



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 134

**An Act mainly to modernize rules relating
to consumer credit and to regulate debt
settlement service contracts, high-cost
credit contracts and loyalty programs**

Introduction

**Introduced by
Madam Stéphanie Vallée
Minister of Justice**

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EXPLANATORY NOTES

This bill amends the Consumer Protection Act, mainly as concerns credit.

A protection regime relating to debt settlement service contracts is introduced. Debt settlement service merchants are required to hold a permit and are prohibited from claiming charges before having obtained from a creditor a debt settlement offer that has been accepted by the consumer and before a payment has been made for the benefit of a creditor. In addition, consumers are granted a right of resolution.

Before entering into a contract, merchants are required to assess the consumer's capacity to repay the credit requested or to perform the obligations arising from a long-term contract of lease of goods. In the case of a high-cost credit contract, merchants must comply with certain additional requirements, such as giving the consumer a copy of the documents reporting on the assessment carried out and information on the consumer's debt ratio. In the case where such a contract is entered into while the consumer's debt ratio exceeds the ratio set by the Government, the consumer is presumed to have contracted an excessive, harsh or unconscionable obligation and may apply to have the contract annulled or the obligations under it reduced. Consumers have a right of resolution with respect to the contract and merchants who enter into such contracts must hold a permit.

Merchants are prohibited from releasing certain information to personal information agents after a consumer has exercised a right of resolution or resiliation with respect to a contract.

A sale of goods to a merchant with a right of redemption by the consumer is, on certain conditions, considered to constitute a contract for the loan of money, as is the sale of goods to a merchant who acquires them from a consumer in order to lease them back to the consumer. In addition, loan brokers are prohibited from collecting fees directly from a consumer.

Measures arising from the Agreement for Harmonization of Cost of Credit Disclosure Laws in Canada are integrated into the Act, in particular the measures concerning the information that must be provided to a consumer if the applicable credit rate is subject to

change as well as the measures relating to the content of the application forms for credit cards, contracts for the loan of money and open credit contracts.

As concerns advertising, information must be presented in a clear, legible and understandable manner, and using a picture that is not an accurate depiction of the goods or services actually offered is prohibited. Certain commercial practices are to be regulated, in particular the use of the expression “cost price”. Also, falsely or misleadingly representing to consumers that credit may improve their financial situation or that credit reports prepared about them will be improved is prohibited.

The rules applicable to open credit contracts are modernized with the introduction of rules concerning, among other things, the mandatory content of certain documents, credit rates, credit limit increases, the revocation of preauthorized payment agreements, and consumer liability in the case of loss, theft or fraudulent or any other unauthorized use of a credit card. In the case of a credit card contract, the minimum payment required for a period must be at least equal to a certain percentage of the outstanding balance, as determined in the bill, which percentage is to increase progressively to 5%.

Provisions relating to loyalty programs are introduced to, among other things, require that consumers be notified in writing of certain information before entering into a contract and to prohibit any stipulation under which the exchange units received by a consumer under a loyalty program may expire on a set date or by the lapse of time.

The Travel Agents Act is amended to consolidate the main rules relating to the Fonds d'indemnisation des clients des agents de voyages, an indemnity fund for the clients of travel agents. The Act is further amended to allow a decision by the president of the Office de la protection du consommateur to cancel or suspend a travel counsellor certificate or to refuse to issue such a certificate to be contested before the Administrative Tribunal of Québec.

The Act respecting the collection of certain debts is also amended so that punitive damages may be claimed for a failure to perform an obligation under that Act. In addition, collection agent representatives must hold a certificate issued by the president of the Office de la protection du consommateur.

Lastly, the president of the Office de la protection du consommateur may apply to the court for an injunction ordering a merchant to cease engaging in an activity without holding the permit required by a law whose application is under the supervision of the Office.

LEGISLATION AMENDED BY THIS BILL:

- Travel Agents Act (chapter A-10);
- Consumer Protection Act (chapter P-40.1);
- Act respecting the collection of certain debts (chapter R-2.2).

Bill 134

AN ACT MAINLY TO MODERNIZE RULES RELATING TO CONSUMER CREDIT AND TO REGULATE DEBT SETTLEMENT SERVICE CONTRACTS, HIGH-COST CREDIT CONTRACTS AND LOYALTY PROGRAMS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CONSUMER PROTECTION ACT

1. Section 6 of the Consumer Protection Act (chapter P-40.1) is amended by striking out paragraphs *c* and *d*.

2. Section 6.1 of the Act is amended

(1) by replacing “to 290” by “to 290.1”;

(2) by striking out “to the acts of a broker or his agent governed by the Real Estate Brokerage Act (chapter C-73.1) or”.

3. Section 7 of the Act is amended

(1) by inserting “103.1 and” after “33, 103,”;

(2) by striking out “116,”.

4. Section 23 of the Act is amended by replacing “or 214.2” by “, 214.2 or 214.16”.

5. Section 54.8 of the Act is amended by replacing the second paragraph by the following paragraph:

“However, the cancellation period begins

(a) as of the performance of the merchant’s principal obligation if the consumer, at that time, observes that the merchant has not disclosed all the information described in section 54.4 or has not disclosed it in accordance with that section; or

(b) where the consumer paid with a credit card or another payment instrument determined by regulation, as of the receipt of the statement of account if the consumer, at that time, observes that the merchant has not

disclosed all the information described in section 54.4 or has not disclosed it in accordance with that section.”

6. Section 58 of the Act is amended

(1) by replacing “are set out as provided in Schedule 3, 5 or 7” in subparagraph *g.1* of the first paragraph by “must be stated in the manner prescribed in section 115, 125, 134 or 150”;

(2) by replacing “in conformity with the model in Schedule 1” in the second paragraph by “in conformity with the model provided by regulation”.

7. Section 59 of the Act is amended by replacing “in conformity with the model in Schedule 1” in subparagraph *d* of the second paragraph by “in conformity with the model provided by regulation”.

8. Section 60 of the Act is amended by replacing “time for cancellation provided for in section 59” by “cancellation period provided for in the first paragraph of section 59”.

9. Section 62 of the Act is amended by adding the following paragraph at the end:

“The other merchant referred to in the second paragraph may not, before the expiry of the cancellation period provided for in the first paragraph of section 59, remit directly to the itinerant merchant all or part of the sum for which credit is extended to the consumer.”

10. Section 70 of the Act is amended by striking out “, except any automobile insurance premium” in paragraph *b*.

11. Section 72 of the Act is amended by striking out the second paragraph.

12. The Act is amended by inserting the following section after section 72:

“72.1. The following credit charge components are not taken into account in calculating the credit rate:

(*a*) a premium for insurance not required by the merchant as a condition for entering into the contract;

(*b*) the premium for insurance covering goods that are the subject of the credit contract or covering property which secures the performance of the consumer’s obligations; and

(*c*) the fee for registration in a public register of rights.

Nor are the following credit charge components taken into account

(a) in calculating the credit rate for an open credit contract:

- i. the membership or renewal fee,
- ii. the value of the rebate or discount to which consumers are entitled if they pay cash,
- iii. the fee for an additional copy of a statement of account,
- iv. the fee for customizing a credit card, and
- v. the replacement fee for a lost or stolen credit card; or

(b) in calculating the credit rate for a credit contract secured by an immovable hypothec:

- i. expenses and professional fees paid for the mandate assigned to a notary,
- ii. fees paid to access the public registers of rights, to obtain certified statements of registered rights or to register or cancel the registration of rights,
- iii. professional fees paid for the purpose of determining or confirming the value, condition, location or compliance with the law of the hypothecated property, provided the consumer is given a report signed by the professional and is free to give the report to other persons,
- iv. transaction fees paid in respect of a tax account relating to a hypothecated immovable,
- v. the premium for insurance required by a hypothecary insurer to guarantee a hypothecary loan, and
- vi. any amount payable as a prepayment charge.

A regulation may be made to determine other credit charge components that are not taken into account in calculating the credit rate for one or more types of credit contracts.”

13. Section 73 of the Act is amended by adding the following paragraph at the end:

“High-cost credit contracts within the meaning of section 103.4 may be cancelled on the same conditions within 10 days following that on which each of the parties is in possession of a duplicate of the contract.”

14. Section 74 of the Act is amended

(1) by inserting “or of an open credit contract” after “In the case of a contract for the loan of money” in the introductory clause;

(2) by replacing paragraph *a* by the following paragraph:

“(a) by returning to the merchant or his representative the net capital, if the consumer received it at the time at which each of the parties came into possession of a duplicate of the contract, or the part of the credit extended already used; or”;

(3) by inserting “or the part of the credit extended already used” after “by either returning the net capital” in paragraph *b*.

15. Section 76 of the Act is amended by replacing “the return of the goods or of the net capital” by “the return of the goods, of the net capital or of the part of the credit extended already used”.

16. Section 98 of the Act is amended by adding the following paragraph at the end:

“The change in the credit rate of a contract with a variable credit rate does not constitute a modification to the provisions of the contract.”

17. Section 100.1 of the Act is replaced by the following section:

“**100.1.** Contracts for the loan of money with a variable credit rate and contracts involving credit with a variable credit rate are exempt from the application of sections 71, 81, 83 and 87, on the conditions prescribed by regulation.

Open credit contracts with a variable credit rate are exempt from the application of sections 71 and 83, on the conditions prescribed by regulation.”

18. The Act is amended by inserting the following section after section 100.1:

“**100.2.** The merchant who is a party to a credit contract with a variable credit rate must, at least once a year, send the consumer a statement containing

(a) the credit rate at the beginning and at the end of the period covered by the statement;

(b) the outstanding balance owed by the consumer at the beginning and at the end of the period; and

(c) if the contract provides for scheduled payments, the outstanding balance on the total obligation and the number of remaining payments, based on the credit rate applicable at that time.

If the credit rate is not tied to a reference index, the merchant must also, within 30 days after increasing the credit rate to a rate that is more than one full percentage point higher than the rate most recently disclosed to the consumer, send the consumer a notice containing

(a) the new credit rate;

(b) the date the new rate takes effect; and

(c) how the amount or timing of any payment is affected by the increase in the credit rate.

The first paragraph does not apply if the merchant sent a statement of account to the consumer within the 12 previous months.”

19. The Act is amended by inserting the following after section 103:

“103.1. A consumer who used all or part of the net capital from a contract for the loan of money to make full or partial payment for the purchase or the lease of goods or for a service may plead against the lender, or against the lender’s assignee, any ground of defence urgeable against the merchant who is the vendor, lessor, contractor or service provider if the loan contract was entered into on the making of and in relation to the sale, lease or service contract, and if the merchant and the lender collaborated with a view to extending such credit to the consumer.

The consumer may also, in the circumstances described in the first paragraph, exercise against the lender, or against the lender’s assignee, any right exercisable against the merchant who is the vendor, lessor, contractor or service provider if that merchant is no longer active or has no assets in Québec, is insolvent or is declared bankrupt.

The first and second paragraphs also apply, with the necessary modifications, to a consumer who used all or part of the credit extended under an open credit contract entered into on the making of and in relation to a sale, lease or service contract.

“0.1. —ASSESSMENT OF CONSUMER’S CAPACITY TO REPAY CREDIT

“103.2. Before entering into a credit contract with a consumer or, if the credit contract is an open credit contract, before granting a credit limit increase, a merchant must assess the consumer’s capacity to repay the credit requested.

A merchant who, in carrying out an assessment, takes into account the information determined by regulation is deemed to comply with the obligation under the first paragraph.

A merchant who is required under the Act respecting insurance (chapter A-32), the Act respecting financial services cooperatives (chapter C-67.3), the Act respecting trust companies and savings companies (chapter S-29.01) or the Bank Act (Statutes of Canada, 1991, chapter 46) to adhere to sound and prudent management practices or sound commercial practices in consumer credit matters is also deemed to comply with the obligation under the first paragraph.

If a contract is transferred to another merchant after having been entered into, and that merchant is the one who approved the contract, the transferee becomes the merchant bound by the obligations under this section and the one to whom the effects of section 103.3 apply.

“103.3. A merchant who fails to carry out the assessment under section 103.2 loses the right to the credit charges and must refund any credit charges already paid by the consumer.

“103.4. Before entering into a high-cost credit contract with a consumer or, if the high-cost credit contract is an open credit contract, before granting a credit limit increase, a merchant must, in accordance with the terms and conditions determined by regulation, give the consumer a written copy of the documents containing the assessment carried out under section 103.2 and information on the consumer’s debt ratio.

A merchant who fails to comply with the first paragraph is deemed not to have carried out the assessment under section 103.2.

A credit contract is considered to be a high-cost credit contract if it has the characteristics determined by regulation.

The debt ratio is a measure of the consumer’s liabilities expressed as a percentage. It is calculated in the manner prescribed by regulation.

“103.5. A consumer who enters into a high-cost credit contract while his debt ratio exceeds the ratio determined by regulation is presumed to have contracted an excessive, harsh or unconscionable obligation within the meaning of section 8.”

20. Section 105 of the Act is amended by replacing “a notice in writing drawn up in accordance with the form appearing in Schedule 2” by “a written notice in conformity with the model provided by regulation”.

21. Sections 111 to 114 of the Act are replaced by the following sections:

“111. A merchant may not subordinate the making of a credit contract to the requirement that the consumer enter into an insurance contract with the insurer specified by the merchant.

“112. A merchant who requires that the making of a credit contract be subordinate to the consumer entering into an insurance contract must inform the consumer, in accordance with the Act respecting the distribution of financial products and services (chapter D-9.2), that the consumer may purchase insurance from the insurer and insurance representative of the consumer’s choice or may fulfil that requirement through an existing insurance policy if the coverage meets the conditions required by the merchant.

The merchant may not, without reasonable grounds, refuse the insurance selected or already held by the consumer.

“113. A merchant who, on entering into a credit contract with a consumer, solicits the consumer’s adhesion to group life, health or job loss insurance must provide the consumer with confirmation of insurance from the insurer, in accordance with the Act respecting the distribution of financial products and services (chapter D-9.2).

“114. A merchant who, on entering into a credit contract with a consumer, purchases individual insurance for the consumer must, within 30 days after the insurer accepts the application relating to the consumer, provide the consumer with the insurance policy together with a copy of any written application made by the consumer or on the consumer’s behalf.”

22. Section 115 of the Act is replaced by the following section:

“115. In addition to the information that may be required by regulation, a contract for the loan of money must contain or state the following, presented in conformity with the model provided by regulation:

(a) the net capital and, if more than one advance is involved, the amount and date of each advance made or to be made to the consumer under the contract, or how the amount and date are determined;

(b) the credit charges claimed from the consumer and the consumer’s total obligation under the contract;

(c) the term of the contract;

(d) the credit rate, specifying, if applicable, that it is subject to change, and the circumstances in which unpaid interest may be capitalized;

(e) the date on which credit charges begin to accrue, or how that date is determined;

(f) the amount and frequency of payments, and the date or day on which they are due;

(g) the nature of any optional contracts, the charge for such contracts or how it is determined, and a statement that the consumer has a right of rescission with respect to such contracts;

(h) a statement that the consumer may, without charges or penalties, prepay all or part of the outstanding balance;

(i) the existence and the subject matter of any security given to guarantee the performance of the consumer's obligations;

(j) if entering into an insurance contract is a condition for entering into the contract, a statement that the consumer has the right to use an existing insurance policy or to purchase insurance from the insurer and insurance representative of the consumer's choice, subject to the merchant's right to disapprove the insurance selected or held by the consumer on reasonable grounds; and

(k) the merchant's permit number, if applicable.

If the credit rate is a variable rate, the contract must also contain the following:

(a) a statement that the credit rate stipulated is the initial rate and that it is subject to change during the term of the contract;

(b) a description of the reference index used to determine the variable credit rate;

(c) a description of the mechanics of credit rate changes and of how a change in the credit rate may affect the terms and conditions of payment;

(d) a clause specifying that the information relating to the terms and conditions of credit is provided for illustrative purposes only, on the basis of the initial credit rate, and that the information may vary with the credit rate; and

(e) a clause specifying the credit rate starting at which the amount of the scheduled payments will not cover the credit charges based on the initial capital, unless the contract provides for the automatic adjustment of the amount of the payments according to changes in the credit rate."

23. The Act is amended by inserting the following sections after section 115:

"115.1. When a consumer sells goods to a merchant with a right of redemption, the sale is deemed to constitute a contract for the loan of money if the amount payable by the consumer under the contract to redeem the goods is greater than the amount paid by the merchant to acquire them.

When a consumer sells goods to a merchant who acquires them in order to lease them to the consumer for an amount that is greater than the amount the merchant paid to acquire them, the sale is also deemed to constitute a contract for the loan of money.

“115.2. Unless the merchant invoked a clause of forfeiture of benefit of the term or exercised a hypothecary right, the merchant must, at least 21 days before the end of the term of a contract for the loan of money secured by an immovable hypothec, give notice in writing to the consumer of whether or not the merchant intends to renew the contract.

If the merchant intends to renew the contract, the notice must contain the information required under subparagraphs *a*, *d* and *g* of the first paragraph of section 115. If the notice is late, the consumer’s rights and obligations under the original contract continue to apply until 21 days after the consumer receives the notice.”

24. Section 116 of the Act is repealed.

25. Section 118 of the Act is amended by replacing the second paragraph by the following paragraph:

“Open credit contracts include credit card contracts, whether or not the use of the credit card requires a personal identification number or any other means designed to ensure consumer authorization; open credit contracts also include contracts for the use of what are commonly called lines of credit, credit accounts, budget accounts, revolving credit accounts, credit openings and any other contract of the same nature.”

26. Section 119 of the Act is replaced by the following section:

“119. In the case of contracts described in section 118, the charges imposed for non-payment of amounts when due are credit charges.”

27. The Act is amended by inserting the following section after section 119:

“119.1. A credit card application form or the accompanying documents must contain or state the following:

(a) the credit rate or, if it is a variable rate, the initial credit rate, the index to which the credit rate is linked and the relationship between the index and the credit rate;

(b) the grace period given the consumer to pay outstanding amounts without having to pay credit charges, except as regards money advances;

(c) the nature of the credit charges and how they are determined; and

(d) the date as of which the information referred to in subparagraphs a to c is current.

If the application form is completed in the presence of the merchant, the merchant must give a copy of the completed form to the consumer.”

28. The Act is amended by inserting the following section after section 122:

“**122.1.** A consumer who is solidarily liable with another consumer for the obligations arising from an open credit contract is released from the obligations resulting from any use of the open credit account after notifying the merchant in writing that he will no longer use the credit extended and no longer intends to be solidarily liable for the other consumer’s future use of the credit extended in advance, and after providing proof to the merchant, on that occasion, that he informed the other consumer by sending him a notice to that effect at his last known address.

Any subsequent payment made by the consumer must be applied to the debts contracted before the notice was sent to the merchant.”

29. Sections 123 and 124 of the Act are replaced by the following sections:

“**123.** The consumer is not liable for debts resulting from the use of a credit card by a third person after the card issuer is notified, by any means, of the loss, theft or fraudulent use of the card or of any other use of the card not authorized by the consumer.

Even if no notice was given, consumer liability for the unauthorized use of a credit card is limited to \$50.

Any stipulation contrary to this section is prohibited.

“**123.1.** Despite section 123, the consumer is held liable for the losses incurred by the card issuer if the latter proves that the consumer committed a gross fault as regards the protection of the related personal identification number.

“**124.** A consumer who has entered into a preauthorized payment agreement with a merchant under which payments are made out of credit obtained under a credit card contract may end the agreement at any time by sending a notice to the merchant.

On receipt of the notice, the merchant must cease to collect the preauthorized payments.

On receipt of a copy of the notice, the card issuer must cease debiting the consumer’s account to make payments to the merchant.”

30. Section 125 of the Act is replaced by the following sections:

“125. In addition to the information that may be required by regulation, an open credit contract must contain or state the following, presented in conformity with the model provided by regulation:

- (a) the credit limit granted;
- (b) the credit rate or, if it is a variable rate, the initial credit rate, the index to which the credit rate is linked and the relationship between the index and the credit rate;
- (c) the nature of the credit charges and how they are determined;
- (d) the grace period given the consumer to pay outstanding amounts without having to pay credit charges, except as regards money advances;
- (e) if the credit rate is a variable rate, the reference index used to determine the credit rate, the credit rate change mechanics and how a change in the credit rate will affect the terms and conditions of payment;
- (f) the minimum periodic payment or the method of calculating the minimum payment required for each period;
- (g) the length of each period for which a statement of account is provided;
- (h) in the case of a credit card contract, the consumer liability limit in the circumstances described in section 123 and the circumstances in which the consumer may be held liable for the losses incurred by the card issuer;
- (i) the existence and the subject matter of any security given to guarantee the performance of the consumer’s obligations;
- (j) the nature of any optional contracts, the charge for such contracts or how it is determined, and a statement that the consumer has a right of resiliation with respect to such contracts;
- (k) if entering into an insurance contract is a condition for entering into the contract, a statement that the consumer has the right to use an existing insurance policy or to purchase insurance from the insurer and insurance representative of the consumer’s choice, subject to the merchant’s right to disapprove the insurance selected or held by the consumer on reasonable grounds; and
- (l) a telephone number that the consumer can use, at no charge, to obtain information about the contract in the language of the contract, or a telephone number that the consumer can use to obtain such information in the language of the contract, together with a clear statement that collect calls are accepted.

“125.1. Despite section 125, information relating to optional contracts or to a specific transaction under the contract may be contained in a separate document delivered to the consumer before the debtor performs his obligation to the consumer under such optional contracts.

“125.2. If the card issuer has a website, an up-to-date version of any credit card contract offered to consumers must be posted on that website.”

31. Section 126 of the Act is replaced by the following sections:

“126. Without delay at the end of each period, the merchant must send the consumer a statement of account specifying

- (a) the period covered by the statement of account;
- (b) the outstanding balance at the beginning of the period;
- (c) the date, a sufficient description and the amount of each transaction charged to the account during the period;
- (d) the date and amount of each payment or sum credited to the account during the period;
- (e) the credit rate or rates applicable; in the case of a variable credit rate, the rate applicable at the end of the period and the manner of obtaining a list of the rates during the period;
- (f) the credit charges charged to the account during the period;
- (g) the total of all advances and purchases charged to the account during the period;
- (h) the outstanding balance at the end of the period;
- (i) the credit limit applicable for the period;
- (j) the minimum payment required for the period;
- (k) in the case of a credit card, the estimated number of months and, if applicable, years required to pay off the outstanding balance if only the required minimum payment is made each period;
- (l) in the case of a credit card, the due date for payment;
- (m) the grace period given the consumer to pay outstanding amounts without having to pay credit charges, except as regards money advances;
- (n) the consumer’s rights and obligations regarding billing errors; and

(o) a telephone number that the consumer can use, at no charge, to obtain information about the contract or the statement of account in the language of the contract, or a telephone number that the consumer can use to obtain such information in the language of the contract, together with a clear statement that collect calls are accepted.

For the purposes of subparagraph *c* of the first paragraph, a transaction is sufficiently described if the information given can reasonably be expected to enable the consumer to identify the transaction.

“126.1. In the case of a credit card contract, the minimum payment required for a period may not be less than 5% of the outstanding balance at the end of the period.

For the purposes of the first paragraph, any debt paid in instalments determined according to special terms and conditions is not included in the balance of the account.

“126.2. The merchant is not required to send a statement of account to the consumer at the end of any period if there have been no advances or payments during the period and the outstanding balance at the end of the period is zero.

“126.3. The consumer may demand that the merchant send, without charge, a copy of the vouchers for each of the transactions charged to the account during the period covered by the statement. The merchant must send the copy of the vouchers requested within 60 days after the date the consumer’s request was sent.”

32. Section 127 of the Act is amended by replacing the second paragraph by the following paragraphs:

“The statement of account may be sent to the consumer’s technological address if expressly authorized by the consumer. The consumer may at any time withdraw the authorization by notifying the merchant.

The statement of account is deemed to have been sent to the consumer’s technological address when

(a) the consumer has received at that address a notice to the effect that the statement of account is available on the merchant’s website;

(b) the statement of account is actually available on the website for the period determined by the regulation; and

(c) the consumer is able to retain a copy of the statement of account by printing it or otherwise.”

33. The Act is amended by inserting the following section after section 127:

“127.1. The merchant must give the consumer a grace period of at least 21 days after the last day of the period covered by the statement of account to pay outstanding amounts without having to pay credit charges.

The first paragraph does not apply in the case of an advance of money. The merchant may claim credit charges from the date of an advance of money until the date of payment.”

34. Section 128 of the Act is replaced by the following sections:

“128. A merchant may not increase the credit limit granted except on the express request of the consumer.

The merchant may not increase the credit limit beyond the new limit requested by the consumer.

The fact that a consumer makes a transaction resulting in the credit limit granted being exceeded does not constitute an express request.

“128.1. The merchant may not allow the consumer to make a transaction resulting in the credit limit granted being exceeded unless the merchant

(a) sends the consumer a notice stating that the consumer made a transaction resulting in the credit limit granted being exceeded;

(b) imposes no charges on the consumer for exceeding the credit limit; and

(c) includes the portion of the amount of the transaction that exceeds the credit limit in the minimum payment required for the subsequent period.

An amount withheld on a credit card may not constitute a transaction resulting in the credit limit being exceeded.

“128.2. Any unilateral increase of the credit limit by the merchant cannot be invoked against the consumer, and the consumer is not required to pay the amounts charged to the account that exceed the credit limit granted before that increase.

“128.3. Any stipulation in an open credit contract whereby the merchant may unilaterally increase the credit limit is prohibited.

Any stipulation whereby the merchant may impose charges on the consumer if a transaction results in the credit limit granted being exceeded or if a transaction is refused on that ground is also prohibited.”

35. Section 134 of the Act is replaced by the following section:

“134. In addition to the information that may be required by regulation, an instalment sale contract must contain or state the following, presented in conformity with the model provided by regulation:

- (a) a description of the goods that are the subject matter of the contract;
- (b) the cash sale price of the goods, the cash down payment paid by the consumer, if any, and the net capital;
- (c) the value of any goods given in exchange;
- (d) the credit charges claimed from the consumer and the consumer’s total obligation under the contract;
- (e) the term of the contract;
- (f) the credit rate, specifying, if applicable, that it is subject to change, and the circumstances in which unpaid interest may be capitalized;
- (g) the date on which credit charges begin to accrue;
- (h) the amount and due date of each payment;
- (i) the nature of any optional contracts, the charge for such contracts or how it is determined, and a statement that the consumer has a right of resiliation with respect to such contracts;
- (j) a statement that the consumer may, without charges or penalties, prepay all or part of the outstanding balance;
- (k) the existence and the subject matter of any security given to guarantee the performance of the consumer’s obligations;
- (l) if entering into an insurance contract is a condition for entering into the contract, a statement that the consumer has the right to use an existing insurance policy or to purchase insurance from the insurer and insurance representative of the consumer’s choice, subject to the merchant’s right to disapprove the insurance selected or held by the consumer on reasonable grounds;
- (m) the date of delivery of the goods; and
- (n) the fact that the merchant reserves ownership of the goods sold until the consumer has paid all or part of the outstanding balance.

If the credit rate is a variable rate, the contract must also contain the following:

(a) a statement that the credit rate stipulated is the initial rate and that it is subject to change during the term of the contract;

(b) a description of the reference index used to determine the variable credit rate;

(c) a description of the mechanics of credit rate changes and of how a change in the credit rate may affect the terms and conditions of payment;

(d) a clause specifying that the information relating to the terms and conditions of credit is provided for illustrative purposes only, on the basis of the initial credit rate, and that the information may vary with the credit rate; and

(e) a clause specifying the credit rate starting at which the amount of the scheduled payments will not cover the credit charges based on the initial capital, unless the contract provides for the automatic adjustment of the amount of the payments according to changes in the credit rate.”

36. Section 139 of the Act is amended by replacing “drawn up in accordance with the form appearing in Schedule 6” by “in conformity with the model provided by regulation”.

37. Section 150 of the Act is replaced by the following section:

“150. In addition to the information that may be required by regulation, a contract involving credit, other than an instalment sale contract, must contain or state the following, presented in conformity with the model provided by regulation:

(a) the nature and object of the contract and, if applicable, a description of the goods;

(b) the net capital and, if applicable, the cash sale price of the goods and the cash down payment paid by the consumer;

(c) the credit charges claimed from the consumer and the consumer’s total obligation under the contract;

(d) the term of the contract;

(e) the credit rate, specifying, if applicable, that it is subject to change, and the circumstances in which unpaid interest may be capitalized;

(f) the date on which credit charges begin to accrue;

(g) the amount and due date of each payment;

(h) the nature of any optional contracts, the charge for such contracts or how it is determined, and a statement that the consumer has a right of rescission with respect to such contracts;

(i) a statement that the consumer may, without charges or penalties, prepay all or part of the outstanding balance;

(j) the existence and the subject matter of any security given to guarantee the performance of the consumer's obligations; and

(k) if entering into an insurance contract is a condition for entering into the contract, a statement that the consumer has the right to use an existing insurance policy or to purchase insurance from the insurer and insurance representative of the consumer's choice, subject to the merchant's right to disapprove the insurance selected or held by the consumer on reasonable grounds.

If the credit rate is a variable rate, the contract must also contain the following:

(a) a statement that the credit rate stipulated is the initial rate and that it is subject to change during the term of the contract;

(b) a description of the reference index used to determine the variable credit rate;

(c) a description of the mechanics of credit rate changes and of how a change in the credit rate may affect the terms and conditions of payment;

(d) a clause specifying that the information relating to the terms and conditions of credit is provided for illustrative purposes only, on the basis of the initial credit rate, and that the information may vary with the credit rate; and

(e) a clause specifying the credit rate starting at which the amount of the scheduled payments will not cover the credit charges based on the initial capital, unless the contract provides for the automatic adjustment of the amount of the payments according to changes in the credit rate."

38. The Act is amended by inserting the following section before section 150.4:

"150.3.1. Before entering into a long-term contract of lease with a consumer, a merchant must assess the consumer's capacity to perform the obligations under the contract.

A merchant who, in carrying out an assessment, takes into account the information determined by regulation is deemed to comply with the obligation under the first paragraph.

If a contract is transferred to another merchant after having been entered into, and that merchant is the one who approved the contract, the transferee becomes the merchant bound by the obligations under this section.”

39. Section 150.13 of the Act is amended by replacing “drawn up in accordance with the form appearing in Schedule 7.1” in paragraph *b* by “in conformity with the model provided by regulation”.

40. Section 150.14 of the Act is amended by replacing “a notice in writing drawn up in accordance with the form appearing in Schedule 7.2” in the first paragraph by “a written notice in conformity with the model provided by regulation”.

41. Section 150.30 of the Act is amended by replacing “a notice in writing drawn up in accordance with the form appearing in Schedule 7.4” in the first paragraph by “a written notice in conformity with the model provided by regulation”.

42. Section 187.3 of the Act is amended by replacing “for an expiry date on a prepaid card” by “that a prepaid card may expire on a set date or by the lapse of time”.

43. The Act is amended by inserting the following division after section 187.5:

“DIVISION V.2

“CONTRACTS RELATING TO LOYALTY PROGRAMS

“187.6. For the purposes of this division,

(a) “loyalty program” means a program under which consumers, on entering into contracts, receive exchange units in consideration of which they may obtain goods or services free of charge or at a reduced price from one or more merchants;

(b) “exchange unit” means any form of benefit granted to a consumer that has an exchange value within the meaning of a loyalty program.

For the purposes of this division, a contract for the sale of a prepaid card does not constitute a contract relating to a loyalty program.

“187.7. Before entering into a contract relating to a loyalty program, the merchant must inform the consumer in writing of the information determined by regulation.

“187.8. Subject to any applicable regulations, any stipulation providing that the exchange units received by the consumer under a loyalty program may expire on a set date or by the lapse of time is prohibited.

“187.9. Despite section 11.2 and subject to any applicable regulations, any stipulation in an indeterminate-term contract under which the merchant may amend an essential element of the contract unilaterally is not prohibited provided the stipulation also

(a) specifies the elements of the contract that may be amended unilaterally; and

(b) provides that the merchant must send to the consumer, within the time limit prescribed by regulation, a written notice drawn up clearly and legibly, setting out the new clause only, or the amended clause and the clause as it read formerly, and the date of the coming into force of the amendment.”

44. Section 190 of the Act is amended by replacing “in conformity with Schedule 8” in the second paragraph by “in conformity with the model provided by regulation”.

45. Section 199 of the Act is amended by replacing “in conformity with Schedule 9” in the second paragraph by “in conformity with the model provided by regulation”.

46. Section 208 of the Act is amended by replacing “in conformity with Schedule 10” in the second paragraph by “in conformity with the model provided by regulation”.

47. The Act is amended by inserting the following division after section 214.11:

“DIVISION VIII

“CONTRACTS ENTERED INTO BY DEBT SETTLEMENT SERVICE MERCHANTS

“§1. — *General provisions*

“214.12. A debt settlement service merchant is a person who offers to enter into or enters into a contract with a consumer that has the following object:

(a) to negotiate the settlement of the consumer’s debts with creditors;

(b) to receive amounts from or for the consumer in order to distribute them to the consumer’s creditors;

(c) to improve the credit reports prepared about the consumer by a personal information agent within the meaning of the Act respecting the protection of personal information in the private sector (chapter P-39.1); or

(d) to provide the consumer with education or raise the consumer’s awareness regarding budget management or debt settlement.

“214.13. The following are exempt from the application of this division:

- (a) consumer advocacy bodies;
- (b) educational institutions under the authority of a school board;
- (c) general and vocational colleges;
- (d) universities;
- (e) faculties, schools or institutes of a university that are administered by a legal person distinct from that which administers the university;
- (f) educational institutions governed by the Act respecting private education (chapter E-9.1), for educational service contracts subject to that Act;
- (g) institutions whose instructional program is the subject of an international agreement, within the meaning of the Act respecting the Ministère des Relations internationales (chapter M-25.1.1), for the subsidized teaching they provide;
- (h) schools administered by the Government or by one of the government departments;
- (i) the Conservatoire de musique et d’art dramatique du Québec established under the Act respecting the Conservatoire de musique et d’art dramatique du Québec (chapter C-62.1);
- (j) members of the Barreau du Québec;
- (k) members of the Chambre des notaires du Québec;
- (l) trustees holding a licence issued by the Superintendent of Bankruptcy under the Bankruptcy and Insolvency Act (Statutes of Canada, 1985, chapter B-3);
- (m) insolvency counsellors who are members of the Canadian Association of Insolvency and Restructuring Professionals;
- (n) financial planners holding a certificate issued by the Autorité des marchés financiers;
- (o) members of the Ordre des comptables professionnels agréés du Québec;
- (p) members of the Ordre des administrateurs agréés; and
- (q) members of the Ordre des huissiers de justice.

“§2.—*Debt settlement service contracts*

“**214.14.** No merchant may make the entering into or the performance of a debt settlement service contract dependent upon the entering into of another contract.

“**214.15.** If, at the time of the entering into or performance of a debt settlement service contract, the consumer enters into any other contract with the merchant, the other contract is deemed to form an integral part of the debt settlement service contract.

If the other contract is entered into subsequently to the debt settlement service contract, the merchant must evidence both contracts in a new contract that complies with section 214.16.

“**214.16.** The contract must be evidenced in writing. In addition to the information that may be required by regulation, the contract must contain or state the following, presented in conformity with the model provided by regulation:

- (a) the merchant’s permit number;
- (b) the name and address of both the consumer and the merchant;
- (c) the merchant’s telephone number and, if available, the merchant’s technological address;
- (d) the place and date of the contract;
- (e) a detailed description of each of the goods and services to be provided under the contract;
- (f) the scheduled dates for the performance of the merchant’s obligations;
- (g) the charges and fees to be paid to the merchant by the consumer;
- (h) the list of creditors disclosed by the consumer and the amount and description of each of their claims;
- (i) the total amount owed to creditors by the consumer;
- (j) the proposal the merchant undertakes to make to each of the consumer’s creditors, including the terms and conditions of payment proposed for each debt;
- (k) the amount of any payment to be made to the merchant by the consumer for remittance to the creditors, and the frequency and dates of the payments;
- (l) the term and expiry date of the contract;

(m) if applicable, the fact that the merchant will receive or attempt to receive amounts from a creditor as consideration for entering into the contract;

(n) if applicable, a description of the goods received in payment, as a trade-in or on account, their quantity, and the price agreed on for each of them; and

(o) the right granted to the consumer to resolve the contract at his sole discretion within 10 days after that on which each of the parties is in possession of a copy of the contract.

The merchant must attach a resolution form in conformity with the model provided by regulation to the copy of the contract the merchant remits to the consumer.

“214.17. A contract may be resolved at the discretion of the consumer within 10 days after that on which each of the parties is in possession of a copy of the contract.

The contract may also be resolved within a year from the date it was entered into

(a) in all cases, if the merchant fails to perform a service within 30 days after the performance date specified in the contract or a later date agreed to by the consumer, unless the consumer accepts performance after that time has expired;

(b) in the case of a contract providing for services described in paragraph *a*, *b* or *d* of section 214.12, if the contract is inconsistent with any of the rules for entering into contracts set out in sections 25 to 28 or 54.4 to 54.7, as the case may be; or

(c) in the case of a contract providing for services described in paragraph *a* or *b* of section 214.12, if

i. the merchant does not hold the permit required by this Act at the time the contract is entered into,

ii. the security furnished by the merchant is invalid or is not in conformity with the security required under this Act at the time the contract is entered into,

iii. the contract does not meet the requirements of section 214.16, or

iv. no resolution form in conformity with the model provided by regulation was attached to the contract at the time the contract was entered into.

“214.18. The consumer avails himself of the right of resolution by returning the form provided for in section 214.16 or by sending the merchant another written notice to that effect.

“214.19. The contract is resolved by operation of law from the sending of the form or the notice.

“214.20. Within 15 days following the resolution, the merchant must make restitution to the consumer of what was received from the consumer, who must return any goods received from the merchant.

If the merchant is unable to make restitution to the consumer of the goods received in payment, as a trade-in or on account, the merchant must remit to the consumer the greater of the value of the goods and the price of the goods specified in the contract.

The merchant shall assume the costs of restitution.

“214.21. The merchant shall assume the risk of loss or deterioration, even by superior force,

(a) of the goods forming the object of the contract, until the expiry of the time provided for in section 214.20; and

(b) of the goods received in payment, as a trade-in or on account, until their restitution.

“214.22. The consumer may not resolve the contract if, as a result of an act or a fault for which he is liable, he is unable to make restitution of the goods to the merchant in the condition in which they were received.

“214.23. The merchant must negotiate with the consumer’s creditors on the basis of the proposal agreed to with the consumer and evidenced in the contract in accordance with subparagraph *j* of the first paragraph of section 214.16.

If the creditor refuses the proposal, the merchant must inform the consumer both orally and in writing without delay.

If the creditor accepts the proposal, an agreement in principle regarding debt settlement entered into by the merchant with that creditor must be evidenced in writing. The merchant must send a copy of the agreement in principle to the consumer within 15 days after it is entered into.

“214.24. The consumer has 10 days to refuse the agreement in principle. The consumer must notify the merchant of a refusal in writing.

“214.25. In the case of a debt settlement service contract providing for services described in paragraph *a* or *b* of section 214.12, the merchant may not collect charges or fees until

(a) an agreement in principle has been evidenced in writing and the consumer has received a copy within the time prescribed in section 214.23;

(b) the agreement in principle referred to in subparagraph *a* has been accepted by the consumer; and

(c) a payment has been made for the benefit of the creditor in accordance with the agreement.

In the case of a debt settlement service contract providing for services described in paragraph *c* of section 214.12 but not for services described in paragraph *a* or *b* of that section, the merchant may not collect a payment from the consumer before having improved the credit reports prepared about the consumer by a personal information agent within the meaning of the Act respecting the protection of personal information in the private sector (chapter P-39.1).

A regulation may be made to set conditions and limits for the charges and fees the merchant may claim from the consumer.

“214.26. The merchant must provide to the consumer, within 45 days after entering into the contract, a summary document containing or stating

(a) a list of the creditors who have accepted or refused the settlement of the consumer’s debts;

(b) the total amount of the payments the merchant must make to each creditor; and

(c) the amount, total number and frequency of the payments the consumer must make to the merchant and the dates on which they must be made.

Such a document must, subsequently and until the contract ends, be provided to the consumer every 60 days.

“214.27. A sum of money received by the merchant from a consumer must be transferred in trust. The merchant is the trustee of the sum and must deposit it in a trust account until entitled to withdraw it in accordance with section 214.28.

The sums of money held in the trust account are unassignable and unseizable.

Sections 257 to 260 apply to the merchant, with the necessary modifications.

“214.28. The merchant shall withdraw from the trust account, for or on behalf of a consumer, only the sums deposited and held in that account for that consumer.

Except for the interest on the sums paid into the trust account, the merchant may withdraw sums from the account for the following purposes only:

(a) remitting to a creditor the payment due, in accordance with the debt settlement agreement;

(b) collecting the charges and fees due to the merchant under the contract; or

(c) in the case of the cancellation, resolution or resiliation of the contract, making restitution of the sums due to the consumer.

“214.29. The president may appoint a provisional administrator to manage temporarily, continue or terminate the current business of a merchant in any of the cases described in section 260.16, with the necessary modifications.

Sections 260.17 to 260.23 apply, with the necessary modifications, to the provisional administrator’s appointment and mandate.

“214.30. Only sections 214.14, 214.15, 214.17 to 214.22 and 214.25 of this subdivision apply in the case of debt settlement service contracts that do not provide for services described in paragraph *a* or *b* of section 214.12.

Section 195 does not apply in the case of debt settlement service contracts that provide for services described in paragraph *d* of section 214.12.”

48. The Act is amended by inserting the following section after section 223:

“223.1. A merchant, manufacturer or advertiser must, in an advertisement concerning goods or services, present all the information in a clear, legible and understandable manner, and as prescribed by regulation.”

49. Section 224 of the Act is amended

(1) by inserting the following subparagraph after subparagraph *a* of the first paragraph:

“(a.1) use the expression “cost price” or any other expression suggesting that goods are for sale or for lease at a price or retail value based on their cost to the merchant, unless the expression refers to the price or retail value actually paid by the merchant to purchase the goods;”;

(2) by replacing subparagraph *b* of the first paragraph by the following subparagraph:

“(b) disclose, in an advertisement, the amount of the instalments to be paid for the purchase or long-term lease of goods or for a service without also disclosing, and laying greater emphasis on, the total price of the goods or service or, in the case of a long-term lease, the retail value of the goods; or”;

(3) by inserting the following paragraph after the first paragraph:

“For the purposes of subparagraph *a.1* of the first paragraph, the price actually paid by the merchant is the price the merchant paid reduced by all the charges the merchant paid but that have been or will be reimbursed.”

50. The Act is amended by inserting the following section after section 230:

“230.1. No loan broker may collect a partial or full payment from a consumer for services rendered or to be rendered.

For the purposes of the first paragraph, “loan broker” means a person who, for the purposes of a credit contract, acts as an intermediary between a consumer and a person willing to advance money. However, this provision does not apply to a member of a professional order governed by the Professional Code (chapter C-26) or to a person who holds a broker’s or agency licence issued under the Real Estate Brokerage Act (chapter C-73.2) when exercising activities covered by either of those Acts.”

51. The Act is amended by inserting the following section after section 231:

“231.1. No merchant, manufacturer or advertiser may, in an advertisement concerning specific goods or services and disclosing their price or retail value, show a picture of the goods or services that is not an accurate depiction of them.”

52. The Act is amended by inserting the following section after section 232:

“232.1. No person may offer a consumer a premium, within the meaning of section 232, as an incentive to enter into a debt settlement service contract.”

53. Section 234 of the Act is amended by replacing “or by negotiable instrument” at the end by “or by payment instrument”.

54. The Act is amended by inserting the following sections after section 244:

“244.1. No person may, by any means, in any advertisement, falsely or misleadingly represent to consumers that credit may improve their financial situation or solve their debt problems.

“244.2. No merchant may, by any means, falsely or misleadingly represent to consumers that credit reports prepared about them will be improved.

“244.3. No merchant may, by any means, represent to consumers that their obligations with regard to a creditor will be reduced, except if the creditor concerned expressly consents to the reduction of such obligations.

“244.4. No merchant may offer to enter into or enter into a credit contract with a consumer with whom the merchant has entered into a debt settlement service contract, or help or encourage the consumer to enter into such a contract.

“244.5. No debt settlement service merchant may, by any means, communicate to a third person any information about a consumer, unless that person is acting as surety for the consumer or is a creditor with whom the merchant has been authorized to communicate by the consumer.”

55. The Act is amended by inserting the following section after section 245.1:

“245.2. No merchant may enter into a credit contract or a long-term contract of lease of goods with a consumer, or grant a credit limit increase to a consumer, without carrying out the assessment under section 103.2 or 150.3.1.”

56. Section 246 of the Act is replaced by the following section:

“246. No person may, in any advertisement concerning credit,

(a) refer to a credit rate without disclosing that rate; or

(b) disclose a rate relating to credit unless the credit rate, calculated in accordance with this Act, is also disclosed with equal emphasis.

Subparagraph *b* of the first paragraph applies, among other cases, if a consumer is offered a rebate or discount on the cash purchase of goods; the credit rate disclosed must in that case include the value of the rebate or discount to which the consumer is entitled on paying cash.”

57. The Act is amended by inserting the following section after section 247.1:

“247.2. No person may let it be believed that no credit charges are payable during a certain period following a transaction, unless the credit rate that will apply at the end of that period if the net capital has not been repaid in full is clearly specified.”

58. The Act is amended by inserting the following sections after section 251:

“251.1. No person may, when a consumer is about to pay with a credit card, withhold an amount on the credit card, unless the person discloses, before the transaction, the amount that will be withheld and why and for how long it will be withheld.

A regulation may be made to set a limit for the amount that may be withheld on a credit card and for how long it may be withheld.

“251.2. No person may inform a personal information agent, within the meaning of the Act respecting the protection of personal information in the private sector (chapter P-39.1), of the exercise by a consumer of the right of

resolution or resiliation under an Act whose application is under the supervision of the Office, or send a personal information agent information unfavourable to the consumer concerning amounts that are no longer payable following the exercise of that right.

Similarly, no person may inform such an agent of the fact that a loan has not been repaid following an order made by the court under section 117.”

59. Section 255 of the Act is amended by replacing “the time provided in section 59 has expired or until the contract is cancelled by virtue of section 59” by “the cancellation period provided for in the first paragraph of section 59 has expired or until the contract is cancelled under that paragraph”.

60. Section 260.9 of the Act is amended by replacing “consistent with the model provided in Schedule 11” in the third paragraph by “in conformity with the model provided by regulation”.

61. Section 316 of the Act is amended by replacing the first paragraph by the following paragraph:

“The president may apply to the court for an injunction ordering

(a) a person to cease engaging in a practice prohibited under Title II;

(b) a merchant to cease including in a contract a stipulation prohibited under this Act or a regulation;

(c) a merchant to comply with section 19.1 when including a stipulation inapplicable in Québec; or

(d) a merchant to cease engaging in an activity without holding the permit required by this Act or by any other Act whose application is under the supervision of the Office.”

62. Section 321 of the Act is amended by adding the following at the end:

“(g) every merchant who enters into a high-cost credit contract; and

(h) every debt settlement service merchant who offers services described in paragraph *a* or *b* of section 214.12.

No person who holds a debt settlement service merchant’s permit may simultaneously hold a permit issued under the Act respecting the collection of certain debts (chapter R-2.2).”

63. Section 350 of the Act is amended

(1) by inserting the following paragraphs after paragraph *g*:

“(g.1) determining the threshold beyond which a credit contract is presumed to constitute an excessive, harsh or unconscionable obligation within the meaning of section 8;

“(g.2) determining the information a merchant must take into account to benefit from the presumption provided for in the second paragraph of sections 103.2 and 150.3.1;

“(g.3) determining, for the purposes of section 103.4, the method for calculating the debt ratio;

“(g.4) determining, for the purposes of section 103.4, the characteristics a credit contract must have to be considered a high-cost credit contract;

“(g.5) determining, for the purposes of section 187.8, the cases or circumstances in which a stipulation may prescribe that the exchange units may expire at a set date or by the lapse of time;

“(g.6) identifying, for the purposes of section 187.9, the elements of a contract relating to a loyalty program that a merchant may not amend unilaterally, and the time limit for sending a consumer a notice of unilateral amendment of an essential element of the contract;

“(g.7) setting, for the purposes of section 214.25, conditions and limits for the charges and fees a debt settlement service merchant may claim from a consumer;

“(g.8) setting, for the purposes of section 251.1, a limit for the amount that may be withheld on a credit card and a limit for how long it may be withheld;”;

(2) by striking out paragraph *s*.

64. Schedules 1 to 11 to the Act are repealed.

65. The Act is amended by replacing “contract extending variable credit”, “contracts extending variable credit” and “variable credit” wherever they appear by “open credit contract”, “open credit contracts” and “open credit”, respectively.

TRAVEL AGENTS ACT

66. Section 13.2 of the Travel Agents Act (chapter A-10) is amended by inserting “and in section 11.8 of the Regulation respecting travel agents (chapter A-10, r. 1)” after “section 13” in the first paragraph.

67. The Act is amended by inserting the following division before Division IV:

“DIVISION III.2

“FONDS D’INDEMNISATION DES CLIENTS DES AGENTS DE VOYAGES

“30.1. The Fonds d’indemnisation des clients des agents de voyages, an indemnity fund for the clients of travel agents, is established to guarantee the indemnification or reimbursement of the clients of travel agents who are required to contribute to the fund in the cases and in accordance with the terms and conditions prescribed by regulation.

The fund also guarantees the payment of the administrative expenses and the fees of a provisional administrator in case of a lack or insufficiency of individual security.

“30.2. The fund is made up of

- (a) the contributions paid by the clients of travel agents;
- (b) the sums recovered by the president by way of subrogation to the rights of clients who received indemnities from the fund;
- (c) the interest earned on the sums of money making up the fund;
- (d) the growth of the fund’s assets; and
- (e) the advances that the Minister of Finance may make to the fund in accordance with section 41.1.

“30.3. Subject to the regulation, the clients of travel agents are required to contribute to the fund an amount calculated in accordance with the regulation.

“30.4. Where a travel agent has transferred a client’s funds to a service supplier in accordance with the conditions prescribed by regulation as regards the deposit and withdrawal of funds held in a trust account, where the travel agent has not committed a fault as regards the choice of the supplier and where the supplier has failed to fulfil his obligations, the client

- (a) may not exercise any recourse against the travel agent to recover the amounts paid by him to the travel agent, but may apply to the fund for reimbursement; and
- (b) may apply directly to the fund for indemnification for the damages incurred, in accordance with the terms and conditions prescribed by regulation.

“30.5. Where, for a reason outside his control, a client is unable to avail himself of tourism services he paid for and where the travel agent has not committed a fault in carrying out the mandate entrusted to him, the client may apply to the fund for reimbursement and indemnification in the cases and in accordance with the terms and conditions prescribed by regulation.

“30.6. The president is the manager of the sums making up the fund. The president shall hold those sums in trust.

“30.7. The president is subrogated by operation of law to the rights of a client against a travel agent or a service supplier for the sums paid by the fund.

In addition, the president may exercise a recourse against a travel agent and a service supplier to recover sums paid by the fund where

(a) the service supplier failed to fulfil his obligations;

(b) the fund reimbursed or indemnified the client; and

(c) the travel agent committed a fault, in particular as regards the choice of the service supplier.

No client of a travel agent may be reimbursed or indemnified by the fund if otherwise reimbursed or indemnified for the damages incurred. However, if the amount of the reimbursement or indemnification the client obtained is less than that which he would have obtained from the fund, the client may claim the difference from the fund.”

68. Section 36 of the Act is amended

(1) by replacing subparagraph *b* of the first paragraph by the following subparagraph:

“(b) to prescribe the terms and conditions of issue, maintenance, suspension, transfer or cancellation of a licence, the qualifications required of a person applying for a licence, the conditions to be met and the duties to be paid by that person, and the duties payable for the transfer of a licence or the amalgamation of two travel agents;”;

(2) by inserting the following subparagraphs after subparagraph *b.1* of the first paragraph:

“(b.2) to prescribe the terms and conditions of issue, maintenance, suspension or cancellation of a travel agency manager certificate, the qualifications required of a person applying for a certificate, and the conditions to be met and the duties to be paid by that person;

“(b.3) to determine the cost of the examination a person applying for a travel counsellor certificate or a travel agency manager certificate must pass;”;

(3) by replacing subparagraph *c.1* of the first paragraph by the following subparagraph:

“(c.1) to prescribe the rules for establishing the amount of the contribution to be paid into the Fonds d’indemnisation des clients des agents de voyages and determine the cases and the terms and conditions of collection, payment, administration and use of the fund, in particular to set a maximum amount, per client or event, that may be paid out of the fund;”;

(4) by replacing “to inform and educate consumers with respect to their rights and obligations under this Act” in subparagraph *c.2* of the first paragraph by “to inform and educate clients with respect to their rights and obligations under the Acts whose application is under the supervision of the Office”;

(5) by striking out the third paragraph.

69. Section 39 of the Act is replaced by the following section:

“**39.** A person found guilty of an offence against section 4 or 33 is liable,

(a) in the case of a natural person, to a fine of \$600 to \$15,000; or

(b) in any other case, to a fine of \$2,000 to \$100,000.

For a subsequent offence, the offender is liable to a fine with minimum and maximum limits twice as high as those prescribed in subparagraph *a* or *b* of the first paragraph, as applicable.”

70. Section 40 of the Act is replaced by the following section:

“**40.** A person found guilty of an offence other than an offence under section 39 is liable,

(a) in the case of a natural person, to a fine of \$600 to \$6,000; or

(b) in any other case, to a fine of \$1,000 to \$40,000.

For a subsequent offence, the offender is liable to a fine with minimum and maximum limits twice as high as those prescribed in subparagraph *a* or *b* of the first paragraph, as applicable.”

71. Section 41.1 of the Act is amended by replacing “of a fund established by regulation for indemnification purposes” in the first paragraph by “of the Fonds d’indemnisation des clients des agents de voyages”.

ACT RESPECTING THE COLLECTION OF CERTAIN DEBTS

72. The Act respecting the collection of certain debts (chapter R-2.2) is amended by inserting the following section after section 24:

“**24.1.** No holder of a permit or of a collection agent representative certificate may also hold a debt settlement service merchant’s permit issued under the Consumer Protection Act (chapter P-40.1).”

73. The Act is amended by inserting the following sections after section 34:

“**34.1.** No permit holder or his representative may collect a debt for a merchant who enters into contracts for the loan of money or into high-cost credit contracts if the merchant did not hold the permit required under the Consumer Protection Act (chapter P-40.1) at the time he entered into a contract with the consumer.

“**34.2.** No collection agent may authorize a representative who does not hold the certificate provided for in section 44.1 to act on the agent’s behalf.”

74. Section 36 of the Act is replaced by the following section:

“**36.** A person whose application for a permit or a certificate is refused or whose permit or certificate is suspended or cancelled may contest the president’s decision before the Administrative Tribunal of Québec within 30 days of its notification.”

75. The Act is amended by inserting the following chapter before Chapter IV:

“CHAPTER III.1

“COLLECTION AGENT REPRESENTATIVES

“**44.1.** A collection agent representative must hold a certificate issued by the president.

“**44.2.** A person who applies for a collection agent representative certificate must meet the conditions prescribed by regulation. The person must send the application to the president using the form provided by the president, along with the documents and payment of the duties prescribed by regulation.”

76. Section 49 of the Act is amended by adding the following paragraph at the end:

“The injured person may also claim punitive damages.”

77. Section 51 of the Act is amended by inserting the following paragraph after paragraph 2:

“(2.1) determining terms and conditions for the issue, renewal, suspension or cancellation of a collection agent representative certificate, cases where a certificate ceases to have effect, the qualifications required of a person applying for a certificate, the documents to be sent, the conditions to be met and the duties to be paid;”.

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

78. This Act does not apply to contracts existing at the time of its coming into force, but

(1) sections 100.2, 103.1 and 115.2 of the Consumer Protection Act (chapter P-40.1), as enacted by this Act, apply to existing credit contracts;

(2) section 122.1, the first and second paragraphs of section 123, and sections 123.1, 124 and 126 to 128.2 of the Consumer Protection Act, as replaced, enacted or amended by this Act, apply to existing open credit contracts; and

(3) this Act applies to existing credit contracts and long-term contracts of lease of goods that are amended after its coming into force.

Stipulations in existing contracts that are contrary to the third paragraph of section 123 and to sections 128.3, 187.8 and 187.9 of the Consumer Protection Act, as enacted or replaced by this Act, are without effect for the future.

79. For the purposes of section 126.1 of the Consumer Protection Act, enacted by section 31, the percentage of 5% set out in that section 126.1 is replaced by a percentage of 2% for the 12-month period that follows the date of coming into force of that section 31; for any subsequent 12-month period, that last percentage is increased by a point per period until it reaches 5%.

During those periods, section 126 of the Consumer Protection Act, as replaced by section 31, is to be read as if the following subparagraph were inserted after subparagraph *l* of the first paragraph:

“(*l.1*) the date from which the percentage for calculating the required minimum payment will be increased, and that percentage;”.

80. Decisions made by the president of the Office de la protection du consommateur between 30 June 2010 and (*insert the date of assent to this Act*) as regards travel counsellor certificates may be contested under section 13.2 of the Travel Agents Act (chapter A-10), as amended by section 66.

A person who, under such a decision, is denied a certificate or the renewal of a certificate or whose certificate is suspended or cancelled must contest the decision not later than 30 days after the president of the Office de la protection du consommateur notifies a notice to the person concerning the person's right under the first paragraph.

81. The Fonds d'indemnisation des clients des agents de voyages established under the Regulation respecting travel agents (chapter A-10, r. 1) is deemed to have been established under section 30.1 of the Travel Agents Act, as enacted by section 67.

82. The provisions of this Act come into force on the date or dates to be set by the Government, except sections 66 and 80, which come into force on *(insert the date of assent to this Act)*.

