



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 75

An Act to amend the Consumer Protection Act

Introduction

NOV 27 1988

Introduced by
Mr Herbert Marx
Minister responsible for Consumer Protection

Québec Official Publisher
1988

EXPLANATORY NOTES

The object of this bill amending the Consumer Protection Act is to protect the sums of money paid by consumers to merchants who offer contracts of additional warranty.

The bill requires merchants to maintain, in a trust account, sufficient reserves to guarantee their obligations arising from additional warranty contracts.

Moreover, the bill contains provisions pertaining to the opening and administration of the trust account and to the rights of the holders of additional warranty contracts with respect to the trust account funds.

Finally, the bill provides for the appointment of a second vice-president at the Office de la protection du consommateur.

ACTS AMENDED BY THIS BILL:

- (1) Consumer Protection Act (R.S.Q., chapter P-40.1);
- (2) Act respecting prearranged funeral services and sepultures (1987, chapter 65).

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

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

2. The said Act is amended by inserting, after section 260.4, the following title:

“TITLE III.2

“ADMINISTRATION OF SUMS COLLECTED IN RESPECT OF ADDITIONAL WARRANTIES

“260.5 This title applies to every merchant required to hold a permit under paragraph *d* of section 321.

“260.6 For the purposes of paragraph *d* of section 321 and this title, “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 a property or a part thereof in the event that it is defective or malfunctions, otherwise than under a basic conventional warranty given gratuitously to every consumer who purchases the property or has it repaired.

“260.7 The merchant must at all times maintain, in a separate trust account identified as a “reserve account”, sufficient reserves to guarantee the obligations arising from any contract of additional warranty he may make.

“260.8 For that purpose the merchant must deposit forthwith in his reserve account a portion equal to not less than 50 percent of any sum he receives in consideration for a contract of additional warranty.

“260.9 The reserve account must remain open at all times in Québec with a trust company which has made a written undertaking that it will assume the duties, obligations and responsibilities imposed on it by this Act with respect to the sums entrusted to it by the merchant.

Upon opening the account, the merchant must inform the president of the number of the account and of the place where it is held and transmit to him the undertaking of the trust company.

The undertaking must be consistent with the model provided in Schedule 11.

“260.10 The merchant must provide a statement of his operations to the president at such intervals and in the manner prescribed by regulation.

“260.11 The reserve account funds may be applied to the following purposes only:

(a) paying a claim arising from a contract of additional warranty in respect of which a sum was deposited in the account pursuant to section 260.8;

(b) refunding the sums due to a consumer following the dissolution or cancellation of a contract of additional warranty in respect of which a sum was deposited in the account pursuant to section 260.8.

Notwithstanding the foregoing, where the financial report transmitted to the president upon an application for the renewal of a permit shows that the reserve account contains funds in an amount greater than that declared to constitute good and sufficient reserves by the actuary's certificate, the merchant may, within 10 days of the coming into force of the renewed permit, withdraw the excess funds.

The merchant may reserve the right to choose how the reserve account funds are to be invested. The only investments permitted in that case are investments of a class prescribed by regulation, made by the trust company.

“260.12 No trust company with which a reserve account has been opened may permit that the reserve account funds be applied

otherwise than to one of the purposes set out in section 260.11 and on presentation of the proper supporting documents.

“260.13 The merchant must keep separate accounting records of all operations affecting the reserve account, in which the application of funds must appear in detail.

In addition, the merchant must keep and update a register of all consumers having entered into a contract of additional warranty with him, stating in respect of each contract the date of signing and the date of expiry, the price, the sum deposited in trust, and any amount applied to the discharge of a claim arising from the contract.

“260.14 The sums collected by a merchant to be deposited in trust in his reserve account pursuant to section 260.8 are deemed to be held in trust for the consumers by the merchant so long as they have not been applied to the discharge of a claim arising from a contract of additional warranty or to the refund of sums due to a consumer following the dissolution or cancellation of a contract of additional warranty or so long as the residual value of the contracts has not been refunded to the consumers, and an amount equal to the aggregate of the sums deemed to be held in trust shall be regarded as a separate fund not forming part of the merchant’s property, whether or not the amount has been kept separate and apart from the merchant’s own funds or the mass of his property.

The residual value of the contracts must be calculated according to recognized actuarial hypotheses and methods as it stands on the date of a winding-up order in respect of the merchant, on the date of an assignment, seizure or taking of possession of his property, on the date of a receiving order against him or on the date fixed by a provisional administrator appointed under section 260.16.

“260.15 The reserve account funds are unassignable and unseizable.

“260.16 The president may appoint a provisional administrator to manage temporarily, continue or terminate the current business of a merchant in any of the following cases:

- (a) where the merchant operates without a permit;
- (b) where the merchant no longer meets one of the requirements prescribed by this Act or the regulations for obtaining a permit;
- (c) where the merchant’s permit is cancelled or suspended by the president or where the latter refuses to renew the permit;

(d) where the president has reasonable grounds to believe that, during the term of his permit, the merchant did not comply with every obligation under sections 260.7 to 260.13;

(e) where the president is of the opinion that the rights of consumers may be jeopardized if such action is not taken.

“260.17 Before appointing a provisional administrator, the president must give the merchant an opportunity to be heard.

However, in an urgent situation, the president may first appoint the provisional administrator, provided that he gives the merchant an opportunity to be heard within 15 days.

“260.18 The deposition of each person heard at the hearing provided for in section 260.17 must be stenographed, stenoyped or recorded by any other means authorized by the Government.

“260.19 The decision to appoint a provisional administrator must state the reasons therefor and the president shall notify the merchant of the decision in writing.

“260.20 The provisional administrator shall have the necessary powers to carry out the mandate entrusted to him by the president.

Subject to the restrictions included in his mandate, he may, of his own initiative, in particular,

(a) take possession of the funds held in trust or otherwise by or for the merchant;

(b) commit the said funds to carry out the mandate entrusted to him by the president and enter into such contracts as are necessary for that purpose;

(c) establish the number and identity of the holders of contracts of additional warranty;

(d) assign, transfer or otherwise dispose of the contracts of additional warranty;

(e) fix the residual value of the contracts of additional warranty as it stands on the date he determines and, where applicable, establish a method of distribution of the funds;

(f) transact upon any claim by a consumer against the merchant for the performance of a contract of additional warranty;

(g) sue for the purposes of the carrying out of his mandate.

In no case may the provisional administrator be sued by reason of acts performed in good faith in the performance of his duties.

“260.21 Where a provisional administrator is appointed, every person in possession of documents, records, books, computer data, computer programs or other effects relating to the merchant's business must hand them over on request to the provisional administrator and give him access to such premises, equipment or computers as he may require.

“260.22 After receiving a notice to that effect from the provisional administrator appointed for a merchant, no depositary of funds for the merchant may make any withdrawal or payment from the funds, except with the written authorization of the provisional administrator. The funds must, on request, be put in the possession of the provisional administrator according to his directives.

“260.23 The costs of the provisional administration and the fees of the provisional administrator shall be charged to the merchant and become payable upon being approved by the president. If the merchant fails to pay the account within 30 days of its presentation, the costs and fees shall be payable by preference to any other debt, out of the security required of the merchant where such is the case, and in case of a lack or insufficiency of funds, they shall be payable out of the reserve account funds and the sums so applied shall affect proportionally the claim of each consumer. In such a case, each consumer is subrogated to the rights of the provisional administrator against the merchant for an amount equal to the amount of his claim applied to the payment.

“260.24 The costs incurred for the administration of the provisions of this title shall be charged to the merchants holding a permit.

The Government shall determine, each year, the quantum of the costs, which shall be claimed and collected from the merchants, in accordance with the criteria of apportionment and the terms and conditions prescribed by regulation.

3. Section 294 of the said Act is amended by replacing the words “the vice-president” in the second line of the first paragraph by the words “not more than two vice-presidents”.

4. Sections 295, 296, 297, 298 and 300 of the said Act are amended by replacing the word “vice-president” by the word “vice-presidents”.

5. Section 302 of the said Act is replaced by the following section:

“302. If the president is absent or unable to act, he is replaced by the vice-president designated by the Minister.”

6. The said Act is amended by inserting, after section 306.1, the following section:

“306.2 The president may at any time require that a merchant submit a report on his activities or on any matter relating to his reserve account or trust accounts, at such intervals and in the manner determined by the president.”

7. Section 320 of the said Act is amended by replacing the words “the vice-president” in the first line by the words “a vice-president”.

8. The last paragraph of section 321, section 323.1 and sections 338.1 to 338.9 of the said Act are repealed.

9. Section 329 of the said Act is amended by replacing the word and figure “section 323.1” in paragraph *d* by the words and figures “sections 260.7 to 260.13”.

10. Section 350 of the said Act is amended by replacing the words “maintenance and utilization of the reserves they must keep” in paragraph *u* by the words “conservation and application of the reserves they are required to maintain and of any additional reserves it may see fit to require”.

11. Section 350 of the said Act is amended by replacing the figure “338.9” in paragraph *v* by the figure “260.24.”

12. Section 350 of the said Act is amended by adding, after paragraph *v*, the following paragraph:

“(w) prescribe the classes of investment that may be chosen by a merchant under section 260.11.”

13. The said Act is amended by adding, after Schedule 10, the following schedule:

16. The provisions of this Act come into force on the date fixed by the Government.