

Regulations and other Acts

Gouvernement du Québec

O.C. 495-2010, 9 June 2010

Consumer Protection Act
(R.S.Q., c. P-40.1)

Regulation

— Amendments

Regulation to amend the Regulation respecting the application of the Consumer Protection Act

WHEREAS, in accordance with the Consumer Protection Act (R.S.Q., c. P-40.1), the Government made the Regulation respecting the application of the Consumer Protection Act (R.R.Q., 1981, c. P-40.1, r. 1);

WHEREAS section 13 of the Consumer Protection Act, amended by section 3 of chapter 51 of the Statutes of 2009, sections 187.3, 187.5, 214.11 and 228.1 of the Act, introduced by sections 9, 11 and 13 of that chapter, paragraphs *a*, *b*, *l*, *n* and *r* of section 350 of the Act and paragraphs *z.4* and *z.5* of that section, introduced by section 20 of that same chapter, empower the Government to make regulations governing the matters set forth therein;

WHEREAS, in accordance with sections 10 to 12 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation to amend the Regulation respecting the application of the Consumer Protection Act was published in Part 2 of the *Gazette officielle du Québec* of 28 April 2010 with a notice that it could be made by the Government on the expiry of 25 days following that publication;

WHEREAS it is expedient to make the Regulation with amendments, to take into account the comments received following that publication;

IT IS ORDERED, therefore, on the recommendation of the Minister of Justice:

THAT the Regulation to amend the Regulation respecting the application of the Consumer Protection Act, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting the application of the Consumer Protection Act*

Consumer Protection Act
(R.S.Q., c. P-40.1, ss. 13, 187.3, 187.5, 214.11, 228.1, 350, pars. *a*, *b*, *l*, *n*, *r*, *z.4*, *z.5*)

1. Section 6.4 of the Regulation respecting the application of the Consumer Protection Act is amended

(*a*) by replacing “of the Act and” by “of the Act,”;

(*b*) by inserting “and contracts involving sequential performance for a service provided at a distance” after “motorcycle”.

2. The following is inserted after section 6.4:

“**6.5.** Merchants who enter into distance contracts orally are exempt from the application of section 54.4 of the Act, provided the contract sent to the consumer in accordance with section 54.7 of the Act contains the following compulsory clause at the very beginning, in a typeface at least twice as large as the typeface used for any other stipulations:

You may cancel this contract without charge or penalty, for any reason, within 7 days of receiving it. In such a case, all reasonable costs of restitution of the goods forming the object of the contract shall be assumed by the merchant.”.

3. Section 8 is amended by replacing “remote-parties contract” in paragraph *c* by “distance contract”, and by striking out paragraph *g*.

4. Section 12.1 is struck out.

5. Sections 15.1, 38, 39, 46, 46.1, 48, 48.1, 49 and 50 are amended by replacing the words “contract of lease of services involving sequential performance” or “contract for the lease of services involving sequential performance”, wherever they appear, by the words “service contract involving sequential performance for instruction, training or assistance”.

* The Regulation respecting the application of the Consumer Protection Act (R.R.Q., 1981, c. P-40.1, r. 1) was last amended by the regulation made by Order in Council 1042-2007 dated 28 November 2007 (2007, *G.O.* 2, 3158B). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2010, updated to 1 April 2010.

6. Section 15.2 is amended by replacing “contract of lease of services involving sequential performance” by “service contract involving sequential performance”.

7. Section 16.1 is replaced by the following:

“**16.1.** Section 11.2 of the Act does not apply to a stipulation providing for the unilateral amendment of the price of tourist services in a contract entered into with a travel agent provided the travel agent comply with the regulations made under the Travel Agents Act (R.S.Q., c. A-10) in connection with the unilateral amendment of the price of tourist services.”.

8. Section 25 is struck out.

9. Sections 25.1, 25.2, 94.3 and 95 are amended by replacing the word “corporation”, wherever it occurs, by the words “legal person”.

10. Section 25.2 is amended by replacing “Inspector General of Financial Institutions” by “Autorité des marchés financiers”.

11. The following is inserted after section 25.3:

**“CHAPTER II.1
STIPULATIONS PROHIBITED IN A CONTRACT**

25.4. A stipulation intended to exclude or restrict the warranty provided for in section 37 or 38 of the Act is prohibited.

25.5. A stipulation intended to exclude or limit the obligation of a merchant or manufacturer to be bound by a written or verbal statement made by its representative concerning goods or services is prohibited.

25.6. A stipulation intended to exclude or limit the rights conferred on a consumer by section 53 or 54 of the Act is prohibited.

25.7. A stipulation allowing a merchant, in the event of the unilateral cancellation by a consumer of a contract involving sequential performance for a service provided at a distance, to charge an indemnity higher than the indemnity provided for in section 214.7 or 214.8 of the Act is prohibited.

25.8. A stipulation having the effect of obliging a consumer to submit a dispute to a court other than a court in Québec is prohibited.

25.9. A stipulation making an external clause binding on a consumer despite the fact that such a clause cannot be set up against the consumer by reason of article 1435 of the Civil Code is prohibited.”.

12. Section 26 is amended by replacing “or 208” in the first paragraph by “, 208 or 214.2”.

13. The heading of Division IV of Chapter IV is replaced by the following:

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

14. The following is inserted after section 71.1:

“**71.2.** A contract for the sale or long-term lease of an automobile may provide a stipulation requiring a consumer who does not take delivery of the automobile to pay penalties or damages, provided the penalties or damages do not exceed the greater of \$400 or an amount representing at most 2% of the sale price or, in the case of a long-term lease contract, the retail value of the automobile.

That stipulation is null if, at the time of formation of the contract, it was not expressly brought to the attention of the consumer.”.

15. The following is inserted after section 79:

**“CHAPTER VI.1
CONTRACTS FOR THE SALE OF PREPAID CARDS**

79.1. A contract for the sale of a prepaid card for mobile telephone services is exempt from the application of sections 187.3 and 187.5 of the Act.

79.2. A contract for the sale of a prepaid card for determined goods or services may provide, for the performance of the contract, after the date indicated on the card, for the payment of an extra amount equivalent to the difference between the price of the goods or services at the time of sale and the current price at the time of performance of the contract, provided this information and the price of the goods or services at the time of sale is indicated on the card.

Where the goods or services covered by the card are no longer offered by the merchant, the latter must provide the consumer with an equivalent consideration at the price of the goods or services at the time of sale of the card.

79.3. Despite section 187.3 of the Act, if a prepaid card must be replaced by a merchant at a determined date, the contract of sale for the card may provide for the date on which the card will be replaced provided that

(a) the replacement of the card does not deprive the consumer of the balance remaining on the card;

(b) the date of replacement of the card and, immediately following, the information given in paragraph *a*, appear on the card; and

(c) the merchant provides a new card to the consumer free of charge.

79.4. Despite section 187.4 of the Act, a contract for the sale of a prepaid card for the procurement of goods or services from several independent merchants who do not use the same name may provide for

(a) a fee not exceeding \$3.50 for the activation of the card, provided the fee is mentioned on the front of the card; or

(b) a fee not exceeding \$2.50 per month for non-use of the card, on the following conditions:

i. no fee may be charged before the 15th month following the conclusion of the contract;

ii. no fee may be charged between the 15th and the 18th month following the conclusion of the contract if, before the end of the 14th month, the consumer so requests by contacting the merchant identified for that purpose on the card;

iii. the amount of the fee for non-use of the card, along with the conditions provided for in subparagraphs *i* and *ii*, appear on the back of the card; and

iv. a statement is made on the front of the card in letters of at least 10-point typeface that the information on fees appears on the back of the card.

79.5. For the purposes of section 187.5 of the Act, the amount that must be refunded by a merchant to a consumer who so requests is equal to the balance remaining on the prepaid card when the balance is \$5 or less.

When a merchant is identified for that purpose on a prepaid card, only that merchant is required to refund the consumer.

79.6. A contract for the sale of a prepaid card issued by a financial institution for the procurement of goods or services from all merchants using the international payment network identified on the card is exempt from the application of sections 187.4 and 187.5 of the Act.

CHAPTER VI.2

CONTRACTS INVOLVING SEQUENTIAL PERFORMANCE FOR A SERVICE PROVIDED AT A DISTANCE

79.7. Contracts for financial services, contracts for lottery subscription services entered into with a legally authorized person, and contracts entered into with a travel agent within the meaning of the Travel Agents Act (R.S.Q., c. A-10) and the regulations made under it, are exempt from the application of Division VII of Chapter III of Title I of the Act.

79.8. The information required under section 214.2 of the Act must be displayed at the very beginning of a contract involving sequential performance for a service provided at a distance, to the exclusion of all other information. The information must be drawn up clearly and legibly.

79.9. The second paragraph of section 214.6 of the Act does not apply to a contract for the leasing of goods entered into in relation with a remote monitoring service contract provided the service contract, in addition to the information required under section 214.2 of the Act, indicates the monthly rent payable by the consumer under the contract of lease in the manner prescribed in section 79.8.

79.10. For the purposes of section 214.7 of the Act, the indemnity that may be required if a consumer unilaterally cancels a fixed-term contract may not exceed the value of the economic inducement less the amount obtained by multiplying the economic inducement by a fraction representing the number of contract months completely elapsed as compared to the total number of contract months. The month started at the time of cancellation is deemed to be a month completely elapsed.

The economic inducement used to calculate the cancellation indemnity is the amount of the rebate granted to the consumer on the sale price charged for goods purchased on the making of the contract that are needed to use the service for which the contract was made.

79.11. For the purposes of section 214.8 of the Act, the indemnity that may be required if a consumer unilaterally cancels an indeterminate-term contract may not exceed the unpaid balance of the sales price of the goods at the time the contract was made less the amount obtained by multiplying 1/48 of that balance by the number of contract months entirely elapsed. The month started at the time of cancellation is deemed to be a month completely elapsed.

79.12. For the purposes of section 214.11 of the Act, the rate of interest on the amount provided as a security deposit is the Bank Rate of the Bank of Canada increased by 1%.

The interest must be calculated from the date on which the consumer provided the security deposit until the date on which the merchant returns it to the consumer.”.

16. The following is inserted after section 91.7:

“**91.8.** The merchant, manufacturer or advertiser is exempt from the obligation arising from the second paragraph of section 224 of the Act to include, in the advertised price, the duties chargeable under a federal or provincial Act where, under that Act, the duties must be charged directly to the consumer to be remitted to a public authority.

DIVISION IV INFORMATION ON THE LEGAL WARRANTY

91.9. Before proposing the conclusion of a contract for valuable consideration including an additional warranty on goods, the merchant must give the consumer a document in paper form containing only the following compulsory notice:

NOTICE CONCERNING THE LEGAL WARRANTY

The Consumer Protection Act gives a warranty on all goods you purchase or lease from a merchant.

The goods must be usable

— for the purposes for which they are ordinarily used (section 37 of the Act) and

— in normal use for a reasonable length of time, which may vary according to the price paid, the terms of the contract and the conditions of use (section 38 of the Act).

For more information on this legal warranty, go to the website of the Office de la protection du consommateur at www.opc.gouv.qc.ca.”.

91.10. The notice provided for in section 91.9 must contain, on the front,

(a) the heading, in bold capital type of at least 14 points;

(b) below the heading, the following text in type of at least 14 points in a rectangle: “The Act provides a warranty on the goods you purchase or lease: they must be usable for normal use for a reasonable length of time.”;

(c) below that rectangle, the following text in italic type of at least 12 points: “(The merchant is required to read you the above text)”;

(d) the first two paragraphs, in type of at least 14 points in a rectangle;

(e) the third paragraph, in type of at least 12 points.

91.11. For the purposes of section 228.1 of the Act, before proposing the making of a contract referred to in that section, the merchant must read to the consumer the text prescribed in paragraph *b* of section 91.10.

91.12. When the proposal to make a contract referred to in section 228.1 of the Act is made in writing from a distance:

(a) the notice prescribed in section 91.9 may not comply with section 91.10 and may be sent to the consumer otherwise than in paper form, on the following conditions:

i. the notice is brought expressly to the attention of the consumer;

ii. the notice is presented legibly;

iii. the notice is presented in a manner that ensures that the consumer is able to easily retain it and print it;

(b) the merchant is exempt from the obligation provided for in the first paragraph of section 228.1 of the Act to inform the consumer orally of the existence and nature of the warranty provided for in sections 37 and 38 of the Act and of the obligation provided for in section 91.11;

(c) the merchant is exempt from the obligation under the second paragraph of section 228.1 of the Act of informing the consumer orally of the elements of the manufacturer’s warranty, provided that

i. the information is brought expressly to the attention of the consumer; and

ii. the information is presented legibly.

91.13. When a proposal to make a contract referred to in section 228.1 of the Act is made orally from a distance, the merchant is exempt from the obligation under section 228.1 of the Act of informing the consumer in writing of the existence and nature of the warranty provided for in sections 37 and 38 of the Act, provided the merchant sends the consumer the notice prescribed by section 91.9 within 15 days of the making of the contract.

When the notice is sent using an information technology medium, it may not comply with section 91.10 and may be sent to the consumer otherwise than in paper form, on the following conditions:

(a) the notice is presented legibly;

(b) the notice is presented in a manner that ensures that the consumer is able to easily retain it and print it.”.

17. Section 92 is amended:

(a) by replacing “corporation” in paragraphs *b* and *c* by “legal person”;

(b) by striking out paragraph *e*.

18. Section 94 is replaced by the following:

“**94.** Every merchant applying for the issue or renewal of a permit must forward to the president, using the form provided by the president, the following information and documents:

(a) the type of permit requested;

(b) the merchant’s name and any other names that must appear on the permit;

(c) the merchant’s address, telephone number and, where applicable, technological address and fax number, and those of the establishment for which the permit is requested;

(d) the name, address, telephone number and, where applicable, technological address and fax number of the natural person who signed the application for a permit and, if the application is for that person, the person’s date of birth;

(e) in the case of a partnership or legal person, the name, date of birth, home address and telephone number of the partners or directors, along with their position in the partnership or legal person;

(f) in the case of a partnership or legal person, a copy of the resolution of the board of directors authorizing the natural person to apply for the issue or renewal of a permit;

(g) when the merchant is required to be registered, the Québec business number (NEQ) assigned by the enterprise registrar;

(h) in the case of a partnership or legal person, a copy of its constituting act, letters patent or similar document and, where applicable, of its articles of amendment, articles of amalgamation, supplementary letters patent or similar document, except if the documents have been filed with the enterprise registrar;

(i) a statement that at the time of the application, the partnership or legal person, if constituted under the laws of Québec, was in compliance with the provisions governing legal publicity;

(j) in the case of a partnership or legal person constituted under a statute other than the statutes of Québec, a document similar to an attestation issued by the enterprise registrar stating that, at the time of the application, it would be in compliance with the obligations governing legal publicity if it was constituted under the statutes of Québec; the document must be issued by the competent authority in that jurisdiction and state that the partnership or legal person is in compliance with the laws of that jurisdiction;

(k) the answers to the following questions concerning the merchant, concerning the person, in the case of a sole proprietorship, or concerning each partner and director:

i. whether they are an undischarged bankrupt;

ii. whether they have been found guilty, in the 3 preceding years, of an offence against an Act or regulation under the administration of the Office de la protection du consommateur or of an indictable criminal offence, unless a pardon has been obtained;

iii. if the answer to one of the questions in subparagraphs *i* and *ii* is affirmative, the name of the person concerned, the nature of the offence, the date of the judgment and the court file number;

(l) at the request of the president, a copy of the contract that the merchant intends to enter into with consumers.

Every application for a permit must be submitted with the duties payable and the security required under Division II of Chapter VIII, along with a statement that the information provided pursuant to sections 94 to 94.02 is true, and be signed by the natural person making the application.

94.01. In addition to the information and documents referred to in section 94, a person applying for the issue or renewal of an itinerant merchant’s permit must forward the following information to the president:

(a) the nature of the goods and services offered to consumers;

(b) a statement that the consideration for the applicant's contracts will be below or above \$100 in most cases for the term of the permit requested;

(c) the planned number of representatives for the term of the permit requested, even if they are not all as yet known;

(d) the name, date of birth, home address, telephone number and, where applicable, technological address and fax number of all the applicant's known representatives;

(e) the name, address, telephone number and, where applicable, technological address and fax number of the applicant's known merchant-representatives;

(f) the name, date of birth, home address, telephone number and, where applicable, technological address and fax number of the employee-representatives of the applicant's known merchant-representatives.

94.02. In addition to the information and documents referred to in sections 94 and 94.1 to 94.4, a person applying for the issue or renewal of a merchant's permit who offers or makes a contract of additional warranty must forward the following information to the president:

(a) the names and addresses of the dealers, independent garage owners and other intermediaries who will sell the contracts of additional warranty;

(b) the addresses of the direct consumer sales outlets;

(c) the nature of the goods to which the contracts relate (new or used automobiles, new or used motorcycles adapted for transportation on public highways);

(d) the minimum and maximum price of the additional warranty in light of the nature of the goods;

(e) the term of the contracts.”.

19. Section 94.3 is amended by replacing “Inspector General of Financial Institutions” in paragraph *a* by “Autorité des marchés financiers”.

20. Sections 96 to 99 are struck out.

21. Section 110 is amended:

(a) by replacing “individual guarantee bond” in paragraph *a* by “individual security policy”;

(b) by replacing “group guarantee bond” in paragraph *b* by “group security policy”;

(c) by striking out the word “certified” wherever it appears in paragraph *c*.

22. Section 113 is replaced by the following:

“**113.** The security must be drawn up using the form provided by the president, and include

(a) the date on which the security is furnished;

(b) the total amount of the obligation which the surety is required to meet for the duration of the permit as determined in section 104, 108 or 108.1;

(c) a solidary undertaking by the surety with the merchant towards the president, in the case of an individual security, or with any member of the group towards the president, in the case of a group security, up to the amount of the security, to pay any amount payable pursuant to section 120 or 120.1;

(d) when the security is furnished by the merchant on his own behalf, an undertaking by the merchant, up to the amount of the security, to pay any amount payable pursuant to section 120 or 120.1;

(e) a statement that the undertaking is binding on the administrators of the surety or the merchant in the case of security furnished by the merchant;

(f) a waiver of the benefits of discussion and division, and the fact that the surety is subrogated in the rights of a consumer to whom an indemnity is paid up to the amount disbursed by the surety;

(g) a statement that the surety or merchant may only terminate the security by sending at least 90 days' written notice to the president along with proof that a copy of the notice was notified to the merchant, if applicable;

(h) a statement that, despite the expiry of the security, the obligations of the surety continue to apply and the responsibility of the merchant continues to extend to the merchant's clients, when

i. the cause of action concerns a contract made while the security was in effect, or occurred while the security was in effect;

ii. no more than 3 years have elapsed between the date of the cause of action and the institution of civil proceedings or conclusion of an agreement or transaction.

The form must be signed by the surety or by the merchant if furnished by the latter and, at the request of the surety, by the principal debtor.”.

23. Sections 114 to 116 and 157 to 160 are struck out.

24. Section 118 is replaced by the following:

“**118.** Each of the permit holders covered by a group security policy must be identified by a member’s certificate containing the following information:

- (a) the name of the surety;
- (b) the name of the group for which the surety furnishes security;
- (c) the member’s certificate number of the group;
- (d) the amount of security payable pursuant to section 104, 108 or 108.1;
- (e) the number of the group security policy and its date of issue;
- (f) a statement that the permit holder is a member of the group and is covered by the group security policy;
- (g) the signature of a duly authorized representative of the surety or of the association authorized by the surety, and the date of issue.”.

25. Section 119 is amended

(a) by replacing “A security by individual guarantee bond, a security by group guarantee bond, commitments referred to in sections 115 and 116 as well as” in the first paragraph by “Security referred to in section 112 and”;

(b) by striking out the word “certified” wherever it occurs in the second paragraph.

26. Section 121.2 is amended

(a) by replacing “individual or group guarantee bond” in subparagraph *a* of the first paragraph by “individual or group security policy”;

(b) by striking out the word “certified” wherever it occurs in subparagraph *b* of the first paragraph.

27. Section 146 is amended by replacing “243” in the second paragraph by “486”.

28. Section 163 is amended by replacing “1 year” by “2 years”.

29. Section 178 is amended by striking out “certified”.

30. Forms N-22 to N-46 are struck out.

31. Contracts in effect when this Regulation comes into force are exempt from the application of sections 214.6 to 214.8 of the Consumer Protection Act.

Sections 25.4 to 25.9 of the Regulation respecting the application of the Consumer Protection Act, introduced by section 11 of this Regulation, do not apply to contracts in effect when this Regulation comes into force.

32. This Regulation comes into force on 30 June 2010.

9852

Gouvernement du Québec

O.C. 496-2010, 9 June 2010

Travel Agents Act
(R.S.Q., c. A-10)

Travel agents
— **Amendments**

Regulation to amend the Regulation respecting travel agents

WHEREAS, in accordance with the Travel Agents Act (R.S.Q., c. A-10), the Government made the Regulation respecting travel agents (R.R.Q., 1981, c. A-10, r. 1);

WHEREAS, under subparagraphs *a* and *b* of the first paragraph and subparagraph *c* of the second paragraph of section 3 of the Travel Agents Act, the second paragraph of section 4 and subparagraphs *b.1* and *c.2* of the first paragraph of section 36, introduced by sections 24 and 29 of chapter 51 of the Statutes of 2009, and subparagraphs *a*, *b*, *c*, *c.1*, *e*, *g*, *j*, *k*, *l*, *n*, *o* and *p* of the first paragraph of section 36 of the Act, the Government may make regulations governing the matters set forth therein, including the activities of travel agents and travel counsellors;

WHEREAS, in accordance with sections 10 and 12 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation was published in Part 2 of the *Gazette officielle du Québec* of 28 April 2010 with a notice that it could be made by the Government on the expiry of 25 days following that publication;