



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 55

(2004, chapter 34)

An Act to amend the Act respecting the Société de l'assurance automobile du Québec and other legislative provisions

Introduced 13 May 2004

Passage in principle 26 May 2004

Passage 14 December 2004

Assented to 17 December 2004

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EXPLANATORY NOTES

This bill provides for the creation and establishment of a social trust within the meaning of the Civil Code of Québec, to be known as the Fonds d'assurance automobile du Québec. The fund, whose trustee is the Société de l'assurance automobile du Québec, is established by transferring most of the assets of the Société. The patrimony of the trust fund is dedicated to granting compensation for bodily injury under the Automobile Insurance Act and compensation for property damage under Title IV of that Act, and to promoting accident prevention and highway safety. The bill also enacts rules applicable to the Société when acting as trustee.

Moreover, the bill introduces changes in the determination of automobile insurance contributions. Henceforth, the Société will set the insurance contributions, after having obtained the opinion of a panel of experts established to that end. The panel will have, in particular, to hold a public consultation on that question.

Lastly, while maintaining the role of the Société in the area of road vehicle registration and driver's licences, the bill modifies some of its other responsibilities.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Automobile Insurance Act (R.S.Q., chapter A-25);
- Highway Safety Code (R.S.Q., chapter C-24.2);
- Act respecting the Société de l'assurance automobile du Québec (R.S.Q., chapter S-11.011).

Bill 55

AN ACT TO AMEND THE ACT RESPECTING THE SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Act respecting the Société de l'assurance automobile du Québec (R.S.Q., chapter S-11.011) is amended by inserting the following headings before section 1:

“CHAPTER I

“THE SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

“DIVISION I

“ESTABLISHMENT AND FUNCTIONS”.

2. Section 2 of the said Act is amended

(1) by replacing paragraphs *a* and *b* of subsection 1 by the following paragraph:

“(a) to administer, as trustee, the Fonds d'assurance automobile du Québec, hereinafter called the “Fonds d'assurance”;;”;

(2) by replacing paragraph *g* of subsection 1 by the following paragraph:

“(g) to carry out any other mandate assigned to it by law or by an agreement with the Government, or a department or body of the Government.”;

(3) by inserting “, on its own behalf or for the Fonds d'assurance,” after “may” in the first line of subsection 2.

3. Section 2.1 of the said Act is repealed.

4. Section 5 of the said Act is replaced by the following section:

“**5.** All the property in the possession of the Société on 31 December 2003 belongs to the Société, except the property transferred to the Fonds d'assurance.”

5. The said Act is amended by inserting the following heading after section 5:

“DIVISION II

“ORGANIZATION AND OPERATION”.

6. Section 7 of the said Act is replaced by the following sections:

“7. The Société is administered by a board of directors consisting of a chairman and eleven other members appointed by the Government.

The eleven other members are appointed from a list containing at least three names for each position to be filled, drawn up by the board of directors after consultation with bodies designated by the board and representative of any of the following sectors or groups:

- (1) business;
- (2) insurance;
- (3) law;
- (4) health;
- (5) highway safety;
- (6) road victims; and
- (7) road users.

The Government shall designate the vice-chairman of the board of directors.

“7.1. Seven of the members of the board of directors must not

- (1) be officers of the Société;
- (2) be mandataries or suppliers or officers or employees of a mandatary or supplier of the Société; and
- (3) have been appointed by the Government or a minister for a term of at least three years or a renewable term within a legal person or body the majority of whose directors or members are appointed by the Government or a minister.

“7.2. In addition, the Government shall appoint the vice-chairmen of the Société, in such number as it may determine.”

7. Section 11 of the said Act is amended by adding the following paragraph after the third paragraph:

“The members of the board of directors are not in conflict of interest for the sole reason that they are required to perform the duties imposed on the Société under section 23.0.4.”

8. Section 13 of the said Act is amended

(1) by striking out “; such by-laws shall be approved by the Government, and come into force upon such approval” in the second paragraph;

(2) by adding the following paragraph after the second paragraph:

“The Government shall approve the by-laws of the Société relating to the exercise of its functions other than the functions of trustee.”

9. Section 16.3 of the said Act is amended

(1) by inserting “, to refuse to provide him with any information or document he is entitled to require or examine, to conceal or destroy any document or property relevant to an inquiry or inspection” after “statements” in the first paragraph;

(2) by adding the following paragraph after the second paragraph:

“A person who contravenes the first paragraph is guilty of an offence and liable to a fine of \$200 to \$1,000.”

10. Section 16.4 of the said Act is replaced by the following section:

16.4. The Minister of Transport may, by agreement, entrust to the Société the implementation of a program on the adaptation of road vehicles to allow handicapped persons to drive a vehicle or have access to it. The program is established under subparagraph *c* of the first paragraph of section 3 of the Act respecting the Ministère des Transports (chapter M-28) and section 4 of the Transport Act (chapter T-12).

A person who believes he has been wronged by a decision rendered by the Société, as a mandatary acting under an agreement provided for in the first paragraph, may contest the decision before the Administrative Tribunal of Québec within 60 days of notification of the decision.

For the purposes of this section, “handicapped person” means a handicapped person within the meaning of paragraph *g* of section 1 of the Act to secure the handicapped in the exercise of their rights (chapter E-20.1).”

11. The said Act is amended by inserting the following after section 17.1:

“DIVISION III**“FINANCIAL PROVISIONS AND REPORTING**

“17.2. The Société shall collect the sums paid under sections 21, 31.1, 69 and 93.1 of the Highway Safety Code.

The Société shall also collect

(1) the amounts paid under an agreement made with any government, any department of such a government or any public body;

(2) any other amount it is authorized to receive or recover.

“17.3. The sums for which the Société has no immediate need for its day-to-day business are deposited with the Caisse de dépôt et placement du Québec.

“17.4. The insurance contributions fixed under sections 151 to 151.3 of the Automobile Insurance Act must, from the fiscal year ending on 31 December 2015 at the latest, cover the payment of all indemnities resulting from accidents that occurred during the period for which those insurance contributions were fixed and all other costs borne by the Fonds d’assurance for that period.

To fix insurance contributions, the Société may include investment income other than investment income from assets held in connection with actuarial liability. Insurance contributions must also be fixed so that the assets of the Fonds d’assurance, after deducting any debts and reserves, are equal to or greater than the amount, actuarially valued, that is needed to pay all indemnities, present or future, resulting from accidents that occurred up to the date of valuation. The Société shall make the valuation at the end of each fiscal year.

If there is an insufficiency in the assets, the insurance contributions must be fixed so as to correct the insufficiency over a maximum period of 15 years.

“17.5. The actuarial valuation referred to in sections 151 and 151.1 of the Automobile Insurance Act and in section 17.4 must be made by an actuary who is a Fellow of the Canadian Institute of Actuaries or has an equivalent status recognized by the Institute.

“17.6. Before amending a regulation on insurance contributions, the Société must obtain the opinion of a panel of experts established for that purpose. The panel consists of three members who are representative of the actuarial and insurance sectors and who are appointed by the Government.

The Société is not required to obtain the opinion of a panel of experts on amendments that have no impact on the tariffing of insurance contributions and that are intended to ensure concordance with technical amendments to a

regulation on the registration of road vehicles or to a regulation on licences to drive road vehicles made under the Highway Safety Code.

The mandate of the panel is to review the approach taken and check the data used in support of the regulatory amendments contemplated by the Société. The panel must also hold a public consultation by publishing a notice to that effect in the *Gazette officielle du Québec* and in at least one French-language and one English-language daily newspaper of its choice. The notice must indicate

- (1) the nature of the regulatory amendments regarding insurance contributions contemplated by the Société;
- (2) the holding of a public consultation to examine the regulatory amendments;
- (3) the possibility for interested persons to submit observations; and
- (4) the place, date and time of the public consultation.

Such a consultation must not be held before the expiry of 30 days after the date of the last publication.

The panel must submit its report to the Société within the time limit determined by the Société. The report must be made public by the Société.

The panel shall adopt rules of operation after the members designate a chairman from among their number. The Société shall determine the terms of reference of the panel's mandate and provide the panel with the support necessary for its operation.

“17.7. Within the scope of its mandate, the panel of experts must

- (1) evaluate the rating criteria for insurance contributions adopted by the Société and ascertain that they correspond, in particular, to the principles of self-financing of the plan, of indemnification by road vehicle users, of equity and of administrative feasibility;
- (2) confirm the total expenditure the Société considers necessary to cover the costs of the indemnities resulting from accidents that occur during the period for which the insurance contributions are fixed and all the other costs borne by the Fonds d'assurance for that period;
- (3) assess the measures taken to promote accident prevention and highway safety in order to reduce the risks associated with driving;
- (4) consider the risks inherent in each class of insureds and the equity to be maintained between classes of insureds;

- (5) ensure that the insurance contributions are fair and reasonable;
- (6) consider the financing policy of the Société, the actuarial forecasts, the valuation of the actuarial liability and, where applicable, the need for recapitalization in the event of insufficient assets;
- (7) consider the quality of the service provided to the insureds by the Société and any change made to the automobile insurance plan;
- (8) consider the economic and social concerns indicated by the Société and the public.”

12. Section 19 of the said Act is amended

- (1) by replacing “a report on its activities” in the first paragraph by “an annual management report”;
- (2) by replacing “on the operations and activities of that year which concern” in the first paragraph by “concerning”.

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

“CHAPTER II

“THE FONDS D’ASSURANCE AUTOMOBILE DU QUÉBEC

“23.0.1. The sums in the possession of the Société on 31 December 2003 and the securities deposited with the Caisse de dépôt et placement du Québec are transferred to the Fonds d’assurance, except the sums kept on deposit by the Société in accordance with the Acts it administers.

The claims of the Société that are recoverable as at 31 December 2003 under the Automobile Insurance Act and the advances made as at that date to rehabilitation centres by the Société are the only claims and advances that are transferred to the Fonds d’assurance.

The titles of ownership of the immovable where the head office of the Société is situated are also transferred to the Fonds d’assurance.

“23.0.2. The debts of the Société on 31 December 2003 shall be borne by the Fonds d’assurance, except for the sick leave and vacation credits of the personnel of the Société, the sums owing to suppliers and the sums owing to the Government in taxes and duties.

“23.0.3. The Fonds d’assurance, established as a social trust patrimony, shall be dedicated to

(1) granting the compensation for bodily injury provided for in the Automobile Insurance Act and the compensation for property damage provided for in Title IV of that Act;

(2) promoting accident prevention and highway safety to reduce the risks associated with driving.

The measures taken under subparagraph 2 of the first paragraph must not compromise the financial stability of the Fonds d'assurance.

“23.0.4. The Société is the trustee of the Fonds d'assurance.

The Société is deemed to have accepted the trusteeship and the obligations arising from it as of 1 January 2004.

The Société shall act to promote the objectives pursued by the Fonds d'assurance.

“23.0.5. Articles 1260 to 1262, 1264 to 1266, 1270, 1274, 1278, 1280, 1293, 1299, 1306 to 1308, 1313 and 1316 are the only provisions of Title VI and Title VII of Book IV of the Civil Code of Québec that apply to the Fonds d'assurance and to the Société in its capacity as trustee, with the necessary modifications.

“23.0.6. The titles to the property of the Fonds d'assurance and other documents of the Fonds are drawn up in its name.

“23.0.7. The Société shall transfer to the Fonds d'assurance, as they are received, all the sums it collects as insurance contributions under sections 21, 31.1, 69 and 93.1 of the Highway Safety Code or as amounts recoverable pursuant to the Automobile Insurance Act, and any other sums meant to increase the Fonds d'assurance.

The Société shall prepare a monthly reconciliation of the sums so collected and the sums actually transferred.

“23.0.8. The sums transferred to the Fonds d'assurance under sections 23.0.1 and 23.0.7 are deposited with a bank governed by the Bank Act (Statutes of Canada, 1991, chapter 46) or a financial services cooperative governed by the Act respecting financial services cooperatives (chapter C-67.3).

“23.0.9. The sums referred to in section 23.0.8 for which the Société has no immediate need for the day-to-day business of the Fonds d'assurance are deposited with the Caisse de dépôt et placement du Québec.

“23.0.10. The expenses incurred in the interest of the Fonds d'assurance are payable by the Fonds.

“23.0.11. When the Société withdraws a sum from the Fonds d’assurance, it is acting in its capacity as trustee.

“23.0.12. The Société must prepare for the Fonds d’assurance its budget estimates for the following fiscal year at least one month before the end of the current fiscal year or on any other date set by the board of directors.

“23.0.13. Sections 21 to 22.1 and the Financial Administration Act (chapter A-6.001) do not apply to the Société in the exercise of its functions as trustee.

“23.0.14. The Public Administration Act (chapter A-6.01) does not apply to the Société in the exercise of its functions as trustee, except for the provisions relating to human resources and section 78 to the extent that it relates to human resources.

“23.0.15. The Société, in the exercise of its functions as trustee, must adopt policies on contract terms and on the security and management of information resources.

The Société’s policy on contract terms must be made public not later than 30 days after its adoption.

The policy must be consistent with the agreements on the liberalization of public procurement applicable to the Société and reflect general government policy on public procurement.

“23.0.16. The fiscal year of the Fonds d’assurance ends on 31 December.

“23.0.17. Not later than 30 April each year, the Société must submit to the Minister the financial statements and an annual management report on the activities of the Fonds d’assurance for the previous fiscal year. The report must contain all the information prescribed by the Minister.

The Minister must table the financial statements and the report before the National Assembly within 30 days of receiving them if the National Assembly is sitting or, if it is not sitting, within 30 days of resumption.

“23.0.18. The books and accounts of the Fonds d’assurance shall be examined by the Auditor General every year and whenever ordered by the Government.

“23.0.19. The chairman and general manager of the Société is accountable to the National Assembly for the management of the Fonds d’assurance.

The competent parliamentary committee of the National Assembly may hear the chairman and general manager at least once each year to discuss the management of the Fonds d’assurance.

The parliamentary committee may discuss, in particular, the financial statements, the annual management report and any administrative matter related to the Fonds d'assurance that may have been noted in a report of the Auditor General or the Public Protector.

“CHAPTER III

“MISCELLANEOUS PROVISIONS”.

14. The Financial Administration Act (R.S.Q., chapter A-6.001) is amended by adding “in the exercise of its functions in a capacity other than that of trustee” after “Société de l'assurance automobile du Québec” in Schedule 3.

15. The heading of Chapter I of Title V of the Automobile Insurance Act (R.S.Q., chapter A-25) is replaced by the following heading:

“INSURANCE CONTRIBUTIONS AND DUTIES”.

16. Section 150 of the said Act is repealed.

17. Section 151.4 of the said Act is amended

(1) by striking out “the insurance contributions fixed pursuant to sections 151 to 151.2 and” in the first paragraph;

(2) by striking out “or insurance contributions” in the third paragraph.

18. Sections 152, 152.1, 153, 154 and 155 of the said Act are repealed.

19. Chapter III of Title V of the said Act is repealed.

20. Section 197 of the said Act is replaced by the following section:

“**197.** Regulations of the Société must be approved by the Government, except those made under sections 151 to 151.3 and 195.1.”

21. Section 11 of the Highway Safety Code (R.S.Q., chapter C-24.2) is replaced by the following section:

“**11.** A handicapped person or a public institution may be authorized to use parking spaces reserved for the exclusive use of handicapped persons and be given an identification sticker and a certificate of issue to that effect.

The sticker and the certificate are issued upon payment of the fees prescribed by regulation.

A public institution is a public institution within the meaning of the Act respecting health services and social services (chapter S-4.2) or the Act

respecting health services and social services for Cree Native persons (chapter S-5) that owns a motor vehicle equipped with devices to secure wheelchairs against movement.

The Société is responsible for the application of this section according to the rules established by agreement between the Société and the Minister of Transport.”

22. Section 21 of the said Code is amended by striking out “and revalorized, where applicable, in accordance with section 151.4 of that Act” in the fourth and fifth lines of subparagraph 3 of the first paragraph.

23. Section 31.1 of the said Code is amended by striking out “and revalorized, where applicable, in accordance with section 151.4 of that Act” in the sixth and seventh lines of the first paragraph.

24. Section 69 of the said Code is amended by striking out “and revalorized, where applicable, in accordance with section 151.4 of that Act” at the end of the first paragraph.

25. Section 93.1 of the said Code is amended by striking out “and revalorized, where applicable, in accordance with section 151.4 of that Act” in the fifth and sixth lines of the first paragraph.

26. Section 618 of the said Code, amended by section 69 of chapter 2 of the statutes of 2004, is again amended by replacing “and fix their periods of validity” in paragraph 20 by “, fix their periods of validity and determine the fees exigible for their issue”.

27. Section 624 of the said Code, amended by section 72 of chapter 2 of the statutes of 2004, is again amended by striking out subparagraph 14 of the first paragraph.

28. The members of the board of directors who are in office on 17 December 2004 are deemed to have been appointed under section 7 of the Act respecting the Société de l’assurance automobile du Québec, as replaced by section 6 of this Act.

29. An agreement entered into before 1 January 2005 and referred to in section 16.4 of the Act respecting the Société de l’assurance automobile du Québec, replaced by section 10 of this Act, has effect from 1 January 2004. Every decision made by the Société de l’assurance automobile du Québec since 1 January 2004 on a matter referred to in that section is deemed to have been made under that agreement.

30. The contribution applicable to the cost of ambulance services provided for in sections 155.5 and 155.6 of the Automobile Insurance Act is taken out of the Fonds d’assurance automobile du Québec until 31 March 2005.

31. This Act has effect from 1 January 2004, except for sections 9 and 19. However, this section does not operate to invalidate the Regulation to amend the Regulation respecting insurance contributions approved by Order in Council 1003-2004 dated 27 October 2004, even if that regulation was not adopted in accordance with section 20.

32. This Act comes into force on 17 December 2004, except for section 19, which comes into force on 1 April 2005.