New Amendments to Consumer Credit Provisions of Québec's Consumer Protection Act

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On May 2, 2017, the Minister of Justice, Stéphanie Vallée, introduced Bill 134, known as an *Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs*[1] (hereinafter the "Bill"). The main objective of the Bill is to modernize the *Consumer Protection Act* (Québec) (hereinafter the "CPA") and introduces new rules and obligations for merchants in the field of consumer credit. The major changes to the CPA for credit agreements are as follows.

Credit rate

The Bill amends the calculation of credit rates for credit contracts by adding components that must not be taken into account for the purpose of calculating the credit rate, such as the premium for insurance, the registration fees in a public register of rights, the membership fee for an open credit contract, expenses and professional fees, as well as the fees paid for access to public registers of rights in a credit contract secured by an immovable hypothec.[2]

Assessment of consumer's capacity to repay credit

The Bill adds an obligation to assess the consumer's capacity to pay. In fact, before entering into a credit contract or granting a credit limit increase in an open credit contract, a merchant will have an obligation to assess the consumer's capacity to repay the credit requested.[3] A merchant, who fails to carry out this assessment, loses the right to credit charges. In this event, the merchant must refund any credit charges already paid by the consumer.[4]

The criteria that must be taken into account will be defined and clarified by a regulation from the government. The Bill also provides that some federally regulated financial institutions are deemed to comply with the obligation to assess the consumer's capacity to repay credit.

High-cost credit contract

The Bill introduces the new concept of a “high cost credit contract”, which is not defined in the Bill but whose characteristics will be determined by regulation at a later date.[5] This Bill creates binding conditions for the merchant. Before concluding such a contract with a consumer, the merchant must give the consumer a written copy of the documents containing the assessment carried out showing the consumer's capacity to repay and the information on the consumer's debt ratio, which is the expression of the consumer's liability in the form of a percentage calculated in the manner prescribed by regulation.[6]If the merchant fails to comply with this requirement, the merchant is deemed not to have made the previously required assessment.[7] Furthermore, a consumer, who enters into such a contract while his or her debt ratio exceeds the ratio identified by regulation, is presumed to have incurred an excessive, harsh or unconscionable obligation, which could lead to a demand in nullity of the contract or a reduction of the obligations thereunder (Section 8 CPA).[8] The Bill adds that “a high-cost credit contract” can be cancelled on the same conditions as those found above, within 10 days following that on which each of the parties is in possession of a duplicate of the contract.[9]

Changes relating to open credit contracts, contracts for the loan of money and installment sale contracts

The Bill clarifies the concept of "open credit contract" by adding credit card contracts, contracts for the use of lines of credit, credit accounts, budget accounts, revolving credit accounts, credit openings and any other contract of the same nature.[10]The Bill adds various formalities to be contained in open credit contracts, such as: the agreed upon credit limit, the credit rate, the nature of the credit charges and how they are determined, the grace period given to the consumer to pay outstanding amounts without having to pay credit charges, the terms of the change in the credit rate, the minimum periodic payment and the period for which a statement of account is provided. The contract is also subject to other formalities foreseen by regulations. The credit application form is subject to formalities of the same nature.[11]

The contract of the loan of money will now contain the information required by regulation, as well as information such as net capital, the amount and date of any advance made or to be made, credit charges, the term of the contract, the credit rate (including whether it is variable) and the amount and frequency of payments. In addition, a sale of goods with the right of redemption by a consumer to a merchant is deemed to be a loan of money if the amount that the consumer must pay to redeem the goods is greater than the amount paid by the merchant to acquire the goods.[12] A sale of goods by a consumer to a merchant that acquires the goods with the purpose to rent the goods to the consumer for a greater amount than the one paid to acquire the goods is deemed to be a loan of money.[13]

An installment sale contract must contain or state certain prescribed information required by the Bill, such as the description of the goods that are subject to the matter of the contract, the cash sale price of the goods, the value of any goods given in exchange, the credit charges claimed from the consumer, the term of the contract, the amount and due date of each payment, and the conditions of the contract if the credit rate is a variable rate.[14]

Requirements for the statement of account

At the end of each billing period, the merchant shall immediately provide the consumer with a statement indicating in particular: the period covered by the statement of account, the outstanding balance at the beginning of the period, a sufficient description including the date and the amount of each transaction, the outstanding balance at the end of the period, the minimal payment required for the period and the applicable credit limit for the period.[15] On the other hand, the merchant is not required to send a statement of account to the consumer at the end of any period if there have been no advances or payments during the period and the outstanding balance at the end of the period is zero.[16]

This statement of account may be transmitted to the consumer's technological address if the latter expressly authorizes it.[17] The consumer has the right to withdraw this authorization at any time by notifying the merchant. In addition, the statement of account will be deemed to be sent to the consumer's technological address when all the following conditions are present: (1) the consumer has received at that address a notice to the effect that the statement of account is available on the merchant's website; (2) the statement of account is actually available on the website for the period determined by the regulation; and (3) the consumer is able to retain a copy of the statement of account.[18]

The credit card issuer must post on its website an up-to-date version of any credit card contract offered for the use of its consumers.[19] The consumer may require the merchant to send him or her, without charge, a copy of the vouchers for each transaction in the account during the period covered by the statement. The merchant must send the copy of the vouchers requested within 60 days of the date where the consumer sends his or her request.[20]

Minimum payment

The Bill provides that the minimum payment required for credit card contracts for a period may not be less than 5% of the outstanding balance at the end of the period.[21]

Grace period

The Bill requires merchants to give the consumer a grace period of at least 21 days after the last day of the billing period covered by the statement of account to pay outstanding amounts without having to pay credit charges.[22] This provision does not apply in the case of an advance of money for which the merchant may charge impose credit charges from the date of the advance of money until the date of payment.

Credit limit requirements

The Bill imposes certain requirements on merchants regarding the credit limit. For instance, the merchant may not increase the credit limit granted except on the express request of the consumer.[23] Moreover, the merchant cannot increase the credit limit beyond the new limit requested by the consumer.

It is important to emphasize that exceeding the credit limit granted by the consumer as a result of a transaction does not constitute an express request.[24] Also, an amount withheld on a credit card is not a transaction resulting in the credit limit being exceeded.[25] Therefore, the merchant cannot allow the consumer to make a transaction that exceeds the credit limit granted unless all the following conditions are met: (1) the merchant sends the consumer a notice stating that the consumer made a transaction resulting in the credit limit granted being exceeded; (2) the merchant imposes no charges on the consumer for exceeding the credit limit; and (3) the merchant includes the portion of the amount of the transaction that exceeds the credit limit in the minimum payment required for the subsequent billing period.

Following the same principle, any unilateral increase of the credit limit by the merchant cannot be invoked against the consumer. The consumer is not required to pay the amounts charged to the account that exceed the credit limit granted before that increase.[26] It is for this reason that the stipulation in an open credit contract whereby the merchant may unilaterally increase the credit limit is prohibited by this Bill.[27]

Prohibitions on misleading advertisements

Finally, the Bill adds provisions to protect consumers from misleading advertisements. In the future, a merchant will specifically be prohibited from making false or misleading representations to consumers in an advertisement that credit may improve their financial situation or solve their debt problems.28 In addition, a merchant may not by any means, falsely or misleadingly represent to consumers that credit reports prepared about them will be improved.[29]

Entry into force

The scope and implementation of these new provisions of the CPA will be subsequently completed by regulations.

Finally, the entry into force of the Bill is not yet determined. The likelihood that the Bill will be passed before the end of the parliamentary session, around June 16, 2017, is relatively thin. It is more likely that the Bill will be passed in the fall of 2017, at the earliest. Furthermore, the date of entry into force of the new provisions should be later than the adoption of the Bill.

[1] *Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs,* Bill n° 134 (adopted), 1st sess., 41st legis. (Qc)

[2] Section 12 of the Bill (Section 72.1 of the CPA).

[3] Section 19 of the Bill (Section 103.2 of the CPA).

[4] Section 19 of the Bill (Section 103.3 of the CPA).

[5] Section 19 of the Bill (Section 103.4 of the CPA).

[6] Section 19 of the Bill (Section 103.4 of the CPA).

[7] Section 19 of the Bill (Section 103.4 of the CPA).

[8] Section 19 of the Bill (Section 103.5 of the CPA).

[9] Section 13 of the Bill (Section 73 of the CPA).

[10] Section 25 of the Bill (Section 118 of the CPA).

[11] Section 27 of the Bill (Section 119.1 of the CPA).

[12] Section 23 of the Bill (Section 115.1 of the CPA).

[13] Section 23 of the Bill (Section 115.1 of the CPA).

[14] Section 35 of the Bill (Section 134 of the CPA).

[15] Section 31 of the Bill (Section 126 of the CPA).

[16] Section 31 of the Bill (Section 126.2 of the CPA).

[17] Section 32 of the Bill (Section 127 of the CPA).

[18] Section 32 of the Bill (Section 127 of the CPA).

[19] Section 30 of the Bill (Section 125.2 of the CPA).

[20] Section 31 of the Bill (Section 126.3 of the CPA).

[21] Section 31 of the Bill (Section 126.1 of the CPA).

[22] Section 33 of the Bill (Section 127.1 of the CPA).

[23] Section 34 of the Bill (Section 128 of the CPA).

[24] Section 34 of the Bill (Section 128 of the CPA).

[25] Section 34 of the Bill (Section 128.1 of the CPA).

[26] Section 34 of the Bill (Section 128.2 of the CPA).

[27] Section 34 of the Bill (Section 128.3 of the CPA).

[28] Section 54 of the Bill (Section 244.1 of the CPA).

[29] Section 54 of the Bill (Section 244.2 of the CPA).

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