

NATIONAL ASSEMBLY

FIRST SESSION

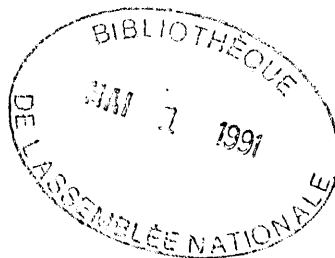
THIRTY-FOURTH LEGISLATURE

Bill 133

An Act to amend the Consumer Protection Act

Introduction

**Introduced by
Mr Gil Rémillard
Minister of Justice**



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EXPLANATORY NOTES

The object of this bill is to extend, by amendment, the scope of the Consumer Protection Act to include contracts of long-term lease of movable goods for which the leasing period is four months or more or may be increased to four months or more by way of a renewal clause.

The bill makes certain rules for the making of contracts governing contracts evidenced in writing applicable to contracts of long-term lease, and prescribes rules for the payment of rent. It allows a person leasing goods to benefit from the manufacturer's warranty and provides for the possibility of returning goods to the merchant, at the consumer's discretion, during the leasing period.

The bill proposes rules applicable in particular to contracts of long-term lease to which is attached a guarantee, by the consumer, of the residual value of the goods leased, which limit the consumer's obligation to 20 % of that value. In addition, the bill allows the consumer to acquire the goods during the leasing period and grants him a right of preemption in cases where the merchant wishes to dispose of the goods at a price lower than the residual value. Certain rules governing the sale of used automobiles and motorcycles are also made applicable to the long-term leasing of such vehicles.

The bill provides for the extension of the rules applicable to goods that the consumer does not solicit to include unsolicited services.

Lastly, this bill proposes new rules concerning the advertising of relative credit rates and makes certain amendments of concordance.

Bill 133

An Act to amend the Consumer Protection Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 7 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by inserting the words and figures “, section 150.12 regarding the application of section 103, and sections 105.21” after the figure “116” in the second line.

2. Section 23 of the said Act is amended by inserting the words and figure “the first paragraph of section 150.4, section” after the figure “80” in the first line of the first paragraph.

3. The said Act is amended by inserting, after Division III of Chapter III of Title I, the following division:

“DIVISION III.1

“LONG-TERM LEASE OF GOODS

“150.1 This division applies to contracts of long-term lease of goods.

“150.2 For the purposes of this Act, a contract of lease of goods which provides for a leasing period of four months or more is a long-term contract.

A contract which provides for a leasing period of less than four months is deemed to be a long-term contract where the period may be extended to a period of four months or more by way of a clause of renewal or extension or another agreement to the same effect.

“150.3 The leasing period begins at the time the goods are put at the disposal of the consumer.

“§ 1.—*General provisions*

“**150.4** Contracts which include a conventional option to purchase the goods leased and contracts of lease with guaranteed residual value referred to in subdivision 2 must be evidenced in writing.

Every other contract of long-term lease, if evidenced in writing, must comply with the rules regarding its form prescribed in Chapter II of this Title in the same manner as if it were a contract which must be evidenced in writing.

“**150.5** Contracts which include a conventional option to purchase must indicate the amount the consumer must pay to acquire the goods or the manner of calculating that amount, and any other conditions of exercising the option.

“**150.6** The rent must be payable before the expiration of the leasing period, except any amount due under the obligation of guarantee provided by a contract of lease with guaranteed residual value and charges relating to the degree of use of the goods, where they are exigible.

No charge relating to the degree of use of the goods may be required unless the goods are equipped with a device enabling their degree of use to be measured in hours or in kilometres and the rate per hour or per kilometre is specified in the contract.

“**150.7** The rent payable during the leasing period must be divided into instalments. All instalments must be equal, except the last, which may be less. The dates on which the instalments become due must be fixed in such a way that they are at the beginning of reasonably equal subdivisions of the leasing period not exceeding thirty-five days.

The merchant cannot require the consumer to pay more than two instalments in advance, or collect such instalments before the beginning of the leasing period.

“**150.8** Contracts entered into with a consumer contemplated in section 88, or with regard to goods contemplated in section 88 are exempt from the application of section 150.7 on the conditions provided in that section.

“**150.9** No contract of long-term lease may contain an agreement

(a) obliging the consumer to return the goods in better condition than that resulting from normal wear;

(b) which aims to specify normal wear;

(c) contemplated in paragraph *a* or *b* of section 136.

“150.10 The merchant assumes the risk of loss or deterioration of the goods by fortuitous event; however, the merchant is not required to assume those risks while the consumer withholds the goods without right or after the merchant has transferred ownership of the goods to the consumer, where such is the case.

“150.11 Any conventional warranty granted to a consumer and owner of goods benefits a consumer who is party to a contract of long-term lease as if he were the owner of the goods.

In the same manner, any conventional warranty available to a consumer and owner of goods must be available, on the same conditions and at the option of the consumer, to a consumer who is party to a contract of long-term lease of goods of the same kind and, if the consumer acquires that warranty, he benefits from it as if he were the owner of the goods.

“150.12 Section 101 relating to discharge and the return of objects or documents, sections 102 and 103 relating to the rights and obligations of an assignee and sections 111 to 114 relating to insurance apply, adapted as required, to contracts of long-term lease.

“150.13 Where a consumer fails to perform his obligation in accordance with the terms and conditions of the contract, the merchant may either

(a) exact immediate payment of that which is due;

(b) exact, in the manner provided in sections 105 and following, immediate payment of that which is due and all future instalments if the contract includes a clause of forfeiture of benefit of the term or another agreement to the same effect. However, the notice which must be sent by the merchant under section 105 must be drawn up in accordance with the form appearing in Schedule 7.1; or

(c) retake possession of the goods leased in the manner provided in sections 150.14, 150.15 and, where applicable, 150.32.

“150.14 Before exercising his right of repossession of the goods leased, the merchant must send to the consumer a notice in writing drawn up in accordance with the form appearing in Schedule 7.2.

The consumer may remedy his default or return the goods to the merchant within thirty days following receipt of the notice referred to in the first paragraph, and the right of repossession cannot be exercised until the expiry of those thirty days.

“150.15 If, following a notice of repossession, the voluntary return or forced repossession of the goods is effected, the contract is cancelled of right from the date of such return.

The merchant is not, in such a case, bound to return the amount of the payments due he has already received, and he cannot claim any damages other than those actually resulting, directly and immediately, from the cancellation of the contract.

The merchant is bound to minimize damages.

“150.16 The merchant who has opted for the recourse provided for in paragraph *b* of section 150.13 may, after the expiry of the delay of thirty days, avail himself of the recourse provided for in paragraph *c* of the same section.

The merchant who has opted for the recourse provided for in paragraph *c* of section 150.13 may, after the expiry of the delay of thirty days, avail himself of the recourse provided for in paragraph *b* of the same section.

“150.17 The consumer may, during the leasing period and at his discretion, return the goods to the merchant. The contract is cancelled of right from the date of return of the goods, with the same consequences as a cancellation under section 150.15.

“§ 2.—Contracts of lease with guaranteed residual value

“150.18 A contract of lease with guaranteed residual value is a contract of long-term lease of goods by which the consumer guarantees that the merchant, once the leasing period is expired, will obtain a certain minimum value from the alienation of the goods.

For the purposes of this division, “residual value” means the value guaranteed by the consumer who is a party to such a contract.

“150.19 The residual value must be established by a reasonable estimation by the merchant of the wholesale value which the goods will have at the end of the leasing period.

“150.20 The residual value must be indicated in the contract and be expressed in terms of dollars and cents.

“150.21 The consumer’s obligation of guarantee as to the residual value is limited to the lesser of the following amounts:

(a) the amount by which the residual value exceeds the value the merchant obtains from the alienation of the goods;

(b) 20 percent of the residual value.

“150.22 The contract must reproduce the particulars set forth in Schedule 7.3, in addition to those prescribed by regulation.

“150.23 The contract may be cancelled without cost or penalty, at the discretion of the consumer, in the manner provided in sections 75 to 77 and on the condition provided in section 79, within two days following that on which each of the parties is in possession of a duplicate of the contract.

“150.24 The net obligation refers to the total value of the goods, namely the sum of the retail value of the goods and the preparation, delivery, installation and other charges, minus the payment on account.

The payment on account includes the agreed value of goods given to the merchant as a trade-in, the first instalment and any sum received by the merchant before the start of the leasing period, including the value of a negotiable instrument payable on demand and the instalments paid in advance, if any.

The instalment obligation refers to the aggregate of the residual value and the periodic instalments other than those included in the payment on account.

“150.25 The amount by which the instalment obligation exceeds the net obligation constitutes the implicit credit charges. The merchant must mention those charges in terms of dollars and cents and indicate that they cover the entire duration of the lease.

“150.26 The implicit credit rate is the expression of the implicit credit charges in the form of an annual percentage. It must be computed and disclosed in the manner prescribed by regulation.

No contract may disclose more than one implicit credit rate.

“150.27 Sections 83 and 91 apply to the computing of implicit credit charges, replacing the expressions “credit charges” and “credit rate”, wherever they appear, by the expressions “implicit credit charges” and “implicit credit rate”, respectively.

“150.28 Sections 94 to 97 relating to statements of account apply to contracts of lease with guaranteed residual value, replacing the expression “credit charges”, wherever it appears, by the expression “implicit credit charges”.

“150.29 A consumer who is a party to a contract of lease with guaranteed residual value may, at any time during the leasing period, acquire the goods which are the object of the contract on paying the balance of his instalment obligation minus the implicit credit charges not yet charged at the time of the acquisition.

“150.30 Except in the cases and on the conditions prescribed by regulation, the merchant cannot, while the residual value of the goods is guaranteed by the consumer, alienate the goods to a prospective acquirer who offers a price for them less than their residual value without first offering the goods to the consumer by sending him a notice in writing drawn up in accordance with the form appearing in Schedule 7.4.

The consumer, within five days following receipt of the notice, may acquire the goods by paying in cash a price equal to that offered by the prospective acquirer.

The consumer may, instead of acquiring the goods, within the same delay, present a third person who agrees to pay in cash for the goods a price equal to that offered by the prospective acquirer.

“150.31 The consumer is released from his obligation of guarantee in one or other of the following cases:

(a) where the residual value of the goods is not specified in the contract in accordance with section 150.20;

(b) where the merchant alienates the goods in contravention of section 150.30 or where he refuses to sell the goods to the third person presented in accordance with the third paragraph of that section;

(c) where the alienation of the goods is not effected by onerous title;

(d) where the alienation of the goods is not effected within a reasonable time after return of the goods to the merchant at the end of the leasing period;

(e) where the merchant, after return of the goods at the end of the leasing period, uses those goods or allows them to be used by a third person otherwise than with a view to their alienation by onerous title.

“150.32 The merchant cannot exercise a right of repossession under sections 150.13 to 150.16 without obtaining the permission of the court if the consumer, at the time he defaults, has already paid at least one-half of the aggregate of his instalment obligation and his payment on account.

When the merchant applies to the court for this purpose, sections 143 to 145 apply.”

4. The heading of subdivision 2 of Division IV of Chapter III of Title I of the said Act is replaced by the following heading:

“§ 2.—*Contracts of sale or of long-term lease of used automobiles and used motorcycles*”.

5. Section 155 of the said Act is amended by inserting the words “or for long-term lease” after the word “sale” in the second line of the first paragraph.

6. Section 156 of the said Act is amended

(1) by replacing paragraph *a* by the following paragraph:

“(a) if the used automobile is offered for sale, its price, and, if it is offered for long-term lease, its retail value;”;

(2) by replacing the word “purchaser” in the second line of paragraph *h* by the word “consumer”.

7. Section 157 of the said Act is amended by inserting the words “or, in the case of a contract of long-term lease which is not evidenced in writing, given to the consumer at the making of the contract” after the word “contract” in the first paragraph.

8. Section 158 of the said Act is amended by inserting the words “of sale” after the word “contract” in the first line.

9. Section 159 of the said Act is amended by inserting the words “or long-term leasing” after the word “sale” in the first line.

10. Section 160 of the said Act is amended by inserting the words “or long-term leasing” after the word “sale” in paragraphs *a*, *b* and *c*.

11. Section 162 of the said Act is amended by inserting the words “or for long-term leasing” after the word “sale” in the second line.

12. Section 164 of the said Act is amended by inserting, after the word “sale”

- (1) in the first paragraph, the words “or long-term leasing”;
- (2) in the second paragraph, the words “or long-term leasing”;
- (3) in subparagraphs *a* and *b* of the third paragraph, the words “or the long-term leasing”.

13. Section 166 of the said Act is amended by adding the words “or comprising a right of acquisition in section 150.29 or 150.30 which the consumer decides to exercise” after the word “himself” in the third line.

14. Section 230 of the said Act is amended by replacing the words “that he has sent” in the first line of paragraph *a* by the words “or services that he has sent or rendered”.

15. Section 246 of the said Act, enacted by section 246 of chapter 9 of the statutes of 1978, is replaced by the following section:

“246. No person may, in any advertisement concerning credit, disclose a rate of credit unless he also discloses, with equal emphasis, the credit rate computed in accordance with this Act.”

16. The said Act is amended by inserting, after section 247, the following section:

“247.1 No person may make use of advertising regarding the terms and conditions of long-term lease of goods, unless such advertising indicates expressly that the offer concerns long-term leasing and includes the particulars prescribed by regulation in the manner therein provided.”

17. Section 252 of the said Act is amended by inserting the figure “, 247.1” after the figure “247” in the first line.

18. Section 350 of the said Act is amended

(1) by inserting the words “or implicit credit rate and implicit credit charges” after the words “credit charges” in the third line of paragraph *e*;

(2) by adding the words “and fixing conditions for that exemption” at the end of paragraph *r*;

(3) by adding, at the end, the following paragraph:

“(x) determining the charges to be paid by a person requesting an exemption under section 308 or 309.”

19. The said Act is amended by adding, after Schedule 7, the following schedules:

“SCHEDULE 7.1

NOTICE OF FORFEITURE OF BENEFIT OF THE TERM CONCERNING LONG-TERM LEASING

(CONSUMER PROTECTION ACT, S. 150.13)

Date:
(date on which sent or remitted)

.....
(name of merchant)

..... (telephone number
of merchant)

.....
(address of merchant)

hereinafter called the merchant notifies

.....
(name of consumer)

.....

.....
(address of consumer)

hereinafter called the consumer

that he is in default to perform his obligation in accordance with the contract (No.)
(number of the contract if indicated)

made between them at
(place where the contract was made)

on
(date on which the contract was made)

and that the following payment(s) is(are) due:

\$ on
(amount of payment) *(date due)*

\$ on
 (amount of payment) (date due)

for a total amount of \$ at this date.
(amount due)

Consequently, if the consumer does not remedy his default by paying the amount due within thirty days of receiving this notice, the total amount of payments due and future instalments, in the amount of \$, will become payable at that time.

The consumer may, however, by motion, petition the court to change the terms and conditions of payment or to be authorized to return the goods leased to the merchant. In that case, return of the goods authorized by the court entails the extinguishment of the obligation and the merchant is not required to return the amount of instalments he has received.

Such motion must be served and filed in the office of the court within thirty days after the consumer receives this notice.

Furthermore, the consumer may also, without the authorization of the court, return the goods to the merchant and thus cancel his contract. In such case, the merchant is not bound to return the amount of the payments due he has already received, and he cannot claim any damages other than those actually resulting, directly and immediately, from the cancellation of the contract.

The consumer is advised to examine his contract and, if further information is necessary, to contact the Office de la protection du consommateur.

.....
(name of merchant)

.....
(signature of merchant)

The consumer may, within 30 days of receiving this notice, either:

- (a) remedy his default by paying the amount presently owing; or
- (b) return the goods to the merchant.

If the consumer has not remedied his default or returned the goods to the merchant at
(address)

within 30 days of receiving this notice, the merchant will exercise his right of repossession and seize the goods at the consumer's expense.

However, if the consumer who is a party to a contract of lease with guaranteed residual value has already paid more than one-half of his maximum obligation, the merchant cannot exercise his right of repossession before obtaining the authorization of the court (section 150.32).

In the case of voluntary return or forced repossession of the goods following this notice, the contract is cancelled. In such case, the merchant is not bound to return the amount of the payments he has already received, and he cannot claim any damages other than those actually resulting, directly and immediately, from the cancellation of the contract (section 150.15).

The consumer is advised to examine his contract and, if further information is necessary, to contact the Office de la protection du consommateur.

.....
(name of merchant)

.....
(signature of merchant)

"SCHEDULE 7.3

CONTRACT OF LEASE WITH RESIDUAL VALUE GUARANTEED BY THE CONSUMER

(CONSUMER PROTECTION ACT, S. 150.22)

Date:
(date on which contract is made)

Place:
(place where the contract is made if made in the presence
of the merchant and the consumer)

.....
(name of merchant)

.....

.....
(address of merchant)

.....
(name of consumer)

.....

.....
(address of consumer)

Description of the object of the contract:
.....
(make, model, serial number, year)

1. Total value of goods

(a) Retail price \$.....

(b) Preparation, delivery and
installation charges \$.....

(c) Other \$.....
(specify)

Total \$.....

2. Payment on account (except applicable taxes)

(a) Trade-in \$.....

(b) First instalment \$.....

(c) Instalment(s) paid in advance,
other than (b). \$.....
(specify which)

(d) Any other amount paid before the
start of the leasing period,
including the value of a negotiable
instrument payable on demand \$.....

Total \$.....

3. Amount of net obligation (1 - 2) \$_____

4. Instalments

(a) (i) $\frac{\text{.....}}{(\text{instalment})} \times \frac{\text{.....}}{(\text{number})} = \.....

(ii) last instalment
(if less than i)

(iii) total instalments (i + ii) \$_____

(b) (i) $\frac{\text{.....}}{(\text{instalment})} + \frac{\text{.....}}{(\text{taxes})} = \$\frac{\text{.....}}{(\text{payment period})}$

(ii) × = \$.....
 (payments) (number)

(iii) + = \$.....
(last instalment) (taxes)

(iv) total payments (ii + iii) \$_____

5. Amount of the instalment obligation

(a) Total of instalments minus those included in the payment on account (4 (a) (iii) – 2 (b) and 2 (c)) \$.....

(b) Residual value of goods \$.....
(wholesale value at the end
of leasing period)

Total \$_____

6. Implicit credit charges and rate

(a) Implicit credit charges (5 - 3) \$.

(b) Leasing period months

(c) Implicit annual credit rate _____%

7. MAXIMUM OBLIGATION OF THE CONSUMER

(not including applicable taxes and charges
relating to the degree of use of the goods) (2 + 5) \$_____

The obligation of the consumer is payable

at
(address)

The amounts to be paid during the leasing period are payable in instalments of on the day of each consecutive beginning on the and a last instalment of \$ on the
(number) *(amount)* *(period)* *(date of delivery of the goods)* *(amount)* *(date)*

The consumer shall defray the residual value if he acquires the goods during the leasing period. If the consumer elects not to exercise this option, he guarantees that the merchant will obtain from alienation of the goods by onerous title within a reasonable time of their return value equal to or greater than the residual value and that, if the merchant fails to obtain at least that value the consumer will assume the difference up to 20 % of the residual value.

The consumer gives to the merchant as acknowledgement of or security for his obligation the following object or document:

.....
(description)

The merchant delivers the goods being the subject of this contract on the making of this contract ☐ or on
yes (date of delivery of the goods)

.....
(signature of the merchant)

.....
(signature of the consumer)

(a) acquire the goods by paying in cash a price equal to that offered by the prospective acquirer; or

(b) present third person who agrees to pay in cash for the goods a price equal to or greater than that offered by the prospective acquirer.

In the latter case, if the merchant does not agree to sell the goods to the third person presented by the consumer, the consumer is released from his obligation to guarantee the residual value.

If the consumer fails to acquire the goods or to present a third person within 5 days of receiving this notice, the merchant will sell the goods to the prospective acquirer at the price offered by him and indicated in paragraph 1.

The consumer is advised to examine his contract and, if further information is necessary, to contact the Office de la protection du consommateur.

.....
(name of merchant)
 ”
(signature of merchant)

20. The provisions of this Act will come into force on the date or dates fixed by the Government.