



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 38
(2001, chapter 29)

**An Act to amend the Highway Safety
Code as regards alcohol-impaired
driving**

**Introduced 14 June 2001
Passage in principle 21 June 2001
Passage 21 June 2001
Assented to 21 June 2001**

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EXPLANATORY NOTES

This bill introduces measures dealing with alcohol-impaired driving. Thus, the rule prohibiting persons from driving a vehicle if any alcohol is present in their body is extended to operators of heavy vehicles or emergency vehicles and taxi drivers. The bill increases from 15 to 30 days in the case of a first suspension and from 30 to 90 days for any subsequent suspension the duration of the immediate suspension of a licence by a peace officer, in particular as concerns the holder of a learner's licence or a probationary licence, the operator of a heavy vehicle or emergency vehicle or a taxi driver if any alcohol is present in the person's body or as concerns any other driver with a concentration of alcohol in excess of 80 milligrammes in 100 millilitres of blood.

In the case of a 90-day suspension, a review of the decision by the Société de l'assurance automobile du Québec may be applied for and the review decision may be contested before the Administrative Tribunal of Québec.

Moreover, the rules governing the issue, following a criminal impaired-driving offence, of a restricted licence authorizing the operation of a road vehicle equipped with an alcohol ignition interlock device are revised.

Any person whose licence is cancelled for the first time will now be required to undergo a summary assessment to verify whether or not the person's relationship with alcohol compromises the safe operation of a road vehicle. If the assessment is not conclusive, the person must undergo a comprehensive assessment.

In addition, the bill increases the subsequent offence reference period from five to ten years. The sanction period established by the Highway Safety Code following impaired-driving conviction under the Criminal Code, is set at one year for a first sanction, three years for a second sanction and five years for any subsequent sanction.

Finally, the bill proposes that the issue of a new licence after a person undergoes an assessment be conditional upon the vehicle being equipped with an alcohol ignition interlock device, for a period of one to three years.

LEGISLATION AMENDED BY THIS BILL :

- Highway Safety Code (R.S.Q., chapter C-24.2);
- Act respecting administrative justice (R.S.Q., chapter J-3).

Bill 38

AN ACT TO AMEND THE HIGHWAY SAFETY CODE AS REGARDS ALCOHOL-IMPAIRED DRIVING

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 64 of the Highway Safety Code (R.S.Q., chapter C-24.2) is amended by adding the following paragraph at the end :

“In the case of a licence authorizing a person to drive a road vehicle only if it is equipped with an alcohol ignition interlock device, the Société shall establish conditions for the issue of the licence and conditions for the use of the alcohol ignition interlock device. Where so required by the Société, the licence holder must furnish the data collected by the alcohol ignition interlock device.”

2. Section 73 of the said Code is amended by adding the following paragraphs after the third paragraph :

“If the examination shows that the person suffers from chronic alcoholism or a pharmaco-physiological alcohol dependence or the assessment shows that the person’s relationship with alcohol compromises the safe operation of a road vehicle corresponding to the class of licence applied for, the probationary licence or driver’s licence that may be issued to the person by the Société shall authorize the person to drive a road vehicle only if it is equipped with an alcohol ignition interlock device approved by the Société.

If warranted by exceptional medical reasons, the Société may exempt a person from the obligation to equip the vehicle the person drives with an alcohol ignition interlock device. In that case, the person is prohibited from driving or having the care or control of a vehicle if any alcohol is present in the person’s body. The Société may require the person to furnish it with any relevant information or documents concerning the person’s relationship with alcohol.”

3. Section 76 of the said Code is replaced by the following section :

“76. No licence may be issued to a person whose licence has been cancelled or whose right to obtain a licence has been suspended following a conviction for an offence under section 180, until one, three or five years have elapsed since the date of the cancellation or suspension, according to whether, in the ten years preceding the cancellation or suspension, the person incurred no cancellation or suspension, one cancellation or suspension, or more than one cancellation or suspension under that section.

Where a conviction is followed by an order prohibiting the driving of a road vehicle made under subsection 1 or 2 of section 259 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) for a period that exceeds the period applicable under the first paragraph, the applicable period shall be equal to the period established in the order.

Upon the expiry of the order referred to in the second paragraph or as soon as permitted by the Criminal Code, a person whose licence has been cancelled or whose right to obtain a licence has been suspended following a conviction for an offence referred to in subparagraph 4 of the first paragraph of section 180 may be authorized to drive a road vehicle, under a restricted licence, if it is equipped with an alcohol ignition interlock device. The restricted licence is valid until the end of the period determined under the first paragraph.

If the offence giving rise to the cancellation or suspension is an offence referred to in subparagraph 4 of the first paragraph of section 180, the following additional conditions apply to the issue of a new licence :

(1) if, during the ten years preceding the cancellation or suspension, the person incurred no cancellation or suspension under subparagraph 4 of the first paragraph of section 180, the person must

(a) successfully complete an educational program accredited by the Minister of Public Security that is designed to raise the awareness of drivers concerning alcohol and drug consumption problems ;

(b) establish, to the satisfaction of the Société, after undergoing a summary assessment by a duly authorized person working in a rehabilitation centre for alcoholic and other addicted persons or in a hospital centre offering rehabilitation services to such persons that the person's relationship with alcohol or drugs does not compromise the safe operation of a road vehicle corresponding to the class of licence applied for. If the summary assessment is not conclusive, the person must satisfy that requirement on the basis of a comprehensive assessment ;

(2) if, during the ten years preceding the cancellation or suspension, the person incurred one or more cancellation or suspension under subparagraph 4 of the first paragraph of section 180, the person must satisfy the requirement specified in subparagraph *b* of subparagraph 1 on the basis of a comprehensive assessment.

An assessment report must be submitted to the Société within the time it specifies.

If the restricted licence referred to in the third paragraph is expired and an assessment has not established to the satisfaction of the Société that the person's relationship with alcohol or drugs does not compromise the safe operation of a road vehicle corresponding to the class of licence applied for, the Société may issue to the person, for the period it determines, a probationary

licence or a driver's licence authorizing the person to drive a road vehicle only if it is equipped with an alcohol ignition interlock device approved by the Société."

4. Section 76.1 of the said Code is replaced by the following section:

"76.1. A new licence issued under the fourth paragraph of section 76 shall authorize the person to drive a road vehicle, for a period of one, two or three years, according to whether a waiting period of one, three or five years was imposed on the person under the first paragraph of section 76, only if it is equipped with an alcohol ignition interlock device approved by the Société.

In computing the one-year, two-year or three-year period referred to in the first paragraph, any time during which the licence was suspended and any time during which the person was not authorized to drive a road vehicle pursuant to the first paragraph of section 93.1 shall be disregarded.

This section does not apply where the summary assessment provided for in subparagraph *b* of subparagraph 1 of the fourth paragraph of section 76 has established that the person's relationship with alcohol or drugs does not compromise the safe operation of a road vehicle corresponding to the class of licence applied for.

If warranted by exceptional medical reasons, the Société may exempt a person from the obligation to equip the vehicle the person drives with an alcohol ignition interlock device. In that case, the person is prohibited from driving or having the care or control of a vehicle if any alcohol is present in the person's body. The Société may require the person to furnish it with any relevant information or documents concerning the person's relationship with alcohol.

Where the new licence is a learner's licence, the person concerned must complete the learning period. On completion of the learning period, the person may only obtain a probationary licence authorizing the person to drive a road vehicle if it is equipped with an alcohol ignition interlock device approved by the Société for the period referred to in the first paragraph."

5. Section 76.2 of the said Code is amended by replacing "the device" in the second line and in the third line by "the alcohol ignition interlock device".

6. Section 76.3 of the said Code is amended by adding "or if the applicant has never held a probationary licence or a driver's licence authorizing the operation of a passenger vehicle other than a moped or a motorcycle" at the end.

7. The said Code is amended by inserting the following section after section 95:

“95.1. The holder of a licence of a class authorizing the operation of a taxi or emergency vehicle whose licence or class of licence is suspended must inform the owner of the taxi or emergency vehicle without delay.”

8. The said Code is amended by inserting the following section after section 98:

“98.1. The holder of a probationary licence or a driver’s licence authorizing the operation of a road vehicle only if it is equipped with an alcohol ignition interlock device who drives a road vehicle that is not equipped with such a device or does not comply with the conditions for the use of the device established by the Société is deemed to be driving without holding the licence required under section 65.

The same applies to a person referred to in the fifth paragraph of section 73 or the fourth paragraph of section 76.1 if the person drives or has the care or control of a road vehicle without complying with the conditions specified in those sections.”

9. Section 141 of the said Code is amended by inserting “95.1,” after “92.1.”

10. The said Code is amended by inserting the following section after section 187.2:

“187.3. The Société may revoke a restricted licence authorizing the operation of a road vehicle only if it is equipped with an alcohol ignition interlock device if the holder does not comply with the conditions of use established by the Société.”

11. The said Code is amended by inserting the following section after section 195.1:

“195.2. The Société may suspend for a period of three months or revoke a probationary licence or a driver’s licence authorizing the operation of a road vehicle only if it is equipped with an alcohol ignition interlock device if the holder does not comply with the conditions of use established by the Société.”

12. Section 202.2 of the said Code is amended

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

“(3) the holder of a restricted licence issued under section 118, if the licence was issued following the suspension of a probationary licence and the holder of a licence issued under the fourth and fifth paragraphs of section 73 or under section 76 or 76.1;”;

(2) by adding the following subparagraph after subparagraph 3 of the first paragraph:

“(4) the driver of a heavy vehicle, an emergency vehicle or a taxi.”;

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

“Subparagraph 4 of the first paragraph does not apply to the driver of an emergency vehicle acting as a volunteer fireman.”

13. Section 202.4 of the said Code is amended

(1) by replacing the text preceding subparagraph 1 of the first paragraph by the following text:

“202.4. A peace officer shall immediately suspend on behalf of the Société, for a period of 30 days, the licence, or the classes of a licence authorizing the operation of a heavy vehicle, an emergency vehicle or a taxi, held by”;

(2) by adding “de” at the beginning of the French text of subparagraph 1 of the first paragraph and by replacing “sampling” in that subparagraph by “screening test”;

(3) by adding “de” at the beginning of the French text of subparagraph 2 of the first paragraph and by replacing “sampling by an approved instrument carried out” in that subparagraph by “sample taken by means of an approved instrument”;

(4) by inserting the following subparagraph after subparagraph 2 of the first paragraph:

“(3) a person who fails to comply with a demand made on the person by a peace officer under section 202.3 or 636.1 of this Code or section 254 of the Criminal Code.”;

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

“If the person is not the holder of a licence, the peace officer shall advise the Société so that it may immediately suspend the person’s right to obtain a learner’s licence, a probationary licence or a driving licence for a period of 30 days.

If the person holds a licence issued by another administrative authority, the peace officer shall instead prohibit the person from driving a road vehicle for 30 days. The peace officer shall advise the Société so that it may immediately

suspend the person's right to obtain a learner's licence, a probationary licence or a driving licence.

In the case of a person who, during the ten years preceding the suspension or prohibition, would have incurred a suspension or prohibition under this section or a suspension or cancellation under section 180, the duration of the suspension or prohibition is increased to 90 days."

14. Section 202.5 of the said Code is repealed.

15. The said Code is amended by inserting the following sections after section 202.6:

"202.6.1. On suspending a licence or prohibiting a person from driving a road vehicle, the peace officer shall draw up a report in the form and tenor determined by the Société.

A copy of the report must be left with the person whose licence has been suspended or who has been prohibited from driving a road vehicle and sent to the Société where it so requires. A refusal to receive the report does not prevent the suspension or prohibition from taking effect.

"202.6.2. A person whose licence or right to obtain a licence has been suspended for 90 days or who is prohibited from driving a road vehicle for 90 days may apply for a review of the decision by the Société.

"202.6.3. A review is applied for by filing the duly completed form provided by the Société at an office of the Société and paying the fees determined by regulation.

The Société shall proceed on the record, unless a meeting is requested.

"202.6.4. The application for review must be signed by the person concerned and filed together with the report of the peace officer and a copy of any certificate of analysis under section 258 of the Criminal Code.

"202.6.5. In exercising its jurisdiction, the Société shall only consider

- (1) any relevant written representations and any other relevant information ;
- (2) the report and any other relevant document drawn up by the peace officer ;
- (3) a copy of any certificate of analysis under section 258 of the Criminal Code ; and
- (4) where a meeting is held with the person concerned, any relevant representations made and other information supplied at the meeting.

“202.6.6. The Société shall lift the suspension of the licence, the suspension of the right to obtain a licence or the prohibition from driving if the person concerned establishes by a preponderance of evidence,

(1) in the case of a prohibition under section 202.2, that no alcohol was present in the person’s body;

(2) that the person had not, at the time of driving or having the control or care of a road vehicle, consumed alcohol in such a quantity that the concentration of alcohol in the person’s blood exceeded 80 milligrammes of alcohol in 100 millilitres of blood;

(3) that the person had a reasonable excuse for not complying with a demand made on the person by a peace officer under section 202.3 or 636.1 of this Code or section 254 of the Criminal Code; or

(4) that the person was not driving or did not have the care or control of a road vehicle in the circumstances described in this section.

Where a suspension or a driving prohibition is lifted, the Société shall reimburse the review fees paid to the Société.

“202.6.7. The report and any other relevant document drawn up by the peace officer may stand in lieu of the peace officer’s statement if the peace officer attests in the report that he or she personally ascertained the facts recorded in the report. The same applies to a copy of the report certified by an authorized person.

A copy of a certificate of analysis under section 258 of the Criminal Code is evidence of its contents without proof of the signature or official character of the person appearing to have signed the certificate or that the copy is a true copy.

“202.6.8. Where a meeting is requested, it must be held by the Société within 10 days after the application for review is duly filed.

“202.6.9. The Société shall render its decision within 10 days after the application for review is duly filed or, if a meeting is held, within 10 days after the meeting is held.

For the purposes of this section, an application is not duly filed unless the fees payable at the time of the filing have been paid.

“202.6.10. An application for review filed with the Société does not lift the suspension of the licence, the suspension of the right to obtain a licence or the prohibition from driving a road vehicle.

“202.6.11. A person may, within 10 days after a review decision is rendered by the Société, contest the decision before the Administrative Tribunal of Québec.

The provisions of section 107 of the Act respecting administrative justice (chapter J-3) allowing a member of the Tribunal to suspend the execution of a decision are not applicable in that case.”

16. Section 209.2 of the said Code is amended by replacing “, 202.4 and 202.5” in the seventh line by “and 202.4”.

17. Section 624 of the said Code is amended by adding the following subparagraph after subparagraph 20 of the first paragraph :

“(21) determine the fees for a review of a decision to suspend a licence or the right to obtain a licence or to prohibit the driving of a road vehicle for a period of 90 days.”

18. Section 25 of the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting “2.1.1” after “paragraphs” in the first line of the third paragraph.

19. Section 119 of the said Act is amended by adding the following paragraph at the end :

“(7) a proceeding under section 202.6.11 of the Highway Safety Code (chapter C-24.2) which pertains to a decision to suspend a licence or the right to obtain a licence for a period of 90 days.”

20. Schedule I to the said Act is amended by inserting the following paragraph after paragraph 2.1 of section 3 :

“(2.1.1) proceedings under section 202.6.11 of the Highway Safety Code;”.

21. A licence issued after a cancellation or suspension imposed in connection with an offence under section 180 of the Highway Safety Code committed before (*insert here the date of coming into force of section 3*) shall be issued in accordance with the provisions of the first and third paragraphs of section 76 of the Highway Safety Code, as they read on (*insert here the date preceding the date of coming into force of section 3*).

22. This Act comes into force on 21 June 2001, except the provisions of sections 3, 4, 12 to 16 and 21, which come into force on the date or dates to be fixed by the Government.