



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 193

**An Act to regulate ferrous and
non-ferrous metal transactions and
recycling**

Introduction

**Introduced by
Mr. Marc Picard
Member for Chutes-de-la-Chaudière**

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EXPLANATORY NOTES

The purpose of this bill is to regulate the retail purchase and recycling of ferrous and non-ferrous metals by metal recyclers in order to prevent metal theft and the possession of stolen metal.

The bill proposes a licencing system governing metal recyclers and sets the conditions and obligations a licence holder carrying on metal recycling activities must fulfil.

Metal recyclers are required to verify the identity of persons who sell or supply metal to them, to collect and record certain information at the time of a metal transaction, and to keep this information. A metal recycler may not purchase metal from a person refusing to present identification or provide the prescribed information.

In addition, a metal recycler must not purchase metallic wire that appears to have had insulation removed from it or metal that bears distinguishing marks, engravings or other features identifying a government department, a government agency, a municipality, a telecommunications or cable distribution company, or a company producing, transporting, distributing or selling gas or electricity, unless the person selling or supplying the metal provides proof that he or she owns it.

A metal recycler must not purchase metal from a person if the recycler has reasonable grounds to believe that the metal was stolen, or pay cash for metal if the total value exceeds the amount set by regulation.

The bill authorizes the Minister to appoint the inspectors necessary for the carrying out of the Act, and establishes the inspectors' powers as regards inspection, seizure and forfeiture.

Under the bill, the Minister must implement the Ferrous and Non-Ferrous Metal Recycling Program within 12 months after the Act comes into force. The Program's main objective is to collect gifts and the amounts paid under this Act in order to reduce the cost of metal recyclers' licences.

Lastly, the bill provides for penal sanctions and transitional measures.

Bill 193

AN ACT TO REGULATE FERROUS AND NON-FERROUS METAL TRANSACTIONS AND RECYCLING

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE

1. The purpose of this Act is to regulate the retail purchase and recycling of ferrous and non-ferrous metals by metal recyclers in order to prevent metal theft and the possession of stolen metal.

“Metal” or “ferrous and non-ferrous metals” means any material or product consisting mainly of iron, steel, galvanized steel, stainless steel, aluminum, silver, bronze, copper, tin, cast iron, brass, lead, zinc or any other metal prescribed by regulation.

“Metal recycler” means any person who acquires, purchases or trades new or used metal in wholesale or retail transactions in order to recycle, reclaim or process it or extract new raw materials from it, for sale or for profit.

CHAPTER II

LICENCES

2. No person may carry on activities as a metal recycler without a licence.

3. A licence is valid for a period of two years and may be renewed for the same period.

The Minister may, however, issue or renew a licence for a shorter period if the Minister considers it advisable.

4. No person may transfer a licence without the Minister’s authorization.

In addition, the Minister may temporarily authorize a person other than the licence holder to act under the authority of the licence, in particular in the case of the death, liquidation of the property or bankruptcy of the holder, or any similar situation. The person to whom temporary authorization is granted must respect all of the licence holder’s obligations under this Act and the regulations.

5. The Minister issues, amends or renews a licence, or authorizes its transfer if a person satisfies the conditions and pays the fees determined by regulation.

6. The Minister may subject the issue, amendment, renewal or transfer of a licence to any other condition, restriction or prohibition that the Minister determines and specifies in the licence.

7. The Minister may, under section 39, refuse to issue, amend, renew or authorize the transfer of a metal recycler's licence for reasons of public interest.

8. A licence holder must, in carrying on activities as a metal recycler, use the books, registers and other documents prescribed by regulation.

In addition to the documents required under the second paragraph of section 13, a licence holder must, at the Minister's request, provide any information relating to his or her activities.

9. A licence holder must comply with any standards that the Government may prescribe by regulation that relate to the operation of a metal recycling or transaction site and that concern, in particular,

(1) the construction, layout and equipment of a metal recycling or transaction site; and

(2) metal recycling, reclaiming, processing or separation.

10. A licence holder must pay the annual fees determined by regulation.

11. A licence holder must display the licence or a duplicate of it, so that it is clearly legible, in a conspicuous place in the holder's business establishment.

CHAPTER III

REGISTER AND INFORMATION

12. When acquiring, purchasing or trading ferrous or non-ferrous metals, a metal recycler must take reasonable measures to verify the identity of the person selling, supplying or trading the metals.

A metal recycler must also collect and record the following information:

(1) the transaction number;

(2) a sufficiently detailed description of the metal involved in the transaction, including its type, weight and any distinguishing features;

(3) the origin of the metal as stated by the person selling, supplying or trading it;

- (4) the date and time of the transaction;
- (5) the total value of the transaction;
- (6) the full name, address and telephone number of the person selling, supplying or trading the metal;
- (7) if the person delivering the metal is not its owner at the time of the transaction, the full name, address and telephone number of the person delivering the metal;
- (8) the full name of the person conducting the transaction on behalf of the metal recycler; and
- (9) any other information prescribed by regulation.

13. A metal recycler must record and keep the information required under section 12 in the books, registers or other documents provided for in section 8.

A metal recycler must provide any book, register, report or other document to the Minister at the time or frequency determined by regulation.

CHAPTER IV

RESTRICTIONS

14. A metal recycler may not purchase metal from a person refusing to present identification or provide the information required under section 12.

15. Unless the person selling, supplying or trading the metal demonstrates his or her ownership of it, a metal recycler may not purchase metallic wire that appears to have had insulation removed from it.

Subject to the first paragraph, a metal recycler may not purchase metal that bears distinguishing marks, engravings or other features identifying

- (1) a government department;
- (2) a government agency within the meaning of the Auditor General Act (chapter V-5.01);
- (3) a municipality;
- (4) a telecommunications or cable distribution company or a company that produces, transports, distributes or sells gas or electricity.

16. A metal recycler may not purchase metal from a person if the recycler has reasonable grounds to believe that the metal was stolen.

17. A metal recycler may not pay cash for metal if the amount of the transaction exceeds the amount set by regulation.

CHAPTER V

INSPECTION

18. The Minister may appoint the inspectors necessary for the carrying out of this Act or the regulations and may provide for the remuneration of those who are not remunerated under the Public Service Act (chapter F-3.1.1).

19. An inspector has, in the performance of inspection duties, the powers of a peace officer.

An inspector must present identification on request and show the certificate bearing the Minister's signature and attesting to the inspector's capacity.

20. No person may hinder or refuse to obey an inspector performing inspection duties.

In addition, a person under inspection must give the inspector all reasonable assistance.

21. An inspector may not be prosecuted for any official act done in good faith in the performance of inspection duties.

22. An inspector may, in the performance of inspection duties,

(1) enter, at any reasonable hour, the business establishment of and have access to the storage, recycling or transaction site of a licence holder or of a person contravening section 2, and inspect it;

(2) examine the premises and any equipment, installation, material, apparatus, metal or other property to which this Act or the regulations apply, take samples without charge, take photographs and make recordings;

(3) order the immobilization of any vehicle used to transport metal, and inspect it; and

(4) require any book, register, bill of lading or other document or record to be produced for examination or to take copies or make extracts if the inspector has reasonable grounds to believe that it contains information relating to the application of this Act or the regulations.

23. An inspector may, in the performance of inspection duties, seize any metal, product or other property if the inspector has reasonable grounds to believe that an offence against this Act or the regulations has been committed in respect of the property, or that the property was used to commit such an offence.

An inspector who seizes property draws up minutes and gives a copy to the person from whom the property was seized.

24. The owner or possessor of the property seized must have custody of it. However, where the inspector considers it advisable, the inspector may designate another custodian, or transfer the property seized to other premises for safekeeping purposes. In addition, the custodian takes custody of the property seized and submitted in evidence, unless the judge to whom it was submitted in evidence decides otherwise.

The property seized must remain under safekeeping until it is disposed of in accordance with any of sections 25 to 28, 30 and 31 or, if proceedings are instituted, until a judge disposes of the property by judgment.

25. If the property seized is perishable or likely to depreciate rapidly, a judge may, on the application of the seizer, authorize the sale of the property.

Prior notice of not less than one clear day of the application must be served on the person from whom the property was seized and on persons claiming a right in the property. However, the judge may exempt the seizer from service if deterioration of the property is imminent.

The sale is made on the conditions determined by the judge. The proceeds of sale are deposited with the Minister of Finance in accordance with the Deposit Act (chapter D-5).

26. Property seized or the proceeds of its sale must be returned to the owner or person who had possession of the property if

(1) 90 days have elapsed since the date of the seizure and no proceedings have been instituted; or

(2) the inspector is of the opinion, after verification within 90 days, that no offence against this Act or the regulations has been committed, or that the owner or person who had possession of the property seized has complied with this Act or the regulations since the seizure.

27. The owner or person who had possession of the property seized may at any time apply to a judge to obtain the return of the property or the proceeds of its sale.

The application must be served on the seizer or, if proceedings have been instituted, on the prosecuting party.

The judge grants the application if he or she is satisfied that the applicant will suffer serious or irreparable injury if detention of the property seized or of the proceeds of its sale is maintained and that the return of the property or proceeds will not hinder the course of justice.

28. Despite section 27, if unlawful possession prevents property seized or the proceeds of its sale from being returned to the person from whom the property was seized or to a person claiming to be entitled to the property or the proceeds, the judge, on the application of the seizer or the prosecuting party, orders forfeiture of the property or the proceeds; if unlawful possession is not proved, the judge designates the person to whom the property or the proceeds may be returned.

Prior notice of the application must be served on the person from whom the property was seized and on the other person entitled to make such an application, unless they are in the presence of the judge. Such prior notice may, where applicable, be given in the statement of offence and specify that the application for forfeiture is to be made at the time of the judgment.

The Minister prescribes the manner in which the property forfeited is to be disposed of.

29. A judge may, on the application of the seizer, order that the period of detention be extended for a maximum of 90 days.

Before deciding on the merits of the application, the judge may order that it be served on the person the judge designates.

30. If a seizure is made under section 23, a judge may, on pronouncing a conviction for an offence under this Act or the regulations, and on the application of the prosecuting party, declare the forfeiture of the seized property.

In such a case, however, if stolen metal or the proceeds of its sale is among the seized property, the conviction entails forfeiture of the stolen metal or the proceeds of its sale.

The prosecuting party must give prior notice of the application for forfeiture to the person from whom the property was seized and to the defendant, unless they are in the presence of the judge.

The Minister prescribes the manner in which the property forfeited is to be disposed of.

31. If the rightful owner or possessor of property seized by an inspector is unknown or untraceable, the property or the proceeds of its sale is transferred 90 days after the day of seizure to the Minister of Revenue or to the Minister of Finance, according to whether it is the property or the proceeds of sale that is involved; a statement describing the property or the proceeds of sale and indicating, where applicable, the name and last known address of the interested party must be sent to the Minister of Revenue at the time of the transfer.

The Unclaimed Property Act (chapter B-5.1) applies to the property or the proceeds of sale so transferred to the Minister of Revenue or to the Minister of Finance.

32. Subject to section 25, no person, except with the assent of an authorized person, may sell or offer for sale seized or forfeited property, or remove or allow such property, its container or the writ of seizure or forfeiture to be removed, or remove or break a seal affixed by an inspector.

CHAPTER VI

FERROUS AND NON-FERROUS METAL RECYCLING PROGRAM

33. The Minister is required to establish a Ferrous and Non-Ferrous Metal Recycling Program within 12 months after the coming into force of this Act.

The purpose of the Program is to collect gifts and the amounts paid under this Act in order to reduce the cost of metal recyclers' licences.

34. The Minister pays the amounts collected under this Act or the regulations into the Ferrous and Non-Ferrous Metal Recycling Program Fund.

In particular, the Minister pays the gifts collected for the Ferrous and Non-Ferrous Metal Recycling Program into the Fund.

35. The fines collected under this Act are paid into the Ferrous and Non-Ferrous Metal Recycling Program Fund.

36. The amounts paid into the Ferrous and Non-Ferrous Metal Recycling Program Fund are allocated exclusively to reducing the cost of metal recyclers' licences.

CHAPTER VII

REGULATORY POWERS

37. The Government may make regulations

(1) determining which metal, material, or product is governed by this Act or the regulations;

(2) determining subclasses of licences and the fees, conditions, restrictions or prohibitions relating to each subclass which a licence holder is required to pay, satisfy or comply with;

(3) determining the conditions for the issue, amendment, renewal or transfer of a licence and the related fees and administrative charges;

(4) determining the books, registers and other documents to be used by a licence holder in carrying on his or her activities;

(5) prescribing standards that apply to the operation of a metal recycling or transaction site and that concern, in particular,

- (a) the construction, layout and equipment of a metal recycling or transaction site; and
- (b) metal recycling, reclaiming, processing or separation;
- (6) determining the annual fees to be paid by a licence holder;
- (7) prescribing standards that apply to the identification of persons who sell, supply or trade metal;
- (8) prescribing standards that apply to the information to be collected and recorded by a metal recycler at the time of a transaction, including the assignment of a transaction number;
- (9) determining the information to be collected and recorded at the time of a metal transaction, in addition to the information required under this Act;
- (10) prescribing standards that apply to recording and keeping the information collected at the time of a metal transaction, including how long the information is to be kept;
- (11) determining the books, registers, reports and other documents a licence holder must provide to the Minister, the information the books, registers, reports or other documents must contain, and the time or frequency at which they must be produced;
- (12) determining conditions or restrictions relating to the acquisition, purchase or trade of certain classes of metal or property by a metal recycler;
- (13) setting the maximum amount for cash transactions for metal;
- (14) prescribing rules governing inspection, sample taking, seizure and forfeiture;
- (15) exempting, on the conditions it may set, a class of persons, materials, products, establishments, activities or places it determines from the application of all or part of this Act or the regulations;
- (16) determining, from among the provisions of a regulation made under this Act, those whose contravention constitutes an offence; and
- (17) prescribing the rules, methods of operation and administration of the Ferrous and Non-Ferrous Metal Recycling Program.

CHAPTER VIII

ADMINISTRATIVE PENALTIES AND PROCEEDINGS BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

38. The Minister may suspend, cancel or refuse to renew the licence of a licence holder who

(1) has been convicted of an offence under this Act or the regulations, unless the holder has obtained a pardon;

(2) no longer satisfies the conditions for obtaining a licence;

(3) does not satisfy a condition or comply with a restriction or prohibition specified in the licence;

(4) does not satisfy the requirements set out in section 9;

(5) fails to comply with a provision of this Act or a regulation made under this Act; or

(6) has ceased activities as a metal recycler permanently or for 12 or more consecutive months.

In addition, the Minister may refuse to authorize a licence holder to transfer a licence to any person referred to in subparagraph 1 of the first paragraph.

39. The Minister may amend, suspend or cancel a licence for reasons of public interest.

40. Before amending, suspending, cancelling or refusing to issue, amend, renew or transfer a licence, the Minister must notify the licence holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and grant the holder at least 10 days to present observations. The Minister must also give notice of the decision in writing, with the reasons on which it is based, to any person whose licence the Minister amends, suspends, cancels or refuses to issue, amend, renew or transfer.

41. Any person whose application for a licence is refused or whose licence is amended, suspended, cancelled or not amended, renewed or transferred may contest the Minister's decision before the Administrative Tribunal of Québec within 30 days of notification of the decision.

CHAPTER IX

PENAL PROVISIONS

42. Any person who contravenes the first paragraph of section 4 or section 8, 12 or 13 is guilty of an offence and is liable to a fine of \$500 to \$1,500 and, in the case of a second or subsequent offence, to a fine of \$1,500 to \$4,500.

43. Any person who contravenes section 9, 10 or 11 or a provision of a regulation whose contravention constitutes an offence under paragraph 16 of section 37 is guilty of an offence and is liable to a fine of \$250 to \$750 and, in the case of a second or subsequent offence, to a fine of \$750 to \$2,500.

If a person is found guilty of an offence under section 9 and the offence entails a risk to public health or safety, the environment or wildlife, the amount of the fine is \$2,000 to \$6,000 and, in the case of a second or subsequent offence, \$6,000 to \$18,000.

44. Any person who contravenes any of sections 14 to 17 is guilty of an offence and is liable to a fine of \$1,500 to \$15,000 and, in the case of a second or subsequent offence, to a fine of \$15,000 to \$45,000.

45. Any person who contravenes section 2, 20, 24 or 32 or who does not comply with a condition, restriction or prohibition specified in the person's licence is guilty of an offence and is liable to a fine of \$1,000 to \$3,000 and, in the case of a second or subsequent offence, to a fine of \$3,000 to \$9,000.

In addition, any person who carries on an activity referred to in section 2 after the person's licence has been suspended or cancelled under section 38 or 39 is guilty of an offence and is liable to a fine of \$2,000 to \$6,000 and, in the case of a second or subsequent offence, to a fine of \$6,000 to \$18,000.

46. Where a legal person, partnership, association or body commits an offence against this Act or any of its regulations, the director, officer, employee, partner or mandatary of the legal person, partnership, association or body who directed, authorized or advised the commission of the offence or consented to it is a party to the offence and is liable to the penalty prescribed for it.

47. Any person who knowingly, by any act or omission, aids another person to commit an offence under any of sections 42 to 45 or who advises, encourages or incites a person to commit an offence is a party to the offence and is liable to the penalty prescribed for it.

48. In proceedings instituted for an offence under this chapter, the inspection, analysis or sampling report and the minutes of the seizure or forfeiture, signed by an inspector, are proof of their contents, unless there is evidence to the contrary; no proof of the signature or of the quality of the signatory is required if the person certifies in the inspection, analysis or sampling report that he or she personally observed the facts stated in it.

CHAPTER X

MISCELLANEOUS PROVISION

49. At least every five years, the Minister must prepare a report for the National Assembly on the carrying out of this Act, and make recommendations on the advisability of maintaining its provisions in force or amending them.

CHAPTER XI

TRANSITIONAL PROVISIONS

50. On the date of coming into force of this Act, any obligation related to obtaining a licence to carry on activities as a metal recycler under a provision other than the provisions of this Act or a regulation made under this Act lapses.

The same applies to the obligation to keep any book, register or other document relating to activities as a metal recycler.

51. Information concerning metal recycling or metal transactions collected and recorded before the coming into force of this Act must be transferred to the books, registers or other documents provided for in this Act.

For the purposes of this Act, the information may also be communicated to the Minister, the inspectors or any other person designated by the Minister, despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Act respecting the protection of personal information in the private sector (chapter P-39.1) and any other communication restrictions under other laws of Québec.

CHAPTER XII

FINAL PROVISIONS

52. The Government designates the Minister responsible for the administration of this Act.

53. This Act comes into force on (*insert the date of assent to this Act*), except sections 2 and 9, which come into force on 1 January 2016 or on any earlier date set by the Government.

