

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**

Section 10

AMENDMENT:

Amendment 1 has been withdrawn and renamed Am f.

*Adopted
SPR*

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Section 12

AMENDMENT:

Withdraw.

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Section 11

AMENDMENT:

Replace by:

11. Section 72 of the Act is amended by adding the following subparagraph at the end of the second paragraph:

“(c) replacement fees for a lost or stolen credit card.”

*Adopté
JPR*

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Section 15.1

AMENDMENT:

Insert after section 15:

15.1. Section 92 of the Act is amended by replacing “and *b*” by “, *b* and *c*”.

Adopte
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Section 19

AMENDMENT:

In proposed section 103.1:

1. Add the following sentence at the end of the second paragraph: "The lender or the lender's assignee is then responsible for the performance of the obligations of the merchant who is the vendor, lessor, contractor or service provider up to the amount of, as the case may be, the debt owed to the lender at the time the contract is entered into, the debt owed to the assignee at the time it was assigned to him or the payment the lender received if he assigned the debt."
2. Insert ", or whose credit limit was increased in the same circumstances" at the end of the third paragraph.

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Section 19

AMENDMENT:

In proposed section 103.2:

1. Insert “who is to enter or has entered into a credit contract” after “merchant” in the first paragraph.
2. Insert “and collected, as the case may be, in accordance with the method that may be determined by regulation” after “regulation” in the second paragraph.
3. Replace the third paragraph by:

A merchant who is subject to 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), the Bank Act (Statutes of Canada, 1991, chapter 46), the Insurance Companies Act (Statutes of Canada, 1991, chapter 47), the Cooperative Credit Associations Act (Statutes of Canada, 1991, chapter 48) or the Trust and Loan Companies Act (Statutes of Canada, 1991, chapter 45) and who must 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.

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Section 19

AMENDMENT:

Insert "meets the conditions for applying the presumption under the second paragraph of section 103.2 but" after "who" in the second paragraph of proposed section 103.4.

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Section 23

AMENDMENT:

In proposed section 115.1:

1. Insert "total" before "amount payable" in the first paragraph.
2. Replace "an amount" in the second paragraph by "a total amount, including the lease payments and all other charges the consumer must pay under the contract, including, if applicable, the amount the consumer must pay under the contract to avail himself of an option to purchase or to exercise the right of acquisition under section 150.29,".

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Section 27

AMENDMENT:

In proposed section 119.1:

1. Strike out "credit" in subparagraph *c* of the first paragraph.
2. Replace the second paragraph by:

If the credit card is applied for remotely, the merchant must, before accepting the application, disclose to the consumer the information required under the first paragraph.

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Section 28

AMENDMENT:

In the first paragraph of proposed section 122.1:

1. Insert "written" before "notice".
2. Insert "or technological address" after "address".

*Adopte
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Section 30

AMENDMENT:

Strike out “, the index to which the credit rate is linked and the relationship between the index and the credit rate” in paragraph *b* of proposed section 125.

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Section 31

AMENDMENT:

In the first paragraph of proposed section 126:

1. Replace subparagraph *a* by:
 - (*a*) the date of the end of the period;
2. Strike out "credit" in subparagraph *f*.

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Section 33

AMENDMENT:

Replace “the last day of the period covered by the statement of account” in the first paragraph of proposed section 127.1 by “the date of the end of the period”.

*Adopte
SP*

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Section 34

AMENDMENT:

In proposed section 128.1:

1. Replace “a transaction resulting in the credit limit granted being exceeded” in the introductory clause of the first paragraph by “transactions that exceed the credit limit during a period”.
2. Strike out subparagraph *c* of the first paragraph.
3. Replace the second paragraph by:

The withholding of an amount on a credit card is not considered to be a transaction for the purposes of this section.

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Section 34.1

AMENDMENT:

Insert after section 34:

34.1. Section 129 of the Act is amended by replacing “or the credit” in the first paragraph by “or as replacement fees for a lost or stolen credit card or to increase the credit”.

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Section 35

AMENDMENT:

Insert “, or how that date is determined” at the end of subparagraph g of the first paragraph of proposed section 134.

Adopted
SPK

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Section 37

AMENDMENT:

Insert “, or how that date is determined” at the end of subparagraph *f* of the first paragraph of proposed section 150.

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Section 38

AMENDMENT:

Insert "and collected, as the case may be, in accordance with the method that may be determined by regulation" after "regulation" in the second paragraph of proposed section 150.3.1.

Adopted
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Section 43

AMENDMENT:

Replace subparagraph *a* of the first paragraph of proposed section 187.6 by:

(a) “loyalty program merchant” means a person who offers to enter into or enters into a contract relating to a loyalty program with a consumer;

(a.1) “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;

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Section 43

AMENDMENT:

Insert "loyalty program" before "merchant" in proposed section 187.7.

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Section 43

AMENDMENT:

In proposed section 187.9:

1. Insert "loyalty program" before "merchant" in the introductory clause.
2. Insert "loyalty program" before "merchant" in paragraph *b*.

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Section 47

AMENDMENT:

Replace proposed section 214.13 by:

“214.13. Despite section 214.12, the following persons are not debt settlement service merchants:

(1) if the object of the contract is that described in paragraph *a* of section 214.12, consumer advocacy bodies, trustees holding a licence issued by the Superintendent of Bankruptcy under the Bankruptcy and Insolvency Act (Statutes of Canada, 1985, chapter B-3), members of the Barreau du Québec, members of the Chambre des notaires du Québec, members of the Ordre des comptables professionnels agréés du Québec, members of the Ordre des administrateurs agréés, members of the Ordre des huissiers de justice and liquidators of undeclared partnerships;

(2) if the object of the contract is that described in paragraph *b* of section 214.12, trustees holding a licence issued by the Superintendent of Bankruptcy under the Bankruptcy and Insolvency Act (Statutes of Canada, 1985, chapter B-3), members of the Barreau du Québec, members of the Chambre des notaires du Québec, members of the Ordre des administrateurs agréés, members of the Ordre des huissiers de justice and liquidators of undeclared partnerships;

(3) if the object of the contract is that described in paragraph *c* of section 214.12, consumer advocacy bodies, members of the Barreau du Québec, members of the Chambre des notaires du Québec, members of the Ordre des administrateurs agréés and members of the Ordre des huissiers de justice; and

(4) if the object of the contract is that described in paragraph *d* of section 214.12, consumer advocacy bodies, educational institutions under the authority of a school board, general and vocational colleges, universities, faculties, schools or institutes of a university that are administered by a legal

person distinct from that which administers the university, educational institutions governed by the Act respecting private education (chapter E-9.1), for educational service contracts subject to that Act, 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, schools administered by the Government or by one of the government departments, 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), trustees holding a licence issued by the Superintendent of Bankruptcy under the Bankruptcy and Insolvency Act (Statutes of Canada, 1985, chapter B-3), financial planners holding a certificate issued by the Autorité des marchés financiers, members of the Barreau du Québec, members of the Chambre des notaires du Québec, members of the Ordre des comptables professionnels agréés du Québec, members of the Ordre des administrateurs agréés and members of the Ordre des huissiers de justice.

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Section 47

AMENDMENT:

Replace proposed section 214.15 by:

“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 merchant must evidence the contracts in a contract that complies with section 214.16.

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Section 47

AMENDMENT:

In the first paragraph of proposed section 214.16:

1. Replace “to be paid to the merchant by the consumer” in subparagraph *g* by “that the consumer may be required to pay to the merchant”.
2. Insert “, including the credit rate,” after “description” in subparagraph *h*.

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Section 47

AMENDMENT:

Replace proposed section 214.17 by:

“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,

i. 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,

ii. if the contract is inconsistent with any of the rules set out in sections 25 to 28 or 54.4 to 54.7, as the case may be,

iii. if the contract does not contain the information required under section 214.16, or

iv. if no resolution form in conformity with the model prescribed by regulation is attached to the contract at the time the contract is entered into; or

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

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

ii. if 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.

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Section 47

AMENDMENT:

In proposed section 214.23:

1. Insert “and enclose a document containing the information required under subparagraphs *j* and *k* of the first paragraph of section 214.16, as it appears in the contract” after “it is entered into” in the third paragraph.

2. Add the following paragraph at the end:

If the merchant has not received the creditor’s acceptance of a proposal at the time the summary document described in section 214.25 is provided or within 45 days after entering into the contract, whichever comes first, the creditor is deemed to have refused the proposal.

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Section 47

AMENDMENT:

Replace proposed section 214.24 by:

“214.24. The consumer may refuse the agreement in principle.

The merchant must obtain the consumer’s written consent for an agreement in principle to be accepted by the consumer.

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Section 47

AMENDMENT:

Replace proposed section 214.25 by:

“214.25. 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 proposal;
- (b) the total amount of the payments the merchant must make to each creditor;
- (c) the amount of the charges and fees the merchant intends to collect from the consumer; and
- (d) the amount, total number and frequency of the payments to be made by the consumer 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.

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Section 47

AMENDMENT:

Replace proposed section 214.26 by:

“214.26. 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 receive any sum from the consumer 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*) the summary document described in section 214.25 has been provided to the consumer.

If the sum mentioned in the first paragraph represents charges or fees, the merchant may not collect them unless the conditions set out in the first paragraph have been met and a payment has been made for the benefit of the creditor in accordance with the agreement.

All the sums the merchant may collect from the consumer under another contract referred to in section 214.15 constitute charges and fees for the purposes of this division.

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.

Adopté
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Section 47

AMENDMENT:

Replace “or resiliation” in subparagraph *c* of the second paragraph of proposed section 214.28 by “, resiliation or expiry”.

*Adopté
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Section 47

AMENDMENT:

In the first paragraph of proposed section 214.30:

1. Insert "subparagraph *o* of the first paragraph of section 214.16, the second paragraph of section 214.16 and sections" after "214.14, 214.15,".
2. Replace "214.25" by "214.26".

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Section 48

AMENDMENT:

Strike out "all" in proposed section 223.1.

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Section 50

AMENDMENT:

In proposed section 230.1:

1. Replace "loan broker" wherever it appears by "credit broker".
2. Insert "or make money available" after "willing to advance money" in the second paragraph.
3. Strike out "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" in the second paragraph.

*Adopté
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Section 54

AMENDMENT:

Replace proposed section 244.4 by:

“**244.4.**No merchant may, by any means, at the time of the entering into of a debt settlement service contract with a consumer or at the time of the performance of such a contract, offer to enter into or enter into a credit contract with the consumer, or help or encourage the consumer to enter into such a contract.

ACCEPTED
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Section 54

AMENDMENT:

Insert after proposed section 244.5:

“244.6.No debt settlement service merchant may, by any means, restrict communication between a consumer and the consumer’s creditors.”

*Adopted
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Section 62

AMENDMENT:

Insert "or certificate" after "hold a permit" in the second paragraph of proposed section 321.

Adopté
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Section 62.1

AMENDMENT:

Insert after section 62:

62.1. Section 323 of the Act is amended by adding the following paragraph at the end:

“A merchants association may act as surety for its members, in the form, on the conditions and in the manner prescribed by regulation. In such a case, the association must deposit an amount with a trust company. The amount is fixed by the president.”

*Adopté
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Bill 134

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Section 62.2

AMENDMENT:

Insert after section 62.1:

62.2. Section 323.1 of the Act is amended by striking out the second paragraph.

*Adopté
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Section 63

AMENDMENT:

1. Insert “and the method for collecting such information” at the end of proposed paragraph g.2 of paragraph 1.

2. Insert after paragraph 1:

(1.1) by replacing “an association of road vehicle dealers or an association of road vehicle recyclers” in paragraph 1.2 by “a merchants association”.

3. Insert after paragraph 2:

(3) by inserting “and determining payment instruments for the purposes of section 54.8” at the end of paragraph y.

Adopted
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Section 67

AMENDMENT:

In proposed section 30.4:

1. Replace the introductory clause by:

Where a travel agent has directly or indirectly 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 and where the supplier has failed to fulfil his obligations, the client

2. Insert "may exercise a recourse against the travel agent or" at the beginning of paragraph *b*.
3. Replace "for the damages incurred" in paragraph *b* by "for the injury suffered".

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Section 67

AMENDMENT:

Strike out “and where the travel agent has not committed a fault in carrying out the mandate entrusted to him” in proposed section 30.5.

*Adopté
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Section 75

AMENDMENT:

Insert "who is required to hold a permit under section 7" after "collection agent representative" in proposed section 44.1.

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Section 79

AMENDMENT:

Replace the first paragraph by:

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

*Adopté
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Section 82

AMENDMENT:

Insert "1, 5, 61," after "except sections".

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Section 10

AMENDMENT:

Replace by:

10. Section 70 of the Act is amended

(1) by replacing paragraph *b* by the following paragraph:

“(*b*) the premium for an insurance contract the consumer subscribed to or participated in through the merchant;”;

(2) by adding the following paragraphs at the end:

“Despite any provision to the contrary, the following do not constitute credit charge components:

(*a*) the premium for insurance of persons if the merchant does not subject the entering into of the credit contract to subscribing to or participating in the insurance;

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

(*c*) the premium for automobile insurance or home insurance;

(*d*) the fee for registration in or access to a public register of rights;

(*e*) in the case of an open credit contract,

i. the fee for an additional copy of a statement of account, and

- ii. the fee for customizing a credit card; and
- (f) in the case of 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 obtain certified statements of rights registered in the public registers of rights or to 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 third persons,
 - iv. transaction fees paid in respect of a tax account relating to a hypothecated immovable,
 - v. any amount payable as a prepayment charge, and
 - vi. the premium charged by a hypothecary insurer for insurance to guarantee a hypothecary loan.

A regulation may be made to determine other components that are not credit charge components for one or more types of credit contracts.”

Adopté
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