

NATIONAL ASSEMBLY
Thirty-fourth Legislature, first session

1991, chapter 24
**AN ACT TO AMEND THE CONSUMER
PROTECTION ACT**

Bill 133

Introduced by Mr Gil Rémillard, Minister of Justice

Introduced 24 April 1991

Passage in principle 16 May 1991

Passage 19 June 1991

Assented to 20 June 1991

Coming into force: on the date or dates fixed by the Government

Act amended:

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



CHAPTER 24

An Act to amend the Consumer Protection Act

[Assented to 20 June 1991]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. P-40.1,
s. 7, am. **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 150.21” after the figure “116” in the second line.

c. P-40.1,
s. 23, am. **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.

c. P-40.1,
ss. 150.1-
150.32,
added **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

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

Long-term contract **“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.

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 continuation or another agreement to the same effect.

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

“§ 1.—*General provisions*”

Contracts
evidenced
in writing

“**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.

Rules

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

Conven-
tional
option

“**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.

Rent

“**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.

Degree of
use

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.

Instalments

“**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 the instalments are payable must be fixed in such a manner as to be situated at the beginning of approximately equal divisions of the leasing period, not exceeding thirty-five days.

Advance
payment

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

Applicabi-
lity

“**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.

Agreements
prohibited

“**150.9** No long-term contract of 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.

Risks

“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.

Conventional warranty

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

Conventional warranty

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 long-term contract of 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.

Discharge and return of objects

“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 long-term contracts of lease.

Default

“150.13 Where a consumer is in default 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 for 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 contemplated in sections 150.14, 150.15 and, where applicable, 150.32.

Notice **“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.

Time limit 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.

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

Damages 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 rescission of the contract.

Obligation The merchant is bound to minimize his damages.

Recourse **“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.

Recourse 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.

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

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

Contract of lease with guaranteed residual value **“150.18** A contract of lease with guaranteed residual value is a long-term contract of 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.

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

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

Residual value	"150.20 The residual value must be indicated in the contract and be expressed in terms of dollars and cents.
Obligation of guarantee	"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.
Particulars	"150.22 The contract must reproduce the particulars provided for in Schedule 7.3, in addition to those prescribed by regulation.
Cancellation	"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.
Net obligation	"150.24 The net obligation refers to the total value of the goods, namely the aggregate of the retail value of the goods and the preparation, delivery, installation and other charges, minus the payment on account.
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 beginning of the leasing period, including the value of a negotiable instrument payable on demand and the instalments paid in advance, if any.
Instalment obligation	The instalment obligation refers to the aggregate of the residual value and the periodic instalments other than those included in the payment on account.
Implied credit charges	"150.25 The amount by which the instalment obligation exceeds the net obligation constitutes the implied credit charges. The merchant must mention those charges in terms of dollars and cents and indicate that they apply to the entire leasing period.
Implied credit rate	"150.26 The implied credit rate is the expression of the implied credit charges expressed as an annual percentage. It must be computed and disclosed in the manner prescribed by regulation.
Implied credit rate	The contract must stipulate only one implied credit rate.
Applicable provisions	"150.27 Sections 83 and 91 apply to the computing of implied credit charges, replacing the expressions "credit charges" and "credit

rate”, wherever they appear, by the expressions “implied credit charges” and “implied credit rate”, respectively.

Applicable provisions

“**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 “implied credit charges”.

Acquisition of goods

“**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 implied credit charges not yet earned at the time of the acquisition.

Alienation

“**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 lower than such 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.

Acquisition of goods

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.

Third person

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.

Release from obligation of guarantee

“**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.

Right of repossession **“150.32** The merchant cannot exercise a right of repossession under sections 150.13 to 150.16 unless he obtains 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.

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

c. P-40.1,
Title I,
Chap. III,
Div. IV,
subdiv. 2,
heading,
replaced **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 and long-term contracts of lease of used automobiles and used motorcycles*”.

c. P-40.1,
s. 155, am. **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.

c. P-40.1,
s. 156, am. **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”.

c. P-40.1,
s. 157, am. **7.** Section 157 of the said Act is amended by inserting the words “or, in the case of a long-term contract of 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.

c. P-40.1,
s. 158, am. **8.** Section 158 of the said Act is amended by inserting the words “of sale” after the word “contract” in the first line.

c. P-40.1,
s. 159, am. **9.** Section 159 of the said Act is amended by inserting the words “or long-term lease” after the word “sale” in the first line.

c. P-40.1,
s. 160, am. **10.** Section 160 of the said Act is amended by inserting the words “or long-term lease” after the word “sale” in paragraphs *a*, *b* and *c*.

c. P-40.1,
s. 162, am. **11.** Section 162 of the said Act is amended by inserting the words “or for long-term lease” after the word “sale” in the second line.

c. P-40.1,
s. 164, am. **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 lease”;

(2) in the second paragraph, the words “or long-term lease”;

(3) in subparagraphs *a* and *b* of the third paragraph, the words “or the long-term lease”.

c. P-40.1,
s. 166, am. **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.

c. P-40.1,
s. 230, am. **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”.

c. P-40.1,
s. 246,
replaced **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:

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

c. P-40.1,
s. 247.1,
added **16.** The said Act is amended by inserting, after section 247, the following section:

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

c. P-40.1,
s. 252, am. **17.** Section 252 of the said Act is amended by inserting the figure “, 247.1” after the figure “247” in the first line.

c. P-40.1,
s. 350, am. **18.** Section 350 of the said Act is amended

(1) by inserting the words “or implied credit rate and implied 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 duties to be paid by a person requesting an exemption under section 308 or 309.”

c. P-40.1,
Sched. 7.1-
7.4, added

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 LEASE

(CONSUMER PROTECTION ACT, S. 150.13)

Date:
(date on which notice is 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 when the contract was made)

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

\$ on
(amount of payment) (date on which the payment is due)

\$ on
(amount of payment) (date on which the payment is 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 \$, shall 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 rescind 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 rescission 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 the merchant)

.....
(signature of the merchant)

- (a) remedy the default by paying the amount due at this date; or
- (b) return the goods to the merchant.

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

within 30 days after receipt of this notice, the merchant will exercise his right of repossession by having the goods seized, 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 at least one-half of his maximum obligation, the merchant will not be entitled to exercise his right of repossession unless he obtains 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 rescinded and the merchant is not bound to return the amount of the payments already received, and he cannot claim any damages other than those actually resulting, directly and immediately, from the rescission 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 the merchant)

.....
(signature of the merchant)

“SCHEDULE 7.3

CONTRACT OF LEASE WITH RESIDUAL VALUE GUARANTEED BY THE CONSUMER

(CONSUMER PROTECTION ACT, S. 150.22)

Date:
 (date on which the contract is made)

Place:
 (place where the contract is made if made in the presence of the merchant and of 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, model 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) × = \$.....
(instalment) (number)

(ii) last instalment
(if less than i)

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

(b) (i) + = \$.....
(instalment) (taxes) (periodic payment)

(ii) × = \$.....
(periodic payment) (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 the leasing period)

Total \$ _____

6. Implied credit charges and rate

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

(b) Leasing period months

(c) Implied 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)

“SCHEDULE 7.4

NOTICE OF RIGHT OF PREEMPTION

(CONSUMER PROTECTION ACT, S. 150.30)

Date:
 (date on which notice is 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,

1 - that the merchant has received from
 (name and address)

(hereinafter called the prospective acquirer) an offer to purchase the goods which are the object of the contract of lease with guaranteed residual value (No) made between the
 (the number of the contract, if indicated)

consumer and the merchant at
 (place where the contract was made)

on
 (date when the contract was made)

and that this offer to acquire is in the amount of \$,
 (amount)

and that this amount is less than the residual value indicated in the contract, namely \$. ;
 (amount)

2 - that the consumer may, within 5 days after receipt of this notice,

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

(b) present a 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 after receipt of 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 the merchant)

.....”
(signature of the merchant)

Coming into
 force

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