



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 5
(2003, chapter 1)

An Act to amend the Act respecting insurance

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Passage in principle 13 June 2003
Passage 20 June 2003
Assented to 21 June 2003

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EXPLANATORY NOTES

This bill amending the Act respecting insurance revises the rules applicable to the issue of bonds and other evidences of indebtedness by an insurer.

In addition, the bill confirms that the authorization of the Minister of Finance is required when amendments are made to the constituting act of an insurance company for the purpose of a continuance under the Companies Act.

As well, new provisions allow the Agence nationale d'encadrement du secteur financier, at the request of a professional order that holds a licence authorizing it to insure its members in respect of professional liability, to extend the authorized insurance activities of the professional order to insuring its members against misappropriations of funds required to be deposited in trust and to insuring the legal costs resulting from such misappropriations.

Lastly, the bill contains transitional provisions and amendments for concordance.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting insurance (R.S.Q., chapter A-32);
- Professional Code (R.S.Q., chapter C-26).

Bill 5

AN ACT TO AMEND THE ACT RESPECTING INSURANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 1.1 of the Act respecting insurance (R.S.Q., chapter A-32), amended by section 1 of chapter 70 of the statutes of 2002, is again amended

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

1.1. A legal person is controlled by another person where the latter person holds, directly or through legal persons controlled by the latter person, more than 50% of the voting rights attached to the shares of the former or is in a position to elect a majority of its directors.”;

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

“A legal person is controlled by a federation of mutual insurance associations where the federation holds, by itself or jointly with the legal persons of its group, directly or through legal persons it controls, more than 50% of the voting rights attached to the shares of that legal person or is in a position to elect a majority of its directors.

A legal person is controlled by a mutual insurance association where the association holds, by itself or jointly with other mutual insurance associations of its group, directly or through legal persons it controls, more than 50% of the voting rights attached to the shares of that legal person or is in a position to elect a majority of its directors.”

2. Section 43 of the said Act is amended

(1) by striking out “directly or indirectly” in subparagraph 3 of the first paragraph ;

(2) by striking out “directly or indirectly” in the fourth line of the third paragraph.

3. Section 62.1 of the said Act is amended by replacing paragraph 2 by the following paragraph :

“(2) following such issue, the insurer’s total bonds and other evidences of indebtedness do not exceed the limits determined by regulation ;”.

4. Section 62.2 of the said Act is amended by striking out “by the shareholders” in paragraph 1.

5. Section 66.2 of the said Act, enacted by section 38 of chapter 70 of the statutes of 2002, is amended by replacing “and” in the English text of subparagraph 3 of the second paragraph by “or”.

6. Section 174.1 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing the first paragraph by the following paragraphs :

“174.1. A professional order governed by the Professional Code (chapter C-26) may, if authorized by the Minister and if the holder of a licence issued by the Agency, insure its members in respect of professional liability. In addition, it may insure the risks referred to in the second paragraph of section 220 provided it is authorized by the licence.

The professional liability insurance shall be valid whether claims are brought against the insured personally or against the partnership of which the insured is or was a member.”

7. Section 174.13 of the said Act is amended by adding “and, where applicable, to transactions referred to in the second paragraph of section 220” at the end of the first paragraph.

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

9. Section 191 of the said Act, replaced by section 72 of chapter 70 of the statutes of 2002, is amended by replacing “amalgamation agreement” in the English text of the second paragraph by “certificate of amalgamation”.

10. The heading of Division I of Chapter V.1 of Title III of the said Act, enacted by section 80 of chapter 70 of the statutes of 2002, is replaced by the following heading :

“CONTINUANCE OF COMPANIES CONSTITUTED UNDER THE LAWS OF QUÉBEC”.

11. Section 200.0.15 of the said Act, enacted by section 80 of chapter 70 of the statutes of 2002, is amended by inserting the following paragraphs after the first paragraph :

“The company shall request the Minister to confirm the continuance by-law if it makes amendments to its constituting act in accordance with section 123.134 of the Companies Act.

The Minister shall confirm the by-law only after obtaining the advice of the Agency.”

12. Section 220 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002 and by section 93 of chapter 70 of the statutes of 2002, is replaced by the following section :

“**220.** The Agency may, at the request of any legal person holding a licence other than a professional order, modify the licence to extend its authorized activities to other classes of insurance.

The Agency may, at the request of a professional order that holds a licence authorizing it to insure its members in respect of professional liability, modify the licence to extend its authorized activities to insuring members against misappropriations of funds required to be deposited in trust committed without complicity on the part of the insured and to insuring the legal costs resulting from such misappropriations.

The professional liability insurance fund established by a professional order covers all risks that the professional order is authorized to insure under its licence.”

13. Section 420 of the said Act, amended by section 242 of chapter 45 of the statutes of 2002 and by section 150 of chapter 70 of the statutes of 2002, is again amended

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

“(ac) prescribe the documents and information that must be furnished to the Minister and the Agency in relation to the constitution of an insurance company, the continuance of an insurance company governed by the Companies Act or the constitution of a mutual insurance association or in relation to any amendment of their constituting acts”;

(2) by striking out paragraph *aj*.

14. Section 420.1 of the said Act, enacted by section 151 of chapter 70 of the statutes of 2002, is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph :

“(1.1) determine, for the purposes of paragraph 2 of section 62.1, the limits in excess of which an insurer may not issue bonds or other evidences of indebtedness;”.

15. Section 86.1 of the Professional Code (R.S.Q., chapter C-26) is amended by replacing “or the” in the third line of the fourth paragraph by “and, where applicable, other risks referred to in the second paragraph of section 220 of the Act respecting insurance, or the”.

16. For the purposes of paragraph 2 of section 62.1 of the Act respecting insurance as replaced by section 3 of this Act, an insurer's total bonds and other evidences of indebtedness must not exceed 10% of its total assets as they appear in its last annual consolidated financial statements, until that limit is revised by regulation.

17. For the purposes of sections 6, 11, 12 and 13 of this Act, "Agency" means the "Inspector General of Financial Institutions" until the date of coming into force of section 7 of the Act respecting the Agence nationale d'encadrement du secteur financier (2002, chapter 45).

18. This Act comes into force on 21 June 2003.