NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 60

(2009, chapter 51)

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

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EXPLANATORY NOTES

This Act 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.

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

As well, the scope of injunctions against prohibited stipulations and practices is extended and consumer advocacy bodies are allowed to apply for such injunctions. Finally, the Government is given the regulatory power to establish funds to indemnify consumers and to provide for the use of the income generated by these funds.

The requirement for travel agents to have an establishment that is physically accessible to their clients is struck from the Travel Agents Act and the concept of travel counsellor is introduced.

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

LEGISLATION AMENDED BY THIS ACT:

– 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. Section 1 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by inserting the following paragraph after paragraph *e*:

"(*e*.1) "contract of additional warranty" means a contract under which a merchant binds himself toward a consumer to assume directly or indirectly all or part of the costs of repairing or replacing goods or a part thereof in the event that they are defective or malfunction, otherwise than under a basic conventional warranty given gratuitously to every consumer who purchases the goods or has them repaired;".

2. The Act 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 30 days before the amendment comes into force, a written notice drawn up clearly and legibly, setting out the new clause only, or the amended clause and the clause as it read formerly, the date of the coming into force of the amendment and the rights of the consumer set forth in subparagraph *c*; and

(*c*) provides that the consumer may refuse the amendment and rescind or, in the case of a contract involving sequential performance, cancel the contract without cost, penalty or cancellation indemnity by sending the merchant a notice to that effect no later than 30 days after the amendment comes into force, 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, except under articles 1604 and 2126 of the Civil Code and, in the latter case, only in accordance with article 2129 of the Code.

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.

"**11.4.** Any stipulation which excludes the application of all or part of articles 2125 and 2129 of the Civil Code regarding the resiliation of contracts of enterprise and for services is prohibited."

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

"**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.

The prohibition under the first paragraph does not apply to contracts of sale or long-term contracts of lease of automobiles, except with respect to charges and subject to the conditions set out in the regulation."

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

"**19.1.** A stipulation that is inapplicable in Québec under a provision of this Act or of a regulation that prohibits the stipulation must be immediately preceded by an explicit and prominently presented statement to that effect."

5. Section 23 of the Act is amended by replacing "or 208" in the first paragraph by ", 208 or 214.2".

6. Section 25 of the Act is amended by replacing "and at least in duplicate and in paper form" by "at least in duplicate and, except in the case of a distance contract, in paper form".

7. 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 or lessees of the goods complied with the conditions of the warranty."

8. 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.

9. 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 certificate, card or other 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 to 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.

"**187.5.** The merchant who is party to a contract for the sale of a prepaid card must, when the consumer so requests, refund to the consumer an amount equal to the balance on the card when the balance is lower than the amount or percentage prescribed by regulation."

10. 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".

11. 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 merchant's telephone number and, if available, the merchant's technological address;

(*c*) the place and date of the contract;

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

(*e*) the monthly rate for each of the services to be provided under the contract, including the monthly rate for any optional services, or the monthly cost if the rate is calculated on a basis other than a monthly basis;

(*f*) the monthly rate for each of the associated costs or the monthly cost if the rate is calculated on a basis other than a monthly basis;

(*g*) the total amount the consumer must pay each month under the contract;

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

(*i*) 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 regular price;

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

(*k*) if applicable, the nature 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;

(*l*) the total value of any economic inducements prescribed by regulation to be used to calculate the cancellation indemnity that may be charged to the consumer under section 214.7;

(*m*) a statement that only the value of the economic inducements referred to in subparagraph *l* will be used to calculate the cancellation indemnity charged to the consumer;

(*n*) the manner of easily obtaining information on the rate for services that are not provided under the contract, and the rate for services that are subject to restrictions or geographical limits as mentioned in subparagraph *h*;

(*o*) the term and expiry date of the contract;

(*p*) 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 or indemnity, if any; and

(*q*) 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;

(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 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 service contract or 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.

"**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 value of the economic inducements determined by regulation that were given to him. The indemnity decreases as prescribed by regulation.

When no economic inducement determined by regulation was given to the consumer, the maximum indemnity the merchant may charge 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.

"**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, with interest at the rate determined by regulation, 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."

12. 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 Québec sales tax or the Goods and Services Tax. More emphasis must be put on the price advertised than on the amounts of which the price is made up."

13. The Act is amended by inserting the following section after section 228:

"**228.1.** Before proposing to a consumer to purchase a contract that includes an additional warranty on goods, the merchant must inform the consumer orally and in writing, in the manner prescribed by regulation, of the existence and nature of the warranty provided for in sections 37 and 38.

In such a case, the merchant must also inform the consumer orally of the existence and duration of any manufacturer's warranty that comes with the goods. At the request of the consumer, the merchant must also explain to the consumer orally how to examine all of the other elements of the warranty.

Any merchant who proposes to a consumer to purchase a contract that includes an additional warranty on goods without first providing the information mentioned in this section is deemed to have failed to mention an important fact, and therefore to have used a practice prohibited under section 228."

14. 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."

15. Section 260.6 of the Act is repealed.

16. 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".

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

"**316.** If a person has engaged or engages in a practice prohibited under Title II or a merchant has included or includes in a contract a stipulation prohibited by this Act or a regulation, or has included or includes a stipulation inapplicable in Québec that is referred to in section 19.1 without complying with that section, 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 to 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. The court may not decide on the application for injunction filed by such a body unless a notice, attached to the motion to institute proceedings or the application for an interlocutory injunction, as the case may be, is notified to the president.

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."

18. 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."

19. 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."

20. 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 rules respecting the method of calculating the cancellation indemnity provided for in section 214.7 and the cancellation indemnity provided for in section 214.8, the mechanics of the decrease in those indemnities, as well as the elements of the economic inducement to be used in calculating the cancellation indemnity provided for in section 214.7."

TRAVEL AGENTS ACT

21. 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".

22. 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.

23. The heading of Division II of the Act is amended by adding "AND CERTIFICATES".

24. 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."

25. Section 5 of the Act is repealed.

26. 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.

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

28. 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."

29. 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;".

30. Section 37 of the Act is amended by replacing "sections 4 to 7" in paragraph *d* by "sections 4, 6 to 8".

31. 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

32. 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:

"**80.1.** 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

33. 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

34. 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 3 and 9, are without effect for the future.

35. The provisions of this Act come into force on the date or dates to be set by the Government, but not later than 30 June 2010.