



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 60

**An Act to amend the Consumer
Protection Act and other legislative
provisions**

Introduction

**Introduced by
Madam Kathleen Weil
Minister of Justice**

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EXPLANATORY NOTES

This bill amends the Consumer Protection Act to include special provisions applicable to contracts involving sequential performance for a service provided at a distance. It introduces new rules on the information such a contract must contain, the rescission of the contract, the use of the security deposit and the renewal or cancellation of the contract by the consumer.

The bill also amends the Consumer Protection Act to prohibit a merchant from including certain clauses in a contract governed by the Act. It also introduces rules on the sale of prepaid cards and disclosure rules applicable prior to the sale of additional warranties. It further amends the Act to make it mandatory for merchants to disclose the total cost of the goods or services they offer.

As well, the bill extends the scope of injunctions against prohibited stipulations and practices and allows consumer advocacy bodies to apply for such injunctions. Finally, the bill adds to the regulatory powers of the Government by authorizing it to establish funds to indemnify consumers and to provide for the use of the income generated by these funds.

In the Travel Agents Act, the bill strikes the requirement for travel agents to have an establishment that is physically accessible to their clients and introduces the concept of travel counsellor.

In addition, the bill amends the Act respecting prearranged funeral services and sepultures and the Travel Agents Act in order to harmonize the prescriptive period for instituting penal proceedings with that provided in the Consumer Protection Act.

LEGISLATION AMENDED BY THIS BILL:

- Travel Agents Act (R.S.Q., chapter A-10);
- Act respecting prearranged funeral services and sepultures (R.S.Q., chapter A-23.001);
- Consumer Protection Act (R.S.Q., chapter P-40.1);
- Act respecting the collection of certain debts (R.S.Q., chapter R-2.2).

Bill 60

AN ACT TO AMEND THE CONSUMER PROTECTION ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CONSUMER PROTECTION ACT

1. The Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by inserting the following sections after section 11.1:

“11.2. Any stipulation under which a merchant may amend a contract unilaterally is prohibited unless the stipulation also

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

(b) provides that the merchant must send to the consumer, at least 60 days before the amendment comes into force, a written notice setting out exclusively the new clause, or the amended clause as it reads now and as it formerly read, and the date of the coming into force of the amendment; and

(c) provides that the consumer may refuse the amendment and cancel the contract without cost or penalty, within 60 days after receiving the notice, if the amendment entails an increase in the consumer’s obligations or a reduction in the merchant’s obligations.

However, except in the case of an indeterminate-term service contract, such a stipulation is prohibited if it applies to an essential element of the contract, particularly the nature of the goods or services that are the object of the contract, the price of the goods or services or, if applicable, the term of the contract.

Any amendment of a contract in contravention of this section cannot be invoked against the consumer.

This section does not apply to the amendment of a contract extending variable credit as provided for in section 129.

“11.3. Any stipulation under which the merchant may unilaterally cancel a fixed-term service contract involving sequential performance is prohibited.

A merchant who intends to cancel an indeterminate-term service contract involving sequential performance must notify the consumer in writing at least 60 days before the date of cancellation if the consumer has not defaulted on his obligation.”

2. Section 13 of the Act is amended by replacing the first paragraph by the following paragraph:

“**13.** Any stipulation requiring the consumer, upon the non-performance of his obligation, to pay a stipulated fixed amount or percentage of charges, penalties or damages, other than the interest accrued, is prohibited.”

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

“**19.1.** A clause that is inapplicable in Québec must be immediately preceded by a prominently presented statement to that effect.”

4. Section 23 of the Act is amended by replacing “or 208” in the first paragraph by “, 208 or 214.2”.

5. The Act is amended by inserting the following section after section 35:

“**35.1.** Before proposing to a consumer a contract to purchase a conventional warranty on goods, the merchant must inform the consumer orally and in writing of the nature of the warranty provided for in section 38. The merchant must also inform the consumer of the existence of any free warranty on the goods, including the manufacturer’s warranty, and of the object and duration of that warranty.”

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

“**52.1.** The merchant or manufacturer may not require that the consumer prove that the previous owners of the goods complied with the conditions of the warranty.”

7. The heading of Division I.1 of Chapter III of Title I as well as sections 54.1, 54.2, 54.9, 54.12 and 54.16 of the Act are amended by replacing “contrat à distance” in the French text by “contrat conclu à distance”, with the necessary modifications.

8. The Act is amended by inserting the following division after section 187:

“DIVISION V.1

“CONTRACTS FOR THE SALE OF PREPAID CARDS

“**187.1.** For the purposes of this division, “prepaid card” means a gift certificate, gift card or similar medium of exchange that is paid in advance and allows the consumer to acquire goods or services from one or more merchants.

“187.2. Before entering into a contract for the sale of a prepaid card, the merchant must inform the consumer of the conditions applicable to the use of the card and explain how the consumer can check the balance on the card.

If the information required under the first paragraph does not appear on the card, the merchant must provide it to the consumer in writing.

“187.3. Subject to any applicable regulations, any stipulation providing for an expiry date on a prepaid card is prohibited unless the contract provides for unlimited use of a service.

“187.4. Subject to any applicable regulations, no charge may be made to the consumer for the issue or use of a prepaid card.”

9. The heading of Division VI of Chapter III of Title I of the Act is replaced by the following heading:

“SERVICE CONTRACTS INVOLVING SEQUENTIAL PERFORMANCE FOR INSTRUCTION, TRAINING OR ASSISTANCE”.

10. The Act is amended by inserting the following division after section 214:

“DIVISION VII

“CONTRACTS INVOLVING SEQUENTIAL PERFORMANCE FOR A SERVICE PROVIDED AT A DISTANCE

“214.1. This division applies to contracts involving sequential performance for a service provided at a distance. However, it does not apply to contracts governed by Division VI, even if entered into by a person listed in section 188.

“214.2. The contract must be evidenced in writing and include

(a) the name and address of the consumer and the merchant;

(b) the place and date of the contract;

(c) a detailed description of the service or of each of the services to be provided under the contract;

(d) the monthly rate for the service or set of services, or the monthly cost if the rate is calculated on a basis other than a monthly basis;

(e) any restrictions on the use of the service or services as well as the geographical limits within which they may be used;

(f) the description of any goods sold or offered as a premium on the purchase of the service or services, specifying whether they are reconditioned, and their price;

(g) the description of any service offered as a premium;

(h) if applicable, either the total value of the economic inducements given by the merchant in consideration of the contract, including such premiums as a rebate on the price charged for goods or services purchased or leased on the making of the contract, or the information the consumer needs to easily determine the total value of the economic inducements he has benefited from at the time the contract is cancelled;

(i) a statement that the value of the economic inducements referred to in subparagraph *h* will be used to calculate the cancellation indemnity payable by the consumer;

(j) any optional services the consumer chooses to add to the service or services purchased, as well as the monthly rate for each of the optional services;

(k) the manner of obtaining information on the rate for the use of services that are not included in the rate for the service or services purchased, and the rate for services that are the subject of restrictions and for services used beyond the limits mentioned in subparagraph *e*;

(l) the term and expiry date of the contract;

(m) without limiting the scope of section 214.6, the circumstances allowing the consumer to rescind, cancel or amend the contract and the related terms and costs, if any; and

(n) the formalities that must be fulfilled by the consumer to terminate the contract upon its expiry.

This information must be presented in the manner prescribed by regulation.

“214.3. Any stipulation under which a contract whose term exceeds 60 days is renewed upon its expiry is prohibited, unless the renewal is for an indeterminate term.

“214.4. The merchant must inform the consumer of the expiry date of the contract by means of a written notice sent between the 90th and 60th day before that date.

The first paragraph does not apply to contracts whose term is 60 days or less.

“214.5. The merchant may not demand payment for services of which the consumer was deprived during the repair of goods supplied free of charge or sold to the consumer on the making of the contract or during the term of the contract, if

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

(2) the goods are necessary for the use of the services purchased.

Likewise, the merchant may not demand payment for services of which the consumer was deprived during the repair of goods leased from the merchant for the use of the services purchased.

“214.6. The consumer may, at any time and at the consumer’s discretion, cancel the contract by sending a written notice to the merchant. The cancellation takes effect by operation of law on the sending of the notice or the date specified in the notice.

The total of the charges the merchant may then claim from the consumer, other than the price of the services provided to the consumer calculated at the rate provided in the contract, constitutes the contract cancellation indemnity. For the purposes of this paragraph, a contract for the lease of goods concluded on the making of or in consideration of the service contract forms a whole with that contract.

No cancellation indemnity may be claimed from the consumer if the contract is cancelled because the merchant has amended it unilaterally.

“214.7. If the consumer unilaterally cancels a fixed-term contract in consideration of which one or more economic inducements were given to him by the merchant, the cancellation indemnity may not exceed the total value of those inducements. The indemnity decreases as prescribed by regulation.

However, when, pursuant to the decrease provided in the first paragraph, the indemnity payable under that paragraph reaches \$50, the maximum indemnity the merchant may require is the lesser of \$50 and an amount representing not more than 10% of the price of the services provided for in the contract that were not supplied. The same applies when the value of the economic inducements given to the consumer is \$50 or less or when no such inducement was given.

“214.8. If the consumer unilaterally cancels an indeterminate-term contract, no cancellation indemnity may be claimed from the consumer unless the merchant gave the consumer a rebate on all or part of the sales price of the goods purchased in consideration of the service contract and entitlement to the rebate is acquired progressively according to the cost of the services used or the time elapsed. In such a case, the cancellation indemnity may not exceed the amount of the unpaid balance of the sales price of the goods at the time the contract was made. The indemnity decreases as prescribed by regulation.

“214.9. If the consumer has paid a security deposit, the merchant may not cancel the contract for failure to pay outstanding amounts under the contract when they become due for as long as the amounts due do not exceed the amount of the deposit.

“214.10. The merchant must notify the consumer in writing on using all or part of the security deposit to collect amounts not paid when they become due.

“214.11. The merchant must return the security deposit to the consumer, minus any amounts due under the contract, within 30 days after the date on which the contract expires if it is not renewed or the date on which the contract is cancelled.”

11. Section 224 of the Act is amended by adding the following paragraph:

“For the purposes of subparagraph *c* of the first paragraph, the price advertised must include the total amount the consumer must pay for the goods or services. However, the price advertised need not include the duties chargeable under a federal or provincial Act.”

12. Section 230 of the Act is amended by adding the following paragraph:

“(c) require that a consumer to whom he has provided services or goods free of charge or at a reduced price for a fixed period send a notice at the end of that period indicating that the consumer does not wish to obtain the services or goods at the regular price.”

13. Section 266 of the Act is amended by replacing “The Attorney General and the president” by “The Attorney General, the president and a body referred to in section 316”.

14. Section 316 of the Act is replaced by the following section:

“316. If a person engages in a practice prohibited under Title II or a merchant includes in a contract a stipulation prohibited by this Act, or a stipulation inapplicable in Québec without complying with the requirements of section 19.1, the president may apply to the court for an injunction ordering the person to cease engaging in the practice or ordering the merchant to cease including such a stipulation in a contract or comply with section 19.1.

A consumer advocacy body that has been constituted as a legal person for at least one year may apply for an injunction under this section and is deemed to have the interest required for that purpose.

If an injunction granted under this section is not complied with, a motion for contempt of court may be brought by the president or the body referred to in the second paragraph.”

15. Section 325 of the Act is amended by adding the following paragraph:

“(e) the applicant has not complied with a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1.”

16. Section 329 of the Act is amended by adding the following paragraph:

“(e) does not comply with a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1.”

17. Section 350 of the Act is amended

(1) by replacing “contrat à distance” in paragraphs y and z in the French text by “contrat conclu à distance”;

(2) by adding the following paragraphs:

“(z.2) establishing any fund for the purpose of indemnifying customers in business sectors governed by an Act the administration of which is under the supervision of the Office, prescribing the amount and the form of the contributions required and determining the circumstances for and the terms and the conditions of collection, payment, administration and use of the fund, in particular, fixing a maximum amount, per customer or event, that may be paid out of a fund;

“(z.3) prescribing, with respect to any indemnity fund established under paragraph z.2, that the investment income on the sums accrued in the fund may be used by the Office, on the terms and conditions the Government determines, to inform and educate consumers with regard to their rights and obligations under this Act or an Act governing the business sector covered by the fund;

“(z.4) identifying prohibited contract stipulations, in addition to those provided for in this Act;

“(z.5) prescribing the mechanics of the decrease in the cancellation indemnity that may be claimed from the consumer under sections 214.7 and 214.8.”

TRAVEL AGENTS ACT

18. Section 1 of the Travel Agents Act (R.S.Q., chapter A-10) is amended by replacing “, situated in Québec, and physically accessible to the clientele corresponding to a class of licence” in paragraph *f* by “and situated in Québec”.

19. Section 3 of the Act is amended by adding “or the Act respecting hunting and fishing rights in the James Bay and New Québec territories (chapter D-13.1)” at the end of subparagraph *d* of the first paragraph.

20. The heading of Division II of the Act is amended by adding “AND CERTIFICATES”.

21. Section 4 of the Act is amended by adding the following paragraphs:

“However, a travel counsellor who is in the employ of a travel agent or has entered into an exclusive service contract with a travel agent may engage in the operations referred to in section 2 and deal with clients if the counsellor holds a certificate issued for that purpose by the Office de la protection du consommateur and meets the conditions prescribed by regulation.

Any other natural person may engage in such operations on account of a travel agent, without holding a licence or certificate issued to that effect, if the person does not deal with clients.

When acting outside the travel agent’s establishment, a person referred to in the second or third paragraph must be able to produce proof of capacity on request.”

22. Section 5 of the Act is repealed.

23. Section 7 of the Act is amended

- (1) by striking out “of the same class” in the first paragraph;
- (2) by striking out the second paragraph.

24. Section 8 of the Act is amended by striking out the third paragraph.

25. Section 12 of the Act is amended by adding the following paragraph:

“(d) does not comply with a voluntary undertaking made under section 314 of the Consumer Protection Act (chapter P-40.1) or whose application has been extended by an order under section 315.1 of that Act.”

26. Section 36 of the Act is amended

- (1) by replacing “of travel agents” in subparagraph *a* of the first paragraph by “of travel agent licences”;
- (2) by inserting the following subparagraph after subparagraph *b* of the first paragraph:

“(b.1) to prescribe the terms and conditions of issue, renewal, suspension or cancellation of a travel counsellor certificate, and the qualifications required of a person applying for a certificate, as well as the conditions to be met and the duties to be paid by that person;”;
- (3) by inserting the following subparagraph after subparagraph *c.1* of the first paragraph:

“(c.2) to prescribe, with respect to any indemnity fund established under subparagraph c.1, that the investment income on the sums accrued in the fund may be used by the Office de la protection du consommateur, on the terms and conditions the Government determines, to inform and educate consumers with respect to their rights and obligations under this Act;”.

27. The Act is amended by inserting the following section after section 40:

“**40.1.** Penal proceedings for an offence under this Act are prescribed two years after the date on which the offence is committed.”

ACT RESPECTING PREARRANGED FUNERAL SERVICES AND SEPULTURES

28. The Act respecting prearranged funeral services and sepultures (R.S.Q., chapter A-23.001) is amended by inserting the following section after section 80:

“**30.1.** Penal proceedings for an offence under this Act are prescribed two years after the date on which the offence is committed.”

ACT RESPECTING THE COLLECTION OF CERTAIN DEBTS

29. The Act respecting the collection of certain debts (R.S.Q., chapter R-2.2) is amended by inserting the following section after section 14:

“**14.1.** The president may refuse to issue and may suspend or cancel a permit if the applicant or holder has failed to comply with a voluntary undertaking made under section 314 of the Consumer Protection Act (chapter P-40.1) or whose application has been extended by an order under section 315.1 of that Act.”

TRANSITIONAL AND FINAL PROVISIONS

30. The provisions enacted by this Act that relate to prohibited stipulations do not apply to contracts in force when those provisions come into force. However, stipulations of such a contract that are contrary to section 13 or 187.3 of the Consumer Protection Act (R.S.Q., chapter P-40.1), as amended by sections 2 and 8, are without effect for the future.

31. The provisions of this Act come into force on the date or dates to be set by the Government.

