



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 169

(2001, chapter 34)

**An Act to amend the Professional Code
and other legislative provisions as
regards the carrying on of professional
activities within a partnership or
company**

Introduced 1 December 2000

Passage in principle 12 December 2000

Passage 21 June 2001

Assented to 21 June 2001

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EXPLANATORY NOTES

This bill allows a professional order to authorize its members, by way of a regulation, to carry on their professional activities within a limited liability partnership or a joint-stock company, and determine, as appropriate, the applicable terms and conditions and restrictions. Members of an order who have been so authorized will be required to secure and maintain professional liability coverage on behalf of the partnership or company in accordance with the regulation made by the Bureau. Such professionals will also be required to declare to the order that they are carrying on their professional activities within such a partnership or company.

Specific rules are provided with regard to the carrying on of professional activities within a limited liability partnership, including provisions concerning the limited liability of a member of an order, the name of the partnership, the continuance of a general partnership as a limited liability partnership, and the effect of such a continuance.

Specific rules are also provided with regard to the liability of a member of an order who is to carry on his or her professional activities within a joint-stock company and the relationship between such a company, the professionals who are to practise within the company, and the directors, officers and representatives of the company.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting insurance (R.S.Q., chapter A-32);
- Act respecting the Barreau du Québec (R.S.Q., chapter B-1);
- Professional Code (R.S.Q., chapter C-26);
- Engineers Act (R.S.Q., chapter I-9);
- Pharmacy Act (R.S.Q., chapter P-10);
- Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45);
- Act to amend the Architects Act (2000, chapter 43).

Bill 169

AN ACT TO AMEND THE PROFESSIONAL CODE AND OTHER LEGISLATIVE PROVISIONS AS REGARDS THE CARRYING ON OF PROFESSIONAL ACTIVITIES WITHIN A PARTNERSHIP OR COMPANY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 12 of the Professional Code (R.S.Q., chapter C-26) is amended by adding the following subparagraph to the third paragraph:

“(11) report to the Government, on or before the expiry of one year from 21 June 2001 and every five years thereafter, on the carrying out of the provisions of this Code pertaining to the security against liability that must be furnished by the members of an order.”

2. Section 46 of the said Code is amended by inserting “and, where applicable, the liability of the partnership or the company, in accordance with paragraph *d* or *g* of section 93,” after “liability” in the second line of paragraph 3.

3. Section 86 of the said Code, amended by section 17 of chapter 13 of the statutes of 2000, is again amended

(1) by inserting “and, where applicable, the liability of the partnership or the company, in accordance with paragraph *d* or *g* of section 93,” after “liability” in the second line of subparagraph ii of subparagraph *l* of the first paragraph;

(2) by replacing “regulation made under paragraph *d*” in the first line of the first paragraph of subparagraph *p* of the first paragraph by “regulations made under paragraphs *d* and *g*”;

(3) by inserting “or, pursuant to the regulation made under paragraph *g* of section 93, solely among the members carrying on their professional activities within a partnership or a company in accordance with section 187.11” after “them” in the fourth line of the first paragraph of subparagraph *p* of the first paragraph.

4. Section 86.1 of the said Code is amended

(1) by replacing “to insure its members in respect of professional liability pursuant to a regulation adopted under paragraph *d* of section 93” in the

second, third and fourth lines of the second paragraph by “in accordance with section 174.5 of the Act respecting insurance”;

(2) by adding “or the liability of a partnership or company which may arise from fault or negligence on the part of members authorized to carry on their professional activities within the partnership or company in accordance with section 187.11” at the end of the fourth paragraph.

5. Section 93 of the said Code is amended by adding the following paragraphs after paragraph *f*:

“(g) pursuant to paragraph 2 of section 187.11, impose on the members referred to therein, on the basis of the risk they represent, the obligation to furnish and maintain security, on behalf of the partnership or company, by means of an insurance or suretyship contract or by any other means determined by the regulation, against liabilities of the partnership or company arising from fault or negligence in the practice of their profession, or the obligation to join a group plan contract entered into by the order or to contribute to a professional liability insurance fund established for such purposes in accordance with section 86.1 ; the regulation shall also determine the minimum amount of security and prescribe specific rules according to such factors as the nature of the professional activities carried on and the number of members of the order in the partnership or company ;

“(h) fix the conditions and procedure and, as appropriate, any fees applicable to a declaration pursuant to paragraph 3 of section 187.11.”

6. Section 94 of the said Code, amended by section 20 of chapter 13 of the statutes of 2000, is again amended by adding the following paragraph after paragraph *o* :

“(p) authorize the members of the order to carry on their professional activities within a limited liability partnership or a joint-stock company constituted for that purpose and, as appropriate, determine the applicable terms and conditions and restrictions. If the Bureau authorizes the members to carry on their professional activities within a joint-stock company, the regulation may, in particular,

(1) determine standards with regard to the name of the company ;

(2) fix, according to whether or not the shares of the company are listed on a stock exchange, the proportion of voting shares that must be held by members of the order ;

(3) fix, according to whether or not the shares of the company are listed on a stock exchange, the proportion or number of directors of the company who must be members of the order ;

(4) determine, according to whether or not the shares of the company are listed on a stock exchange, conditions governing the transfer of shares, or shares of certain classes, and the exercise of the voting rights of a shareholder whose right to engage in professional activities has been restricted or suspended or who is no longer a member of the order, and, as appropriate, the applicable procedures and restrictions; and

(5) define, if applicable, the professions, trades, industries, businesses, offices or duties incompatible with the status of employee, shareholder or director of the company.”

7. Section 95.2 of the said Code, amended by section 21 of chapter 13 of the statutes of 2000, is again amended

(1) by replacing “paragraph *d*” in the first line of the first paragraph by “paragraph *d, g* or *h*”;

(2) by adding the following sentence at the end of the first paragraph: “The same applies to any regulation under paragraph *p* of section 94 if it is not the first regulation adopted by the Bureau under that paragraph.”

8. Section 95.3 of the said Code, amended by section 22 of chapter 13 of the statutes of 2000, is again amended by replacing “paragraph *d* of section 93 or paragraph *j* or *o*” in the second line by “paragraph *d* or *g* of section 93 or paragraph *j, o* or *p*”.

9. The said Code is amended by inserting the following chapter after section 187.10:

“CHAPTER VI.3

“CARRYING ON OF PROFESSIONAL ACTIVITIES WITHIN A LIMITED LIABILITY PARTNERSHIP OR A JOINT-STOCK COMPANY

“187.11. The members of an order may carry on their professional activities within a limited liability partnership or a joint-stock company constituted for that purpose, if

(1) the Bureau of the order makes a regulation under paragraph *p* of section 94 authorizing the members of the order to carry on their professional activities within such a partnership or company and, as appropriate, determining the applicable terms and conditions and restrictions;

(2) the members of the order carrying on their professional activities within such a partnership or company furnish and maintain security against professional liability, on behalf of the partnership or company, in accordance with the requirements prescribed in a regulation made by the Bureau of the order under paragraph *g* of section 93; and

(3) the members of the order carrying on their professional activities within such a partnership or company declare that fact to the order in accordance with the conditions and procedure fixed in a regulation made by the Bureau under paragraph *h* of section 93.

“187.12. Subject to the provisions of this chapter, a limited liability partnership is governed by the rules concerning general partnerships contained in the Civil Code of Québec.

“187.13. Members of an order carrying on their professional activities within a limited liability partnership must include the expression “limited liability partnership” or the abbreviation “L.L.P.” in the name of the partnership.

“187.14. A member of an order carrying on his or her professional activities within a limited liability partnership is not personally liable for obligations of the partnership or of any other professional arising from fault or negligence on the part of the other professional or the other professional’s servant or mandatary in the course of their professional activities within the partnership.

“187.15. Two or more members of an order who decide to form a limited liability partnership for the carrying on of their professional activities or who continue a general partnership as a limited liability partnership must so stipulate expressly in a written agreement.

Where a partnership ceases to be a limited liability partnership, the change must also be expressly stipulated in a written agreement.

“187.16. Upon continuance of a general partnership as a limited liability partnership, all rights and obligations of the general partnership which were in existence immediately before its continuance are transferred to the limited liability partnership, and all persons who were partners immediately before the continuance remain liable for all obligations of the general partnership, in accordance with article 2221 of the Civil Code of Québec.

“187.17. A member of an order carrying on his or her professional activities within a joint-stock company is not personally liable for obligations of the company or of any other professional arising from fault or negligence on the part of the other professional or the other professional’s servant or mandatary in the course of their professional activities within the company.

“187.18. No director, officer or representative of a joint-stock company may help or, by encouragement, advice or consent, or by an authorization or order, induce a member of an order carrying on his or her professional activities within the company to contravene a provision of this Code, the Act constituting the order or the regulations made under this Code or that Act.

“187.19. A member of an order may not invoke decisions or acts of a joint-stock company within which the member carries on his or her professional

activities to justify a contravention of a provision of this Code, the Act constituting the order or the regulations made under this Code or that Act.

“187.20. Members of an order may carry on their professional activities in Québec within a limited liability partnership or a joint-stock company constituted under any Act other than an Act of Québec if the conditions set out in section 187.11 are met in respect of the members and if, in the case of a limited liability partnership, the members comply with the provisions of section 187.13 in carrying on their professional activities in Québec.

The personal liability of members within such a partnership or company, including the liability relating to the obligations of the partnership or company or of another professional within the partnership or company, shall continue to be governed by the law of Québec for all matters concerning the professional activities they carry on in Québec, as if the partnership or company had been constituted under this Code.”

10. The said Code is amended by inserting the following section after section 189:

“189.1. A professional order may, on a resolution of its Bureau or administrative committee and in accordance with article 10 of the Code of Penal Procedure, institute penal proceedings for an offence under section 187.18.”

11. Section 174.1 of the Act respecting insurance (R.S.Q., chapter A-32) is amended by adding the following paragraph:

“A professional order may also, subject to the same conditions and for the purposes specified in paragraph g of section 93 of the Professional Code, provide liability insurance to a partnership or company within which members of the order are authorized to carry on their professional activities in accordance with section 187.11 of that Code.”

12. Section 174.2 of the said Act is amended

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

“(1) that a by-law was passed to impose on its members, certain classes of them and, where applicable, those who carry on their professional activities within a partnership or company in accordance with section 187.11 of the Professional Code the obligation to contribute to a professional liability insurance fund;”;

(2) by adding the following paragraph:

“However, if the professional order is already authorized to insure its members in respect of professional liability, the order shall, before it may provide liability insurance to a partnership or company within which members

of the order are authorized to carry on their professional activities in accordance with section 187.11 of the Professional Code, transmit to the Inspector General an application signed by its president and stating

(1) that a by-law was passed to impose on the members of the order who carry on their professional activities within such a partnership or company the obligation to contribute to a professional liability insurance fund for the purposes specified in paragraph *g* of section 93 of that Code;

(2) that the sums which will be payable by its members will be sufficient to provide for the financing of its insurance transactions and to maintain a surplus of assets over liabilities equal to or greater than the minimum amount required pursuant to section 275.”

13. Section 174.3 of the said Act is amended

(1) by replacing the line before paragraph 1 by the following :

“**174.3.** The application referred to in the first paragraph of section 174.2 must be accompanied with the following documents :” ;

(2) by adding the following paragraph :

“The application referred to in the second paragraph of section 174.2 must be accompanied with the documents specified in subparagraph 1 of the first paragraph.”

14. Section 174.5 of the said Act is replaced by the following section :

“**174.5.** The Minister may, if he considers it expedient and after obtaining the opinion of the Inspector General, grant to the professional order the authorization to insure its members in respect of professional liability and, for the purposes specified in paragraph *g* of section 93 of the Professional Code, to provide liability insurance to a partnership or company within which members of the order are authorized to carry on their professional activities in accordance with section 187.11 of that Code.”

15. Section 174.13 of the said Act is amended by striking out “professional” in the third line of the first paragraph.

16. Section 174.15 of the said Act is amended by striking out “professional” in the second line of the first paragraph.

17. Section 125 of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) is amended by adding the following sentence at the end of subsection 1 : “However, a joint-stock company within which an advocate is authorized to carry on his or her professional activities may, in accordance with the terms and conditions established by a regulation made under paragraph *p* of section 94 of the Professional Code, collect such costs on behalf of the advocate.”

18. Section 11 of the Engineers Act (R.S.Q., chapter I-9) is repealed.

19. The said Act is amended by inserting the following section after section 28:

“**28.1.** An engineer may carry on his or her professional activities within a joint-stock company constituted for that purpose before 21 June 2001 until the coming into force of the first regulation made by the Order under paragraph *p* of section 94 of the Professional Code.

From the coming into force of the regulation, an engineer may carry on his or her professional activities within such a company insofar as the engineer complies with the provisions of the regulation. The regulation may nevertheless provide that an obligation, term, condition or restriction in respect of the carrying on of professional activities within a joint-stock company shall not apply to the engineer until the expiry of a certain period of time, which may not exceed one year from the coming into force of the regulation.”

20. Section 27 of the Pharmacy Act (R.S.Q., chapter P-10) is amended by replacing “or partnership of pharmacists.” in the first and second lines by “, a partnership of pharmacists or a joint-stock company all of the shares of which are held by one or more pharmacists and all of the directors of which are pharmacists.”

21. Section 11 of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45) is amended by replacing paragraph 3 by the following paragraphs:

“(3) an entry indicating that the liability of some or all of the partners is limited, if the partnership is a limited liability partnership or is not formed in Québec;

“(4) the date on which a general partnership becomes or ceases to be a limited liability partnership.”

22. Section 7 of the Act to amend the Architects Act (2000, chapter 43) is amended by replacing “The said Act” in the first line by “The Architects Act (R.S.Q., chapter A-21)”.

23. Section 22 has effect from 5 December 2000.

24. This Act comes into force on 21 June 2001.