



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 136

(2005, chapter 51)

An Act to amend the Act respecting insurance and the Act respecting trust companies and savings companies

**Introduced 6 December 2005
Passage in principle 9 December 2005
Passage 14 December 2005
Assented to 16 December 2005**

**Québec Official Publisher
2005**

EXPLANATORY NOTES

This bill amends the Act respecting insurance and the Act respecting trust companies and savings companies in order to clarify the rules that apply as of 1 March 2006 to annuity contracts available from insurance companies and trust companies. It confirms, in particular, the conditions under which the capital accumulated for the payment of an annuity is unseizable.

In addition, this bill is aimed at attributing the legal effects of annuity contracts to other contracts offered as such and entered into before 1 March 2006 by insurance companies and trust companies. However, these provisions are not applicable in the case of proceedings instituted before the date of introduction of the bill to seize or revendicate the capital accumulated under such contracts. The bill also provides that such a company must, as compensation, restore the accumulated capital at the company's expense if the capital was transferred to a third party following a judgment rendered or a seizure or revendication proceeding served before the date of introduction of the bill; the other contracting party will be reimbursed in the same manner for judicial and extrajudicial costs relating to the proceeding.

Finally, this bill contains consequential amendments and transitional provisions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting insurance (R.S.Q., chapter A-32);
- Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2);
- Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01).

Bill 136

AN ACT TO AMEND THE ACT RESPECTING INSURANCE AND THE ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING INSURANCE

1. The Act respecting insurance (R.S.Q., chapter A-32) is amended by inserting the following heading before section 33.1:

“DIVISION I

“GENERAL PROVISIONS”.

2. The Act is amended by adding the following division after section 33.3:

“DIVISION II

“SPECIAL PROVISIONS RESPECTING ANNUITIES

“33.4. In an annuity contract, the fact that an insurance company offers a choice of investments does not preclude the company from having control of the capital accumulated for the payment of the annuity.

The right to withdraw all or part of the capital accumulated for the payment of an annuity may be stipulated, but the exercise of that right reduces the insurance company’s obligations correlatively.

In addition, the amount of the annuity to be paid periodically must, at the time the contract is entered into, be determinate, or at least determinable according to variables and a computation method specified in the contract.

“33.5. For the capital accumulated for the payment of an annuity to be exempt from seizure, a person must be designated, in accordance with article 2457 or 2458 of the Civil Code, as qualified to receive the capital or the related annuity following the death of the annuitant or the person who furnishes the capital.”

3. Section 65 of the Act is amended by replacing “ten” in the fourth line of the first paragraph by “two”.

ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

4. Section 170 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01) is amended by replacing “à terme fixe” in subparagraph 4 of the first paragraph in the French text by “non viagères”.

5. Section 178 of the Act is replaced by the following sections:

“**178.** The capital accumulated for the payment of a fixed-term annuity is unseizable in the hands of the trust company as if it were a fixed-term annuity transacted by an insurer.

For the capital to be exempt from seizure, a person must be designated, in accordance with article 2457 or 2458 of the Civil Code, as qualified to receive the capital or the related annuity following the death of the annuitant or the person who furnishes the capital.

“**178.1.** In an annuity contract, the fact that a trust company offers a choice of investments does not preclude the company from having control of the capital accumulated for the payment of the annuity.

The right to withdraw all or part of the capital accumulated for the payment of an annuity may be stipulated, but the exercise of that right reduces the trust company’s obligations correlatively.

In addition, the amount of the annuity to be paid periodically must, at the time the contract is entered into, be determinate, or at least determinable according to variables and a computation method specified in the contract.”

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

6. Section 3 of the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2) is amended by striking out “, including endowment contracts,” in the second and third lines of the first paragraph.

7. Any contract entered into with an insurance company or a trust company before 1 March 2006 that was offered to the other contracting party as an annuity contract and is not in compliance with article 2367 of the Civil Code carries with it, as of the time it was entered into, the unseizability of the accumulated capital as though it had been accumulated under an annuity contract.

For the capital to be exempt from seizure, a person must be designated in the contract, in accordance with article 2457 or 2458 of the Civil Code, as qualified to receive the capital or the related annuity following the death of the annuitant or the person who furnishes the capital. The capital remains exempt from seizure until the end of the contract.

This section applies only to contracts of the type offered to the public by an insurance company or a trust company before 6 December 2005.

8. In addition to the unseizability of the capital accumulated under its stipulations, a contract referred to in section 7 has, as of the time it is entered into, all the effects of an annuity contract, particularly as regards the application of the Securities Act (R.S.Q., chapter V-1.1) to the contract, the capacity of the insurance company or the trust company to enter into the contract and the validity of designations of persons qualified to receive the accumulated capital following the death of the other contracting party or the person who furnishes the capital. Subject to a judgment confirming or revoking them, such designations do not prevail over designations validly made in a subsequent juridical act, such as a will.

9. An insurance company or a trust company that is a party to a contract that was offered to the other contracting party as an annuity contract and is not in compliance with article 2367 of the Civil Code must, as compensation, restore the capital accumulated under the contract at the company's expense if the capital was transferred to a third party in whole or in part following a judgment rendered before 6 December 2005 or a seizure or revendication proceeding served before that date. The amount of the compensation is equal to the sums transferred. The capital thus restored is exempt from seizure subject to the conditions set out in section 7.

If all of the capital was transferred to a third party following a judgment or a seizure or revendication proceeding, the restoration of the accumulated capital by the insurance company or the trust company carries with it the reinstatement of the contract between the original contracting parties.

The fact that an insurance company or a trust company has restored the accumulated capital in accordance with the first paragraph does not give it the right to claim the restitution of the sums transferred to a third party following a judgment or a seizure or revendication proceeding.

10. An insurance company or a trust company that is a party to a contract that was offered to the other contracting party as an annuity contract, although not in compliance with article 2367 of the Civil Code and that, because of this lack of compliance, is the subject of proceedings pending on or completed before 6 December 2005 is required to compensate the other contracting party for any judicial or extrajudicial costs that party may have assumed in connection with the seizure or revendication of the capital accumulated under the contract.

11. Sections 7 and 8 are declaratory, but do not apply to proceedings pending on 6 December 2005 whose purpose is to seize or revendicate the capital accumulated under a contract referred to in section 7, or to a contract entered into on or after 1 March 2006.

12. Sections 9 and 10 apply only in respect of a contract that would have conferred rights exempt from seizure under articles 2457 and 2458 of the Civil Code if it had been in compliance with article 2367 of that Code.

13. This Act comes into force on 16 December 2005, except sections 1, 2 and 5, which come into force on 1 March 2006.