



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 48

(2006, chapter 56)

An Act to amend the Consumer Protection Act and the Act respecting the collection of certain debts

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EXPLANATORY NOTES

This bill amends the Consumer Protection Act to set up a new regime for distance contracts based on the Internet Sales Contract Harmonization Template agreed on by the provinces further to the Agreement on Internal Trade. Accordingly, the bill introduces new rules concerning the information a merchant must send to a consumer before a distance contract is entered into, the time limits for sending the contract to the consumer, the consumer's cancellation rights and the chargeback mechanism in cases where the merchant fails to make a refund.

The bill also amends the Consumer Protection Act to prohibit merchants from including, in contracts subject to that Act, a clause obliging the consumer to submit any dispute that may arise to arbitration.

Other amendments to the Act are aimed mainly at updating the rules concerning household appliance repairs, eliminating inconsistencies between that Act and the Civil Code with regard to the prescription of civil remedies, and relieving the Office de la protection du consommateur of certain outdated responsibilities.

In addition to these amendments, this bill amends the Act respecting the collection of certain debts to bring rules on prohibited practices in line with those set out in the Harmonized List of Prohibited Collection Practices further to the Agreement on Internal Trade. The bill also establishes a prescription period for penal proceedings in keeping with that provided for in the Consumer Protection Act.

LEGISLATION AMENDED BY THIS BILL:

- 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 48

AN ACT TO AMEND THE CONSUMER PROTECTION ACT AND THE ACT RESPECTING THE COLLECTION OF CERTAIN DEBTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CONSUMER PROTECTION ACT

1. Section 5 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by striking out paragraph *c*.

2. The Act is amended by inserting the following section after section 11:

“11.1. Any stipulation that obliges the consumer to refer a dispute to arbitration, that restricts the consumer’s right to go before a court, in particular by prohibiting the consumer from bringing a class action, or that deprives the consumer of the right to be a member of a group bringing a class action is prohibited.

If a dispute arises after a contract has been entered into, the consumer may then agree to refer the dispute to arbitration.”

3. Sections 20 to 22 of the Act are repealed.

4. The heading of Chapter II of Title I of the Act is replaced by the following heading:

“RULES GOVERNING THE MAKING OF CERTAIN CONTRACTS IN RESPECT OF WHICH TITLE I REQUIRES A WRITING”.

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

“DIVISION I.1

“DISTANCE CONTRACTS

“54.1. A distance contract is a contract entered into without the merchant and the consumer being in one another’s presence and preceded by an offer by the merchant to enter into such a contract.

A merchant is deemed to have made an offer to enter into a distance contract if the merchant’s proposal comprises all the essential elements of the intended contract, regardless of whether there is an indication of the merchant’s

willingness to be bound in the event the proposal is accepted and even if there is an indication to the contrary.

“54.2. A distance contract is deemed to be entered into at the address of the consumer.

“54.3. No merchant who makes an offer to enter into or enters into a distance contract may collect or offer to collect a partial or full payment from the consumer before performing the merchant’s principal obligation, unless the consumer may request a chargeback of the payment under this Act or a regulation.

“54.4. Before a distance contract is entered into, the merchant must disclose the following information to the consumer:

(a) the merchant’s name and any other name under which the merchant carries on business;

(b) the merchant’s address;

(c) the merchant’s telephone number and, if available, the merchant’s fax number and technological address;

(d) a detailed description of goods or services that are to be the object of the contract, including characteristics and technical specifications;

(e) an itemized list of the prices of the goods or services that are to be the object of the contract, including associated costs charged to the consumer and any additional charges payable under an Act;

(f) a description of any possible additional charges payable to a third party, such as customs duties and brokerage fees, whose amounts cannot reasonably be determined;

(g) the total amount to be paid by the consumer under the contract and, if applicable, the amount of instalments, the rate applicable to the use of an incidental good or service and the terms of payment;

(h) the currency in which amounts owing under the contract are payable if not Canadian dollars;

(i) the date on which, or the time within which, the merchant’s principal obligation must be performed;

(j) if applicable, the mode of delivery, the name of the carrier and the place of delivery;

(k) the applicable cancellation, rescission, return, exchange and refund conditions, if any; and

(l) any other applicable restrictions or conditions.

The merchant must present the information prominently and in a comprehensible manner and bring it expressly to the consumer's attention; in the case of a written offer, the merchant must present the information in a manner that ensures that the consumer is able to easily retain it and print it.

“54.5. Before a distance contract is entered into, the merchant must provide the consumer with an express opportunity to accept or decline the proposal and to correct any errors.

“54.6. A distance contract must be evidenced in writing and indicate:

(a) the consumer's name and address;

(b) the date the contract is entered into; and

(c) the information described in section 54.4, as disclosed before the contract was entered into.

“54.7. The merchant must send a copy of the contract to the consumer within 15 days after the contract is entered into, in a manner that ensures that the consumer may easily retain it and print it.

“54.8. The consumer may cancel the contract within seven days after receiving a copy if

(a) the merchant did not disclose to the consumer the information described in section 54.4 before the contract was entered into, or did not disclose it in accordance with that section;

(b) the merchant did not provide the consumer with an express opportunity, before the contract was entered into, to accept or decline the proposal or to correct any errors;

(c) the contract does not meet the requirements of section 54.6; or

(d) the merchant did not send a copy of the contract in a manner that ensures that the consumer may easily retain it and print it.

However, the cancellation period begins as of the merchant's performance of the principal obligation if the consumer, at that time, observes that the merchant has not disclosed all the information described in section 54.4.

If the merchant does not send a copy of the contract to the consumer within the time provided for in section 54.7, the consumer has 30 days, as of the date the contract is entered into, in which to cancel the contract.

“54.9. In addition to the cases provided for in section 54.8, a distance contract may be cancelled by the consumer at any time before performance of the merchant’s principal obligation if

(a) the merchant’s principal obligation is not performed within 30 days after the date specified in the contract or the later date agreed on in writing by the consumer and the merchant, or within 30 days after the contract is entered into in the case of a contract that does not specify a date or time limit for the merchant’s principal obligation to be performed; or

(b) the contract is for transportation, lodging or restaurant services, or for tickets to an event, and the merchant does not provide the consumer, by the date specified in the contract or the later date agreed on in writing by the consumer and the merchant, with documents enabling the consumer to receive the services or attend the event.

“54.10. The merchant’s principal obligation is presumed to have been performed if the merchant attempted to perform it on the date specified in the contract, on a later date agreed on in writing by the consumer and the merchant, or on the date specified in a notice sent to the consumer within a reasonable time, but was prevented from doing so by the actions or negligence of the consumer.

“54.11. The consumer’s right to cancel the contract is exercised by sending a notice to that effect to the merchant.

“54.12. The contract is cancelled by operation of law as of the sending of the cancellation notice.

The cancellation of the contract entails the cancellation of any accessory contract and of any warranty or security given to guarantee the amount payable under the contract.

A contract of credit entered into between the consumer and another merchant under or in relation to a distance contract forms a whole with that contract and, as such, is also cancelled by operation of law if it results from an offer, representation or other action by the merchant who is party to the distance contract.

“54.13. Within 15 days following the cancellation of the contract, the merchant must refund all sums paid by the consumer under the contract and any accessory contract, including sums paid to a third person.

Within 15 days following the cancellation of the contract or following delivery if it postdates cancellation, the consumer must restore the goods that were the object of the contract to the merchant in the same state in which they were received.

The merchant shall assume the reasonable costs of restitution.

“54.14. If the merchant defaults on the obligation to make a refund under section 54.13 and the consumer has paid by credit card, the consumer may, within 60 days following the default, request the card issuer to chargeback all amounts paid under the contract and any accessory contract, and to cancel all charges made to the consumer’s account in relation to those contracts.

“54.15. A chargeback request must be in writing and contain the following information:

- (a) the credit cardholder’s name;
- (b) the credit card number and expiry date;
- (c) the merchant’s name;
- (d) the date the contract was entered into;
- (e) the amount charged to the credit card account and the sums to be refunded by the merchant;
- (f) a description of the goods or services that are the object of the contract and for which chargeback is requested;
- (g) the reason for cancelling the contract; and
- (h) the date of cancellation and the means used to send the cancellation notice.

“54.16. A credit card issuer that receives a chargeback request must

- (a) acknowledge receipt within 30 days;
- (b) make the chargeback and cancel all credit card charges in connection with the distance contract and any accessory contract within 90 days or two complete periods, as defined in section 67, following receipt of the request, whichever comes first.”

6. Section 182 of the Act is amended by replacing paragraph *a* by the following paragraph:

“(a) “household appliance” means a kitchen range, a refrigerator, a freezer, a dishwasher, a microwave oven, a clothes washer, a clothes dryer, an audio device, an audio-video device, a computer and its peripheral equipment, an air conditioner, a dehumidifier, a heat pump or any other appliance determined by regulation;”.

7. Sections 273 to 275 of the Act are repealed.

8. Section 292 of the Act is amended by striking out paragraphs *h* and *j*.

9. Section 309 of the Act is repealed.

10. Section 350 of the Act is amended by striking out “or 309” at the end of paragraph *x* and by adding the following paragraphs at the end:

“(y) determining cases where a distance contract may not be cancelled by the consumer under sections 54.8 and 54.9;

“(z) determining cases, other than that described in section 54.14, where the consumer may request a credit card chargeback following cancellation of a distance contract, and specifying the information to be included with the request and the chargeback terms;

“(z.1) determining appliances, other than those mentioned in section 182, that constitute household appliances.”

ACT RESPECTING THE COLLECTION OF CERTAIN DEBTS

11. Section 3 of the Act respecting the collection of certain debts (R.S.Q., chapter R-2.2) is amended

(1) by inserting the following subparagraph after subparagraph 2 of the first paragraph:

“(2.1) communicate verbally with the debtor before legal action is taken, if the debtor has informed the person in writing that the debt is contested and that the creditor may proceed with legal action; however, for the collection of a debt by the Government or one of its departments, this prohibition only applies as of 120 days following the sending of a demand for payment of the debt;”;

(2) by adding the following subparagraphs after subparagraph 6 of the first paragraph:

“(7) claim a sum of money from a person other than the debtor or his or her surety;

“(8) communicate verbally with a person believed to be the debtor but who, in the course of a prior communication, indicated that he or she was not the debtor.”

12. Section 4 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

4. No person may, for the purpose of collecting a debt, communicate with the debtor’s spouse, civil union spouse, family members, friends, acquaintances, neighbours or employer except on one occasion only to obtain the debtor’s address or telephone number if this information is not already

known; however, the creditor may communicate with such a person if that person is also the debtor's surety.”;

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

“No person may, for the purpose of collecting a debt, communicate with the debtor or surety at the debtor's or surety's place of work without the debtor's or surety's express authorization, except on one occasion only in the following cases:

(1) the person knows neither the address nor any other telephone number where the debtor or surety may be reached; or

(2) the person has tried unsuccessfully to reach the debtor or surety at the debtor's or surety's home telephone number.”

13. The Act is amended by inserting the following paragraph after section 4:

“**4.1.** Subparagraph 7 of the first paragraph of section 3, and section 4, do not limit the exercise of a right or power under another Act.”

14. Section 6 of the Act, amended by section 52 of chapter 44 of the statutes of 2005, is again amended by replacing “or to the Minister of Revenue in the exercise of the functions of provisional administrator of property entrusted to him by law, or,” in paragraph 1 by “or to the Minister of Revenue, or”.

15. Section 34 of the Act is amended

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

“(1) communicate verbally with a debtor before five days after the sending of a notice of payment, in paper form, in conformity with the model prescribed by regulation;”;

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

“(1.1) again communicate verbally with a debtor before five days after the sending of a new notice of payment consistent with the description in subparagraph 1 to the address provided by the debtor, where the debtor has informed the permit holder or representative that he or she did not receive the first notice;”;

(3) by inserting the following subparagraphs after subparagraph 2 of the first paragraph:

“(2.1) communicate with the debtor if the latter has informed the permit holder or representative in writing that the debt is contested and that the creditor may proceed with legal action;

“(2.2) communicate with a person who, in the course of a prior communication, indicated that he or she is not the debtor.”;

(4) by striking out subparagraph 3 of the first paragraph;

(5) by replacing subparagraph 4 of the first paragraph by the following subparagraph:

“(4) communicate verbally with the debtor or the debtor’s surety, or their spouses, civil union spouses, family members, friends, acquaintances, neighbours or employers except on days other than Sundays and holidays from 8:00 a.m. to 8:00 p.m.”;

16. The Act is amended by inserting the following section after section 63:

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

FINAL PROVISIONS

17. Sections 54.8 to 54.16 of the Consumer Protection Act, enacted by this Act, do not apply to contracts entered into before the coming into force of section 54.8 of that Act.

18. The provisions of this Act come into force on 14 December 2006, except section 1, which comes into force on 1 April 2007, and sections 3, 5, 9 and 10, which come into force on the date or dates to be set by the Government, but not later than 15 December 2007.