



BILL NO. 65

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

**An Act to Amend Chapter 92
of the Revised Statutes, 1989,
the Consumer Protection Act,
to Ensure Fairness in
Cellular Telephone Contracts**

CHAPTER 19
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 17, 2012**

The Honourable John M^{ac}Donell
Minister of Service Nova Scotia and Municipal Relations

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 92
of the Revised Statutes, 1989,
the Consumer Protection Act,
to Ensure Fairness in
Cellular Telephone Contracts**

Be it enacted by the Governor and Assembly as follows:

1 Chapter 92 of the Revised Statutes, 1989, the *Consumer Protection Act*, is amended by adding immediately after Section 25J the following Sections:

25K In this Section and Sections 25L to 25AO,

(a) “cancellation fee” means a cancellation fee referred to in clause (b) of Section 25AB;

(b) “cellular telephone services” means, subject to the regulations, wireless communication services or functions that are accessed from a cellular telephone, including, without limiting the generality of the foregoing, receiving or transmitting telephone calls, electronic data, electronic mail or text messages;

(c) “contract”, except where the context otherwise requires, means a contract to which this Section and Sections 25L to 25AO apply;

(d) “customer” means a person who enters into a contract with a supplier for cellular telephone services;

(e) “indeterminate contract” means a contract without a fixed term;

(f) “supplier” means a person who enters into a contract with a customer to provide cellular telephone services to the customer.

25L (1) Subject to the regulations, Sections 25K to 25AO apply to every contract for cellular telephone services entered into after the coming into force of this Section between a supplier and a customer primarily for personal, family or household purposes.

(2) Subject to the regulations, Sections 25K to 25AO apply to a contract for cellular telephone services entered into before the coming into force of this Section between a supplier and a customer primarily for personal, family or household purposes if the contract is extended or renewed after the coming into force of this Section.

(3) Notwithstanding subsections (1) and (2), Section 25K and Sections 25M to 25AO do not apply to a contract for prepaid cellular telephone services.

25M For greater certainty, and for the purpose of Sections 25K to 25AO, the amendment of a term or provision of a contract

(a) does not constitute consent by either party to the contract to any other amendment of the contract;

(b) does not terminate the amended contract; and

(c) does not create a new contract.

25N (1) A contract must be in writing.

(2) A supplier shall, before a contract is made and at no additional cost to a prospective customer, give the prospective customer

(a) copies of all documents that constitute the contract; and

(b) reasonable time to review the documents and ask questions before requesting that the customer sign the contract.

(3) A supplier shall give to each customer, at no additional cost to the customer, copies of all documents that constitute the contract immediately after the contract is made.

(4) A supplier shall give to each customer, at no additional cost to the customer, educational materials about responsible cellular telephone use, including cyberbullying, immediately after the contract is made.

(5) Subsections (1) to (3) do not apply to a contract that is not made in person.

25O (1) In this Section and in Sections 25P and 25Q,

(a) “additional use charges” means costs not included in the minimum monthly cost;

(b) “base services” means the cellular telephone services provided for in the minimum monthly cost;

(c) “minimum monthly cost” means the minimum amount that a customer will become liable to pay under the contract, including any fees, charges, penalties, interest and other amounts or consideration but not including any municipal, provincial or federal government taxes, fees or levies, in a one-month period regardless of the customer’s usage of the cellular telephone services available under the contract;

(d) “optional services” means cellular telephone services available under the contract that the customer may opt to use but that are not included in the calculation of the minimum monthly cost.

(2) The minimum monthly cost must be expressed on a monthly basis, even if the costs under the contract are calculated on a basis other than a monthly basis or the billing period is not a monthly period.

25P (1) A supplier shall ensure that the following information is set out prominently and in a clear and understandable manner, on the beginning page or pages of a contract:

(a) the supplier’s business name, business and mailing addresses, telephone number, fax number, electronic mail address and, where the supplier has a website, the supplier’s website address;

(b) the customer’s name and address;

(c) the date the contract was made, and where it was made;

- (d) the term of the contract expressed in days, weeks, months or years, and its expiry date;
- (e) the minimum monthly cost of the contract;
- (f) an itemized list of all costs included in the minimum monthly cost;
- (g) a description of the base services including, where applicable,
 - (i) a statement of the maximum usage of any of the base services before the customer will become liable for additional use charges,
 - (ii) a description of any restrictions on the base services, including, without limiting the generality of the foregoing, restrictions relating to time of day, day of week or geography, that will result in the customer becoming liable for costs not included in the minimum monthly cost, and
 - (iii) the manner in which the customer can obtain further details on the base services and their costs and restrictions;
- (h) rates for any additional use charges, which may include, without limiting the generality of the foregoing, rates for additional minutes or additional data usage, and information on how the customer can obtain further details on these rates;
- (i) a description, that complies with the requirements of the regulations, of any optional services;
- (j) a description of any one-time or irregularly occurring fees, charges, penalties, interest or other amounts or consideration payable by the customer under the contract, including, without limiting the generality of the foregoing, system activation fees;
- (k) without limiting the generality of clause (j), either the actual amount of or the method of calculating the amount of any amounts or consideration described in the contract under clause (j);
- (l) a description of any temporarily reduced or waived charges for cellular telephone services, including, without limiting the generality of the foregoing, a reduced rate or waiver of all charges for one or more cellular telephone services for an initial period;
- (m) a description of any cellular telephone provided by the supplier to the customer for free or by sale to the customer, whether or not at a reduced cost, along with a statement as to
 - (i) whether the cellular telephone is new or reconditioned, and
 - (ii) whether the cellular telephone is locked;
- (n) a description, consistent with Sections 25AA to 25AD and the regulations, of
 - (i) how the customer may cancel the contract, and

(ii) how any cancellation fee is to be calculated;

(o) where a cellular telephone is provided by the supplier to the customer for free or by sale at a reduced cost, a statement of the amount that is to be used in calculating the cancellation fee, which must not exceed

(i) in the case of a free phone, the value of the phone, and

(ii) in the case of a phone sold at a reduced cost, the value of the phone less the amount that the customer paid for it;

(p) a description, that complies with the requirements of the regulations, of any manufacturer's warranty or other warranty that automatically applies, at no additional cost, to a cellular telephone provided for free or by sale, whether or not at a reduced cost, to the customer;

(q) the manner in which the customer can contact the supplier for customer service; and

(r) any other information prescribed by the regulations.

(2) The minimum monthly cost, and any rates or costs stated in the contract under clauses (h) and (i) of subsection (1), must not reflect any temporarily reduced or waived rates or costs, including, without limiting the generality of the foregoing, a reduced rate or a waiver of all costs for one or more cellular telephone services for an initial period.

25Q (1) The price advertised by a supplier for cellular telephone services under a contract must include the minimum monthly cost under the contract.

(2) An advertisement by a supplier must

(a) prominently disclose the minimum monthly cost; and

(b) place more emphasis on the minimum monthly cost than on the amounts that make up the minimum monthly cost.

25R Before offering to sell a customer an additional warranty or an extended warranty on a cellular telephone, the supplier shall

(a) inform the customer orally of the existence of any manufacturer's warranty or other warranty that automatically applies, at no additional cost, to the cellular telephone, and explain

(i) what is covered under the manufacturer's warranty or other warranty or, where applicable, under each warranty,

(ii) the duration of the manufacturer's warranty or other warranty or, where applicable, the duration of each warranty, and

(iii) how the customer can make a claim under the manufacturer's warranty or other warranty or, where applicable, under each warranty; and

(b) at the customer's request, explain to the customer how to obtain details of the manufacturer's warranty or other warranty or, where applicable, details of each warranty.

25S In this Section and in Sections 25T to 25Y,

(a) “material term or provision”, when used in relation to a contract, means, subject to the regulations, a term or provision that is required to be set out in the contract under clauses (d) to (l) of subsection (1) of Section 25P;

(b) “non-material term or provision”, when used in relation to a contract, means a term or provision that is not a material term or provision.

25T A term or provision of a contract that authorizes a supplier to unilaterally amend a material term or provision of the contract is prohibited, and any term or provision of a contract that purports to give the supplier authority to do so is void and of no effect.

25U (1) Unless it complies with the requirements of subsection (2), a term or provision of a contract that authorizes a supplier to unilaterally amend a non-material term or provision of the contract is prohibited, and any term or provision of a contract that purports to give the supplier authority to do so is void and of no effect.

(2) A term or provision of a contract that authorizes a supplier to unilaterally amend a non-material term or provision of the contract must provide that the supplier send to the customer, at least thirty days before the amendment comes into force, a written notice setting out

(a) the new term or provision, or the amended term or provision as it reads at present and how it will read as amended;

(b) the date the amendment comes into force; and

(c) that the customer may accept the amendment by taking no action in response to the notice.

(3) The unilateral amendment of a contract under this Section does not constitute a negative-option strategy as that term is defined in subsection (1) of Section 24A.

25V (1) Where a supplier unilaterally amends a material term or provision of a contract or purports to do so,

(a) the amendment or purported amendment is void and of no effect;

(b) the customer may cancel the contract; and

(c) the supplier shall not charge the customer a cancellation fee or any other charge, fee, penalty, interest or other amount or consideration, other than the cost of any unpaid cellular telephone services that have been provided to the customer calculated at the rate provided in the contract, as a result of the customer cancelling the contract.

(2) Where a supplier unilaterally amends a non-material term or provision of a contract or purports to do so, and

(a) the contract does not contain a term or provision that meets the requirements of subsection (2) of Section 25U; or

(b) the notice requirements set out in clauses (a) to (c) of subsection (2) of 25U have not been met in respect of the amendment or purported amendment,

clauses (a) to (c) of subsection (1) apply.

25W Sections 25T to 25V do not apply to amendments that are required by any law or by an order of a court, board or tribunal.

25X (1) Sections 25T to 25V do not apply to amendments made to an indeterminate contract.

(2) Notwithstanding subsection (1),

(a) the requirements of subsection (2) of Section 25U apply *mutatis mutandis* to the unilateral amendment of an indeterminate contract; and

(b) clauses (a) to (c) of subsection (1) of Section 25V apply to the unilateral amendment or purported unilateral amendment of an indeterminate contract that does not meet the notice requirements set out in clauses (a) to (c) of subsection (2) of Section 25U.

(3) For greater certainty, subsection (2) applies to any unilateral amendment of an indeterminate contract, without regard to whether the amendment is of a material term or provision or of a non-material term or provision.

25Y (1) Sections 25T and 25U do not apply to a term or provision of a contract that authorizes a supplier to unilaterally amend

(a) a material term or provision of the contract if the amendment benefits the customer and does not increase the customer's obligations under the contract; or

(b) a non-material term or provision of the contract if the amendment does not increase the customer's obligations or decrease the supplier's obligations under the contract.

(2) Section 25V and subsections (2) and (3) of Section 25X do not apply to

(a) a unilateral amendment of a material term or provision of the contract if the amendment benefits the customer and does not increase the customer's obligations under the contract; or

(b) a unilateral amendment of a non-material term or provision of the contract if the amendment does not increase the customer's obligations or decrease the supplier's obligations under the contract.

(3) Within thirty days after making a unilateral amendment described in subsection (2), the supplier shall give notice of the amendment to the customer.

25Z For greater certainty, where a customer accepts an amendment under clause (c) of subsection (2) of Section 25U, that acceptance does not constitute consent by the customer

(a) to any other amendment of the contract;

(b) to renew or extend the contract; or

(c) to enter into a new contract.

25AA(1) A customer may, at any time, cancel a contract by giving notice to that effect to the supplier.

(2) The cancellation takes effect on the day that the notice is given, or on a later date that may be specified in the notice.

(3) The cancellation rights under this Section are in addition to, and do not affect, any other right or remedy that the customer has under the contract or at law.

25AB Upon the cancellation of a contract under Section 25AA, the supplier shall not charge the customer any fee, charge, penalty, interest or other amount or consideration other than

(a) the cost of any unpaid cellular telephone services that have been provided to the customer calculated at the rate provided in the contract; and

(b) any cancellation fee that may be authorized under Section 25AC or the regulations.

25AC(1) Subject to the regulations, this Section applies to the cancellation of a contract with a fixed term.

(2) Where

(a) a cellular telephone was provided by the supplier to the customer for free or by sale at a reduced cost; and

(b) an amount was stated in the contract under clause (o) of subsection (1) of Section 25P for the purpose of calculating the cancellation fee,

the supplier may charge a cancellation fee of not greater than the amount stated in the contract under clause (o) of subsection (1) of Section 25P, pro-rated by the length of time remaining in the contract's term.

(3) Where a cellular telephone was not provided by the supplier to the customer for free or by sale at a reduced cost or where subsection (2) does not apply for any other reason, the supplier may charge a cancellation fee not to exceed the lesser of

(a) fifty dollars; and

(b) the amount determined by the formula

$$\text{Amount} = 10\% \times M \times N$$

where

M is the minimum monthly cost, as defined in subsection (1) of Section 25O; and

N is the length of the remaining term of the contract, expressed in months.

25AD(1) Subject to the regulations, this Section applies to the cancellation of an indeterminate contract.

(2) Where

(a) a cellular telephone was provided by the supplier to the customer for free or by sale at a reduced cost; and

(b) an amount was stated in the contract under clause (o) of subsection (1) of Section 25P for the purpose of calculating the cancellation fee,

the supplier may charge a cancellation fee of not greater than the amount stated in the contract under clause (o) of subsection (1) of Section 25P, less the amount calculated in accordance with the regulations.

(3) For greater certainty, where a cellular telephone was not provided by the supplier to the customer for free or by sale at a reduced cost or where subsection (2) does not apply for any other reason, the supplier shall not charge a cancellation fee.

25AE(1) The supplier shall, between sixty and ninety days before the expiry date of a contract, give a written notice to the customer setting out

(a) the date that the contract is set to expire, and that the notice is written notice that the contract will terminate on that date; or

(b) the date that the contract is set to expire, but that it may be extended, on a monthly basis, on the same terms as at present, if the customer notifies the supplier to extend the contract on the same terms as at present, until either the customer or the supplier gives notice to the other that the contract is not to be further extended.

(2) Subsection (1) does not apply to

(a) a contract with a term of less than sixty days; or

(b) an indeterminate contract.

25AF(1) On the expiry date of a contract, the contract terminates if notice is not given by the customer under clause (b) of subsection (1) of Section 25AE.

(2) On the expiry date of a contract, where

(a) a notice has been given to the customer under clause (b) of subsection (1) of Section 25AE; and

(b) the customer has given notice to the supplier that the contract is to be extended,

the contract is extended on the same terms, for an additional one-month term.

(3) In cases where subsection (2) applies, the supplier shall automatically extend the contract, for additional one-month terms, until either the supplier or the customer gives notice to the other that the contract is not to be further extended.

(4) No supplier shall charge a customer a contract extension fee or any other fee, charge, penalty, interest or other amount or consideration for a contract extension under this Section.

25AG(1) Where a customer has paid a security deposit, the supplier shall not cancel the contract for failure to pay outstanding amounts under the contract when

they become due for as long as the amounts due do not exceed the amount of the deposit.

(2) A supplier shall notify the customer in writing when it uses all or part of the security deposit to satisfy amounts not paid when they became due.

25AH A supplier shall return to the customer any security deposit paid by the customer, minus any amounts used to pay outstanding amounts due under the contract, with interest at the rate prescribed by the regulations, within thirty days after the day on which the contract expires if it is not renewed or extended or the day on which the contract is cancelled.

25AI (1) No supplier shall demand, request or accept payment for cellular telephone services of which the customer was deprived during the repair of equipment or other goods supplied free of charge, sold or rented to the customer on the making of the contract or during the term of the contract if

(a) the goods were given to the supplier for repair while still under warranty and the supplier did not provide a replacement free of charge; and

(b) the goods are necessary for the use of cellular telephone services provided for under the contract.

(2) Subsection (1) does not apply if the damage to the equipment or other goods under repair was caused by the customer.

25AJ A supplier shall, at the customer's request and subject to the regulations, provide bills in paper form to the customer.

25AK A supplier shall, in accordance with the regulations, make and maintain records of all contracts into which it enters.

25AL(1) In this Section, "inspector" means a person authorized by the Registrar to act under this Section.

(2) For the purpose of

(a) determining compliance with Sections 25K to 25AN or the regulations;

(b) verifying the accuracy or completeness of a record or of other information provided to the Registrar or inspector; or

(c) performing any other duty or function that the Registrar or inspector considers necessary or advisable in the administration or enforcement of Sections 25K to 25AN or the regulations,

the Registrar or an inspector may require a supplier to provide records or copies of records it is required to make and maintain under Section 25AK.

(3) A supplier shall provide records or copies of records required under subsection (2).

25AM(1) Information that a supplier is required to include in a notice or other document under Sections 25K to 25AO or the regulations must be clear and understandable, and the required information must be prominently displayed.

(2) Where a term, provision or statement in a notice or other document provided to a customer under Sections 25K to 25AO or the regulations is ambiguous, it must be construed in favour of the customer.

25AN Any term or provision of a contract purporting to restrict the application of the law of the Province or to restrict jurisdiction or venue to a forum outside the Province is void and of no effect.

25AO(1) The Governor in Council may make regulations

(a) exempting any contract or class of contracts or any person or class of persons from the application of Sections 25K to 25AO or the regulations or any provision of Sections 25K to 25AO or the regulations;

(b) extending, modifying or limiting the meaning of “cellular telephone services” for the purpose of Sections 25K to 25AO or the regulations or any provision of Sections 25K to 25AO or the regulations;

(c) extending, modifying or limiting the application of any provision of Sections 25K to 25AO in relation to indeterminate contracts;

(d) respecting the manner of giving, sending or serving any notice or other document that is required to be given, sent or served by the supplier;

(e) respecting requirements for contracts not made in person, including, without limiting the generality of the foregoing,

(i) whether the contract must be in writing,

(ii) documents or information that must be given or made available to the prospective customer before the contract is made, and

(iii) documents or information that must be given or made available to the customer after the contract is made;

(f) for the purpose of clause (i) of subsection (1) of Section 25P, respecting the requirements for the description of any optional services to be set out on the beginning page or pages of a contract, including, without limiting the generality of the foregoing, the actual amount of or the method of calculating the amount of the cost of any optional services;

(g) respecting methods for determining the maximum amount that may be stated in a contract under clause (o) of subsection (1) of Section 25P, and setting the maximum amount;

(h) for the purpose of clause (p) of subsection (1) of Section 25P, respecting the requirements for the description of any warranty or manufacturer’s warranty to be set out on the beginning page or pages of a contract;

(i) for the purpose of clause (r) of subsection (1) of Section 25P, prescribing other information required to be set out prominently and in a clear and understandable manner on the beginning page or pages of a contract;

(j) for the purpose of the definition “material term or provision” in Section 25S,

(i) extending, modifying or limiting the meaning of that expression for the purpose of this Act or any part of this Act, or

(ii) specifying other classes of terms or provisions that are material terms or provisions;

(k) for the purpose of Section 25AB, authorizing other cancellation fees, and respecting the circumstances in which such fees apply and methods of calculating them;

(l) for the purpose of subsection (2) of Section 25AC, respecting the determination of the maximum amount of the cancellation fee, including, without limiting the generality of the foregoing, the method of determining the pro-rated value of a cellular telephone;

(m) for the purpose of subsection (2) of Section 25AD, specifying how to calculate the amount that is to be subtracted from the amount stated in the contract under clause (o) of subsection (1) of Section 25P;

(n) for the purpose of subsection (1) of Section 25AE, respecting the manner of giving notice that the contract is to be extended or is not to be further extended which may include oral notice and, where notice is provided by the customer, how it must be acknowledged by the supplier;

(o) for the purpose of Section 25AH, prescribing the rate of interest, or the method of determining the rate of interest, payable on the return of a security deposit;

(p) respecting the provision of bills in paper form to a customer, including prescribing the maximum amount that a supplier can charge a customer for a paper bill;

(q) for the purpose of Section 25AK, respecting records of contracts to be made and maintained by a supplier, including the length of time for which and the location at which records must be retained;

(r) respecting Internet cellular telephone contracts;

(s) respecting cellular telephone contracts made, in whole or in part, by telephone, including, without limiting the generality of the foregoing, contracts made by a combination of telephone and Internet communications;

(t) respecting the form of a contract or of any document or information required or provided for under Sections 25K to 25AO, which may include, without limiting the generality of the foregoing, requiring specified fonts or font sizes;

(u) respecting the requirement under subsection (4) of Section 25N for suppliers to provide educational materials about responsible cellular telephone use, including, without limiting the generality of the foregoing,

- (i) specifying information that must be included in the educational materials,
 - (ii) respecting the form and content of the educational materials that must be provided, which may include, without limiting the generality of the foregoing, requiring specific educational materials to be provided, and
 - (iii) respecting the manner of providing the educational materials;
 - (v) defining any word or expression used but not defined in Sections 25K to 25AO, including “cellular telephone” and “prepaid cellular telephone services”;
 - (w) respecting any other matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of Sections 25K to 25AO.
- (2) Without limiting the generality of clause (r) of subsection (1), a regulation made under that clause may do one or more of the following:
- (a) define the expression “Internet cellular telephone contract”;
 - (b) designate another jurisdiction as a reciprocating jurisdiction if, in the opinion of the Governor in Council, it has similar law for the regulation of Internet cellular telephone contracts;
 - (c) authorize the Minister, on behalf of Her Majesty in right of the Province, to enter into an agreement with the government of a reciprocating jurisdiction designated under clause (b) respecting the application, administration or enforcement of this Act or the law of that jurisdiction in respect of Internet cellular telephone contracts;
 - (d) in accordance with any agreement made under clause (c), specify which law applies or does not apply when both this Act and the law of the reciprocating jurisdiction purport to apply to an Internet cellular telephone contract;
 - (e) extend, modify or limit the application of this Act in relation to Internet cellular telephone contracts.
- (3) Regulations made pursuant to subsection (1)
- (a) may be of general or specific application; and
 - (b) may establish one or more classes of contracts, suppliers or customers and apply differently to different classes.
- (4) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*.

2 (1) Subsection 29(1) of the Chapter 92 is amended by striking out “two” in the eighth line and substituting “twenty-five”.

(2) Subsection 29(2) of the Chapter 92 is amended by striking out “twenty-five” in the last line and substituting “three hundred”.

3 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
