

1988, chapter 79
**AN ACT TO AMEND THE ACT RESPECTING
SUPPLEMENTAL PENSION PLANS**

Bill 95

Introduced by Mr André Bourbeau, Minister of Manpower and Income Security

Introduced 15 November 1988

Passage in principle 8 December 1988

Passage 22 December 1988

Assented to 23 December 1988

Coming into force: 23 December 1988

Act amended:

Act respecting supplemental pension plans (R.S.Q., chapter R-17)



CHAPTER 79

An Act to amend the Act respecting supplemental pension plans

[Assented to 23 December 1988]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. R-17,
s. 9.1, added

1. The Act respecting supplemental pension plans (R.S.Q., chapter R-17) is amended by inserting, after section 9, the following section:

Prohibition

“9.1 From 15 November 1988, no amendment with respect to the employer's or the members' entitlement to any part of the assets of the retirement fund which exceeds the pension credits of the members may be made to a registered plan; the prohibition shall not have the effect of preventing a plan amendment to allocate the balance of assets remaining in the retirement fund to the payment of contributions.

Conditions
for approval

The Board's approval of a plan amendment whereby the assets of the retirement fund are distributed among several plans may be subject to such conditions as the Board may consider fair for the membership as a whole, if a previous amendment to the plan approved by the Board after 15 November 1988, resulted, through an increase in pension credits, in favouring certain members.

Refusal

The Board shall refuse to approve any amendment to any plan if it is of the opinion that the amendment would cause the assets of the retirement fund to be distributed otherwise than *pro rata* to the pension credits of the members, among several plans to which the same employer is or will be contributing.

Nullity

The prohibition provided for in the first paragraph shall entail the nullity of any amendment made prior to 15 November 1988 and which has not, as of that date, been approved by the Board.

Effect This section shall cease to have effect on the date fixed by the Government, or on 1 January 1990 at the latest, unless, before that date, the Government extends its effect for a period that it indicates."

c. R-17,
s. 40, am. **2.** Section 40 of the said Act is amended by adding, after the second paragraph, the following paragraph:

Conditions for approval "The Board's approval of the report may be subject to such conditions as the Board may consider fair for the membership as a whole, if an amendment to the plan, approved by the Board after 15 November 1988, resulted, through an increase in pension credits, in favouring certain members."

c. R-17,
s. 43, am. **3.** Section 43 of the said Act is amended by replacing the first paragraph by the following paragraph:

Balance of remaining assets "**43.** Upon the total termination of a plan, the balance of assets remaining in the retirement fund shall be determined after the full payment of all the pension credits has been made. Subject to section 43.1, the balance may be paid, wholly or in part, from 15 November 1988, only to the members affected by such termination, and apportioned among them only *pro rata* to their pension credits, except in the following cases:

(1) where the plan provides that the balance of assets shall first be used to increase the members' benefits up to the ceiling fixed under the Taxation Act (R.S.Q., chapter I-3), the apportionment may be made *pro rata* to the members' pension credits up to the aforementioned ceiling only. Moreover, in no case may any part which, by reason of such ceiling, cannot be paid to a member accrue to the other members;

(2) where the employer and the members have agreed in writing to apportion among themselves, among the members only or among the members and former members, the whole or part of the balance of assets otherwise than *pro rata* to the pension credits, the apportionment among the said members may be made according to the agreement if

(a) the Board considers that the apportionment is fair for all the said members, and that the members affected by the termination have been properly informed of the agreement;

(b) less than 30% of the members affected by the termination notified the Board in writing of their objection to the agreement within sixty days of the date on which they were informed of the agreement;

(3) where a report under section 40 was approved by the Board prior to 15 November 1988, the apportionment among the members of the whole or part of the balance of assets may be effected according to the report.”

c. R-17,
ss. 43.1-43.3,
added

4. The said Act is amended by inserting, after section 43, the following sections:

Prohibition

“43.1 From 15 November 1988, no part of the assets of the retirement fund of the plan may be paid to the employer. Such prohibition shall not prevent the allocation of the whole or part of the balance of assets remaining in the retirement fund, determined on the date of an actuarial valuation of the plan, to the payment of the employer’s contributions; however, in any event where the Act would increase the members’ pension credits, any employer whose contributions would have been thus paid shall be required to pay into the retirement fund such amounts as are necessary to finance the increase, up to the amount of contributions paid.

Authoriza-
tion required

Notwithstanding the prohibition provided for in the first paragraph, the Government may, on the conditions it fixes, authorize the payment of the whole or part of the balance of assets remaining in the retirement fund, determined on the date of the total termination of the plan, to the employer who is entitled to it, if it is of the opinion that, without the investment of that amount in his enterprise, the survival of the enterprise would be endangered and the employments of the members would be threatened. In addition, the payment may be authorized only if the employer undertakes, in any event where the Act would increase the members’ pension credits, to return to the retirement fund the amounts thus paid and which will be necessary for the full payment of such pension credits. The sums the payment of which has been authorized by the Government pursuant to this paragraph shall be transmitted to the trustee designated by the Government to hold, manage and make payments out of such sums in accordance with the prescriptions of the authorization order.

Applicability
of prohibi-
tion

The prohibition provided for in the first paragraph applies also in respect of the part of the assets of the retirement fund to which the employer is entitled under the terms of a plan terminated prior to 15 November 1988 and which, as of that date, has not been paid to him; it applies also to proceedings that are pending on 15 November 1988.

Proceedings

“43.2 Without prejudice to any other recourse, any interested person may contest any act performed by the administrator or employer in contravention of the provisions of section 43.1 or of an order issued under such section if such act was performed with intent

to defraud the trust patrimony constituted by the retirement fund of the plan; any act performed in contravention of those provisions is deemed to be performed with intent to defraud, until proof to the contrary.

Account-
ability

The administrator, or any person mandated by him or to whom he delegates all or part of his functions, shall be accountable for any amount paid in contravention of section 43 or 43.1, or an order issued pursuant to section 43.1. Where the administrator or the recipient of the mandate or delegation is a legal person, the members of the board of directors of that legal person who have consented to the illegal payment shall be jointly and severally accountable for such amounts.

Effect

“43.3 The third paragraph of section 40 and sections 43 to 43.2 shall cease to have effect on the date fixed by the Government, or on 1 January 1990 at the latest, unless, before that date, the Government extends the effect of those sections for the period that it indicates.”

Coming into
force

5. This Act comes into force on 23 December 1988 and has effect as of 15 November 1988.