



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 67

An Act to amend various legislative provisions concerning health

Introduction

**Introduced by
Mr. Philippe Couillard
Minister of Health and Social Services**

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EXPLANATORY NOTES

This bill introduces a plan to compensate victims of products distributed by Héma-Québec, regardless of liability.

The bill provides for the establishment of a public health ethics committee by the Institut national de santé publique du Québec and broadens the government plan to protect the public against disease to cover all vector-borne diseases, including the West Nile virus. The bill also specifies that the Minister of Health and Social Services may collect certain information from public health directors in a form that ensures anonymity, to enable public health authorities to exercise their monitoring activities. In addition, the bill introduces mandatory entry of all vaccinations in the vaccination registry.

Amendments are also made to the Health Insurance Act, the Youth Protection Act and the Act respecting health services and social services. With respect to the latter Act, the bill clarifies certain provisions relating to the use of information for the purpose of soliciting gifts, the complaints examination procedure, in-patients' committees and users' committees.

LEGISLATION AMENDED BY THIS BILL:

- Health Insurance Act (R.S.Q., chapter A-29);
- Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., chapter H-1.1);
- Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2);
- Youth Protection Act (R.S.Q., chapter P-34.1);
- Public Health Act (R.S.Q., chapter S-2.2);

- Act respecting health services and social services (R.S.Q., chapter S-4.2);
- Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5);
- Act to amend the Act respecting health services and social services and other legislative provisions (2005, chapter 32).

Bill 67

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING HEALTH

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

HEALTH INSURANCE ACT

1. Section 67 of the Health Insurance Act (R.S.Q., chapter A-29) is amended by inserting the following paragraph after the ninth paragraph:

“It does not prohibit the communication of information to the Minister of Health and Social Services, in accordance with the conditions and formalities prescribed by the Act respecting Access to documents held by public bodies and the Protection of personal information, where such information is needed to assess and evaluate health and social services under subparagraph 13 of the second paragraph of section 431 of the Act respecting health services and social services (chapter S-4.2).”

ACT RESPECTING HÉMA-QUÉBEC AND THE HAEMOVIGILANCE COMMITTEE

2. The Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., chapter H-1.1) is amended by inserting the following chapter after section 54:

“CHAPTER II.1

“COMPENSATION FOR VICTIMS OF A HÉMA-QUÉBEC PRODUCT

“54.1. In this chapter, unless the context indicates otherwise,

“bodily injury” means any physical or mental injury suffered by a victim, including death but excepting any adverse effects determined by regulation;

“Héma-Québec product” means any product distributed by Héma-Québec, except products used for research or clinical trials, unless the Minister decides otherwise;

“victim” means a person who received a Héma-Québec product through a transfusion or graft, a person who contracted a disease from a person who received a Héma-Québec product, or a foetus of either of such persons or, if death occurs, the person who is entitled to a death benefit.

“54.2. The Minister must compensate, regardless of liability, a victim of bodily injury caused by a defect in or contamination, by known or unknown pathogens, of a Héma-Québec product.

The medical act leading to the injury must have taken place in Québec.

“54.3. Compensation under this chapter is the same as that provided for by the Automobile Insurance Act (chapter A-25) and its regulations, with the necessary modifications.

“54.4. Entitlement to compensation is prescribed three years after the date on which the bodily injury becomes apparent.

However, if an injury becomes apparent gradually, the time limit runs from the day the injury first becomes apparent.

“54.5. Compensation under this chapter stands in lieu of all rights and remedies against Héma-Québec by reason of bodily injury.

However, in cases where it is not otherwise prohibited by law, the victim may institute civil proceedings against any other person liable for the bodily injury.

“54.6. The Minister is subrogated by operation of law to the rights and actions of the victim against the person liable for the bodily injury up to the amount of compensation paid by the Minister or of the capital representing the pension to be paid by the Minister.

“54.7. A claimant who believes he or she has been wronged by a decision of the Minister under section 54.2 or 54.3 may, within 60 days of the date of notification of the decision, contest the decision before the Administrative Tribunal of Québec.

“54.8. A proceeding before the Administrative Tribunal of Québec does not suspend the payment of compensation paid as a pension.

[[**“54.9.** The sums necessary for the purposes of this chapter are taken out of the consolidated revenue fund.]]

“54.10. If the bodily injury caused by a Héma-Québec product results from an event which entitles a person to both compensation under this chapter and a benefit, advantage or compensation under the Act respecting industrial accidents and occupational diseases (chapter A-3.001), the Automobile Insurance Act (chapter A-25), the Act to promote good citizenship (chapter C-20), the Crime Victims Compensation Act (chapter I-6) or the Public Health Act (chapter S-2.2), the person may elect to take advantage of the compensation provided for in this chapter or to claim the above-mentioned benefit, advantage or compensation.

A person who chooses to be compensated under the Act respecting industrial accidents and occupational diseases, the Automobile Insurance Act, the Act to promote good citizenship, the Crime Victims Compensation Act or the Public Health Act loses all rights to compensation under this chapter. In the same manner, a person who chooses to be compensated under this chapter loses all rights to compensation under the other acts.

“54.11. The Government must, by regulation,

(1) determine the conditions that must be met by a person claiming compensation under this chapter; and

(2) determine which adverse effects are not bodily injuries.

“54.12. This chapter applies to victims who received Héma-Québec products after 28 September 1998. However, a victim whose right of recourse is prescribed when this section comes into force is not entitled to the compensation provided for in section 54.2.”

ACT RESPECTING INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC

3. The Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1) is amended by inserting the following sections after section 19:

“19.1. The institute is to establish a public health ethics committee.

“19.2. The main function of the ethics committee is to give its opinion on the ethical aspect of the proposed surveillance plans and surveys on health and social issues drawn up under the Public Health Act (chapter S-2.2) and submitted to it by the Minister and public health directors.

The committee may, in particular, give its opinion on

(1) the object of ongoing surveillance and the indicators or health determinants selected for a surveillance plan or a survey; and

(2) the type of information it will be necessary to collect, the sources of information to be used and the analytic study envisaged.

“19.3. The ethics committee may also give its opinion on any ethical question that may arise in the application of the Public Health Act, in particular, on the activities or actions provided for in the national public health program or in regional or local public health action plans.

“19.4. The composition and the operating procedures of the ethics committee are determined by the institute.

The committee, however, must include

- (1) one ethicist;
- (2) two representatives of the general public who have no professional ties to the health and social services system;
- (3) one public health director; and
- (4) one professional practising in a health and social services institution.”

ACT RESPECTING MEDICAL LABORATORIES, ORGAN, TISSUE, GAMETE AND EMBRYO CONSERVATION, AND THE DISPOSAL OF HUMAN BODIES

4. Division IV.1 of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2), comprising sections 24.1 to 24.6, is repealed.

YOUTH PROTECTION ACT

5. Section 32 of the Youth Protection Act (R.S.Q., chapter P-34.1), amended by section 10 of chapter 34 of the statutes of 2006, is again amended by inserting the following paragraphs after the first paragraph:

“Despite the first paragraph, the director may, if the director considers that the situation warrants it, authorize, in writing and to the extent the director specifies, a person who is not a member of the director’s staff to assess a child’s situation and living conditions as provided for in subparagraph *b* of the first paragraph if the person is

(a) a member of the personnel of an institution operating a child and youth protection centre;

(b) a member of the personnel of an institution operating a rehabilitation centre for young persons with adjustment problems; or

(c) a member of a Native community designated by the director within the scope of an agreement between an institution operating a child and youth protection centre and the Native community.

The director may terminate the authorization at any time.”

6. Section 81 of the Act, amended by section 62 of chapter 34 of the statutes of 2005 and by section 49 of chapter 34 of the statutes of 2006, is again amended by replacing the second paragraph by the following paragraphs:

“The child, the child’s parents and the director are parties to the hearing.

The Commission may, *ex officio*, intervene at the proof and hearing as if it were a party to it.”

7. Section 96 of the Act, amended by section 63 of chapter 34 of the statutes of 2005, is again amended by inserting the following subparagraph at the end of the first paragraph:

“(j) the tutor appointed under section 70.1 or 70.4, with regard to the record of the tribunal kept under sections 70.1 to 70.6.”

PUBLIC HEALTH ACT

8. Chapter III of the Public Health Act (R.S.Q., chapter S-2.2), comprising sections 19 to 32, is replaced by the following chapter:

“CHAPTER III

“INFORMATION REQUIRED TO MONITOR PUBLIC HEALTH

“**19.** The Minister may require from public health directors the information necessary for public health authorities to monitor public health. The information is to be provided in a form that ensures anonymity.

“**20.** Section 52 applies to this chapter, with the necessary modifications.”

9. Section 36 of the Act is amended by replacing “ethics committee” in the first and second paragraphs by “ethics committee of the Institut national de santé publique du Québec”.

10. Section 43 of the Act is amended by replacing “ethics committee” in the first paragraph by “ethics committee of the Institut national de santé publique du Québec”.

11. Section 61 of the Act, enacted by section 61 of chapter 60 of the statutes of 2001, is amended by replacing “cause a registry to be kept” by “establish and maintain a registry”.

12. Section 62 of the Act, enacted by section 62 of chapter 60 of the statutes of 2001, is amended by striking out “, provided the person consents thereto in the manner set out in sections 63 to 65”.

13. Sections 63 and 64 of the Act, enacted by sections 63 and 64 of chapter 60 of the statutes of 2001, are repealed.

14. Section 65 of the Act, enacted by section 65 of chapter 60 of the statutes of 2001, is replaced by the following section:

“65. Information held by a health professional on the vaccinations a person has received in or outside Québec shall be sent to the manager of the registry to be recorded in it.”

15. Section 66 of the Act, enacted by section 66 of chapter 60 of the statutes of 2001, is amended by replacing “Written information on the vaccination registry must be” by “The Minister must make written information on the vaccination registry”.

16. Section 67 of the Act, enacted by section 67 of chapter 60 of the statutes of 2001, is amended

(1) by striking out subparagraphs 2 and 6 of the first paragraph;

(2) by inserting the following paragraphs after the first paragraph:

“Access to the information may be granted to the following persons for the purpose of verifying an individual’s vaccination history and provided the individual has consented to it in writing:

(1) physicians;

(2) pharmacists;

(3) dentists;

(4) nurses;

(5) midwives; and

(6) nursing assistants.

The consent may be given for all or part of the vaccination history and be withdrawn at any time by means of a written document.

In addition, access to the personal information referred to in the first paragraph shall be granted to institutions operating a local community service centre, for the purpose of promoting vaccination among the people in their territories who have given prior consent to such access or, on the same conditions, to the public health director of a territory, if the director and such an institution signed an agreement under which such promotional activities are carried out by the public health department.”;

(3) by replacing “first paragraph” in the second paragraph by “first, second, third and fourth paragraphs”.

17. Section 68 of the Act, enacted by section 68 of chapter 60 of the statutes of 2001, is amended

- (1) by striking out “Subject to sections 62 to 65,” in the first paragraph;
- (2) by replacing “provide” in the first paragraph by “record”.

18. Section 69 of the Act is amended by replacing “a person who has agreed to participate in the vaccine registration procedure” in the third paragraph by “the person who was vaccinated”.

19. Section 95 of the Act is amended

- (1) by striking out “a physician,” in the third line of the second paragraph;
- (2) by inserting “other than a physician” after “health professional” in the fourth line of the second paragraph.

20. The Act is amended by inserting the following division after section 130:

“DIVISION IV

“GOVERNMENT PLAN OF ACTION TO PROTECT THE PUBLIC FROM VECTOR-BORNE DISEASES, INCLUDING THE WEST NILE VIRUS

“130.1. If the health of the public is threatened by vectors capable of transmitting a disease such as that caused by the West Nile virus, the Government may establish and implement a plan of action to control the vectors, on a joint proposal of the Minister of Health and Social Services, the Minister of Sustainable Development, Environment and Parks and the Minister of Agriculture, Fisheries and Food, after consultation with the Minister of Municipal Affairs and Regions.

“130.2. The measures provided for in the government plan of action may call for the use of chemical pesticides only if the other measures available are considered to be insufficient.

Measures that call for the use of pesticides are exempt from the application of any general or special legislative or regulatory provision, including a municipal by-law, that prevents or delays the implementation of the measures. However, the Regulation respecting environmental impact assessment and review (R.R.Q., 1981, chapter Q-2, r. 9) applies to these measures.

Furthermore, when the measures provided for in the government plan of action call for a pesticide treatment from the air or in an aquatic environment with a surface outlet flowing towards a drainage basin, the Minister of Health and Social Services must notify the Minister of Natural Resources and Wildlife, the Minister of Sustainable Development, Environment and Parks and the Minister of Agriculture, Fisheries and Food one week before application is to begin.

“130.3. Using the means considered to be the most efficient, the Minister of Health and Social Services must give the municipalities and the public concerned prior notification of the planned application of pesticides and information on the measures affording the best protection against the harmful effects of the pesticides.

“130.4. No person may hinder the implementation of the measures provided for in the government plan of action. The owner, lessee or occupant of a parcel of land is required to give free access to the land at all times so that the measures, in particular the use of pesticides, may be implemented.

“130.5. The government plan of action must be updated annually, if necessary, and made public.

“130.6. A report on the measures implemented to protect the public from the threat posed by disease-bearing vectors must be filed, within three months after the measures have been taken, with the Minister of Health and Social Services, who must immediately send a copy of the report to the other ministers concerned. The Minister must make the report public within 30 days after it is received.”

21. Section 137 of the Act is amended by striking out paragraph 3.

22. Section 174 of the Act is amended by striking out the second paragraph.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

23. Section 27.3 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is amended by adding the following paragraph at the end:

“If the user is under 14 years of age, the institution may use the name and address of the user’s father or mother for the same purpose. The other provisions of this section then apply in respect of that person as though the person were a user.”

24. Section 42 of the Act is amended by adding the following paragraph at the end:

“The medical examiner is answerable to the board of directors for the application of the complaint examination procedure in cases involving a physician, dentist or pharmacist, or a resident.”

25. Section 82 of the Act is amended by replacing “Act respecting young offenders (Revised Statutes of Canada, 1985, chapter Y-1)” in the fourth and fifth lines of the first paragraph by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”.

26. Section 91 of the Act, amended by section 3 of chapter 43 of the statutes of 2006, is again amended by striking out “subparagraph 1 of” in the first paragraph.

27. Section 108 of the Act is amended by replacing “second” in the second line of the fifth paragraph by “fourth”.

28. Section 129 of the Act is amended by replacing “users’ committee of the institution” in paragraph 2 by “institution’s users’ committee or committees”.

29. Section 182 of the Act is amended

(1) by striking out “38,” in the second line of the first paragraph;

(2) by inserting “42, 43,” after “39,” in the second line of the first paragraph.

30. Section 209 of the Act is amended by inserting the following paragraph after the first paragraph:

“However, an institution operating a residential and long-term care centre that has facilities in more than one region of Québec may choose to set up one users’ committee for each region or a single users’ committee for two or more regions, the committee members being elected by the users of the region or regions concerned.”

31. The Act is amended by inserting the following section after section 209:

“209.0.1. Despite the third paragraph of section 209, an institution may choose not to set up an in-patients’ committee for a facility that provides lodging to fewer than 10 users or that expects to provide lodging to most of its users for a period of less than six months.

In such a case, after consulting its users’ committee, the institution must either entrust the exercise of the functions set out in section 212.1 to the users’ committee, or group the facility together with one or more other facilities maintained by the institution in order to establish a single in-patients’ committee for all those facilities.

Sections 209 to 212.1 then apply, with the necessary modifications.

Each year, the institution must assess the effectiveness of the measure chosen under the second paragraph and, if need be, modify it in accordance with this section.”

32. Section 212 of the Act is amended by inserting the following subparagraph after subparagraph 5 of the first paragraph:

“(6) assess the effectiveness of any measure implemented under section 209.0.1.”

33. Section 343 of the Act is amended by inserting “and in-patients committees” after “committees” in the second line of the first paragraph.

34. Section 518 of the Act is amended by replacing “Act respecting young offenders (Revised Statutes of Canada, 1985, chapter Y-1)” by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES FOR CREE NATIVE PERSONS

35. Section 152 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) is amended

(1) by replacing “Young Offenders Act (Revised Statutes of Canada, 1985, chapter Y-1)” in the fifth and sixth lines of the first paragraph by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”;

(2) by replacing “Young Offenders Act” in the first and second lines of the second paragraph by “Youth Criminal Justice Act”.

ACT TO AMEND THE ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES AND OTHER LEGISLATIVE PROVISIONS

36. Section 339 of the Act to amend the Act respecting health services and social services and other legislative provisions (2005, chapter 32) is amended by replacing “hours” in the first line by “months”.

OTHER PROVISIONS

37. Section 5 of Schedule I to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting the following paragraph after paragraph 5:

“(5.1) proceedings against decisions pertaining to compensation for victims, brought under section 54.7 of the Act respecting Héma-Québec and the haemovigilance committee (chapter H-1.1);”.

38. The members of the public health ethics committee, established under the Public Health Act (R.S.Q., chapter S-2.2), who are in office on (*insert the date of assent to this Act*) are deemed to have been designated by the Institut national de santé publique du Québec as members of the ethics committee established under the Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1). The members remain in office until replaced or reappointed.

39. A permanent public servant designated by the national public health director under section 27 of the Public Health Act to attend the meetings of the ethics committee and act as secretary becomes an employee of the Institut national de santé publique du Québec, subject to the provisions of the collective agreement applicable to that public servant.

The employee occupies the position and exercises the functions assigned by the institute, subject to the applicable provisions of the collective agreement.

40. An employee referred to in section 39 of this Act may also apply for a transfer to a position in the public service or enter a competition for promotion in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

Section 35 of that Act applies if the employee enters such a competition for promotion.

41. An employee referred to in section 39 of this Act who applies for a transfer or enters a competition for promotion may apply to the chair of the Conseil du trésor for an assessment of the classification that would be assigned to the employee in the public service. The assessment must take account of the classification that the employee had in the public service on the date on which the employee left the public service, as well as the years of experience and the formal training acquired in the course of employment with the Institut national de santé publique du Québec.

If the employee is transferred following an application under the first paragraph, the deputy minister of the department or chief executive officer of the body must assign to the employee a classification compatible with the assessment provided for in the first paragraph.

If promoted, the employee must be given a classification on the basis of the criteria set out in the first paragraph.

42. Where some or all of the operations of the Institut national de santé publique du Québec are discontinued or if there is a shortage of work, the employee referred to in section 39 of this Act is entitled to be placed on reserve in the public service with the same classification the employee had on the date on which the employee left the public service.

In such a case, the chair of the Conseil du trésor must establish the employee's classification, where applicable, on the basis of the criteria set out in the first paragraph of section 41 of this Act.

43. An employee placed on reserve under section 42 of this Act remains in the employ of the Institut national de santé publique du Québec until the chair of the Conseil du trésor is able to assign the employee a position.

44. Subject to any remedy available under a collective agreement, an employee referred to in section 39 of this Act who is dismissed may bring an appeal under section 33 of the Public Service Act.

45. The records and documents of the public health ethics committee established under the Public Health Act become the records and documents of the ethics committee established under the Act respecting Institut national de santé publique du Québec.

46. The provisions of this Act come into force on (*insert the date of assent to this Act*), except sections 2 and 37, which come into force on the date or dates to be set by the Government.