

FMD DRAFT: NOVEMBER 26, 2017

TABLE/ANALYSIS OF BILL 141 AND BILL 150

Sections of the Act respecting the distribution of financial products and services

Please note that we have underlined any additions to the Sections and have crossed out any deletions.

Section	Concept	Act respecting the distribution of financial products and services (the “DFPSA”)	Bill 141	Bill 150	Comments	Action
12	Exception to the obligation of being certified as a representative	<p>Subject to the provisions of Title VIII, no person may act as or purport to be a representative without holding the appropriate certificate issued by the Authority.</p> <p>However, a financial institution may, by giving out brochures or flyers or using direct mail or any other form of publicity, invite the public to purchase insurance products.</p>			<p>This Section is not new or modified.</p> <p>Even though the distribution guide will no longer exist, since Bill 141 proposes to repeal Section 410 and the immediately ensuing sections of the DFPSA, a financial institution may still give out promotional materials to invite the public to purchase insurance products.</p>	No CAFII comment required on this in submission to National Assembly (BWycks and KMartin comment)
70	Offering of insurance products without involving a certified representative	<p>A firm is <u>A legal person offering financial products and services acts</u> either <u>as</u> a single-sector firm or a multi-sector firm.</p> <p>A single-sector firm is a firm that offers products and services in a single sector through representatives. A multi-sector firm is a firm that offers products and services in more than one sector.</p> <p><u>A firm is considered to offer products and services in the</u></p>	YES		<p>Important change allowing a firm to offer insurance without having a certified insurance representative involved.</p> <p>Please also see Section 71.1 of the DFPSA below, as well as Sections 59-68 of the <i>Insurers Act</i>.</p> <p>Finally, please also note the new Section 202.2 of the DFPSA which reads</p>	A favourable change for consumer choice and for CAFII members’ ability to provide such. Should be expressly supported in CAFII’s submission to National Assembly (c.c. the AMF) (BWycks and KMartin)

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		<u>mortgage broker sector if it engages in mortgage brokerage transactions.</u>			as follows and allows the AMF to regulate the information to be provided for the sale of insurance online: “The Authority may, for each sector, determine by regulation the information and documents that a firm acting without the intermediary of a natural person must give to clients, as their form.”	comment)
71	Acting as a firm	<p>No person may act as or purport to be a firm without being registered with the Authority.</p> <p><u>A legal person that, without acting as a firm, receives a commission or other remuneration based on the sale of financial products or the provision of financial services must be registered with the Authority. As of its registration, the legal person is, for the purposes of this Act, considered to be acting as a firm in the sector in which the products and services are offered.</u></p>	YES		<p>As drafted, this provision is very broad and may require that any legal person who receives a commission or a remuneration <u>based on the sale of financial products or the provision of financial services</u> be registered as a firm with the AMF. This captures commissions or referral fees or other remuneration based on the sale of products or the provision of services. This is in line with the prohibition in Section 100 of the DFPSA, but its scope can capture different situations. According to our analysis, referral fees or other remuneration not based on the sale or provision of financial products or services would <u>not</u> trigger this requirement.</p>	<p>Since Bill 150 removes the ability for a distributor to sell credit insurance, it is important to clarify with the National Assembly that CAFII members will not have to register as a firm to do so.</p> <p>More particularly, considering the second paragraph of Section 71 of the DFPSA, it is important to confirm that the persons who will enrol consumers in creditor’s group insurance policies and distributors will not have to register as a</p>

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						firm with the AMF, even if they receive commissions based upon the volume of insurance products or financial services sold or offered.
71.1	Offering of insurance products without a representative	<u>A firm may offer products and services in a given sector, without the intermediary of a natural person, if it employs a representative who is authorized to transact business in that sector.</u>	YES		<p>This Section is new. It allows for a legal person to register as a firm and to offer insurance products as a firm without involving an individual, as long as it employs a representative who is authorized to act in the sector(s) in which the firm is involved. This is the provision that expressly allows the sale of insurance through an electronic tool or platform.</p> <p>Please also see Section 70 of the DFPSA above, as well as Sections 59-68 of the <i>Insurers Act</i>.</p>	A favourable change for consumer choice and for CAFII members’ ability to provide such. Should be expressly supported in CAFII’s submission to National Assembly (c.c. the AMF) (BWycks and KMartin comment)
408	Definition of distributors and limitation of sales through natural persons	<p><u>Bill 140 Amendment</u></p> <p>An insurer may, in accordance with this Title, offer insurance products through a distributor.</p> <p>A distributor is a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a client’s adhesions in respect of such an insurance product.</p>	YES	YES	In light of Sections 408 and 431 of the DFPSA, our interpretation is that the distribution of insurance products or services can be done by a distributor through a technological tool or platform, which means that the distribution is made directly by the distributor without an intermediary. However, if an intermediary is involved, Bill 141	Based on our analysis of Bill 141, a distributor can sell insurance online <u>or</u> through a natural person. This interpretation should be confirmed with the National Assembly since the drafting of

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		<p><u>Only a natural person may distribute an insurance product on behalf of a distributor.</u></p> <p><u>Bill 150 Amendment</u></p> <p>An insurer may, in accordance with this Title, offer insurance products through a distributor.</p> <p>A distributor is a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person. or secures a client’s adhesions in respect of such an insurance product.</p>			<p>provides that only a natural person can act for the distributor (and not an intermediary who is a legal person or another entity). There is no requirement provided as to the competence or status of this individual. In addition, since only individuals can act for the distributor, it is our view that the objective of the legislation is to prevent a distributor from subcontracting its obligations to a third party administrator.</p> <p>The removal of “or secures a client’s adhesion in respect of such insurance product” introduced by Bill 150 apparently means that the enrolment of a person in a group insurance policy is no longer permitted through a distributor. However, based on a conversation with the AMF, we understand that one of the objectives of the changes made to the DFPSA is to allow persons who are not certified as insurance representatives to enrol a consumer in a group insurance policy. However, we do not know if they will be allowed to do so through an electronic tool or platform, who will be allowed to do so, and if Section 85 of the <i>Regulation under the Act respecting insurance</i> will be amended to allow the policy holder to receive remuneration for doing so (in addition to the reimbursement</p>	this Section is ambiguous.

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					<p>of expenses related to the administration of the contract for group insurance on the life or health of debtors).</p> <p>This is also one of the reasons for the proposed change to the definition of “<i>representative in insurance of persons</i>” found in Section 3 of the DFPSA, to remove “<i>and it is authorized to secure the adhesion of a person in respect of a group insurance or annuity contract</i>”. This change suggests that the general principle that a certified representative is needed to enrol a person in a group insurance policy will not apply if Bill 150 comes into force.</p>	
409	Distribution of insurance for the providers of credit	An employee of an insurer whose principal duties consist in offering credit may act as a distributor and secure the adhesion of clients in respect of an insurance product referred to in paragraph 1 of section 426.		YES	<p>Under Bill 150, it is proposed to repeal this provision. If Bill 150 is adopted as proposed, distributors would no longer sell credit insurance.</p> <p>Please also see Section 426 of the DFPSA also repealed, below.</p>	See Action on Section 426 below.
410 to 418 429 430 435 474 475 476	The abolition of the distribution guide		YES	YES	<p>Under Bill 150, only Section 435 of the DFPSA (whereas under Bill 141 it is repealed) is amended to remove “or securing a client’s adhesion in respect of” which appears to remove the possibility for a distributor to enrol a person in a group insurance policy. Please see our comments above related to Section 408 of</p>	It would be helpful to inquire if the distribution guide is to be replaced by another document, such as the document referred to in in new Section 222.3 of the <i>Insurance Act</i>

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					<p>the DFPSA.</p> <p>These Sections which refer to the distribution guide are repealed by Bill 141. However, the AMF has the power and authority under Section 482 of the <i>Insurers Act</i> to adopt regulations regarding commercial practices, among other things. Such Section reads as follows:</p> <p>“ 482: In addition to other regulations that it may make under this Act, the Authority may, by regulation, determine the standards applicable</p> <p>(1) to authorized insurers in relation to their commercial practices and their management practices; and</p> <p>(2) to federations of mutual companies in relation to their management practices.”</p>	<p>(Québec) introduced in Bill 150 and the new Section 62 of the <i>Insurers Act</i> introduced by Bill 141 (which shall be provided in addition to the insurance certificates referred to in Article 2401 of the <i>Civil Code of Québec</i>). If not, it is important to understand how sales will be governed once the distribution guide is abolished.</p> <p>CAFII’s submission to the National Assembly (and subsequently to the AMF when it is drafting Regulations) should inquire as to why the distribution guide is to be abolished and if there is a document which will serve as its replacement.</p>

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424	Sale through a distributor of insurance products which relate solely to goods	<p>For the purposes of this Title, the following types of products are deemed to be insurance products which relate solely to goods:</p> <p>(1) travel insurance;</p> <p>(2) vehicle rental insurance, where the rental period is less than four months;</p> <p>(3) credit card and debit card insurance;</p> <p>(4) <i>(not in force)</i>;</p> <p>(4.1) <u>the civil liability insurance contract referred to in section 19 of the Act respecting off-highway vehicles (chapter V-1.2) covering bodily injury and property damage caused by an off-highway vehicle</u>;</p> <p>(5) replacement insurance, that is, property insurance under which the insurer guarantees the replacement of the insured vehicle or insured parts and the form and conditions of which are approved by the Authority pursuant to section 422 of the Act <u>section 71 of the Insurers Act</u>.</p>	YES		<p>This Section is not new but is modified by the addition of paragraph 4.1.</p> <p>Distributors can thus still sell travel insurance as well as the other types of insurance enumerated in Section 424 DFPSA.</p>	The amendments/additions to this Section are not particularly relevant to CAFII members; so no comment on it required in CAFII’s submission to National Assembly (B. Wycks and K. Martin comment)
425	Sale of travel insurance	<p>A deposit institution may distribute travel insurance products. In such a case, it is deemed to act as a distributor.</p> <p>An employee of an insurer may also distribute travel insurance products. In such a case, the employee is deemed to act as a distributor.</p>			Neither Bill 141, nor Bill 150 amend this Section of the DFPSA.	Good to know that the status quo prevails in this area; but no comment on it required in CAFII’s submission to National Assembly (B. Wycks and K.

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426	Offer of credit insurance through a distributor	<p>For the purposes of this Title, the following insurance products are deemed to be insurance products which relate solely to goods and to which clients adhere:</p> <p>(1) debtor life, health and employment insurance,</p> <p>(2) investor life, health and employment insurance.</p>		YES	<p>Bill 150 proposes to repeal this Section. Further to our analysis, we did not find in the <i>Insurers Act</i> or in the new provisions of the DFPSA a provision which would allow a distributor or the policy holder of a group insurance policy to sell or offer credit insurance as currently provided for under Section 426 DFPSA.</p> <p>Please also see commentary related to Section 409 above, which Bill 150 proposes to repeal and which reads as follows:</p> <p>“An employee of an insurer whose principal duties consist in offering credit may act as a distributor and secure the adhesion of clients in respect of an insurance product referred to in paragraph 1 of Section 426.”</p> <p>However, we understand from a conversation with the AMF that one of the objectives of the changes made to the DFPSA is to allow persons who are not certified insurance representatives or distributors to enrol persons in a group insurance policy.</p>	<p>Bill 150 removes the ability for a distributor to sell credit insurance. We recommend that CAFII confirm with the National Assembly that the intent is not to prohibit CAFII members and other industry players from selling credit insurance, but rather to allow a person to be enrolled in a creditor’s group insurance policy without having to involve a certified representative or distributor.</p> <p>In addition, it should also be confirmed that enrolling persons in group insurance through an electronic tool or platform will be permitted.</p> <p>It should be pointed out to the National Assembly that if Bill</p>

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						<p>150 is adopted first, Section 59 of the <i>Insurers Act</i> (as amended by Bill 141) should be reviewed to take into account the fact that CAFII members and other industry players will be allowed to enrol consumers in a creditor’s group insurance policy.</p> <p>Finally, it should be clarified with the National Assembly that Section 85 of the <i>Regulation under the Act respecting insurance</i> will be amended to allow CAFII members and other industry players to receive remuneration for doing so (other than reimbursement of expenses relating to the administration of the contract for group insurance on the life or</p>

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						health of debtors).
431		<p>A person who distributes an insurance product, <u>whether the person is a distributor or a natural person assigned that task by the distributor</u>, must describe the product to the client and explain the nature of the guarantee.</p> <p>The person distributing the product must clearly explain the exclusions under the guarantee to enable the client to decide whether the situation applying in the client’s case constitutes an exclusion under the guarantee.</p> <p>The person distributing the product must also, if the remuneration received by the distributor for the sale of the product exceeds 30% of its sale price, disclose that remuneration to the client.</p>	YES		See our comments above in light of Section 409 of the DFPSA.	See Action on Section 408 above.

Sections of the *Insurers Act*

The *Insurers Act* would replace entirely the *Act respecting insurance* (Québec). Consequently, all of its proposed Sections introduced by Bill 141 are new.

Section	Concept	Insurers Act	Bill 141	Bill 150	Comments	Action
59	Persons through whom the insurer is allowed to underwrite insurance products	To underwrite an insurance contract, an authorized insurer must deal with the client concerned either through a natural person, whether employed by the insurer or not, or without the intermediary of such a person. If the insurer deals with the client through a natural person, that person	YES		<p>This is an entirely new section which allows for the sale of insurance without a representative, including through an electronic tool or platform.</p> <p>Only property and casualty insurance</p>	In light of our comments on Sections 409 and 426 of the DFPSA above, it should be clarified with the

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		<p>must be an insurance representative holding a certificate issued by the Authority in accordance with the Act respecting the distribution of financial products and services and must be authorized to act with respect to the contract.</p> <p>However, the insurer may deal with the client for a damage insurance contract or an individual insurance of persons contract through a natural person who is not an insurance representative if</p> <p>(1) the natural person is a distributor within the meaning of the second paragraph of section 408 of the Act respecting the distribution of financial products and services or has been assigned that task by such a distributor; and</p> <p>(2) the insurance contract is an insurance product subject to Title VIII of that Act.</p> <p>This section does not apply to the renewal of an insurance contract the only amendment to which is the premium.</p>			<p>contracts (group or individual, since the nature of the contract is not indicated) and individual insurance of person contracts (but not group insurance contracts to which a person is enrolled) can be offered through a distributor.</p> <p>However, the insurance products provided for under Title VIII of the Act, related to distribution without a representative, are allowed to be offered through distributors. See Sections 424, 425 and 426 DFPSA.</p> <p>It is useful to mention that a distributor is defined in Section 408 of the DFPSA as a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a consumer's enrolment in respect of such an insurance product.</p>	<p>National Assembly that CAFII members and other industry players will be allowed to enrol consumers in a creditor's group insurance policy through an electronic tool or platform; and that Section 85 of the <i>Regulation under the Act respecting insurance</i> will be amended to allow them to receive remuneration for doing so (other than reimbursement of expenses relating to the administration of the contract for group insurance on the life or health of debtors).</p>
60	Assumption providing that a natural person is deemed to be an insurance representative	For the purposes of this division, a natural person is considered an insurance representative holding a certificate issued by the Authority under the Act respecting the distribution of financial products and services if any of the following provisions of that Act apply to him or her:	YES		<p>The following are not insurance representatives:</p> <p>“3.(1) persons who, on behalf an employer, a union, a professional order or an association or professional syndicate</p>	<p>The changes in this area are only tangentially related to CAFII members; and not materially significant; so no CAFII comment</p>

Section	Concept	Insurers Act	Bill 141	Bill 150	Comments	Action
		<p>(1) subparagraph 1 or 2 of the third paragraph of section 3;</p> <p>(2) the second paragraph of section 4; and</p> <p>(3) section 7.</p>			<p>constituted under the <i>Professional Syndicates Act</i> (chapter S-40), secure the adhesion of an employee of that employer or of a member of that union, professional order, association or professional syndicate in respect of a group contract in insurance of persons or a group annuity contract;</p> <p>(2) the members of a mutual benefit association that does not guarantee the payment of a benefit upon the occurrence of a risk who offer policies for the mutual benefit association.”</p> <p>“4. ...</p> <p>Actuaries who, in pursuing activities as an actuary, offer insurance products in group insurance of persons or group annuities are not group insurance representatives.”</p> <p>“7. A customs broker who, in pursuing activities as a customs broker, offers insurance products is not a damage insurance agent or damage insurance broker.”</p>	on it is required in submission to National Assembly (BWycks and KMartin comment)
62	Information to provide to the client	An authorized insurer must see that the client or the participant, as the case may be, is provided in sufficient time with the information necessary to make an	YES		See also Section 482 of the <i>Insurers Act</i> which confers upon the AMF the power to adopt regulations to regulate the	No CAFII comment required in submission to the National

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		<p>enlightened decision and for contract performance purposes</p> <p>(1) if, in the cases provided for in section 59, the insurer deals with the client otherwise than through an insurance representative or firm; or</p> <p>(2) if the insurer has underwritten a group insurance of persons contract in which a person may enroll as a participant without dealing with an insurance representative.</p> <p>Such information includes</p> <p>(1) the extent of the coverage considered and the exclusions;</p> <p>(2) the time limits, in accordance with the Civil Code, within which a loss must be reported and within which the insurer is required to pay the sums insured or the indemnity provided for ; and</p> <p>(3) the information required to communicate to the insurer a complaint to be registered in the complaints register provided for in subparagraph 3 of the second paragraph of section 50, including the time limit within which a complaint must be communicated.</p>			commercial practices of insurers.	Assembly; but the Association may want to comment on these information disclosure requirements subsequently to the AMF when it is drafting Regulations. (BWycks and KMartin comment)
67	Absence of intermediary	If a means of formulating and submitting a proposal without the intermediary of a natural person or firm and otherwise than by an application in writing referred to in article 2400 of the Civil Code is made available to a			This Section proposes to allow an insurer to offer insurance through an electronic tool or platform without having to involve an individual.	A favourable change for consumer choice and for CAFII members' ability to provide such.

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		<p>client, the insurer must deliver to the policyholder, together with the policy, a document describing any proposal submitted by such means. In such circumstances, the insurer must also see that the client, if the client so desires, can communicate with a natural person.</p> <p>The document delivered by the insurer is equivalent to an application in writing referred to in article 2400 of the Civil Code.</p>				Should be expressly supported in CAFII's submission to National Assembly (c.c. the AMF) (BWycks and KMartin comment)
68	Offering of insurance products without a representative	An authorized insurer does not contravene the Act respecting the distribution of financial products and services by the mere fact that, in accordance with this Act, no natural person deals with the clients or participants, as the case may be.	YES		This Section confirms that the DFPSA is not violated if there is no natural person involved in the offering of insurance products to a client or participant.	A favourable change for consumer choice and for CAFII members' ability to provide such. Should be expressly supported in CAFII's submission to National Assembly (c.c. the AMF) (BWycks and KMartin comment)

Sections of the *Civil Code of Québec*

This proposed amendment to the *Civil Code of Québec* has been introduced by Bill 150.

Section	Concept	Civil Code of Québec	Bill 141	Bill 150	Comments	Action
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Section	Concept	Civil Code of Québec	Bill 141	Bill 150	Comments	Action
2395		<p>Damage insurance protects the insured against the consequences of an event that may adversely affect his patrimony.</p> <p><u>Group damage insurance covers, under a master policy, the patrimony of participants in a specified group and, in some cases, the patrimony of their family members, their dependants or the client.</u></p>		YES	The <i>Civil Code of Québec</i> now allows the issuance of group damage insurance policies in addition to group insurance of persons.	The amendments/additions in this area are only tangentially relevant to CAFII members; so no comment is required on it in the Association's submission to National Assembly (B. Wycks and K. Martin comment)