



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 13

(1996, chapter 17)

An Act to amend various provisions relating to alcoholic beverages, video lottery and amusement machines

Introduced 14 May 1996
Passage in principle 29 May 1996
Passage 17 June 1996
Assented to 20 June 1996

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EXPLANATORY NOTES

This bill proposes to amend certain rules contained in the Act respecting offences relating to alcoholic beverages, in the Act respecting lotteries, publicity contests and amusement machines and in the Act respecting the Société des alcools du Québec.

In particular, as regards seizure and confiscation, the bill creates new presumptions concerning the nature of beverages seized, adapts the rules applicable to certain seizures and allows the confiscation by operation of law of certain property seized.

The bill also proposes, in penal matters, to simplify the rules as regards proof that a person holds a permit for alcoholic beverages, and proposes other measures, in particular concerning the registration of amusement machines.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting offences relating to alcoholic beverages (R.S.Q., chapter I-8.1);
- Act respecting lotteries, publicity contests and amusement machines (R.S.Q., chapter L-6);
- Act respecting the Société des alcools du Québec (R.S.Q., chapter S-13).

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING OFFENCES RELATING TO ALCOHOLIC BEVERAGES

1. Section 125.1 of the Act respecting offences relating to alcoholic beverages (R.S.Q., chapter I-8.1) is amended by replacing the second paragraph by the following paragraphs:

“The peace officer may, upon stopping the vehicle, proceed immediately with the seizure of any alcoholic beverages possessed or transported in contravention of this Act and of their containers.

The provisions of the Code of Penal Procedure (chapter C-25.1) that concern things seized, adapted as required, apply once they are seized, to the alcoholic beverages and their containers, subject to the provisions of this Act.”

2. Section 127 of the said Act is amended by inserting the words “125.1 or” after the word “section” in the second line of the first paragraph.

3. Section 127.1 of the said Act is amended by inserting the words “125.1 or” after the word “section” in the third line of the first paragraph.

4. The said Act is amended by inserting, after section 138, the following section:

“138.1 Where the proof of an offence requires that the prosecuting party establish that the defendant is the holder of a permit, the prosecuting party may, instead of producing an

attestation to that effect signed by the person having the authority to issue the permit, establish that fact by means of a declaration recorded in the statement of offence or in the offence report.

The defendant may, however, require that the prosecuting party prove that the defendant is the holder of a permit by the production of an attestation to that effect from the proper authority, provided the defendant gives notice to the prosecuting party not less than 10 days before the date set for the beginning of the trial. The prosecuting party may waive the notice.”

5. Section 148 of the said Act is replaced by the following section:

“**148.** If the judge considers it necessary for the purposes of this Act, he may cause any alcoholic beverage to be analysed by the Corporation’s analyst. The costs of such analysis shall be included in the costs of the proceeding, and the amounts collected as such shall belong to the Corporation and be remitted to it.”

6. Section 149 of the said Act is amended

(1) by adding, at the end of the first paragraph, the words “, and the amounts collected as such shall belong to the Corporation and be remitted to the Corporation”;

(2) by replacing the second and third paragraphs by the following paragraphs:

“Where beverages that have been seized in an establishment are in containers identified as containing alcoholic beverages, the beverages shall be presumed to be alcoholic beverages of the type indicated on the container, in the absence of any evidence to the contrary.

Where beverages that have been seized elsewhere than in an establishment are in sealed containers identified as containing alcoholic beverages, the beverages shall be presumed to be alcoholic beverages of the type indicated on the container, in the absence of any evidence to the contrary.

However, any defendant who contests that beverages seized are alcoholic beverages or are of a particular type must give prior notice to the prosecuting party of an application for analysis of the contents of a determined number of containers of such beverages

not less than 10 days before the date set for the beginning of the trial, unless the prosecuting party waives the notice. Article 172 of the Code of Penal Procedure applies to the application.”

7. Section 172 of the said Act is amended

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

“**172.** On the thirtieth day following a conviction for an offence under a provision of this Act, the alcoholic beverages seized by reason of the offence and their containers are confiscated by operation of law, except if a judge, on application of the defendant or of a third party, decides otherwise.

Upon a conviction for an offence under a provision of this Act, the judge may, on application of the prosecuting party, order the confiscation

(1) of any vehicle or other thing seized and having been used to transport such beverages;

(2) of movable property and equipment seized and having been used in the illegal sale of alcoholic beverages;

(3) of any amount seized that constitutes the proceeds from the illegal sale of alcoholic beverages.”;

(2) by adding, after the third paragraph, the following paragraph:

“The clerk or a person under his authority must advise the Corporation of any order for the confiscation of alcoholic beverages made under this Act.”

8. Section 175 of the said Act is amended

(1) by replacing the words “is unknown to the Minister of Public Security” in the third line by the words “are unknown to the Minister of Public Security or cannot be traced”;

(2) by replacing the words “two months” in the fourth line by the words “90 days”.

9. Section 177 of the said Act is amended

(1) by inserting the words “under section 172 or” after the word “place” in the first line of the first paragraph;

(2) by replacing the words “two months’ delay” in the second line of the first paragraph by the words “period of 90 days”.

10. Section 178 of the said Act is amended

(1) by striking out the words “after an application to have it declared confiscated has been filed,” in the second line of the second paragraph;

(2) by replacing the words “the judge to whom the application is made” in the third line of the second paragraph by the words “a judge”.

ACT RESPECTING LOTTERIES, PUBLICITY
CONTESTS AND AMUSEMENT MACHINES

11. Section 53 of the Act respecting lotteries, publicity contests and amusement machines (R.S.Q., chapter L-6) is amended by inserting the words “have in his possession, possess or” after the words “person may” in the first line.

12. Section 121.0.1 of the said Act is replaced by the following sections:

“121.0.1 If the court considers it necessary for the purposes of this Act, it may cause any machine required to be registered under this Act to be analysed. The costs of such analysis shall be included in the costs of the proceeding.

“121.0.2 In any prosecution under this Act, the certificate relating to the analysis of any machine required to be registered under this Act signed by an analyst of the laboratory referred to in section 52.15 shall be accepted as proof, *prima facie*, of the facts set forth therein and of the authority of the person who signed such certificate, without further evidence of his appointment or of his signature. The costs of such analysis shall also be included in the costs of the proceeding.

“121.0.3 On the thirtieth day following a conviction for an offence under a provision of this Act or the rules or regulations thereunder, any amusement machines, video lottery machines,

accessories thereof, sums of money contained in such machines or gaming materials seized by reason of the offence are confiscated by operation of law, except if a judge, on the application of the defendant or of a third party, decides otherwise.

Except as otherwise provided by this Act, upon a conviction for an offence under a provision of this Act or the regulations or rules thereunder, a judge may, on the application of the prosecuting party, order the confiscation of any sums of money collected from the public, any prizes awarded and any other things connected with the conduct of a lottery scheme or a publicity contest.

“121.0.4 If the name and the address in Québec of the person at whose establishment or residence or in whose possession the things were seized are not known to the Minister of Public Security or cannot be traced, everything that was seized shall be considered to be confiscated after the expiry of 90 days from the seizure.”

ACT RESPECTING THE SOCIÉTÉ DES ALCOOLS DU QUÉBEC

13. Section 39.2 of the Act respecting the Société des alcools du Québec (R.S.Q., chapter S-13) is amended by replacing the second paragraph by the following paragraphs:

“The peace officer may, upon stopping the vehicle, proceed immediately with the seizure of any alcoholic beverages possessed or transported in contravention of this Act and of their containers.

The provisions of the Code of Penal Procedure (chapter C-25.1) that concern things seized, adapted as required, apply once they are seized, to the alcoholic beverages and their containers, subject to the provisions of this Act.”

14. Section 42 of the said Act is amended by inserting the words “39.2 or” after the word “section” in the second line of the first paragraph.

15. Section 42.1 of the said Act is amended by inserting the words “39.2 or” after the word “section” in the third line of the first paragraph.

16. Section 47 of the said Act is amended

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

“47. On the thirtieth day following a conviction for an offence under a provision of this Act, the alcoholic beverages seized by reason of the offence and their containers are confiscated by operation of law, except if a judge, on application of the defendant or of a third party, decides otherwise.

Upon a conviction for an offence under a provision of this Act, the judge may, on application of the prosecuting party, order the confiscation

(1) of any vehicle or other thing seized and having been used to transport such beverages;

(2) of movable property and equipment seized and having been used in the illegal production or sale of alcoholic beverages;

(3) of any amount seized that constitutes the proceeds from the illegal sale of alcoholic beverages.”;

(2) by adding, after the third paragraph, the following paragraph:

“The clerk or a person under his authority must advise the Corporation of any order for the confiscation of alcoholic beverages made under this Act.”

17. Section 50 of the said Act is amended by inserting the words “or has been carried out under section 47” after the word “court” in the first line.

18. Section 54 of the said Act is amended

(1) by striking out the words “after an application to have it declared confiscated has been filed” in the second line of the first paragraph;

(2) by replacing the words “the judge seized of the application,” in the third line of the first paragraph by the words “a judge”.

19. Section 55.6 of the said Act is replaced by the following section:

“55.6 If the judge considers it necessary for the purposes of this Act, he may cause any alcoholic beverage to be analysed by the Corporation’s analyst. The costs of such analysis shall be included in

the costs of the proceeding, and the amounts collected as such shall belong to the Corporation and be remitted to it.”

20. Section 55.7 of the said Act is amended

(1) by adding, at the end of the first paragraph, the words “, and the amounts collected as such shall belong to the Corporation and be remitted to the Corporation”;

(2) by replacing the second and third paragraphs by the following paragraphs:

“Where beverages that have been seized are in sealed containers identified as containing alcoholic beverages, the beverages shall be presumed to be alcoholic beverages of the type indicated on the container, in the absence of any evidence to the contrary.

However, any defendant who contests that beverages seized are alcoholic beverages or are of a particular type must give prior notice to the prosecuting party of an application for analysis of the contents of a determined number of containers of such beverages not less than 10 days before the date set for the beginning of the trial, unless the prosecuting party waives the notice. Article 172 of the Code of Penal Procedure (chapter C-25.1) applies to the application.”

21. This Act comes into force on 20 June 1996.

