

THIRD SESSION

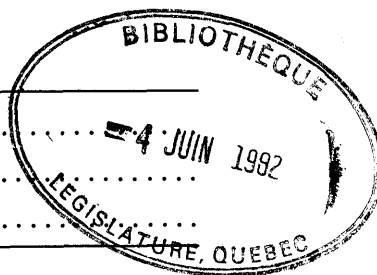
THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 73

**An Act respecting property in stock
transferred as security**

First reading
Second reading
Third reading



M. MARC-ANDRÉ BÉDARD

Minister of Justice

QUÉBEC OFFICIAL PUBLISHER

1982

EXPLANATORY NOTES

The object of this bill is to grant to businesses an additional means of obtaining short term credit from financial institutions.

It provides in effect that a person who operates a business may from now on, when making a loan, transfer as security the moveable property in stock of that business, without, however, having to lose possession of the property.

It states the rules respecting such transfer as security and specifies in particular the method of registration for the protection of third parties.

Finally, it contains the provisions applicable to realizing on the security by creditors when the debtor fails to meet his obligations in its regard.

ACTS AMENDED

- (1) Bills of Lading Act (R.S.Q., chapter C-53);
- (2) Special Corporate Powers Act (R.S.Q., chapter P-16).

Bill 73

An Act respecting property in stock transferred as security

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

1. The title of the Bills of Lading Act (R.S.Q., chapter C-53) is replaced by the following title:

“An Act respecting bills of lading, receipts and property in stock transferred as security”.

2. The said Act is amended by adding, after section 9, the following divisions:

“DIVISION III

“TRANSFER AS SECURITY OF PROPERTY IN STOCK

“**10.** Any person who operates a business, alone or with others, may as collateral security for the payment of capital, interest and costs of a loan or authorized credit, transfer to a creditor, without dispossession, any moveable property of the stock of that business, present or future, while keeping the right to have it retransferred at the time of discharge of the debt.

“**11.** No property transferred as security under Divisions I and II of this Act may be transferred under section 10.

“**12.** Property being processed and property so processed may be transferred as security.

Any property acquired as a replacement for transferred property may be transferred.

“13. Where a person who operates a farming business transfers as security improvements, fertilizers, seeds, pesticides or weedkillers and subsequently uses them in whole or in part, the transfer also affects the crop produced during the first harvest following such use.

“14. The indemnity payable by reason of the loss or deterioration of transferred property is paid to the creditor, who may allocate it to the payment of the debt or remit it to the transferor to repair or replace the property contemplated.

“15. The person who transfers as security moveable property in stock has, over such property and in respect of the creditor, the obligations of a mandatary and depositary without being entitled to the costs of custody and preservation.

“16. The transfer must be evidenced by notarial deed *en minute* or *en brevet* or by private deed.

“17. The deed of transfer must indicate the address of the domicile, the principal place of business or the head office of the transferor, the nature of the property, its class and quality, the amount or quantity of property of each class or each quality, or any other particular allowing it to be identified in relation to other property of the same nature; where the particulars given do not allow the property to be specifically identified, the transfer is not a ground that may be set up against a third person in good faith being a subsequent purchaser for valuable consideration of rights on the property.

The deed of transfer must also indicate the address of the place where the property is located.

“18. The deed must be registered by deposit in the registry office of the registration division of the domicile, place of business or head office of the transferor.

The registrar of the registry office shall affix, on the two copies or originals presented, a certificate attesting the registration mentioning the record number of the deed and the time and date of registration; he shall enter the document in the index of names, remit a copy or an original to the person who requested the registration and immediately transmit the other duplicate to the registrar of the registration division of Montréal.

“19. The registration date determines the priority of rank. If, however, several deeds of transfer affecting the same property are registered on the same date, they rank together.

No deed of transfer has any effect without registration.

“20. The registrar of the registration division of Montréal shall keep a register of transfers as security of property in stock.

“21. The register contains, in alphabetical order, the names of persons who have so transferred their property, their addresses and the registry office where each deed has been registered and the date of registration.

“22. Article 2127 of the Civil Code and sections 18 and 19 apply to every conveyance or transfer, whether voluntary or judicial, of a claim secured by transfer made under section 10, and any subrogation in the same rights; the registrar of the registration division of Montréal is required to make an entry of it in the register contemplated in section 21.

“23. The retransfer of transferred property is evidenced by registration in accordance with section 18 of a deed requesting the cancellation of the registration of the deed of transfer.

The cancellation is carried out in accordance with Chapter V of Title Eighteenth of Book Third of the Civil Code, and reference to the cancellation is entered in the register contemplated in section 21.

“24. From the registration of the deed of transfer, the creditor holds on the transferred property all the rights that the transferor had on that property.

“25. In no case may the rights of the creditor be set up against a purchaser in good faith who, in the ordinary course of business of the transferor, purchases transferred property.

“26. Subject to section 25, the rights of the creditor on transferred property take precedence over all rights subsequently acquired on such property and the claim of any unpaid vendor.

The rights of the creditor obtain if the transferred property becomes immovable by destination, as long as the transferor remains the owner of the immovable.

“27. The return to the lessor of the deed of transfer is equivalent to the notice given under article 1639 of the Civil Code.

“28. If the debtor or the transferor, as the case may be, fails to fulfil his obligations, the creditor may enter the premises where the transferred property is located to take possession of or seize it.

“29. The creditor may terminate the processing of property of which he takes possession. Similarly, he may proceed to harvest standing crops affected by the transfer.

“30. Where transferred property of which a creditor takes possession is an animal, he may take care of it, or may slaughter it if it should be slaughtered because it is diseased or because the transferor had acquired it for that purpose.

“31. The costs incurred by the creditor in applying sections 29 and 30 are at the charge of the debtor and their repayment is secured by the transfer.

“32. After taking possession of transferred property, the creditor shall sell it in the shortest possible time. He may sell it by agreement with the transferor’s consent in writing; no such consent may be given before the debtor or the transferor, as the case may be, is in default.

If the creditor fails to obtain the transferor’s consent or to sell the property by agreement, he shall sell it at auction at the date, time and place fixed in a notice forwarded to the debtor, and to the transferor, where applicable; the provisions of the Code of Civil Procedure respecting sale at auction of moveable property apply to such a sale.

“33. The notice provided for in section 32 must be forwarded to the last known address of the debtor and the transferor, where applicable, at least ten days before the date fixed for the sale at auction.

The notice must also be published not less than two days before that date in accordance with the rules provided in article 139 of the Code of Civil Procedure.

“34. The creditor shall, eight days after the sale of the property, render account of the proceeds of the sale to the debtor and the transferor, where applicable, or to their creditors, and remit, after the discharge of the debt and costs, the balance of the sale price.

The account rendered may be contested in the manner established in the Code of Civil Procedure.

“DIVISION IV

“CARRYING OUT OF THE ACT

“35. The Minister of Justice is responsible for the carrying out of this Act.”

3. Section 29 of the Special Corporate Powers Act (R.S.Q., chapter P-16) is amended by replacing the third paragraph by the following paragraph:

“Such hypothec, such privilege, such mortgage and such pledge, whether affecting moveables or immoveables, shall take effect only from the date of the registration, in the manner herein-after provided, of the deed by which they are constituted:

(a) in the case of immoveable property being affected, in the registry office of the registration division in which such property is situated;

(b) in the case of moveable property being affected, including moveable property in stock, in the registry office of the registration division in which the company has its head office in Québec, and also in every other division in which it has a place of business; and

(c) in the case of moveable property in stock being affected, in the registry office of the registration division of Montréal.”

4. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (*insert here the reference to the chapter number of the Canada Act in the compilation of the Acts of the Parliament of the United Kingdom for 1982*).

5. This Act comes into force on the date fixed by government proclamation.