



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 37

An Act to amend the Automobile Insurance Act

Introduction

**Introduced by
Madam Pauline Marois
Minister of Finance**

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EXPLANATORY NOTES

This bill amends the Automobile Insurance Act as regards an insured person's right to choose the person who is to repair a damaged automobile. The bill also deals with the activities of appraisal centres.

The bill establishes the requirements that must be met to act as a certified appraiser. It authorizes the Groupement des assureurs automobiles to establish a covenant determining rules of ethics, which will require the approval of the Inspector General of Financial Institutions.

The bill confers on the Inspector General of Financial Institutions the power to inspect and issue orders in respect of the Groupement des assureurs automobiles.

Lastly, the bill contains penal and transitional provisions.

Bill 37

AN ACT TO AMEND THE AUTOMOBILE INSURANCE ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 171 of the Automobile Insurance Act (R.S.Q., chapter A-25) is amended

(1) by striking out the third paragraph ;

(2) by replacing the fourth paragraph by the following paragraph :

“The Groupement is, in addition, responsible for the certification of persons who wish to act as certified appraisers.”

2. The said Act is amended by inserting the following sections after section 171 :

“**171.1.** An authorized insurer must allow an insured to choose the person who is to repair the damage sustained by an automobile.

“**171.2.** A certified appraiser who appraises the damage covered under an automobile insurance contract shall not be an employee or in the service of the person who is to repair the automobile or of a legal person or partnership controlled by that person.

The certified appraiser must sign the appraisal and ensure that a copy is given to the insured before the repair work begins or before the authorized insurer informs the insured that he or she is to be compensated for the total loss of the automobile.

For the purposes of the first paragraph, a legal person is controlled by a person where the latter person holds, directly or through legal persons the latter person controls, more than 50% of the shares or voting rights attached to the shares of the legal person, or has the power to elect a majority of its directors.

A partnership is controlled by a person where the person holds, directly or through legal persons the person controls, more than 50% of the partnership shares. A limited partnership is controlled by a person if the person or a legal person controlled by the person is the general partner.”

3. Section 172 of the said Act is replaced by the following section :

“**172.** Appraisal centres may exercise other activities, including verifying repairs effected after damage is sustained.”

4. The said Act is amended by inserting the following sections after section 172 :

“**172.1.** No person may appraise the damage sustained by an automobile for the purposes of compensation by an authorized insurer or use the title “certified appraiser” unless the person is bound to the Groupement by a covenant pertaining to the activity of appraiser, hereinafter called “appraiser’s covenant”.

“**172.2.** The Groupement shall determine, by by-law, the requirements that an appraiser must meet in order to enter into an appraiser’s covenant with the Groupement, in particular the minimum requirements concerning training and examinations.

The Groupement shall also establish the terms of such a covenant, which must include

- (1) rules of ethics for certified appraisers ; and
- (2) appropriate penalties for conduct inconsistent with the stipulations of the covenant.

The by-law and the covenant shall be submitted for approval to the Inspector General of Financial Institutions, who may approve them with or without amendment.

The by-law and the covenant shall not come into force unless a notice, reproducing the text thereof, is published 30 days beforehand in the *Gazette officielle du Québec*.

“**172.3.** A person who wishes to enter into an appraiser’s covenant with the Groupement must first pass an examination prepared by the Groupement. The examination must be approved by the Inspector General of Financial Institutions.

“**172.4.** If a certified appraiser does not comply with the stipulations of the appraiser’s covenant, the Groupement must impose the penalties provided for in the covenant.

The Groupement may not refuse to enter into a covenant, or suspend or revoke the rights conferred by a covenant, without first having

- (1) informed the person concerned of its intention and the reasons therefor ;
- (2) informed the person concerned of the substance of any complaints or objections that concern the person ; and

(3) given the person concerned the opportunity to present observations and, where necessary, to produce documents to complete the person's file.”

5. The said Act is amended by inserting the following sections after section 176:

“176.1. The Inspector General of Financial Institutions shall, as often as the Inspector General considers necessary, inspect the Groupement to ensure that it is applying the provisions of this Title.

“176.2. Where, in the opinion of the Inspector General of Financial Institutions, the Groupement is contravening any provision of this Title or has failed to ensure the application of the provisions of this Title, the Inspector General may order the Groupement to cease such conduct and to remedy the situation.

At least 15 days before issuing an order, the Inspector General of Financial Institutions shall notify the contravener as prescribed by section 5 of the Act respecting administrative justice (chapter J-3), stating the reasons which appear to justify the order, the date on which the order is to take effect and the right of the contravener to present observations.

“176.3. The order of the Inspector General of Financial Institutions, including the reasons on which it is based, shall be sent to the Groupement. It shall also be sent to each member of the Groupement and to its directors. The order shall take effect on the day it is served or on any later date indicated therein.

“176.4. The Inspector General of Financial Institutions may revoke an order issued under section 176.2.

“176.5. The Inspector General of Financial Institutions may, by a motion, apply to a judge of the Superior Court for an injunction in respect of the application of this Title.

The motion for an injunction constitutes an action.

The procedure prescribed in the Code of Civil Procedure (chapter C-25) applies, except that the Inspector General of Financial Institutions shall not be required to give security.”

6. Section 182 of the said Act is amended by replacing “March” in the first line of the second paragraph by “June”.

7. The said Act is amended by inserting the following section after section 190.1:

“190.2. Any authorized insurer who contravenes the provisions of section 171.1 is liable to a fine of not less than \$700 nor more than \$7,000 for a first offence, or to a fine of not less than \$1,400 nor more than \$14,000 for a second or subsequent offence.”

8. Section 204 of the said Act is amended by adding the following paragraph at the end :

“The Inspector General of Financial Institutions is responsible for the administration of Titles VI and VII.”

9. Notwithstanding sections 172.1 to 172.3 of the Automobile Insurance Act, enacted by section 4 of this Act, the Groupement des assureurs automobiles must enter into a covenant pertaining to the activity of appraiser with any person who applies therefor and establishes that, on (*insert here the date of coming into force of this section*), he or she had been acting as an appraiser for at least one year.

However, the person must comply with the provisions of section 171.2.

10. The provisions of this Act come into force on the date or dates to be fixed by the Government.