

NATIONAL ASSEMBLY

SECOND SESSION

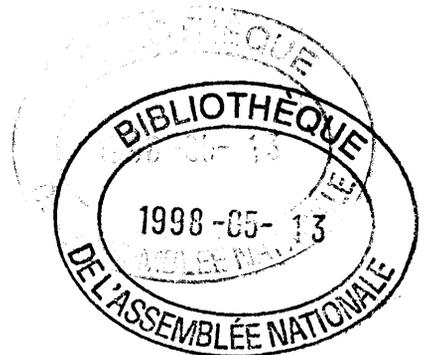
THIRTY-FIFTH LEGISLATURE

Bill 429

An Act to amend the Automobile Insurance Act

Introduction

**Introduced by
Mr Jacques Brassard
Minister of Transport**



Québec Official Publisher
1998

EXPLANATORY NOTES

This bill amends the Automobile Insurance Act for the main purpose of revising the compensation scheme for the victims of automobile accidents.

The maximum amount of compensation that may be granted for physical or mental injury is increased from \$137,210 to \$175,000, and coverage is extended to include temporary suffering. In addition, the compensation payable following the death of a victim with no dependants is increased from \$18,256 to \$40,000.

The conditions on which a reimbursement is granted for expenses incurred by a victim in providing alternative care for dependants are broadened, and compensation may now be paid for a loss of earnings incurred when a victim takes time away from work to receive care or undergo a health examination required by the automobile insurance board. Other provisions are amended to better reflect the actual economic loss sustained by victims.

The bill amends the rules dealing with compensation for property damage, to limit coverage to the damage sustained by the automobile involved and to clarify the conditions for eligibility.

Lastly, the bill introduces new financial provisions to provide explicitly for the use of investment income as a source of funding, and to allow the automobile insurance board to use unallocated surpluses to grant rebates on insurance contributions. The bill also determines the manner in which the cost of the health care services occasioned by automobile accidents will be reimbursed.

Bill 429

AN ACT TO AMEND THE AUTOMOBILE INSURANCE ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 11 of the Automobile Insurance Act (R.S.Q., chapter A-25) is amended

(1) by replacing, in the French text, “dommage” in the first paragraph by “préjudice”;

(2) by replacing “owing to extraordinary circumstances” in the second paragraph by “for serious and legitimate cause”.

2. Section 15 of the said Act is amended by replacing the second paragraph by the following:

“A victim who, by reason of the accident, is also deprived of regular benefits or employment benefits paid to assist in acquiring skills for employment through a training program under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23), to which the victim was entitled at the time of the accident, is entitled to receive an additional indemnity computed on the basis of the benefits that would have been paid. The benefits are deemed to form part of the victim’s gross income.”

3. Section 20 of the said Act is amended by replacing the second paragraph by the following:

“A victim who, by reason of the accident, is also deprived of regular benefits or employment benefits paid to assist in acquiring skills for employment through a training program under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23), to which the victim was entitled at the time of the accident, is entitled to receive an additional indemnity computed on the basis of the benefits that would have been paid. The benefits are deemed to form part of the victim’s gross income.”

4. Section 22 of the said Act is repealed.

5. Section 24 of the said Act is amended by replacing “the unemployment benefits or of allowances paid under the National Training Act (Revised Statutes of Canada, 1985, chapter N-19)” in subparagraph 2 of the first

paragraph by “regular benefits or employment benefits paid to assist in acquiring skills for employment through a training program under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23)”.

6. Section 25 of the said Act is amended by striking out “or allowances” in the second and third paragraphs.

7. Section 26 of the said Act is amended by striking out “and shall not be less than the indemnity the victim was receiving, if such was the case, at the end of the one hundred and eightieth day after the accident” in the third paragraph.

8. Section 29.1 of the said Act is replaced by the following :

“29.1. A victim who, by reason of the accident, is deprived of regular benefits or employment benefits paid to assist in acquiring skills for employment through a training program under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23), to which the victim was entitled at the time of the accident, is entitled to receive an income replacement indemnity for such time as the victim is deprived of the benefits by reason of the accident until the date scheduled, at the time of the accident, for the completion of the victim’s current studies.

The indemnity to which the victim is entitled is computed on the basis of the benefits that would have been paid had the accident not occurred.

For the purposes of this section, the benefits to which the victim would have been entitled are deemed to be the victim’s gross income.”

9. Section 30 of the said Act is amended

(1) by adding, at the end of the second paragraph, the following: “, until the date scheduled at the time of the accident for the completion of the victim’s current studies”;

(2) by striking out the third and fourth paragraphs.

10. Section 36.1 of the said Act is replaced by the following :

“36.1. A victim who, by reason of the accident, is deprived of regular benefits or employment benefits paid to assist in acquiring skills for employment through a training program under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23), to which the victim was entitled at the time of the accident, is entitled to receive an income replacement indemnity for such time as the victim is deprived of the benefits by reason of the accident until the end of the school year during which the victim reaches 16 years of age.

The indemnity to which the victim is entitled is computed on the basis of the benefits that would have been paid had the accident not occurred.

For the purposes of this section, the benefits to which the victim would have been entitled are deemed to be the victim's gross income."

11. Section 37 of the said Act is amended

(1) by adding, at the end of the second paragraph, the following: “, until the end of the school year during which the victim reaches 16 years of age”;

(2) by striking out “section 38 or” in the fourth paragraph.

12. Section 42 of the said Act is amended

(1) by replacing “unemployment benefits or of allowances paid under the National Training Act (Revised Statutes of Canada, 1985, chapter N-19)” in subparagraph 2 of the first paragraph by “regular benefits or employment benefits paid to assist in acquiring skills for employment through a training program under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23),”;

(2) by replacing “sections 21 and 22” in the fourth paragraph by “section 21”.

13. Section 42.1 of the said Act is amended by striking out “or allowances” in the second and third paragraphs.

14. Section 52 of the said Act is amended by replacing “premiums determined under the Unemployment Insurance Act (Revised Statutes of Canada, 1985, chapter U-1)” in the first paragraph by “employee's premium determined under the Act respecting employment insurance in Canada (Statutes of Canada, 1996, chapter 23)”.

15. Section 55 of the said Act is amended, in the French text, by replacing “de son dommage corporel” by “de son préjudice corporel”.

16. Section 63 of the said Act is replaced by the following:

“63. The spouse of a victim on the date of the victim's death is entitled to the greater of the following lump sum indemnities:

(1) an indemnity equal to the amount obtained by multiplying the gross income used as the basis for computing the income replacement indemnity to which the victim is entitled on the one hundred and eighty-first day after the accident, or to which the victim would have been entitled on that date had the victim survived but been unable to hold employment by reason of the accident, by the factor determined according to the victim's age at the time of death as shown in Schedule I;

(2) an indemnity of \$48,683.

If the victim's spouse is disabled on the date of the victim's death, the indemnity provided for in subparagraph 1 of the first paragraph is computed using the factors shown in Schedule II."

17. Sections 64 and 65 of the said Act are repealed.

18. Section 68 of the said Act is amended by replacing "63, 64 or 65, as the case may be" by "63".

19. Section 69 of the said Act is replaced by the following:

"69. If the victim is a minor and has no dependant at the time of death, the victim's father and mother are entitled to equal shares of a lump sum indemnity of \$40,000. If one parent is deceased, has been deprived of parental authority or has abandoned the victim, that parent's share shall accrue to the other parent. If both the victim's parents are deceased, the indemnity shall be paid to the victim's succession, except where the victim's property accrues to the State.

If the victim is of full age and has no dependant at the time of death, the indemnity shall be paid to the victim's succession, except where the victim's property accrues to the State."

20. The said Act is amended by striking out Division III of Chapter III of Title II.

21. The said Act is amended by replacing Chapter IV of Title II by the following:

"CHAPTER IV

"COMPENSATION FOR PHYSICAL OR MENTAL INJURY

"73. A victim is entitled, for loss of enjoyment of life, physical and mental suffering and other inconvenience suffered by reason of any injuries or sequelae affecting the victim temporarily or permanently following an accident, to a lump sum indemnity for physical or mental injury not exceeding the amount of \$175,000, subject to the terms and conditions fixed by regulation.

"74. The Société shall establish, by regulation, a table of injuries and the corresponding figures to be used in computing the amount of the lump sum indemnity for a victim who is affected by an injury temporarily, that is between the date of the accident and the date of recovery.

If an injury is not listed in the table, the corresponding figure shall be determined by the Société according to the figure corresponding to an injury of the same type and gravity that is listed in the table.

“75. The Société shall establish, by regulation, a table of functional and aesthetic sequelae and the figure corresponding to each sequela to be used in computing the amount of the lump sum indemnity for a victim permanently affected by an injury.

The amount granted shall not be less than \$608.

If the type of functional or aesthetic sequela is not listed in the table, the corresponding figure shall be determined by the Société according to the figure corresponding to a sequela of the same type and gravity that is listed in the table.

“76. A lump sum indemnity for physical or mental injury shall be determined according to the amounts in force on the date on which the Société makes its decision.

“77. No lump sum indemnity for physical or mental injury is payable if the victim dies within 24 hours of the accident.

“78. If the victim dies more than 24 hours after the accident but within the twelve months following the accident, the physical or mental injury is deemed to have affected the victim temporarily.”

22. Section 79 of the said Act is amended by replacing the second and third paragraphs by the following:

“The Société shall, using the calculation method and the procedure prescribed by regulation, determine the victim’s personal assistance needs and the amount of the reimbursement. The amount is reimbursed on presentation of vouchers, and may not exceed \$609 per week.

The Société may, in the cases and on the conditions prescribed by regulation, replace the reimbursement of expenses by an equivalent weekly allowance.”

23. Section 83 of the said Act is amended

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

“83. A victim who, by reason of the accident, becomes unable to care for a child under 16 years of age or for a person ordinarily unable, for any reason, to hold employment, and who is not receiving an indemnity under section 80, is entitled to the reimbursement of the expenses incurred to pay for the care of such persons.

The entitlement to a reimbursement is maintained where a victim having recovered the capacity to care for such persons is temporarily unable to do so because

(1) the victim must receive medical or paramedical care referred to in section 83.2;

(2) the victim must undergo an examination by a health professional, as required by the Société.”;

(2) by replacing, in the French text, “est également incapable de” in the fifth paragraph by “ne peut également”.

24. Section 83.5 of the said Act is replaced by the following:

“83.5. A victim who must, by reason of the accident, take time away from work to receive medical or paramedical care or to undergo an examination by a health professional as required by the Société is entitled to an indemnity for any resulting loss of earnings.

A person who accompanies a victim whose physical or mental state or age requires that the victim be accompanied when the victim must receive medical or paramedical care or undergo an examination by a health professional as required by the Société, is entitled to an attendance allowance.

Victims and persons accompanying victims are entitled to the reimbursement of the accommodation and travel expenses they incur.

Indemnities or allowances and reimbursements of accommodation and travel expenses are paid in the cases and on the terms and conditions prescribed by regulation.”

25. Section 83.8 of the said Act is replaced by the following:

“83.8. For the purposes of this chapter, a health professional means any person who is a member of a professional order determined by a regulation of the Société.”

26. Section 83.12 of the said Act is amended

(1) by adding, at the end of the first paragraph, the following: “selected by the Société from a list of health professionals drawn up by the Société following recommendations from the professional orders concerned”;

(2) by striking out the second paragraph.

27. Section 83.13 of the said Act is repealed.

28. Section 83.22 of the said Act is amended by replacing “equivalent to the capital value of the indemnity” in the first paragraph by “established using the calculation procedure prescribed by regulation”.

29. Section 83.34 of the said Act is amended by adding, at the end, the following:

“The amount of the lump sum indemnity for physical or mental injury determined in a regulation made pursuant to section 74 shall also be revalorized on 1 January each year beginning on 1 January 2000.”

30. The said Act is amended by inserting, after section 83.44.1, the following:

“83.44.2. A decision granting the reimbursement of expenses under Division I of Chapter V has effect only with regard to the subject of the decision and shall not be interpreted as recognition of an entitlement to any other indemnity.”

31. Section 83.46 of the said Act is amended by replacing “it was impossible *de facto* for him” by “the person was, for serious and legitimate cause, unable”.

32. Section 111 of the said Act is amended by replacing “for any loss to a victim for” by “to a victim of any damages to”, and by replacing “such loss exceeds” by “such damages exceed”.

33. The said Act is amended by replacing Chapters II and III of Title IV by the following:

“CHAPTER II

“COMPENSATION FOR PROPERTY DAMAGE

“142. Except in the cases provided for in section 144, the Société shall compensate an owner for damage caused to the owner’s automobile in an accident in Québec if

(1) the owner of the automobile was not insured against the damage caused to the automobile; and

(2) the identity of the persons who could be sued for damages cannot be determined, despite reasonable efforts, or the judgment obtained against such persons cannot be executed.

“143. The indemnity provided for in section 142 shall cover, up to an amount of \$10,000, any damage caused to the automobile for which the owner is not responsible and, where applicable, interest and judicial costs. The Société may, by regulation, fix a deductible amount.

In addition, the Société may, by regulation, provide for the reimbursement of other expenses, the maximum amount of the reimbursement and the conditions of reimbursement.

“144. No indemnity may be paid under this chapter for damage caused to an automobile

(1) that, at the time of the accident, was being driven by its owner while the latter was subject to a sanction within the meaning of section 106.1 of the Highway Safety Code (chapter C-24.2) or did not hold the licence provided for in section 65 of that Code;

(2) whose owner did not, at the time of the accident, have a liability insurance contract guaranteeing compensation for property damage caused by an automobile, in violation of the provisions of section 84;

(3) that, at the time of the accident, was not registered or in respect of which the owner had not paid the duties prescribed by section 31.1 of the Highway Safety Code;

(4) that, at the time of the accident, was being used to take part in an automobile contest, show or race on a track or other location that was temporarily or permanently closed to other vehicular traffic;

(5) whose owner was, at the time of the accident, domiciled outside Québec, in a jurisdiction where no provision is made for the granting to persons domiciled in Québec of benefits equivalent to those provided for by this chapter;

(6) that was, at the time of the accident, the property of the State or of a State mandataire, or of a person exempted by the Société under section 102 from having a liability insurance contract guaranteeing compensation for property damage caused by an automobile.

“145. No application for an indemnity may be accepted unless it is made within one year from the date of the judgment against the person responsible for the damage or, if the identity of the persons who could be sued for damages cannot be determined, within 30 days of the date of the accident.

The Société may, however, allow a person applying for an indemnity to act after the expiry of the prescribed time if the person was unable, for serious and legitimate cause, to act sooner.

“146. No application for an indemnity based on the fact that the identity of the persons who could be sued for damages cannot be determined may be accepted

(1) where repairs have been made before the expert designated by the Société has appraised the damage;

(2) where the accident was not reported to the police within 48 hours.

“147. The Société is subrogated in the rights of the person to whom it has paid an indemnity, up to the amount paid.

Where payment is made pursuant to a judgment, the subrogation shall be declared to the clerk of the court that rendered the judgment by the filing of a certificate from the Société, setting out the amount of the payment and the fact that the Société is subrogated to the rights of the person who received the payment, up to the amount paid. The Société shall thereupon be entitled to execute in its own name.

“148. No application for an indemnity may be made to the Société in respect of a judgment rendered by default, on acquiescence in the demand, by consent, or in the absence of the defendant or the defendant’s attorney, unless 30 days’ notice of the plaintiff’s intention to proceed has been given to the Société. If a notice is received, the Société may intervene in the proceedings and urge any ground of defence that the defendant might have set up regardless of any admission, any consent or any acquiescence in the demand.

“149. The Société shall fix, by regulation, the mechanics of this chapter.”

34. Section 151.1 of the said Act is amended

(1) by replacing “, on the basis” by “according to the risk of accident associated with that type of vehicle. The risk of accident may be assessed on the basis”;

(2) by replacing paragraph 4 by the following:

“(4) its make, model and piston displacement;”.

35. Section 151.3 of the said Act is amended by inserting “an exemption from or” after “entitlement to” in paragraph 1.

36. Section 152 of the said Act is amended

(1) by replacing “, the payment of the cost of highway safety promotion, the payment of the liabilities of the Société under Title IV and Chapter II of this title and the payment of the administration expenses of the Société” in the first paragraph by “and the payment of all the other costs resulting from the application of this Act, the Act respecting the Société de l’assurance automobile du Québec (chapter S-11.011) and the Highway Safety Code.”;

(2) by replacing “contingency reserve” in the second paragraph by “stabilization or reserve fund”;

(3) by adding, at the end, the following:

“In fixing insurance contributions, the Société may include any income from investments, other than income from assets associated with actuarial liabilities.”

37. The said Act is amended by inserting, after section 152, the following:

“152.1. The Société may, after allocating the amounts it considers necessary to any stabilization or reserve fund it establishes, use all or part of any unallocated amount, on the conditions and in the manner it determines and with the approval of the Government, to grant rebates on insurance contributions.”

38. Chapter II of Title V of the said Act is replaced by the following:

“CHAPTER II

“HEALTH CARE SERVICES

“155.1. For its 1998 fiscal year, the Société shall pay into the consolidated revenue fund the sum of \$88,654,000, representing the annual cost of health services occasioned by automobile accidents. That sum shall be paid in two equal instalments on 31 March 1998 and 30 September 1998.

“155.2. For the 1999 and subsequent fiscal years of the Société, the amount representing the annual cost of health services occasioned by automobile accidents borne by the Régie de l’assurance-maladie du Québec shall be determined by agreement between that body, the Minister of Finance and the Société.

For the said fiscal years of the Société, the amount representing the annual cost of health care services occasioned by automobile accidents borne by the Ministère de la Santé et des Services sociaux shall be determined by agreement between the Minister of Health and Social Services, the Minister of Finance and the Société.

If no agreement is reached under this section for a given fiscal year, the Société shall pay the amount set out in section 155.1 for that fiscal year.

The Société shall, annually, pay the amount representing the cost of health services into the consolidated revenue fund in two equal instalments on 31 March and 30 September.

“155.3. Where so agreed by the Société and the Minister of Health and Social Services, all or part of the cost of the health care services referred to in the second paragraph of section 155.2 may be reimbursed upon billing.

“155.4. The parties to which this Title applies may exchange the nominative information required for the purposes of the Title.

The parties shall enter into an agreement specifying, in particular, the information to be transmitted, the steps taken to ensure the confidentiality of the information and the security measures provided. The agreement shall be submitted to the Commission d’accès à l’information for an opinion.

The Commission shall give its opinion within 30 days of receiving the agreement. Should the Commission give an unfavourable opinion, the agreement may be submitted to the Government for approval; the agreement comes into force on the date of its approval.

The agreement, together with the opinion of the Commission d'accès à l'information and, where applicable, the approval of the Government, shall be tabled in the National Assembly within 30 days of the date of such opinion or approval, as the case may be, if the Assembly is sitting or, in other cases, within 30 days of resumption."

39. Chapter IV of Title V of the said Act is repealed.

40. Section 195 of the said Act is amended

(1) by replacing paragraphs 12, 13 and 14 by the following:

"(12) for the purposes of section 73, to fix the minimum conditions for eligibility for a lump sum indemnity for physical or mental injury, and the procedure used to calculate the amount of the indemnity;

"(13) for the purposes of section 74, to establish a table of injuries and the corresponding figures;

"(14) for the purposes of section 75, to establish a table of aesthetic or functional aftereffects and the corresponding figures;"

(2) by replacing paragraphs 18 and 19 by the following:

"(18) for the purposes of section 83.5, to prescribe the cases and conditions giving entitlement to a reimbursement of expenses, an indemnity for loss of earnings, or an attendance allowance, and to determine the maximum amount granted for such expenses, indemnity or allowance;

"(19) for the purposes of section 79, to prescribe the calculation method and procedure to be used in determining personal assistance needs and the amount of the reimbursement for expenses, and to prescribe the cases and conditions in which the Société may replace the reimbursement by an equivalent weekly allowance;"

(3) by striking out paragraphs 22 and 26;

(4) by adding, after paragraph 32, the following:

"(33) for the application of Chapter VI of Title II, to determine the professional orders whose members are considered to be health professionals;

"(34) for the purposes of section 83.22, to prescribe the calculation procedure used to establish the amount of a single payment;

“(35) to fix the mechanics of Chapter II of Title IV and the deductible amount referred to in section 143, and to determine the other expenses that may be reimbursed to a victim, the maximum amount of a reimbursement and the conditions of reimbursement.”

41. The said Act is amended

(1) by replacing, in the French text, “dommage”, “DOMMAGE” and “dommages” in the definitions of “accident” and “dommage causé par une automobile” in section 1, the first paragraph of section 10, the second paragraph of section 83.57, subparagraph 1 of the second paragraph of section 83.66, the first paragraph of section 83.67, and sections 108 and 114 by “préjudice” and “PRÉJUDICE”, with the necessary modifications;

(2) by replacing, in the French text, “dommage physique ou psychique”, “DOMMAGE CORPOREL”, “dommage corporel” and “dommages corporels” in the heading of Title II, the definition of “dommage corporel”, section 2, sections 6, 12.1, 83.7, 83.57 and 83.60 and the first paragraphs of sections 57, 83.61 and 83.62 by “préjudice corporel ou moral d’ordre psychique”, “PRÉJUDICE CORPOREL” and “préjudice corporel”, with the necessary modifications;

(3) by replacing, in the French text, “DOMMAGE MATÉRIEL”, “dommage matériel” and “dommages matériels” in the heading of Title III, sections 84, 84.1 and 106, the first paragraph of sections 108 and 114, section 112, the heading of Chapter III of Title III, section 115, the first paragraph of section 116 and paragraph 1 of section 173 by “PRÉJUDICE MATÉRIEL” and “préjudice matériel”, with the necessary modifications;

(4) by replacing, in the French text, “dommage matériel” in the first paragraph of section 85 and “les dommages corporels visés” in the third paragraph of that section by “préjudice matériel” and “le préjudice corporel visé”.

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

42. Notwithstanding section 83.34 of the Automobile Insurance Act, the amounts specified in sections 69 and 73 of the said Act, enacted respectively by sections 19 and 21 of this Act, shall be revalorized only from 1 January 2000.

43. An order providing for the coming into force of the provisions of this Act, made under section 44, may provide that the provisions it indicates apply only to accidents or deaths occurring on or after the date of coming into force of the provisions concerned, and that accidents or deaths occurring before that date will continue to be governed by the provisions applicable at that time.

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