

THIRD SESSION

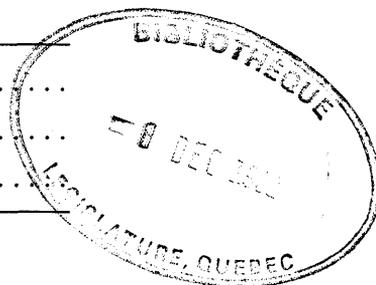
THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 97

An Act respecting transfers of property in stock

First reading
Second reading
Third reading



M. MARC-ANDRÉ BÉDARD
Minister of Justice

QUÉBEC OFFICIAL PUBLISHER

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EXPLANATORY NOTES

The object of this Bill is to grant to undertakings an additional means of obtaining short-term credit from financial institutions.

It provides in effect that a person may from now on, in consideration of a loan or authorized credit, transfer property in stock of his business, but without giving up possession of the property.

It contains the rules respecting the transfer of property in stock, and the provisions applicable should a debtor fail to meet his obligations towards his creditor, the transferee of the property.

Finally, it sets out certain rules of registration that are to be inserted into the present system of registration in order to guarantee that transfers are given rapid, effective and reliable publicity.

ACT AMENDED BY THIS BILL

The Bills of Lading Act (R.S.Q., chapter C-53)

Bill 97

An Act respecting the transfer of property in stock

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 transfers of property in stock”.

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

“**10.** A security given under this division has effect in respect of third persons only from its registration.

“DIVISION III

“TRANSFERS OF PROPERTY IN STOCK

“**11.** A person may, as consideration for a loan or authorized credit, transfer, while retaining possession thereof, any moveable property in stock of his undertaking, whether or not the undertaking deals in goods or services and whether or not it is a commercial undertaking.

“Property in stock” means any moveable property in reserve, including raw materials, property being processed, finished products, animals, wares, property used for packing, and any hydrocarbons or mineral substances, even where still in the ground.

“12. The transferee acquires the same rights over the transferred property as those vested in the beneficiary by endorsement of a bill of lading or receipt made under section 1 or section 6.

“13. No transferor may transfer property unless he owns it; however, he may transfer future property, but its transfer has effect only on his becoming its owner.

“14. Property acquired to replace transferred property is the object of the transfer.

A transfer is not deemed to be without an object where all the transferred property is lost or destroyed, if the transferor replaces it within a reasonable time, considering its quantity and nature.

“15. Where a transferor transfers fertilizers, ameliorants, seeds, pesticides or weedkillers and subsequently uses them without replacing them, the crop produced during the first harvest following such use is also the object of the transfer.

“16. To carry on the business, the transferor has the powers of a mandatary of the transferee over the transferred property. The transferor remains responsible for any expenditure incurred in carrying on the undertaking.

“17. The transferor shall exercise the care of a prudent administrator over the transferred property.

However, the loss or deterioration of transferred property is the responsibility of the transferor, unless it is by the fault of the transferee.

“18. The indemnity payable by reason of the loss or deterioration of any transferred property belongs to the transferee up to the amount of his claim. Payment made in good faith to the transferor before notification is final.

The transferee may allocate the indemnity to the payment of the debt or remit it to the transferor to repair or replace the property contemplated.

“19. Following any transfer, whether voluntary or judicial, of rights acquired under section 11, and following any subrogation in the same rights, the loan or authorized credit contemplated may be repaid in advance, without notice and without any fine or penalty being exacted by reason of such repayment.

The repayment may be partial or full and must be made not later than twenty-nine days after the sending to the transferor of a notice of the transfer or subrogation by registered or certified mail.

“20. The transfer must be evidenced in a writing, which may be drafted as in the model in Schedule 1.

“21. The writing evidencing a transfer must, in particular, 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 or quality, the place where it is located, and, where applicable, the amount or quantity of property of each class or each quality, and any other information allowing it to be identified in relation to other property of the same nature.

“22. The transfer has effect against third parties only from its registration.

“23. The rights of a transferee resulting from a registered transfer are extinguished by the lapse of five years from the date of registration, unless the registration is renewed before then.

“24. The extinction of the rights of a transferee over transferred property is evidenced by the cancellation of the registration of the transfer.

“25. Sections 22 to 24 apply to any transfer, whether voluntary or judicial, of rights acquired under section 11 and to any subrogation in the same rights.

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

In no case may the transferee be bound for latent defects.

“27. Subject to section 26, the rights of the transferee over the transferred property take precedence over any claim of an unpaid vendor, including such vendor’s right under article 1543 of the Civil Code to dissolve a sale, except a claim known to the transferee at the time of the transfer; those rights also take precedence over all rights over the property granted by the transferor subsequently to the transfer, and they follow the property into whatever hands it may pass.

However, in the event of the bankruptcy of the transferor pursuant to the Bankruptcy Act (Revised Statutes of Canada, 1970, chapter B-3), his employees’ claims for wages, salary or other remuneration owed them for a period of not over three months im-

mediately preceding the bankruptcy take precedence over the rights of the transferee.

“28. The amalgamation of undertakings does not affect the rights of a transferee over the property transferred to him.

“29. The return to a lessor of a duplicate or copy of the writing evidencing a transfer is equivalent to the notice given under article 1639 of the Civil Code.

“30. If a transferor in possession of transferred property fails to fulfil his obligations under the transfer towards the transferee, the transferee may obtain a judicial order enjoining the transferor to remit the property to the transferee.

“31. The transferee may terminate the processing of property of which he takes possession. Similarly, he may proceed to harvest standing crops or extract hydrocarbons or raw materials that are the object of the transfer.

“32. Where transferred property taken into possession by a transferee is an animal, the transferee, in the best interests of the transferor and taking account of circumstances, may care for it or slaughter it.

“33. The transferee shall sell the property diligently and in the best interests of the transferor; for that purpose he may sell it by bulk sale or separately.

“34. A transferee may himself sell the property he has taken into possession by agreement or by a call for tenders, or cause it to be sold by auction.

“35. In no case where the transferee elects to sell the transferred property himself may the sale be effected until five days after he has sent notice of it to the transferor at his last known address by registered or certified mail, unless the property is perishable and he considers that such formality could result in a significant reduction of its value.

“36. A transferee who proceeds by way of a call for tenders may do so through the newspapers or by invitation.

“37. A call for tenders must contain sufficient information to permit any interested person to tender a bid at the proper time and place.

“38. The transferee is bound to accept the highest bid unless conditions attached to it make it less advantageous than a bid tendered for a lower price, or unless none of the bids tendered to him are for a reasonable price, considering the nature and value of the property.

“39. A transferee who proceeds by way of auction shall do so at the date, time and place fixed in a notice sent to the transferor at his last known address by registered or certified mail, and then published not less than five days before the date fixed for the sale in accordance with the rules provided in article 139 of the Code of Civil Procedure.

“40. At any time before the sale, the transferor may retake possession of the transferred property by paying to the transferee every sum then due to him in capital, interest, costs and accessory expenses; repossession in this manner extinguishes the rights of the transferee over the property.

“41. The transferor is responsible for the reasonable costs incurred by the transferee in the exercise of his rights under sections 30 and 32 and his right to sell the property.

“42. The transferee shall allocate the proceeds of the sale to payment of the costs contemplated in section 41, payment of the claims having precedence over his rights pursuant to section 27 up to the net proceeds of the sale, and payment of the debt and the accessory expenses.

Where there is a surplus of money after the allocation in the first paragraph, the transferee shall remit it to the transferor; where, on the other hand, the proceeds of the sale are insufficient to pay the costs, the debt and the accessory expenses, the transferee preserves a personal claim against the transferor for the remainder due to him and is subrogated, where such is the case, in all the rights of the persons to whom he paid claims pursuant to the first paragraph, up to the amounts paid.

“43. Not later than eight days after the sale of the property, the transferee shall render account of the proceeds of the sale to the transferor.

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

“44. The Government may, by regulation, prescribe the information that must be contained in a call for tenders contemplated in section 37, the procedure to be followed and the time limits to be observed in carrying out that mode of proceeding.

The regulation shall come into force ten days after its publication in the *Gazette officielle du Québec* or on any later date fixed therein.

“DIVISION IV

“REGISTRATION

“**45.** The registrar of the registration division of Montréal shall keep a computerized register of the registrations provided for by this Act.

“**46.** The register must contain, in alphabetical order, the name of each endorser and transferor, his address, the nature of the deed, the name of the registry office where the notice has been registered, the date of registration, the registration number and the date and time of entry in the register.

“**47.** Every registration of rights provided for in this Act shall be made by depositing a notice, prepared in accordance with one of the models shown in Schedule 2, in the registry office of a registration division established under the Territorial Division Act (R.S.Q., chapter D-11).

“**48.** If a notice is registered in a registry office where a computerized system is used, the registrar of the office himself shall immediately enter the information required by section 46 in the register.

“**49.** If a notice is registered in a registry office where no computerized system is used, the registrar of the office shall immediately inform the registrar of Montréal, who shall thereupon enter the information required by section 46 in the register.

The information may be relayed by any usual means, including telex or telephone. Where the information has been relayed verbally, the registrar of Montréal shall so indicate in the register and, upon receipt of a copy or facsimile of the notice, shall verify the entry in the register, and correct it if necessary.

“**50.** Notwithstanding article 2130 of the Civil Code, the date and time of entry in the register determine the priority of rank.

“**51.** A person wishing to register a document, including a document to effect cancellation, respecting a previous registration made under this Act, must deposit the document in the office where the previous registration was made.

“**52.** A registration made under this Act may be cancelled, subject to section 53, in accordance with Chapter V of Title Eighteenth

of Book Third of the Civil Code; however, where a security created under section 6 ceases to have effect under section 8, or where the rights of a transferee are extinguished under section 23, the registration thereof is cancelled upon deposit of a requisition to that effect by any interested person.

Mention of the cancellation must be entered, in the manner determined in sections 48 and 49, in the register contemplated in section 45.

“53. The fifth paragraph of article 2131 and the second paragraph of article 2151 of the Civil Code do not apply to documents presented for registration under this Act.

“54. Any person may obtain a true copy of the registered notices from a registry office. The copy consists of a computerized statement of the uncanceled entries appearing on the register.

Where the request is made to an office contemplated in section 49, the registrar of that office shall forward it to the registrar of an office contemplated in section 48, who shall issue the statement after having certified it.

“DIVISION V

“ADMINISTRATION OF THE ACT

“55. The Minister of Justice is responsible for the administration of this Act.”

3. Section 10 of the said Act, enacted by section 2, has effect only as regards security given after (*insert here the date of the coming into force of section 2*).

4. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

5. This Act will come into force on the date to be fixed by proclamation of the Government, except the provisions excluded by the proclamation, which will come into force, in whole or in part, on any later date that may be fixed by proclamation of the Government.

SCHEDULE I
(section 20)

TRANSFER OF PROPERTY IN STOCK

I, the undersigned.....
(transferor)

.....
(address of domicile, principal place of business or head office)

in consideration of a loan or authorized credit for
an amount of.....dollars (\$)

that is made to me by.....
(transferee)

.....
(address)

transfer to the latter the property hereinafter described of which
I am now or shall become owner:

(Description of property)

Present property:

Future property:

The property is located at

(Other clauses agreed by the parties)

I consent to this transfer under Division III of the Act respecting
bills of lading, receipts and transfers of property in stock (R.S.Q.,
chapter C-53).

I guarantee that the property of which I am owner and that is hereby
transferred is discharged of all assignments and privileges, except

.....
(identification of existing privileges)

and I pledge that the future property of which I shall become owner
and that is also transferred hereby is discharged of all assignments
and privileges.

Made at....., on..... 19.....

(signature of transferor)

(signature of transferee)

SCHEDULE 2
(section 47)

NOTICE OF A SECURITY UNDER DIVISION II
OR OF A TRANSFER OF PROPERTY IN STOCK

To the registrar of the registration division of

.....,
(name of the office where the notice will be deposited)

notice is given that.....,
(endorser or transferor)

.....
(address)

has (endorsed a receipt or a bill of lading, or transferred property in stock) under section (6 or 11) of the Act respecting bills of lading, receipts and transfers of property in stock (R.S.Q., chapter C-53) in favour of.....,
(beneficiary or transferee)

.....
(address)

dated
(date)

This notice is given to you under section 47 of the Act respecting bills of lading, receipts and transfers of property in stock (R.S.Q., chapter C-53), so that it may be registered in your office and entered in the register contemplated in section 45 of the said Act.

Made at....., on.....19.....

*(signature of the beneficiary
or transferee)*

NOTICE OF RENEWAL OF THE REGISTRATION OF A TRANSFER
OF PROPERTY IN STOCK

To the registrar of the registration division of

.....
(name of the office)

notice is given that,
(transferor)

.....
(address)

has transferred property in stock, notice of which was registered
in your office on.....

under number....., that the notice was registered
less than five years ago, and that it is expedient to renew the regis-
tration of the notice.

This notice is given to you under section 47 of the Act respec-
ting bills of lading, receipts and transfers of property in stock (R.S.Q.,
chapter C-53), so that it may be registered in your office and
entered in the register contemplated in section 45 of the said Act.

Made at....., on.....19.....

(signature of the transferee)

NOTICE OF A VOLUNTARY OR JUDICIAL ASSIGNMENT
OF TRANSFERRED PROPERTY IN STOCK

To the registrar of the registration division of

.....
(name of the office)

notice is given that the rights from the transfer of property in stock by

.....
(transferor)

.....
(address)

notice of which was registered in your office on

....., under number.....,

in favour of

(first transferee)

have been the object of an assignment of rights (voluntary or

judicial) in favour of

(new transferee)

.....
(address)

This notice is given to you under section 47 of the Act respecting bills of lading, receipts and transfers of property in stock (R.S.Q., chapter C-53), so that it may be registered in your office and entered in the register contemplated in section 45 of the said Act.

Made at....., on.....19.....

(signature of the new transferee)

NOTICE OF A SUBROGATION RELATING TO A TRANSFER
OF PROPERTY IN STOCK

To the registrar of the registrar division of

.....
(name of the office)

notice is given that the rights arising from the transfer of property
in stock by,
(transferor)

.....
(address)

notice of which was registered in your office on,
....., under number,

in favour of,
(first transferee)

have been subrogated in favour of,
.....
(new transferee)

.....
(address)

This notice is given to you under section 47 of the Act respect-
ing bills of lading, receipts and transfers of property in stock (R.S.Q.,
chapter C-53), so that it may be registered in your office and entered
in the register contemplated in section 45 of the Act.

Made at, on 19.....

(signature of the new
transferee)