



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 58

**An Act to again amend various
legislative provisions concerning mainly
the financial sector**

Introduction

**Introduced by
Mr. Nicolas Marceau
Minister of Finance and the Economy**

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EXPLANATORY NOTES

Firstly, this bill amends the Financial Administration Act to allow the Minister of Finance to pay and receive sums of money in order to guarantee obligations resulting from certain financial transactions and, for the purpose of exercising such guarantees, to make it possible for compensation to be invoked against the State.

Secondly, it amends the Act respecting insurance to give the insured of a damage insurer controlled by one or more mutual insurance associations rights similar to those of the insured of those associations.

Thirdly, the Act respecting the Autorité des marchés financiers is amended so that a certificate issued by the Authority will constitute proof of its content in any proceeding.

Fourthly, the Act respecting financial services cooperatives is amended to allow the Fédération des caisses Desjardins du Québec, when it makes a capital issue in favour of its credit unions, to use the process provided for in the Act even if the securities of the credit unions are held through a subsidiary of the federation.

Fifthly, the Money-Services Businesses Act is amended so that the security clearance report issued for each holder of a money services business licence will be updated every three years, instead of relying solely on voluntary reporting by such businesses.

Sixthly, the Derivatives Act and the Securities Act are amended to provide that an attempt to manipulate the market or to defraud a person constitutes an offence.

Seventhly, the Securities Act is further amended to standardize the fines payable for a distribution without a prospectus, introduce a definition of “market participant” and introduce provisions to allow securities dealer and adviser representatives to carry on their activities within a business corporation.

Finally, adjustments are made to the English text of the Act respecting insurance and the Business Corporations Act.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (chapter A-6.001);
- Act respecting insurance (chapter A-32);
- Act respecting the Autorité des marchés financiers (chapter A-33.2);
- Act respecting financial services cooperatives (chapter C-67.3);
- Money-Services Businesses Act (chapter E-12.000001);
- Derivatives Act (chapter I-14.01);
- Business Corporations Act (chapter S-31.1);
- Securities Act (chapter V-1.1).

Bill 58

AN ACT TO AGAIN AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING MAINLY THE FINANCIAL SECTOR

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

FINANCIAL ADMINISTRATION ACT

1. Section 16.1 of the Financial Administration Act (chapter A-6.001) is replaced by the following sections:

“16.1. Ancillary to a transaction effected under the first paragraph of section 16, including as a margin deposit, margin or settlement, the Minister may, where the Minister deems it advisable, in accordance with an instrument the Minister concludes,

(1) encumber with a movable hypothec with delivery any security or security entitlement within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002) that the Minister holds; and

(2) pay or receive, without further authorization, a sum of money that allows the person receiving it to extinguish or reduce, by way of compensation, their obligation to reimburse that sum whenever provided for in the instrument.

“16.2. Despite article 1672 of the Civil Code and any provision to the contrary in Chapter III, compensation may be invoked against each of the parties to a transaction effected under the first paragraph of section 16 or to an instrument referred to in section 16.1, provided that one of the instruments authorizes compensation and sets out the terms under which compensation may be carried out.”

2. Section 17 of the Act is amended by replacing the second paragraph by the following paragraph:

“The person authorized by the Minister to conclude and sign a transaction may conclude and sign the instrument referred to in section 16.1, if the instrument is ancillary to that transaction.”

3. Section 18 of the Act is amended by adding “and for the payment of a sum of money by the Minister under paragraph 2 of that section” at the end of the second paragraph.

4. Section 19 of the Act is amended

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

“19. A transaction referred to in section 16 or a hypothec granted or the payment of a sum of money in accordance with an instrument concluded under section 16.1 is valid, and its validity cannot be contested if such transaction is concluded, such hypothec is granted or such payment is made in accordance with section 17, except where the cause of invalidity is set out in the terms of the transaction.”;

(2) by adding the following sentence at the end of the second paragraph: “The same applies for payments by the Minister under paragraph 2 of section 16.1.”;

(3) by replacing “hypothec” in the third paragraph by “to an instrument referred to in section 16.1”;

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

“An instrument concluded under section 16.1 in accordance with which the Minister makes or receives a payment described in paragraph 2 of that section is enforceable against third persons without further formality. Such an instrument is governed by the law expressly designated in it or the designation of which may be inferred with certainty from the terms of the instrument.”

ACT RESPECTING INSURANCE

5. The Act respecting insurance (chapter A-32) is amended by inserting the following section after section 55:

“55.1. The board of directors of an insurance company that carries on damage insurance activities and is controlled by a mutual insurance association must include at least one director elected by its insured present at the general meeting for the election of the other directors.

The number of directors to be elected by the insured is determined by a by-law of the company. It cannot exceed one third of the members of the board of directors.”

6. The heading of Division IV of Chapter II of Title III of the Act is amended by striking out “PARTICIPATING”.

7. The Act is amended by inserting the following sections after section 66.1.6:

“66.1.7. The insured of an insurance company that carries on damage insurance activities and is controlled by a mutual insurance association are entitled to attend all general meetings of the company.

“66.1.3. An insurance company that carries on damage insurance activities and is controlled by a mutual insurance association may pay part of its profits for a particular year to its insured.”

8. The Act is amended by inserting the following section after section 93.4.2:

“93.4.3. No mutual insurance association may control an insurance company that carries on damage insurance activities in Québec unless that insurance company is constituted or continued under this Act.

The Minister may, however, authorize, for the period determined by the Minister, a mutual insurance association to control such a company constituted otherwise than under the laws of Québec, provided the association undertakes to continue the company under this Act before that period expires.”

9. Section 244.3 of the Act is replaced by the following section:

“244.3. A mutual insurance association, or a damage insurance company controlled by such an association, must obtain the authorization of the federation with which that association or company is affiliated before acquiring, directly or through a holding company, all or part of the shares of a legal person in accordance with section 244.2.”

10. Section 285.30 of the Act is amended

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

“285.30. A person who is dissatisfied with the examination of a complaint or with the outcome of the examination of a complaint carried out by a mutual insurance association or a damage insurance company controlled by such an association may refer the matter to the federation belonging to the same group as the association or the company.”;

(2) in the second paragraph,

(a) by inserting “or the damage insurance company” before “as regards the complaint filed”;

(b) by replacing “company” by “association”.

11. Section 285.33 of the Act is amended, in the first paragraph,

(1) by inserting “or a damage insurance company controlled by such an association” before “, the federation”;

(2) by replacing “company” by “association”.

12. Section 301 of the Act is amended by replacing the second paragraph by the following paragraph:

“Participating policyholders, members of mutual insurance companies, members of mutual insurance associations, and the insured of damage insurance companies controlled by such an association are entitled, in the same manner as shareholders, to examine the annual report.”

13. Section 325.0.1 of the Act is amended by replacing “companies” in subparagraphs 4 and 5 of the first paragraph and in the second paragraph by “associations”.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

14. The Act respecting the Autorité des marchés financiers (chapter A-33.2) is amended by inserting the following section after section 25:

“25.0.1. A certificate issued by the Authority to attest any matter relating to the administration of this Act or of an Act referred to in section 7 constitutes, in the absence of any evidence to the contrary, proof of its content in any proceeding without further proof of the signature or authority of the signatory.”

ACT RESPECTING FINANCIAL SERVICES COOPERATIVES

15. Section 46 of the Act respecting financial services cooperatives (chapter C-67.3) is amended by inserting “directly or through an association or a legal person it controls,” after “unions,” in the second paragraph.

MONEY-SERVICES BUSINESSES ACT

16. Section 27 of the Money-Services Businesses Act (chapter E-12.000001) is amended

(1) by replacing the first and second paragraphs by the following paragraphs:

“27. Every three years following the issue of a money services business’s licence and every time it is informed of a fact likely to affect the validity of the licence or to render any of sections 11 to 17 applicable, the Authority sends information concerning the licence holder to the Sûreté du Québec and the police force of the local municipality in which the business offers money services so they can make such checks as they consider necessary.

The Sûreté du Québec must then provide the Authority with new security clearance reports stating the grounds on which it recommends that the business’s licence be suspended or revoked, if that is the case.”;

(2) by replacing “a licence” in the third paragraph by “the business’s licence”.

17. Section 77 of the Act is repealed.

DERIVATIVES ACT

18. Section 92 of the Derivatives Act (chapter I-14.01) is repealed.

19. Section 151 of the Act is amended by replacing “or participates” by “, participates or attempts to engage or participate”.

BUSINESS CORPORATIONS ACT

20. Section 215 of the Business Corporations Act (chapter S-31.1) is amended by replacing “restricts, in whole or in part, the powers of the directors” in the first paragraph by “restricts the powers of the directors or withdraws all powers from them”.

SECURITIES ACT

21. Section 5 of the Securities Act (chapter V-1.1) is amended by inserting the following definition after the definition of “issuer”:

““market participant” means a registered, recognized or designated person or a person exempted from registration, recognition or designation, a self-regulatory organization that has been recognized or exempted from recognition, a transfer agent or registrar of a reporting or exempt issuer, a person acting as depositary, trustee or manager of an investment fund, an unregistered subscriber of an alternative trading system, a person having direct electronic access to the markets or any other person designated as such by regulation;”.

22. Section 151.1.1 of the Act is amended by replacing “, a person acting as depositary, trustee or manager of such a fund or any other market participant determined by regulation” in the first paragraph by “or a market participant”.

23. The Act is amended by adding the following chapter after section 168.1.5:

“CHAPTER V

“DEALER OR ADVISER REPRESENTATIVE ACTIVITIES WITHIN A BUSINESS CORPORATION

“**168.2.** A dealer or adviser representative who is duly registered as such with the Authority may carry on activities, in accordance with the conditions and rules determined by regulation of the Authority, within a business corporation of which the representative has sole control.

The business corporation is solidarily liable with the representative for the performance of the obligations imposed by this Act and for any fault committed by the representative.

“168.3. If a dealer or adviser representative holds civil liability insurance, that insurance must also designate the business corporation as an insured.

“168.4. A dealer or adviser representative may not invoke decisions or acts of the business corporation within which the representative carries on activities to justify a contravention of this Act or the regulations or to limit or exclude the representative’s personal liability.

“168.5. The remuneration relating to the dealer or adviser representative activities carried on within a business corporation belongs to the corporation.”

24. Section 199.1 of the Act is amended by replacing “or participates” by “, participates or attempts to engage or participate”.

25. Section 204.1 of the Act is amended by replacing “section 11” in the first sentence by “sections 11 and 12”.

26. Section 208.1 of the Act is amended

- (1) by replacing “section 11” by “section 11 or 12”;
- (2) by inserting “199.1,” after “197,”.

27. Section 295 of the Act is repealed.

28. Section 331 of the Act is amended, in the first paragraph,

- (1) by striking out subparagraph 6.1;
- (2) by striking out subparagraph 8.

29. Section 331.1 of the Act is amended

- (1) by inserting the following paragraph after paragraph 26:

“(26.1) for the purposes of section 168.2, determine the conditions and rules subject to which the securities activities of a dealer or adviser representative may be carried on within a business corporation;”;

- (2) by inserting “, and rules concerning market participants that are parties to such offers, trades or transactions,” after “or other securities transactions” in paragraph 32.0.1;

- (3) by inserting the following paragraph after paragraph 32.2:

“(32.3) designate a person as a market participant for the purposes of the definition of “market participant” in section 5;”.

FINAL PROVISION

30. This Act comes into force on (*insert the date of assent to this Act*), except section 23, paragraph 2 of section 28 and paragraph 1 of section 29, which come into force on the date to be set by the Government.

