



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 3

(2011, chapter 9)

An Act to promote safe school transportation and to better regulate bulk trucking brokerage

**Introduced 23 March 2011
Passed in principle 12 May 2011
Passed 10 June 2011
Assented to 13 June 2011**

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EXPLANATORY NOTES

The object of this Act is to amend the Transport Act in order to improve the safety of transportation for schoolchildren, increase the powers of the Commission des transports du Québec and introduce new provisions relating to bulk trucking.

As of 1 July 2012, any driver of a vehicle used for the transportation of schoolchildren will be required to hold a certificate of competence issued in accordance with a government regulation.

The president of the Commission des transports du Québec is empowered to refer certain matters to mediation or to arbitration. The Commission is granted new powers, including the power to take any measure it deems appropriate or reasonable in respect of a carrier or operator of heavy vehicles, for the purposes of certain subdivisions of the Transport Act.

As concerns bulk trucking, criteria are established to allow certain operators of heavy vehicles who have not subscribed to a brokerage service operated by a brokerage permit holder since 1 January 2000, but who were registered in the bulk trucking register at that date, to re-register. Rules are also established as regards the approval of a brokerage permit holder's by-laws by the permit holder's subscribers. Moreover, brokerage permit holders may submit to the Commission des transports du Québec, for approval, a by-law stipulating that all the brokerage permit holder's by-laws applicable to government contracts, and only those by-laws, apply to transport brokerage services under other contracts. In the cases where a by-law is approved, to ensure it is complied with, the Commission has the same powers the Transport Act grants when a permit holder and the subscribers are acting under a government contract.

Lastly, various consequential amendments and transitional measures are introduced.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting transportation services by taxi (R.S.Q., chapter S-6.01);
- Transport Act (R.S.Q., chapter T-12).

Bill 3

AN ACT TO PROMOTE SAFE SCHOOL TRANSPORTATION AND TO BETTER REGULATE BULK TRUCKING BROKERAGE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TRANSPORT ACT

- 1.** Section 5 of the Transport Act (R.S.Q., chapter T-12), amended by section 128 of chapter 14 of the statutes of 2008, is again amended by replacing “, prescribe the information to be contained in the certificate of competence and authorize a person to issue or renew it, to determine the content of the training course needed to obtain or renew it, to dispense that course and to fix the costs payable therefor” in paragraph g.1 by “or to drive a vehicle used for the transportation of schoolchildren, prescribe the information to be contained in the certificate of competence and authorize a person to issue or renew it, to determine the content of the training course needed to obtain or renew it, to dispense that course and to determine the fees payable for it”.
- 2.** Section 8 of the Act is amended by replacing “regulation” wherever it appears in the first and third paragraphs by “by-law”.
- 3.** The Act is amended by inserting the following after section 35.1:

“§2.1. — *Mediation*

“35.2. If the president of the Commission considers it expedient and the subject matter and circumstances of the case so permit, the president may, with the consent of the parties and on payment by both parties of the mediation fees determined by regulation of the Commission, refer any dispute in respect of which the Commission may intervene under a legislative provision to a mediator designated by the president.

Unless the parties agree otherwise, the mediation process may not continue for more than 30 days after the date on which the mediator is appointed by the president.

In exercising the regulatory power under the first paragraph, the Commission may determine different mediation fees based on whether they are payable by natural or legal persons or by any other category of persons it determines.

“35.3. Unless the parties consent to it, nothing that is said or written in the course of a mediation session may be admitted as evidence before the Commission, before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

The mediator may not be compelled to disclose anything revealed to or learned by the mediator in the exercise of the functions of office or to produce a document prepared or obtained in the course of such exercise before the Commission, before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person may have access to a document contained in the mediation record.

“35.4. An agreement is recorded in a document signed by the mediator, the parties and, if applicable, their representatives.

An agreement reached following a mediation session presided by a member of the Commission terminates the proceedings and is enforceable as a decision of the Commission; an agreement reached following a mediation session conducted by any other person has the same effects, provided it is homologated by the Commission.

“35.5. The mediator shall send the agreement or, if no agreement is reached, the report, to the Commission.

“35.6. No proceedings may be brought against the mediator for an official act performed in good faith in the exercise of the functions of office.”

4. Section 37.3 of the Act is amended by replacing “executory” in the second paragraph by “enforceable”.

5. Section 40 of the Act is amended

(1) by inserting the following subparagraph after subparagraph *c* of the first paragraph:

“(c.1) fails to comply with a mediation agreement or the decision of an arbitrator, which are enforceable as decisions of the Commission, or with an enforceable decision of the Commission;”;

(2) by adding the following subparagraph after subparagraph *e* of the first paragraph:

“(f) uses intimidation, threats or reprisals, or causes them to be used, in order to compel an operator or a brokerage permit holder to refrain from or cease exercising a right arising from this Act or a regulation.”;

(3) by adding the following paragraph at the end:

“The Commission may, in its own right or on the request of the Minister or of an interested person, take any other measure it deems appropriate or reasonable in respect of a carrier for the purposes of this subdivision.”

6. Section 40.1 of the Act is amended by striking out “by the permit modification, suspension or revocation or the registration plate or certificate withdrawal”.

7. Section 47.12 of the Act is amended by replacing “operated by the brokerage permit holder” in paragraph 1 by “, if any, operated by a brokerage permit holder”.

8. Section 47.13 of the Act is amended

(1) by adding the following subparagraphs at the end of the first paragraph:

“(5) an operator who uses intimidation, threats or reprisals, or causes them to be used, in order to compel an operator or a brokerage permit holder to refrain from or cease exercising a right arising from this Act or a regulation;

“(6) an operator who fails to comply with a mediation agreement or the decision of an arbitrator, which are enforceable as decisions of the Commission, or with an enforceable decision of the Commission;

“(7) an operator who is an officer of a brokerage permit holder that fails to comply with a mediation agreement or the decision of an arbitrator, which are enforceable as decisions of the Commission, or with an enforceable decision of the Commission, and who prescribed, authorized, consented to, acquiesced in or participated in the act or omission contravening the agreement or the decision.”;

(2) by inserting the following paragraph after the first paragraph:

“The Commission may, on its own initiative or on request, take any other measure it deems appropriate or reasonable in respect of an operator for the purposes of this subdivision.”;

(3) by inserting “or taking any other measure in respect of the operator” after “register” in the second paragraph;

(4) by inserting “or the imposition of any other measure” after “register” in the third paragraph.

9. The Act is amended by inserting the following sections before section 47.14:

“47.13.1. Before being approved under section 8, a by-law concerning transport brokerage services under a government contract adopted by a brokerage permit holder must be approved by at least two thirds of the permit holder’s subscribers in attendance at a special meeting where at least one fourth of the subscribers are present.

The special meeting takes place following a notice sent to the subscribers, at least 15 days before the date of the meeting, at the last address given to the brokerage permit holder. The notice must state the date, time and place of the meeting, and the agenda. It must also mention any new by-law or amendment to a by-law that may be approved at the meeting. The notice must be accompanied by the by-law to be submitted for approval at the meeting.

In the case of a by-law referred to in the first paragraph that accompanies an application for a brokerage permit, and for the purposes of the first and second paragraphs, “subscribers” means all the operators of heavy vehicles registered in the bulk trucking register who, during the subscription period, signed a contract with the applicant for the brokerage services offered under the permit to which the application refers.

“47.13.2. A brokerage permit holder may submit to the approval prescribed in section 8 a by-law that has been approved in accordance with section 47.13.1 and that provides that all the permit holder’s by-laws in force concerning transport brokerage services under government contracts, and only those by-laws, also apply to contracts other than government contracts to which the permit holder is a party.

If the by-law is approved under section 8, the Commission, each of its members, any person designated under section 17.8 and any person authorized to act as an inspector under section 49.2 have the powers provided in this Act to ensure compliance with the by-law as if the permit holder and the subscribers were acting under a government contract. The provisions of this Act, and those of the regulations, that govern brokerage services offered under government contracts then apply, with the necessary modifications, to services offered under other contracts to which the permit holder is a party.”

10. Section 47.14 of the Act is amended

(1) by replacing “in his by-laws, a priority listing classifying subscribers’ trucks” in the first paragraph by “in the holder’s by-laws, a single priority listing classifying all subscribers’ trucks”;

(2) by replacing “disciplinary provisions contained” in the second paragraph by “disciplinary measures provided for”.

11. The Act is amended by inserting the following section after section 47.15:

“47.15.1. The fees a brokerage permit holder claims from a new or existing subscriber to the permit holder’s services must not vary depending on

(1) whose services the subscribing operator had previously subscribed to or, in the case of a transfer, the operator who transferred the registration; or

(2) the zone or the territory in which the main establishment of the operator is or was located or, in the case of a transfer, the operator who transferred the registration.”

12. The Act is amended by inserting the following after section 47.17:

“§4.4. — *Arbitration*

“47.18. The president of the Commission may, on a request from either party, appoint an arbitrator to settle a dispute between a brokerage permit holder and a subscriber concerning the application of sections 47.14 to 47.17 or of a by-law approved under section 8.

“47.19. The arbitrator may not have an interest in the dispute or have acted as a representative of either party, or, unless the parties agree to it, have acted as a mediator in a dispute between the parties.

“47.20. The arbitrator has all the powers necessary for the exercise of the arbitrator’s jurisdiction. The arbitrator settles the dispute in accordance with the applicable rules of law and decides on every question of fact. The arbitrator may, in particular, order either party to do or not do something.

“47.21. The arbitrator’s decision must be rendered within three months after being taken under advisement. It must be in writing, give reasons and be signed. It must be forwarded without delay to the parties. The decision is public and forms part of the records of the Commission.

The arbitrator’s decision has effect from the date it is signed or from any later date given in the decision and is enforceable as a decision of the Commission.

No appeal lies from the arbitrator’s decision.

“47.22. The losing party must pay the arbitration costs determined by regulation of the Commission unless, in a substantiated decision, the arbitrator orders the other party to pay all the costs or determines the proportion of the costs each party must pay.

“47.23. No proceedings may be brought against the arbitrator for an official act performed in good faith in the exercise of the functions of office.”

13. Section 48.12 of the Act, amended by section 129 of chapter 14 of the statutes of 2008, is again amended by inserting “or a vehicle used for the transportation of schoolchildren within the meaning of the Regulation respecting road vehicles used for the transportation of school children made by Order in Council 285-97 (1997, G.O. 2, 1141),” after “(chapter C-24.2),”.

14. Section 48.14 of the Act, amended by section 130 of chapter 14 of the statutes of 2008, is again amended by inserting “or a vehicle used for the transportation of schoolchildren” after “schoolchildren”.

15. Section 48.15 of the Act, amended by section 130 of chapter 14 of the statutes of 2008, is again amended by inserting “or a vehicle used for the transportation of schoolchildren” after “schoolchildren” in the first paragraph.

16. Section 48.16 of the Act, amended by section 131 of chapter 14 of the statutes of 2008, is again amended

(1) by inserting “or a vehicle used for the transportation of schoolchildren” after “schoolchildren”;

(2) by inserting “or vehicle” before “to be driven”.

17. Section 51 of the Act is amended by replacing “of the date on which the decision becomes executory” by “after the date the decision takes effect”.

18. Section 74 of the Act is amended by striking out “section 42, the second paragraph of section 47.4 or”.

ACT RESPECTING TRANSPORTATION SERVICES BY TAXI

19. The Act respecting transportation services by taxi (R.S.Q., chapter S-6.01) is amended by inserting the following after section 84:

“CHAPTER X.0.1

“MEDIATION

“**84.0.1.** Subdivision 2.1 of Division V of the Transport Act (chapter T-12) applies to transportation by taxi.”

20. Section 84.2 of the Act is amended by adding “, or, unless the parties agree to it, have acted as a mediator in a dispute between the parties” at the end.

21. Section 84.4 of the Act is amended

(1) by replacing “promptly” in the first paragraph by “within three months after being taken under advisement”;

(2) by inserting “is public and” after “The decision” in the first paragraph;

(3) by inserting the following paragraph after the first paragraph:

“The arbitrator’s decision has effect from the date it is signed or from any later date given in the decision and is enforceable as a decision of the Commission.”

22. The Act is amended by inserting the following section after section 84.4:

“84.4.1. The losing party must pay the arbitration costs determined by regulation of the Commission unless, in a substantiated decision, the arbitrator orders the other party to pay all the costs or determines the proportion of the costs each party must pay.”

TRANSITIONAL AND FINAL PROVISIONS

23. The Commission des transports du Québec must, on the request of an operator whose registration was removed from the bulk trucking register, re-register the operator if the following conditions are met:

(1) the operator was registered in the bulk trucking register on 1 January 2000;

(2) the operator has not subscribed to a brokerage service operated by a brokerage permit holder since 1 January 2000; and

(3) the operator applies for registration before 1 November 2011.

Operators re-registered in the bulk trucking register under the first paragraph have the same rights, powers, privileges and obligations as any other registered operator.

24. In its decision to re-register an operator under section 23, the Commission determines

(1) the place of the main establishment of the operator;

(2) the maximum number of heavy vehicles that the operator may register with a brokerage service, which is the number of trucks operated that were registered in the bulk trucking register on 1 January 2000;

(3) the zone established by the Commission or, if applicable, the territory determined by a regulation made under the Transport Act (R.S.Q.,

chapter T-12) in which the operator must subscribe to a brokerage service operated by a brokerage permit holder, and the time granted to do so;

(4) the only subscription fees the operator may be required to pay when initially subscribing to a brokerage service operated by a brokerage permit holder, which may not exceed \$500.

For the purposes of subparagraph 3 of the first paragraph, if there is no brokerage service in the determined zone or territory, the time granted starts to run from the moment a brokerage service is offered.

For the purposes of subparagraph 4 of the first paragraph, “subscription fees” covers what may be designated in a by-law concerning transport brokerage services as adhesion, admission, registration or membership fees, for instance.

25. With the exception of the subscription fees payable at the time of the initial subscription, established under subparagraph 4 of the first paragraph of section 24, the brokerage fees applicable to an operator who re-registers under section 23 are the same as those applicable to the other subscribers under a by-law adopted by the brokerage permit holder to whose services the operator subscribes.

26. Any provision that pertains to mediation or arbitration mechanisms that is included in a by-law of a brokerage permit holder approved under section 8 of the Transport Act ceases to have effect on 1 April 2012.

27. As of 12 June 2008, the Regulation respecting Municipalized Public Transport Services, enacted by Order in Council 2515-85 (1985, G.O. 2, 4285), is deemed to have been enacted under section 48.20 of the Transport Act.

28. This Act comes into force on 13 June 2011, except

(1) sections 3, 11, 12, 19 and 20, which come into force on 1 April 2012; and

(2) sections 13 to 16, which come into force on 1 July 2012.

However, until 1 April 2012,

(1) subparagraph *c.1* of the first paragraph of section 40 of the Transport Act, enacted by paragraph 1 of section 5, must read as follows:

“(c.1) fails to comply with an enforceable decision of the Commission;”;

(2) subparagraphs 6 and 7 of the first paragraph of section 47.13 of the Transport Act, enacted by paragraph 1 of section 8, must read as follows:

“(6) an operator who fails to comply with an enforceable decision of the Commission;

“(7) an operator who is an officer of a brokerage permit holder that fails to comply with an enforceable decision of the Commission, and who prescribed, authorized, consented to, acquiesced in or participated in the act or omission contravening the decision.”