



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 1195

An Act to combat late payment in commercial transactions

Introduction

**Introduced by
Madam Mireille Jean
Member for Chicoutimi**

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EXPLANATORY NOTES

The purpose of this bill is to combat late payment in commercial transactions.

To that end, the bill prescribes, among other things, that payment under a sales or service contract must be received no later than the 30th day after the date determined, which may be the date the goods sold are received or the service is provided.

The bill also specifies the conditions that may govern payment under the sales or service contract, in particular the interest rate applicable to outstanding debts. Such conditions are imperative if the seller or service provider has fewer than 500 employees on the date the contract is entered into.

Furthermore, the bill sets out measures to facilitate collection of certain debts, determining the conditions under which a debtor can be given formal notice by operation of law, and the penalties payable if payment is not made by the prescribed due date, and providing for an accelerated procedure for collecting debts subject to the Court of Québec's material jurisdiction.

Bill 1195

AN ACT TO COMBAT LATE PAYMENT IN COMMERCIAL TRANSACTIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND APPLICATION

1. The purpose of this Act is to combat late payment in commercial transactions.

To that end, the Act establishes certain standards governing time limits for payment of amounts due under certain sales or service contracts. It also sets out measures facilitating debt collection.

2. This Act applies despite any contrary provision in the Civil Code.

It applies despite the Act respecting the United Nations Convention on Contracts for the International Sale of Goods (chapter C-67.01), if the States in which the contracting parties' principal places of business are located have adopted laws whose provisions are substantially similar to those of Chapter II of this Act.

For the purposes of the second paragraph, the laws adopted to implement Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions are deemed to be laws whose provisions are substantially similar to those of Chapter II of this Act.

CHAPTER II

STANDARDS GOVERNING TIME LIMITS FOR PAYMENT

3. Payment under a sales or service contract that an enterprise enters into in the normal course of business must be received no later than the 30th day after the latest of the following:

- (1) the date the goods sold are received;
- (2) the date the service is provided;

(3) the date an invoice containing at least the information required by government regulation for the type of contract to which the invoice relates is received;

(4) the date the procedure set out in section 4 is completed; or

(5) the date the 30-day time limit set out in section 4 expires.

4. The contract may provide for a procedure for accepting or verifying compliance of the goods or the services received.

The time limit for carrying out the procedure may in no case exceed 30 days from the date the goods are received or the service is provided.

5. The clause of a contract that sets a payment due date in reference to when one of the contracting parties will receive a sum of money from a third party may not provide for more than 10 days between the two events.

Such a clause is deemed to subject payment to a suspensive condition, unless it is expressly stipulated that payment is subject to a condition being met and the creditor agrees to accept that risk.

6. An outstanding balance bears interest at the rate set for debts owed to the State under section 28 of the Tax Administration Act (chapter A-6.002). The interest is capitalized daily.

7. While the provisions of this chapter are imperative, they must not be interpreted so as to limit the creditor's rights if the conditions stipulated in the contract are more favourable to the creditor.

Despite the first paragraph, the provisions of this Act supplement intention for sellers or service providers that have 500 employees or more on the date the sales or service contract is entered into.

CHAPTER III

DEBT COLLECTION

DIVISION I

EXTRAJUDICIAL MEASURES

8. A debtor is deemed to be in default of payment after the time limit provided for in section 3 has expired.

9. If payment is made after the time limit provided for in section 3 has expired, in addition to the capital and interest prescribed in section 6, the debtor must pay the creditor an additional sum of

(1) 2% of the amount due on the date of payment, if that date is within the 30-day period following expiry of the time limit provided for in section 3; or

(2) 5% of the amount due on the date of payment in any other case.

DIVISION II

ACCELERATED COLLECTION PROCEDURE

10. On expiry of the time limit provided for in section 3, the creditor may file an application for debt collection with the office of the Court of Québec.

The amount claimed must be less than the Court of Québec's maximum jurisdictional threshold set out in article 35 of the Code of Civil Procedure (chapter C-25.01), excluding interest and the costs and disbursements required under section 9 of this Act.

The form of the application is established by government regulation.

11. The application sets out the underlying facts, the nature of the debt and the amount of the debt and interest and contains a list of supporting documents. It is supported by the plaintiff's statement, deemed to have been made under oath, attesting that the facts alleged are true and that the amount claimed is payable.

The application also states the plaintiff's name and principal place of business and, if applicable, the name of the plaintiff's mandatary, as well as the defendant's name and head office contact information.

12. The application is filed with the special clerk, who determines whether it is admissible. If so, the court clerk opens a court record.

If not, the court clerk notifies the plaintiff, specifying that the latter may, within 15 days after the notification, correct any failing that would make the application admissible or ask that the court review the decision. The court rules on the matter on the face of the record.

13. The court clerk notifies the application, together with a notice setting out the options available to the defendant and the list of supporting documents, to the defendant.

The notice must comply with the model established by the Minister of Justice, stating that should the defendant fail to indicate the option chosen to the court clerk within 15 days after the notification, judgment may be rendered against the defendant without further notice or extension.

Article 547 of the Code of Civil Procedure applies to the defendant's answer, with the necessary modifications.

14. If the defendant has paid the plaintiff, the court clerk closes the record. If the parties have reached a settlement and one of them so requests, the court clerk homologates the agreement as a judgment.

If the defendant asks that the case be referred, the court clerk informs the plaintiff, specifying that the latter may make representations in writing within 10 days after the notification. After that time, the court clerk submits the application and the representations to the court, which rules on the matter on the face of the record. If the court considers the application to be founded, the court clerk refers the matter back to the office of the court having jurisdiction.

If the defendant has made a tender, the court clerk informs the plaintiff.

15. If the defendant contests the application's merits, the special clerk summarily examines the reasons given.

In the absence of reasons for contesting the application, the special clerk orders the defendant to make the reasons known within 10 days, specifying that failure to do so will lead to the defendant being considered non-compliant.

16. If the defendant is non-compliant, or if the special clerk deems that the reasons given are clearly unfounded, frivolous or dilatory, the special clerk renders judgment on the face of the application and the supporting documents in the record or, if the special clerk considers it necessary, after having heard the plaintiff's evidence.

Otherwise, the special clerk refers the application to the competent court to be dealt with in accordance with the provisions of Book II of the Code of Civil Procedure.

FINAL PROVISIONS

17. The Minister of Economy, Science and Innovation is responsible for the administration of this Act.

18. This Act comes into force on *(insert the date of assent to this Act)*.

