

NATIONAL ASSEMBLY

SECOND SESSION

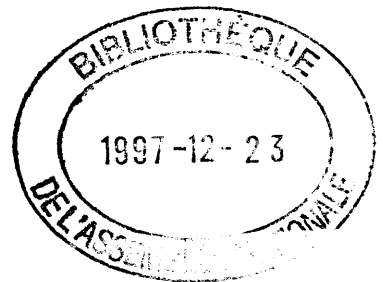
THIRTY-FIFTH LEGISLATURE

Bill 401

**An Act to amend the Consumer
Protection Act with respect
to itinerant merchants**

Introduction

**Introduced by
Mr André Boisclair
Minister of Relations with the Citizens
and Immigration**



**Québec Official Publisher
1997**

EXPLANATORY NOTES

This bill is designed to harmonize the provisions of the Consumer Protection Act concerning itinerant merchants with the proposals concerning direct sales made by the Committee on Consumer-Related Measures and Standards, established under the Agreement on Internal Trade.

The bill redefines the content of the contracts that must be drawn up in writing, in particular as regards the description of goods covered by those contracts, the duration of the services or the terms and conditions of payment, delivery or performance.

The bill also introduces a provision that will enable consumers to cancel a contract within one year if the merchant does not hold a permit or has failed to provide the necessary security, if the contract violates the rules prescribed regarding the making or content of a contract or if the merchant fails to deliver the goods or services within the prescribed time.

Bill 401

AN ACT TO AMEND THE CONSUMER PROTECTION ACT WITH RESPECT TO ITINERANT MERCHANTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 56 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is replaced by the following section:

“56. Sections 58 to 65 apply to contracts of sale or lease of goods or services and to mixed contracts of sale and lease entered into by an itinerant merchant, except contracts excluded by regulation.”

2. Section 58 of the said Act is amended

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

“(b) the name, address and telephone number and, where applicable, the electronic address and fax number of each establishment of the itinerant merchant in Québec and each representative of the itinerant merchant who signed the contract;

“(b.1) the name, address and telephone number and, where applicable, the electronic address and fax number of the consumer;”;

(2) by replacing the words “of the contract” in subparagraph *c* of the first paragraph by the words “on which the contract is made”;

(3) by replacing subparagraph *d* of the first paragraph by the following subparagraph:

“(d) the description and quantity of the goods that are the object of the contract, the year of the model or any other distinguishing mark, and the duration of each service provided for by the contract;”;

(4) by replacing the words “chargeable duties” in subparagraph *f* of the first paragraph by the words “the amounts of all duties chargeable”;

(5) by inserting, after subparagraph *g* of the first paragraph, the following subparagraphs:

“(g.1) where applicable, the terms and conditions of payment ; in the case of a contract of credit, the terms and conditions of payment are set out as provided in Schedule 3, 5 or 7 ;

“(g.2) the frequency and dates of all deliveries of goods and the frequency and dates of all performances of services, as well as the date by which delivery or performance must be completed ;

“(g.3) where applicable, a description of all goods received as a trade-in or on account, their quantity, and the price agreed for each item ;” ;

(6) by replacing the word “form” in the second paragraph by the words “Statement of consumer cancellation rights and a cancellation form”.

3. Section 59 of the said Act is amended by adding the following paragraph :

“The time limit is, however, extended to one year from the date on which the contract is made in any of the following cases :

(a) the merchant does not hold the permit required by this Act at the time the contract is made ;

(b) the security furnished by the itinerant merchant is invalid or is not in conformity with the security required under this Act at the time the contract is made ;

(c) the contract is inconsistent with any of the rules set out in sections 25 to 28 for the making of contracts, or one of the particulars required under section 58 does not appear in the contract ;

(d) a Statement of consumer cancellation rights and a cancellation form in conformity with the model in Schedule 1 have not been attached to the contract at the time the contract was made ;

(e) the merchant fails to deliver the goods or perform the service within 30 days from the delivery or performance date specified in the contract or a later date agreed to by the consumer, unless the consumer accepts delivery or performance after that time has expired.”

4. Section 61 of the said Act is amended, in the French text, by replacing the words “la formule prévue” in paragraph *b* by the words “le formulaire prévu”.

5. Section 62 of the said Act is amended

(1) by replacing, in the French text, the words “de la formule” by the words “du formulaire” ;

(2) by adding the following paragraph :

“A contract of credit made by the consumer, even with another merchant, under or in relation to a contract made with an itinerant merchant, forms part of the whole contract and is also cancelled of right if it was made as a result of an offer or representation made by, or any other action of, the itinerant merchant.”

6. Section 63 of the said Act is amended

(1) by replacing the word “ten” in the first paragraph by the figure “15”;

(2) by inserting, after the first paragraph, the following paragraph :

“If the itinerant merchant is unable to restitute to the consumer the goods received in payment, as a trade-in or on account, the merchant must remit to the consumer the value of the goods or the price of the goods as indicated in the contract, whichever is greater.”

7. Section 64 of the said Act is amended by inserting the words “, as a trade-in or on account” after the word “payment” in paragraph b.

8. Schedule 1 to the said Act is replaced by the following schedule :

“SCHEDULE 1

STATEMENT OF CONSUMER CANCELLATION RIGHTS
(Consumer Protection Act, section 58)

You may cancel this contract for any reason within 10 days after you receive a copy of the contract along with the other required documents.

If you do not receive the goods or services within 30 days of the date stated in the contract, you may cancel the contract within one year. You lose that right if you accept delivery after the 30 days. There are other grounds for extended cancellation, for example if the itinerant merchant does not hold a permit or has not provided the required security at the time the contract is made, if the goods are never delivered or the services never performed, or if the contract is incorrectly made or worded. For more information, you may seek legal advice or contact the Office de la protection du consommateur.

If you cancel the contract, the itinerant merchant must refund all amounts you have paid, and return to you the goods received in payment, as a trade-in or on account ; if the merchant is unable to return the goods, you are entitled to receive an amount of money corresponding to the value indicated in the contract or the cash value of the goods, within 15 days of cancellation. You also have 15 days to return to the merchant any goods you received from the merchant.

To cancel, you must return the items received from the merchant to the merchant or the merchant's representative, send the merchant the cancellation form printed below, or send the merchant written notice of cancellation. The form or written notice must be sent to the merchant or the merchant's representative at the address indicated on the form, or at any other address indicated in the contract. You must give notice of cancellation by personal delivery or by any other method that will allow you to prove that you gave notice, including registered mail, E-mail, fax and courier.

CANCELLATION FORM (detachable from schedule)

<p style="text-align: center;">TO BE COMPLETED BY THE MERCHANT</p> <p>TO: (name of itinerant merchant or representative)</p> <p>..... (address of itinerant merchant or representative)</p> <p>Telephone number of itinerant merchant or representative: (.....)</p> <p>Fax number of itinerant merchant or representative: (.....)</p> <p>Electronic address of itinerant merchant or representative:</p>
<p style="text-align: center;">TO BE COMPLETED BY THE CONSUMER</p> <p>DATE: (date on which form is sent)</p> <p>By virtue of section 59 of the Consumer Protection Act, I hereby cancel the contract</p> <p>No.: (contract number, if any)</p> <p>made on (date of contract)</p> <p>at (address where contract was signed by consumer)</p> <p>..... (name of consumer)</p> <p>Telephone number of consumer: (.....)</p> <p>Fax number of consumer: (.....)</p> <p>Electronic address of consumer:</p> <p>..... (address of consumer)</p> <p>..... (signature of consumer)</p>

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9. This Act comes into force on 1 August 1998.