



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 135
(2002, chapter 55)

**An Act to amend the Travel Agents Act
and the Consumer Protection Act**

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Passage in principle 19 November 2002
Passage 13 December 2002
Assented to 17 December 2002

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EXPLANATORY NOTES

This bill amends the Travel Agents Act to modernize the provisions applicable to that sector of activity.

The bill redefines the scope of the Act, updates the list of exceptions and provides a new regulatory power. The bill introduces a civil remedy that may be pursued against persons who act as travel agents without a licence. The bill provides that a person may hold a licence for another natural person, specifies the case where a person may hold more than one licence and establishes the rules relating to the transfer of a licence. The bill imposes solidary liability on the officers of a travel agency with regard to the amounts received from clients that must be deposited in a trust account.

With respect to the supervision of the travel agent operations, the president of the Office de la protection du consommateur is conferred additional powers as regards the issue, renewal, suspension or cancellation of a licence. In addition, the bill broadens the power of the president to appoint a provisional administrator whenever necessary to protect the clients of a travel agent or of a person acting as a travel agent without a licence.

The regulatory power of the Government is modified to allow for the adoption of new rules relating to the establishment of a fund to indemnify the clients of travel agents and provide for the establishment of an advisory committee. Lastly, the penal provisions are amended as regards involvement in the commission of an offence and the fines are increased.

The bill also amends the Consumer Protection Act to provide for the function of vice-president within the Office de la protection du consommateur.

Bill 135

AN ACT TO AMEND THE TRAVEL AGENTS ACT AND THE CONSUMER PROTECTION ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TRAVEL AGENTS ACT

1. Section 1 of the Travel Agents Act (R.S.Q., chapter A-10) is amended

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

“(e) “officer”: a director, a partner, a person exercising duties of management and any person who actually exercises one of those functions on account of an association, a partnership or a person;”;

(2) by replacing “functions of the licensee are principally exercised” at the end of paragraph *g* by “operations of the licensee are principally performed”.

2. Sections 2 and 3 of the said Act are replaced by the following sections:

“**2.** For the purposes of this Act, a travel agent is a person, a partnership or an association that, on account of a third party or on account of its members, engages in or offers to engage in or issues vouchers for or offers to issue vouchers for any of the following operations:

(a) the booking or reservation of lodging accommodation;

(b) the booking or reservation of transportation services;

(c) the arranging of travel services.

“**3.** This Act does not apply to

(a) persons or bodies that operate a tourist accommodation establishment governed by the Act respecting tourist accommodation establishments (chapter E-15.1) and that offer tourist services in Québec accessory to the operation of the establishment in accordance with any requirements that may be prescribed by regulation;

(b) persons or bodies organizing adventure travel in Québec and offering other tourist services in Québec that are accessory to the operation of the enterprise in accordance with any requirements that may be prescribed by regulation;

(c) carriers as regards the renting or reservation of their transportation services;

(d) outfitters as regards the outfitters' activities governed by the Act respecting the conservation and development of wildlife (chapter C-61.1);

(e) real estate brokers or their agents as regards the brokerage activities governed by the Real Estate Brokerage Act (chapter C-73.1).

Nor does this Act apply

(a) where the operations of a travel agent are performed occasionally and exclusively in Québec by an association, a partnership or a legal person on account of its members for trips lasting no longer than 72 hours or, in other cases, for trips lasting no longer than 48 hours;

(b) where the person or body that performs the operations proper to a travel agent receives no form of remuneration and there is no expenditure, participation or contribution on the part of the beneficiary in relation to such operations;

(c) in the other cases or on the other conditions determined by regulation.”

3. Section 4 of the said Act is amended

(1) by replacing “exercise the functions” in the first line by “perform the operations”;

(2) by replacing “or, in the case of an association, partnership or legal person,” in the third and fourth lines by “or”.

4. The said Act is amended by inserting the following section after section 4 :

“**4.1.** A person may apply for the annulment of a contract entered into with any person or body acting as a travel agent without a licence.”

5. Section 5 of the said Act is amended by replacing “a licensed employer” in the first line of the first paragraph by “an employer on whose account or on whose behalf a licence is held”.

6. Section 6 of the said Act is amended

(1) by inserting “, on behalf of another natural person” after “on his account” in the first paragraph;

(2) by striking out “legal” in the third line of the second paragraph.

7. Section 7 of the said Act is amended

(1) by inserting the following paragraph after the first paragraph :

“The same person may hold a licence in more than one class if the licences are held on the person’s account or on behalf of the same association, partnership or person.”;

(2) by replacing “or on behalf of that agent” in the second line of the last paragraph by “of that agent or on behalf of an association, partnership or person”.

8. Section 8 of the said Act is amended

(1) by replacing “account” in the first line of the first paragraph by “behalf”;

(2) by striking out “legal” in the second and fourth lines of the first paragraph;

(3) by replacing “exercise, as his principal activity, the functions” in the second line of the second paragraph by “perform, as his principal activity, the operations”;

(4) by adding the following paragraph at the end :

“Every person applying for a licence in more than one class must perform management duties or operations of a travel agent at the principal establishment corresponding to each class of licence.”

9. Section 10 of the said Act is amended

(1) by replacing “granted” in the first line by “issued”;

(2) by replacing the words “legal person” wherever they appear by the word “person”;

(3) by replacing “carried on” in the second line of paragraph *b* by “performed”;

(4) by striking out the words “, director or partner” wherever they appear;

(5) by replacing the words “carried on one of the activities” wherever they appear by the words “performed one of the operations”;

(6) by inserting the following paragraph after the first paragraph :

“However, the president may issue a licence notwithstanding a bankruptcy within the meaning of the first paragraph if the president considers that the bankruptcy is not related to operations proper to a travel agent.”

10. Section 11 of the said Act is amended by striking out “legal” in the second line of the first paragraph.

11. The said Act is amended by inserting the following section after section 11 :

“11.1. The president may authorize the transfer of a licence to another person in the case of the death, resignation or dismissal of the licensee or if the licensee no longer satisfies the requirements necessary to hold the licence.

An application for the transfer of a licence must be transmitted to the president within ten days of the event giving rise thereto or, where applicable, within three months of the date of acceptance of an application for a temporary transfer.

A licence may be transferred temporarily upon an application transmitted to the president within ten days of the event giving rise thereto in accordance with the requirements prescribed by regulation.”

12. Section 12 of the said Act is amended

(1) by replacing “the licence of any licensee who” in the first and second lines by “a licence where the applicant or the licensee, or where the association, partnership or person on whose account or on whose behalf the licence is applied for or is held” ;

(2) by replacing “, or” at the end of paragraph *a* by a semi-colon ;

(3) by adding the following paragraph after paragraph *b* :

“(c) made a false declaration or untrue statement of a material fact to obtain a licence.”

13. The said Act is amended by inserting the following section after section 12 :

“12.1. The president may also suspend, cancel or refuse to issue or to renew a licence

(a) if the association, partnership or person on whose account or on whose behalf the licence is applied for or is held do not prove that their financial position enables them to meet the obligations arising from the operations proper to a travel agent ;

(b) if the president has reasonable grounds to believe that the association, partnership or person on whose account or on whose behalf the licence is applied for or is held is unable to ensure, in the public interest, that the operations proper to a travel agent will be performed with honesty and competence ;

(c) if the association, partnership or person on whose account or on whose behalf the licence is held has failed to comply with an obligation imposed by this Act or the regulations.”

14. Section 13 of the said Act is replaced by the following section :

“**13.** The president shall, before cancelling, suspending or refusing to issue or renew a licence, notify in writing the applicant or the licensee, and the association, partnership or person on whose behalf the licence is applied for or is held, as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow them at least 10 days to present observations. The president shall also notify his decision in writing and give reasons.”

15. Section 13.1 of the said Act is amended

(1) by replacing “The licence of a travel agent ceases to have effect from such time as the agent” in the first line by “A licence shall cease to have effect from such time as the travel agent”;

(2) by adding the following paragraph at the end :

“The licence of a licensee who is deceased, has resigned or has been dismissed or who no longer satisfies the requirements necessary to be the holder of the licence ceases to have effect if no application for the transfer of the licence has been transmitted to the president before either of the following dates :

(a) the eleventh day following the date of the event giving rise to the transfer application ;

(b) the day occurring three months after the date of acceptance of an application for a temporary transfer, where applicable.”

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

“DIVISION III.1

“PROVISIONAL ADMINISTRATION

“**14.** The president may appoint a provisional administrator to temporarily manage or terminate the current business

(a) of a travel agent in whose respect the licence is cancelled, suspended or not renewed ;

(b) of a travel agent that no longer meets the requirements prescribed by this Act or by regulation for obtaining a licence ;

(c) of a travel agent that does not respect the obligations prescribed by this Act or by regulation;

(d) of a travel agent where the president considers that the situation requires it so as not to jeopardize the rights of the travel agent's clients;

(e) of a person acting as a travel agent without a licence.

“14.1. Before appointing a provisional administrator, the president must give the person concerned an opportunity to present observations.

However, in an urgent situation, the president may first appoint the provisional administrator, provided that the person concerned is allowed at least 10 days to present observations.

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

“14.3. The provisional administrator shall have the necessary powers to exercise his mandate.

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 the travel agent, the person who acted as a travel agent without a licence or for either of them;

(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) assign, transfer or otherwise dispose of travel contracts;

(d) transact upon any claim by a client for the performance of a travel contract against a travel agent or the person who acted as a travel agent without a licence;

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

“14.4. In no case may the provisional administrator be sued by reason of acts performed in good faith in the exercise of his functions.

“14.5. A holder of a travel agent's licence, an officer of the association, partnership or person on whose account or on whose behalf a travel agent's licence is issued, or a person acting as a travel agent without a licence must, on request, hand over to the provisional administrator any current document, book, register or account relating to the operations proper to a travel agent and give him access to any premises or equipment.”

17. Section 15 of the said Act is amended

(1) by replacing “licensee whose licence” in the second and third lines by “travel agent in whose respect the licence issued on account or on behalf of the travel agent”;

(2) by replacing “shall, after notice served to that effect by the provisional administrator referred to in section 13 or in section 14, as the case may be” in the fifth and sixth lines by “may, after a notice to that effect is served by the provisional administrator”.

18. Section 16 of the said Act is amended

(1) by inserting “or the person who acted as a travel agent without a licence” after “travel agent” in the second line;

(2) by replacing “security contemplated in subparagraph *c* of the first paragraph of section 36, in the manner provided there” in the fourth and fifth lines by “individual security of the travel agent or the fund referred to in subparagraphs *c* and *c.1* of the first paragraph of section 36”.

19. Section 17 of the said Act becomes section 13.2 and is amended

(1) by replacing “whose licence application is refused or whose licence is suspended, cancelled or not renewed” in the first and second lines by “referred to in section 13”;

(2) by adding the following paragraph at the end:

“When assessing the facts or the law, the Tribunal shall not substitute its assessment of the public interest for the assessment made by the president, pursuant to paragraph *b* of section 12.1, before he made his decision.”

20. The heading of Division IV of the said Act is replaced by the following heading:

“OBLIGATIONS OF A TRAVEL AGENT”.

21. Section 31 of the said Act is amended by replacing “his licence” by “the licence issued on his account or on his behalf”.

22. Section 33 of the said Act is amended by adding the following paragraph at the end:

“The funds collected by a travel agent and which must be deposited in a trust account are deemed to be held in trust by the travel agent and an amount equal to the aggregate of the funds deemed held in trust must be considered as constituting a separate fund not forming part of the property of the travel agent or of the officers of the travel agent, whether or not the amount was kept

distinctly and separately from the own funds of the travel agent or of the officers of the travel agent or from the mass of their property.”

23. The said Act is amended by inserting the following sections after section 33:

“33.1. Every director of a legal person on whose behalf a travel agent’s licence is issued is solidarily liable, with the licensee and the legal person, for the amounts which must be deposited in a trust account, unless the director proves that he acted in good faith.

“33.2. Where the president has reasonable grounds to believe that amounts that must be held in a trust account may be withdrawn otherwise than in accordance with the conditions prescribed by regulation, he may apply for an injunction ordering any person in Québec having the deposit, control or custody of such amounts to hold them in trust for the period and on the conditions determined by the court.”

24. Section 35 of the said Act is amended by replacing “the activities of a travel agency” in the third and fourth lines of the first paragraph by “the operations proper to a travel agent”.

25. Section 36 of the said Act is amended

(1) by replacing “or cancellation of a licence, the cases where a licence may be transferred and the terms and conditions on which such transfer shall be made” in the first, second and third lines of subparagraph *b* of the first paragraph by “, transfer or cancellation of a licence”;

(2) by replacing subparagraph *c* of the first paragraph by the following subparagraphs:

“(c) to require individual security of a travel agent, prescribe the amount and the form and determine the cases and the terms and conditions of collection, payment, administration and use of that security;

“(c.1) to establish any fund for the purpose of indemnifying the clients of travel agents, prescribe the amount and the form of the contributions required and determine the cases, the terms and the conditions of collection, payment, administration and use of a fund, in particular, fix a maximum amount, per client or event, that may be paid out of a fund;”;

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

“(e) to prescribe standards relating to any advertising made by a travel agent or by a third party for such travel agent;”;

(4) by replacing “duties” in the second line of subparagraph *f* of the first paragraph by “operations”;

(5) by adding the following subparagraphs after subparagraph *k* of the first paragraph:

“(l) to prescribe the obligations applicable to travel agents;

“(m) to establish an advisory committee and determine its composition and functions;

“(n) to exempt from or subject to the application of all or part of this Act, in the cases and on the conditions determined by the Government, persons, operations or tourist services, or to modify the list of exceptions provided for in section 3;

“(o) to determine the nature of the accessory tourist services or the number or maximum value of such services that may be offered by the operator of a tourist accommodation establishment or an organizer of adventure travel, or to determine criteria on the basis of which that number or value may vary according to classes of operators or organizers;

“(p) to determine among the regulatory provisions those the contravention of which constitutes an offence.”;

(6) by replacing the second paragraph by the following paragraphs:

“The regulatory standards adopted under subparagraphs *c*, *c.1* and *l* of the first paragraph may vary according to the class of travel agent or within the same class, according to the volume of business, the number of establishments, the type of activity, the cost of the services offered, the experience or operations of the travel agent or according to any other actuarial criterion relating to the risk to be covered.

Where a travel agent has transferred funds of a client, in accordance with the conditions prescribed by regulation as regards the deposit and withdrawal of funds held in a trust account, to a service supplier to whom the travel agent is not related or over whom he does not exercise any control, and where the travel agent has not committed a fault as regards the choice of the supplier, the client may not, in the case where the supplier has failed to fulfil his obligations, exercise any recourse against the travel agent to recover the amounts paid by him to the travel agent. The client may, however, apply for reimbursement to a fund referred to in subparagraph *c.1* of the first paragraph established for the purpose of indemnifying clients.”

26. Section 37 of the said Act is amended by replacing paragraph *d* by the following paragraph:

“(d) contravenes any of sections 4 to 7, 14.5, 15, 31 to 33, 35 or any provision of a regulation the contravention of which constitutes an offence.”

27. Section 38 of the said Act is replaced by the following section :

38. Any officer of a legal person, partnership or association who had knowledge of an offence is deemed to be a party to the offence and is liable to the fine provided for in this Act, unless the officer establishes to the satisfaction of the court that he did not acquiesce in the commission of the offence.

Any person who performs or omits to perform an act for the purpose of aiding a person to commit an offence or who advises, encourages or incites a person to commit an offence is guilty of the offence and is liable to the penalty prescribed for the offence.”

28. Section 39 of the said Act is amended by replacing “\$10,000” and “\$20,000” by “\$100,000” and “\$200,000”, respectively.

29. Section 40 of the said Act is amended by replacing “\$500 to \$2 500” by “\$1,000 to \$40,000” and by replacing “\$1 000 to \$5 000” by “\$2,000 to \$80,000”.

30. The said Act is amended by inserting the following section before section 42 :

41.1. The manager of a fund established by regulation for indemnification purposes may borrow from the Minister of Finance sums taken out of the financing fund established under the Act respecting the Ministère des Finances (chapter M-24.01).

The Minister of Finance may, with the authorization of the Government and subject to the conditions it determines, advance to such a fund sums taken out of the consolidated revenue fund.”

CONSUMER PROTECTION ACT

31. Section 294 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by replacing “nine members, including the president,” in the first paragraph by “ten members, including a president and a vice-president,”.

32. Section 295 of the said Act is amended by replacing “is appointed” in the first line by “and the vice-president are appointed”.

33. Section 296 of the said Act is amended by striking out “, including the president,”.

34. Section 297 of the said Act is amended by adding “or the vice-president” after “president”.

35. Section 298 of the said Act is amended by replacing “is subject” in the second line by “and the vice-president are subject”.

36. Section 300 of the said Act is amended by replacing “shall exercise his” by “and the vice-president shall exercise their”.

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

“**302.** The vice-president shall replace the president when the president is absent or unable to act.”

38. Section 320 of the said Act is amended by inserting “the vice-president or” after “authorize” in the first line.

TRANSITIONAL AND FINAL PROVISIONS

39. The assets and liabilities of the collective security funds of travel agents shall be transferred, on the date, on the conditions and in the manner determined by the Government, to a fund established by regulation for the purpose of indemnifying clients of travel agents.

The Government may, in a regulation made before 1 January 2004, make any other transitional provision to ensure compliance with the regulation establishing a fund for indemnification purposes.

40. This Act comes into force on 17 December 2002, except paragraph 2 of section 18, section 22, paragraphs 2 and 6 of section 25 and section 26, which come into force on the date or dates to be fixed by the Government.