of the demand.

Repairs at manufacturer's expense

136(3) Where a manufacturer returns a motor vehicle to a purchaser under clause (1)(a), the purchaser may deliver the motor vehicle to a motor vehicle service facility that the purchaser chooses and may order that repairs or adjustments that have not been done by the manufacturer and that remain to be done to restore the motor vehicle to conformity with the warranty be done and the manufacturer shall reimburse the purchaser the cost of the repairs or adjustments done by the service facility.

Calculation of "reasonable offset for use"

136(4) For purposes of clause (1)(b), a reasonable offset for use is an amount of money that is calculated by multiplying the number of kilometres that the car is driven while in the possession of the purchaser by the purchase price of the motor vehicle and dividing the product by 190,000.

Refund to pay charges and liens first

136(5) Where a purchaser elects to take a refund under subclause (1)(b)(ii), the manufacturer shall first pay the refund, in whole or in part as circumstances require, to persons holding charges or liens against the motor vehicle and secondly pay the balance of the refund, if any, to the purchaser.

Sales tax refund to manufacturer

136(6) Where a manufacturer makes a refund under subclause (1)(b)(ii), the manufacturer may apply to the

Minister of Finance for remission in favour of the manufacturer of the amount of sales tax included in the refund.

More favourable warranties

137 Where this Part imposes a duty on a manufacturer that is less favourable to a purchaser than a duty undertaken by the manufacturer in a warranty of the manufacturer, the more favourable duty under the warranty applies and in all other respects the manufacturer is subject to this Part.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l'article 23.1, de ce qui suit:

Adjonction de la partie XVII

23.2 La présente partie est ajoutée après l'article 130.

**PARTIE XVII—VÉHICULES
AUTOMOBILES DÉFECTUEUX**

Définitions

131 Les définitions qui suivent s'appliquent à la présente partie.

"achat" Achat au détail d'un véhicule automobile. ("purchase")

"fabricant" Fabricant d'un véhicule automobile faisant l'objet d'une vente à laquelle s'applique la présente partie. ("manufacturer")

"garantie" Affirmation solennelle écrite de fait ou promesse écrite de la part d'un fabricant relativement à la qualité de fabrication ou à la capacité de fonctionnement d'un véhicule automobile en particulier. La présente définition exclut la garantie implicite. ("warranty")

"non-conformité" Vice ou défaut ayant pour effet de limiter l'usage d'un véhicule automobile, de le rendre moins sécuritaire ou d'en diminuer la valeur, et ce, de façon considérable. La présente définition exclut les vices et les défauts qui résultent:

- a) d'un accident survenant alors que l'acheteur avait la possession du véhicule;
- b) d'un usage abusif ou négligent du véhicule de la part de l'acheteur ou de l'utilisateur à qui l'acheteur a donné son consentement;
- c) d'une modification de la totalité ou d'une partie du véhicule automobile par une personne, à l'exception du fabricant et du représentant autorisé. ("non-conformity")

"prix d'achat" Montant qui est payé ou payable par l'acheteur. Est assimilé au prix d'achat le montant accordé pour la reprise d'un véhicule automobile auquel la présente partie ne s'applique pas. ("purchase price")

"représentant autorisé" Personne autorisée par le fabricant à réparer ou à régler un véhicule automobile pour le compte de ce fabricant. ("authorized service agent")

“véhicule automobile” Véhicule automobile, au sens du Code de la route, qui n’a jamais été vendu au détail. (“motor vehicle”)

“véhicule automobile de remplacement” Véhicule automobile provenant du fabricant du véhicule remplacé ou, si le véhicule provient d’un autre fabricant, véhicule automobile de qualité de fabrication équivalente qui:

a) est un modèle de la même année ou d’une année plus récente que le véhicule automobile remplacé;

b) est dans le même état ou dans un meilleur état que le véhicule automobile remplacé au moment de l’achat de celui-ci. (“replacement motor vehicle”)

“vendeur” Personne qui vend un véhicule automobile. (“seller”)

“vente” Vente au détail d’un véhicule automobile. (“sale”)

“vente au détail” Vente d’un véhicule automobile réservé à l’usage personnel de l’acheteur et qui n’est pas destiné à la revente par ce dernier. (“retail sale”)

Application

132 La présente partie s’applique aux véhicules automobiles qui sont vendus ou achetés dans la province après son entrée en vigueur de celle-ci.

Garantie d’un an

133(1) Le fabricant ou le représentant autorisé répare ou règle gratuitement le véhicule automobile dont l’état ou la qualité n’est pas conforme à la garantie donnée si l’acheteur lui en rapporte la non-conformité dans les 12 mois suivant l’achat. Les réparations et les réglages en question visent à rendre l’état ou la qualité du véhicule conforme à la garantie.

Liste de représentants

133(2) Pour l’application du paragraphe (1), le vendeur:

- a) donne à l’acheteur:
 - (i) un manuel du propriétaire publié ou distribué par le fabricant du véhicule automobile,
 - (ii) une liste des noms, de l’adresse et du numéro de téléphone des représentants autorisés du fabricant situés dans la province.
- b) donne, au plus tard le 1^{er} janvier de chaque année, une copie de la garantie et du manuel du propriétaire au ministère de la Consommation, des Corporations et des Coopératives.

Fonctions du représentant ou du vendeur

133(3) Au cours d’une vente, le vendeur donne à l’acheteur:

- a) une explication de la procédure que doit suivre l’acheteur s’il entend présenter une

réclamation aux termes de la garantie du fabricant;

- b) une déclaration écrite comprenant un résumé des droits de l’acheteur relativement à la vente;
- c) un numéro de téléphone auquel le fabricant peut être rejoint sans frais.

Déclaration postérieure aux réparations

134 Le fabricant ou le représentant autorisé qui remet le véhicule automobile à l’acheteur après avoir terminé les réparations ou les réglages prévus au paragraphe 3(1) donne à l’acheteur une déclaration lisible et détaillée:

- a) comprenant une description sommaire du problème signalé par l’acheteur;
- b) indiquant le kilométrage du véhicule au jour de sa remise par l’acheteur pour réparations ou modification;
- c) indiquant le diagnostic du fabricant ou du représentant autorisé relativement à l’état du véhicule;
- d) comprenant la liste des pièces qui ont été nécessaires à la réparation ou au réglage du véhicule;
- e) détaillant les travaux qui ont été exécutés sur le véhicule;
- f) indiquant les dates de fourniture des pièces et d’exécution des travaux;
- g) confirmant la tenue d’un essai de route après l’exécution des réparations ou des réglages sur le véhicule et indiquant la durée de l’essai;
- h) indiquant les dates auxquelles les réparations ou les réglages ont été exécutés et à laquelle le diagnostic a été rendu.

Avis de réclamation

135(1) Lorsqu’il s’avère nécessaire, en raison d’une même non-conformité, d’effectuer des réparations ou des réglages à un véhicule automobile à quatre reprises au moins ou, lorsqu’en raison d’une non-conformité, un véhicule demeure hors d’usage pendant au moins 20 jours, l’acheteur peut donner au vendeur ou au représentant autorisé du fabricant un avis écrit de la réclamation prévue par la garantie.

Signification de l’avis

135(2) L’acheteur signifie l’avis en le remettant au bureau du vendeur ou du représentant ou en l’envoyant par courrier recommandé à la même adresse.

Transmission de la réclamation

135(3) Dès réception de l’avis, le vendeur ou le représentant en informe sans délai le fabricant.

Délai de 7 jours

135(4) Au plus tard le 7^e jour ouvrable du vendeur ou du représentant qui suit le jour de réception de l’avis prévu au paragraphe (1), le fabricant donne au vendeur

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ou à son représentant le nom et l'adresse d'un établissement de réparation auquel l'acheteur à assez facilement accès et où il peut amener son véhicule pour y faire faire gratuitement les réparations et les réglages couverts par la garantie. Le vendeur ou l'agent transmet immédiatement à l'acheteur le nom et l'adresse de l'établissement en question.

Délai de 10 jours

135(5) Dans les 10 jours suivant la remise du véhicule automobile prévue au paragraphe (4), le personnel de l'établissement de réparations exécute les réparations ou les réglages nécessaires afin que l'état ou la qualité du véhicule soit conforme à la garantie.

Omission de réparer

135(6) Lorsque le personnel de l'établissement visé au paragraphe (5) omet d'effectuer les réparations ou les réglages nécessaires dans les 10 jours de la remise du véhicule automobile, le fabricant viole la garantie délivrée relativement au véhicule automobile.

Choix de l'acheteur

136(1) Lorsque le fabricant viole la garantie délivrée relativement au véhicule automobile, l'acheteur peut, selon le cas:

- a) après l'expiration de la période visée au paragraphe 135(5), exiger la remise du véhicule automobile;
- b) exiger:
 - (i) soit un véhicule de remplacement d'une valeur comparable, qui est fondée sur le prix d'achat du véhicule automobile défalqué d'une compensation raisonnable pour cause d'utilisation,
 - (ii) soit un remboursement du prix d'achat du véhicule et des taxes de vente versées par l'acheteur moins une compensation pour l'utilisation que l'acheteur en a faite.

Remise

136(2) Sous réserve du paragraphe (5), le fabricant visé au paragraphe (1) est tenu d'obtempérer à la demande de l'acheteur au plus tard le 10^e jour suivant la réception de cette dernière.

Réparations aux frais du fabricant

136(3) L'acheteur à qui le véhicule automobile est remis en vertu de l'alinéa (1)a) peut remettre ce dernier à un établissement de service pour véhicules automobiles de son choix et ordonner l'exécution des réparations ou des réglages que le fabricant n'a pas effectués et qui ont pour but de rendre le véhicule automobile conforme à la garantie. Le fabricant rembourse à l'acheteur les coûts des réparations ou des réglages.

Calcul de la compensation raisonnable

136(4) Pour l'application de l'alinéa (1)b), la compensation raisonnable pour cause d'utilisation s'entend d'un montant d'argent obtenu en multipliant le prix d'achat du véhicule automobile par le nombre de kilomètres accumulés pendant que le véhicule est en possession de l'acheteur et en divisant ce produit par 190 000.

Paiement des charges et des privilèges

136(5) Lorsque l'acheteur opte pour le remboursement prévu au sous-alinéa (1)b)(ii), le fabricant verse d'abord le remboursement, intégral ou partiel selon les circonstances, aux personnes qui détiennent des charges ou des privilèges sur le véhicule automobile et verse ensuite à l'acheteur le solde du remboursement, s'il y a lieu.

Remboursement de la taxe de vente

136(6) Le fabricant peut demander au ministre des Finances une remise du montant de la taxe de vente inclus dans le remboursement qu'il verse en application du sous-alinéa (1)b)(ii).

Obligations plus favorables

137 Lorsque les obligations du fabricant visées par la présente partie sont moins favorables à l'acheteur que celles qui sont prévues par la garantie, ces dernières s'appliquent. Le fabricant est toutefois assujéti aux dispositions de la présente partie à tous les autres égards.

Mr. Chairman: It is so noted, Mr. Maloway.

Mr. Maloway: Mr. Chairman, the amendment comes before us because of the lemon law introduced primarily in the United States; 45 states have lemon laws. This one is based on the toughest law in the United States, which is Florida, which was just passed last January, so a year and a month ago.

I would like to draw your attention to the Conservative Government, when they were in Opposition, Mr. Ducharme, who was the Consumer Critic at the time, his one and only consumer issue for the two years he was the critic was lemon law. I find it surprising the Government seems to want to ignore this issue now. When they were in Opposition, this was their only consumer issue that they seemed to want to champion.

Mr. Chairman: Any more comments in this respect? If not, I will have to again rule that this amendment by Mr. Maloway is out of order. Mr. Storie.

Mr. Storie: Mr. Chairperson, I move that the amendments introduced by my colleague, commonly called the lemon laws, be now considered.

Mr. Chairman: Moved by Mr. Storie, that the amendments introduced by his colleague, commonly called the lemon laws, be now considered. All those in favour, please raise your hands. All those in favour of this motion by Mr. Storie.

Madam Clerk: One, two.

Mr. Chairman: All those opposed, please raise your hands.

Madam Clerk: One, two, three, four, five, six, seven.

Mr. Chairman: Seven against.

Madam Clerk: Eight.

Mr. Chairman: I declare this motion defeated—eight against.

Clause 23, as amended—Mr. Maloway.

Mr. Maloway: Mr. Chairman, I move

THAT Bill 63 be amended by adding the following after Section 23.2:

Part XVIII added

23.3 The following Part is added after section 137 as Part XVIII:

**PART XVIII
MOTOR VEHICLE
DOCUMENTATION FEES**

Definitions

138 In this Part,

“documentation fee” means a fee or charge relating to the preparation or processing of documents involved in the retail sale of a motor vehicle including a fee or charge for personal property registry searches, lien or title searches, credit checks, or warranty or insurance transfers; (“frais d’établissement de documents”)

“motor vehicle” means a motor vehicle as defined in The Highway Traffic Act. (“véhicule automobile”)

Prohibition re: documentation fee

139 No seller of a motor vehicle in a retail sale shall charge a purchaser a documentation fee.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l’article 23.2, de ce qui suit:

Adjonction de la partie XVIII

23.3 La Loi est modifiée par adjonction, après l’article 137, de ce qui suit:

**PARTIE XVIII
FRAIS D’ETABLISSEMENT
DE DOCUMENTS**

Définitions

138 Les définitions qui suivent s’appliquent à la présente partie.

“frais d’établissement de documents” Les frais ayant trait à l’établissement ou au traitement de documents liés à la vente au détail de véhicules automobiles, y compris les frais ayant trait aux recherches au Bureau d’enregistrement des sûretés relatives aux biens personnels, aux recherches de privilège ou de titre, aux vérifications de crédit ou aux transferts de garantie ou d’assurance. (“documentation fee”)

“véhicule automobile” Véhicule automobile au sens du Code de la route. (“motor vehicle”)

Interdiction

139 Il est interdit à tout vendeur de véhicules automobiles d’exiger de l’acheteur, à l’occasion d’une vente au détail, qu’il verse des frais d’établissement de documents.

Mr. Maloway: It is common in Winnipeg right now for some dealers to charge anywhere from between \$50 and \$150 as a documentation fee which is nothing more than a charge to register the vehicle and check for liens and type up the contract and we feel that is unconscionable.

Mr. Chairman: Mr. Maloway, I will again have to rule that this is out of order. Mr. Storie.

Mr. Storie: Mr. Chairperson, again these amendments, in our opinion, are both germane and in order, given the precedents that we have established in this committee on numerous occasions.

I move that the amendments introduced by my colleague, the MLA for Elmwood (Mr. Maloway), which prohibit the charging of documentation fees, be now considered.

Mr. Chairman: Moved by Mr. Storie, that the amendments introduced by his colleague, the MLA for Elmwood, which prohibits the charging of documentation fees, be now considered. All those in favour of Mr. Storie’s motion, please raise your hands.

Madam Clerk: One, two.

Mr. Chairman: All those against, please raise your hands.

Madam Clerk: One, two, three, four, five, six, seven, eight.

Mr. Chairman: Eight against. I move that it is defeated.

We will now ask the question once more on Clause 23 as amended—Mr. Maloway.

Mr. Maloway: Mr. Chairman, my second last amendment this evening.

I move

THAT Bill 63 be amended by adding the following after section 23.3:

PART XIX added

23.4 The following is added after Part XVIII:

**PART XIX
ADVERTISING DIRECTED
AT CHILDREN**

Definitions

140(1) In this Part,

“advertisement” means a message that is designed to promote goods, services, or an organization in Manitoba; (“message publicitaire”)

"children" means persons under the age of 13.
("enfant")

Advertising directed at children

140(2) Except as otherwise provided in the regulations, no person shall broadcast on television a commercial advertisement that is directed at children.

Regulations respecting advertising

140(3) The Lieutenant Governor in Council may make regulations

- (a) establishing the criteria for determining whether an advertisement is directed at children;
- (b) respecting the content and physical presentation and the terms and conditions of broadcasting advertisements on television that are directed at children;
- (c) exempting, on such conditions as it may determine, an advertisement or class of advertisements from the application of subsection (2);
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Part.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l'article 23.3, de ce qui suit:

Adjonction de la partie XIX

23.4 La Loi est modifiée par adjonction, après la partie XVIII, de ce qui suit:

PARTIE XIX PUBLICITÉ DESTINÉE AUX ENFANTS

Définitions

140(1) Les définitions qui suivent s'appliquent à la présente partie.

"enfant" Personne âgée de moins de 13 ans.
("child")

"message publicitaire" Message destiné à promouvoir un bien, un service ou un organisme au Manitoba. ("advertisement")

Publicité destinée aux enfants de moins de 13 ans

140(2) Sauf disposition contraire des règlements, nul ne peut télédiffuser un message publicitaire destiné à des enfants.

Règlements concernant la publicité

140(3) Le lieutenant-gouverneur en conseil peut, par règlement:

- a) fixer des critères afin de déterminer si un message publicitaire est ou non destiné à des enfants;

b) prendre des mesures concernant le contenu et la présentation matérielle des messages publicitaires destinés aux enfants ainsi que les modalités et conditions de leur télédiffusion;

c) soustraire, selon les conditions qu'il fixe, certains messages publicitaires ou certaines catégories de messages publicitaires à l'application du paragraphe (2);

d) prendre toute mesure d'application de la présente partie.

Mr. Maloway: Mr. Chairman, once again, as mentioned previously, this has been borrowed from the Quebec Act of 10 years ago and it has survived a court challenge last year involving Irwin Toys. We think it is time to proceed and implement this legislation in Manitoba.

* (2050)

Mr. Chairman: Once again, Mr. Maloway, according to Beauchesne's Citation 698.8(b) "An amendment may not amend sections from the original Act unless they are specifically being amended in a clause of the bill before the committee", I again will have to rule this amendment out of order.

Mr. Storie: Because you are citing precedent in this Legislature on numerous occasions, I move that the amendment introduced by my colleague, the MLA for Elmwood (Mr. Maloway), prohibiting advertising directed at children, be now considered.

Mr. Chairman: It has been moved by Mr. Storie that the amendments introduced by his colleague, the MLA for Elmwood, prohibiting advertising directed at children, be now considered.

All those in favour, please raise their hands.

Madam Clerk: One, two.

Mr. Chairman: Two. All those against, please raise their hands.

Madam Clerk: One, two, three, four, five, six, seven, eight.

Mr. Chairman: Eight. I rule it is defeated.

Mr. Angus: I will bring it to your attention and particularly the Minister's attention that supporting your ruling on the procedures that you have identified in no way commits us to taking any form of a position for against all of these or any portion of these particular motions. I just want to make sure that you and, as I say, particularly the Minister are aware of that, that some of these might be worthy of serious consideration by him and his department.

Mr. Chairman: Mr. Angus, that is correct what you have stated. Mr. Storie.

Mr. Storie: Mr. Chairperson, far be it for me to suggest the Liberals take a position on anything. The fact of

the matter is, the motion calls for this committee to consider the amendments introduced by my colleague. These amendments are not amendments introduced on the spur of the moment. They have been discussed with many people. We have heard from literally dozens of people from the community who have supported these amendments. These amendments have been considered by many groups over a long period of time, and as my colleague has indicated are the law of the land in other parts of Canada and other parts of North America. They are reasonable, considered amendments to The Consumer Protection Act, and that is what we are dealing with.

Whether Members of this committee or Members of the Liberals would like to think that they are in order or not, the committee has from time to time considered such amendments that were not part of the original set of amendments introduced, so we are violating precedent and the Liberals are supporting that every time we do not consider these important amendments.

Mr. Chairman: Clause 23—Mr. Maloway.

Mr. Maloway: Mr. Chairman, we have a final amendment.

I move

THAT Bill 63 be amended by adding the following after section 23.4:

Part XX added

23.5 The following is added after Part XIX:

**PART XX
STANDARD WILL**

Standard will

141(1) The minister shall cause to be prepared within one year of the date of the coming into force of this section a standard form of will in the form prescribed by regulation under subsection (3).

Standard will available to public

141(2) The minister shall cause the standard form of will to be provided to members of the public upon payment of the prescribed fee.

Regulations

141(3) The minister may make regulations respecting the form and content of a standard form of will and the fee to be charged for copies of it.

(French version)

Il est proposé que le projet de loi 63 soit amendé par adjonction, après l'article 23.4, de ce qui suit:

Adjonction de la partie XX

23.5 La Loi est modifiée par adjonction, après la partie XIX, de ce qui suit:

**PARTIE XX
TESTAMENT TYPE**

Testament type

141(1) Le ministre fait établir dans l'année qui suit la date d'entrée en vigueur du présent article une formule type de testament conforme au règlement pris en application du paragraphe (3).

Obtention de la formule type de testament

141(2) Toute personne peut se procurer la formule type de testament sur paiement du droit prescrit.

Règlement

141(3) Le ministre peut, par règlement, prendre des mesures concernant la forme et le contenu de la formule type de testament ainsi que le droit à verser pour l'obtention de copies de cette formule.

Mr. Chairman, I believe it is self-explanatory.

Mr. Chairman: Members of the committee, I will again have to rule, like I did on the previous one, on the proposed motion of Mr. Maloway, that this proposed motion is out of order. Mr. Storie.

Mr. Storie: Mr. Chairperson, I move that the amendment introduced by my colleague, the MLA for Elmwood (Mr. Maloway), seeking a standard will be adopted in the province, be now considered.

Mr. Chairman: It has been moved by Mr. Storie that the amendment introduced by his colleague the MLA for Elmwood seeking a standard will be adopted in the province be now considered. All those in favour, please raise their hands.

Madam Clerk: One, two.

Mr. Chairman: Two. All those against, please raise their hands.

Madam Clerk: One, two, three, four, five, six, seven, eight.

Mr. Chairman: Eight against. I rule it out of order. Mr. Minister.

Mr. Connery: I assume that is the final amendment that the Member for Elmwood (Mr. Maloway) has. Mr. Chairman, I think we did hear indeed from a lot of presenters, the Liberal Party Caucus and the Conservative Party Caucus heard from a lot of presenters. They—

Mr. Chairman: Excuse me. I would like to interject that the count was seven to two, not eight to two as I had indicated.

Mr. Connery: We heard a lot of discussion on various material presented to this committee. We also heard from the Consumers Association, who raised some very solid concerns about amendments that the Member for Elmwood (Mr. Maloway) was proposing. They were not researched properly. They did not have consultation

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with the business community, with the Consumers Association, with the Manitoba Society of Seniors.

The Member for Elmwood has been wrong many times in statements that he has put forward. He has said on occasion that MSRP in Ontario has to be on the windshield of a car, where indeed this is not factual. The Member for Elmwood has from time to time put much misinformation on the record both in Question Period and in committee. I think it is incumbent upon us as legislators before we would bring in something as legislation that it be properly researched, consulted with the appropriate groups, which these amendments have not been.

To suggest that, and I should not be speaking for the Liberals, but I do not think either of us want to say, at least I do not want to say, that there is not some substance and that our department in many cases is following up and looking at some of the ideas and the amendments suggested by the Member. They have to be fully researched and all of the proper consultations with the various client groups before it would be brought forward as legislation.

Mr. Storie: Mr. Chairperson, you know we could have proceeded following the votes to a reasonable conclusion this evening, but the hypocrisy that the Minister lays before this committee is really quite unbearable. This is an act of legislative cowardice like nothing we have seen in this province for many, many years.

The fact of the matter is that the Member for Elmwood (Mr. Maloway) introduced most of these amendments a year and a half ago. If the Minister would have had any intestinal fortitude or any real commitment to any of the principles that he says he now supports in some form, he would have done the consultation, he would have taken them up instead of bringing in a rather lacklustre piece of legislation of supposed consumer protection, he would have introduced the amendments that we have just introduced tonight.

The fact of the matter is that neither the Liberals nor the Conservatives can hide behind some supposed ruling from hiding the fact that they are not supporting legislation that has worked in other jurisdictions, is working in other jurisdictions, is supported by the vast majority of Manitobans and has been researched as thoroughly as possible by my colleague the Member for Elmwood.

The Minister has the resources and the opportunity and the time to do the research that was necessary if he felt these amendments were not thorough. Of course he did not do it. It is easy for him to come to committee now and make light of the amendments and make suggestions about their adequacy when he did absolutely nothing to protect consumers in the length of time he has had in his portfolio. He is in no position to talk. That is for certain.

Mr. Maloway: Thank you, Mr. Chairman. I too was prepared to let this pass—

Mr. Chairman: Excuse me, Mr. Maloway. Mr. Driedger, was there a point of order? On a point of order, Mr. Driedger.

Mr. Albert Driedger: Yes, Mr. Chairman, I do not want to belabour this, but I think all Members should be cognizant of the fact that we are going on a clause by clause. The debating part is something that gets done in the House. That goes, I say, for all Members here. So I think that if we want to debate the whole context of the Bill again, I think this is the wrong place to do it. I think it can be done—there is provision again under third reading for further debate. I think at this stage of the game in the committee that we deal with clause by clause.

Mr. Chairman: I would have to rule that is not a point of order. Mr. Maloway.

Mr. Maloway: I think it is absurd that the Minister would make these suggestions in light of the fact that we introduced Bill No. 22 last year, which included a seven-day cooling off period which we just amended his Bill to a few minutes ago. We also included in our Bill last year the manufacturer's suggested retail price stickers and the prepaid services contract, so in a sense what he did, was he photocopied our Bill from last year, dropped the manufacturers suggested retail price stickers and changed our proposed seven-day cooling off period to 10 and just 10 minutes ago he amended it back to seven. All he had to do in the first place was bring in our original bill, so that is absolutely absurd.

In terms of the other measures this Minister should have taken in terms of The Business Practices Act, that too is virtually a photocopy of what we introduced a year and a half ago. Now there is signs that the Minister is backing down in the face of business pressure and we will never see that Bill get out of committee. This Minister has no room whatsoever to lecture to us about what should be done and how we should proceed in this House. If he would simply take our advice in the first place, we would have had this legislation through a year and a half ago.

Mr. Chairman: Shall Clause 23 as amended pass—pass; Clause 24—pass; Preamble—pass; Title—pass. Shall the Bill as amended be reported—pass. Is it the will of the committee that I report the Bill as amended? Agreed.

Committee rise.

COMMITTEE ROSE AT: 10:02 p.m.