



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 78

**An Act mainly to improve the
transparency of enterprises**

Introduction

**Introduced by
Mr. Jean Boulet
Minister of Labour, Employment and Social Solidarity**

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EXPLANATORY NOTES

This bill amends the Act respecting the legal publicity of enterprises mainly to improve the transparency of enterprises.

The bill provides that the enterprise registrar must take reasonable measures to improve the reliability of the information contained in the enterprise register.

The bill requires registrants to declare certain information relating to the natural persons who are their ultimate beneficiaries, including their names, domiciles and dates of birth. In that regard, it establishes the conditions under which a natural person is considered to be an ultimate beneficiary and allows the Government to make regulations determining other conditions.

The bill adds the date of birth to the information required to be declared by a registrant about a natural person and allows a registrant to declare such a person's professional address so that the information relating to that person's domicile may not be consulted.

The bill provides that a natural person's name may be part of a compilation of information or serve as the basis for a compilation, including for the purposes of a search in the enterprise register. However, it specifies that information that may not be consulted may not be part of such a compilation or serve as the basis for one.

The bill allows the Government to make regulations determining terms relating to the declaration of certain information concerning ultimate beneficiaries as well as the information contained in the enterprise register that may not be consulted.

The bill allows the Minister to make a regulation exempting a category of registrants from paying the registration fee.

Finally, the bill makes consequential amendments to the Regulation respecting the application of the Act respecting the legal publicity of enterprises, and contains amending, transitional and final provisions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting the legal publicity of enterprises (chapter P-44.1).

REGULATION AMENDED BY THIS BILL:

- Regulation respecting the application of the Act respecting the legal publicity of enterprises (chapter P-44.1, r. 1).

Bill 78

AN ACT MAINLY TO IMPROVE THE TRANSPARENCY OF ENTERPRISES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING THE LEGAL PUBLICITY OF ENTERPRISES

I. The Act respecting the legal publicity of enterprises (chapter P-44.1) is amended by adding the following chapter before Chapter I:

“CHAPTER 0.1

“PURPOSES AND DEFINITIONS

“**0.1.** This Act establishes the enterprise register and sets rules relating to the information required to be recorded in the register in order to optimize the reliability of that information and improve the transparency of enterprises.

The purpose of the Act is to enhance the protection of the public by providing public access to certain information contained in the register, particularly in the context of socio-economic relations.

A further purpose of the Act is to prevent and fight tax evasion, money laundering and corruption.

“**0.2.** For the purposes of this Act,

“government enterprise” means any enterprise listed in Schedule 3 to the Financial Administration Act (chapter A-6.001);

“legal person constituted in Québec” means a legal person constituted under the laws of Québec and includes, except for the purposes of the second paragraph of section 36, a legal person constituted under the laws of a jurisdiction other than Québec that is continued under the laws of Québec;

“registrant” means a person or group of persons registered voluntarily or any person, trust or partnership required to be registered.

“0.3. In this Act, “ultimate beneficiary” means a natural person who

(1) is the holder, even indirectly, or beneficiary of a number of shares or units of the registrant conferring on the person the power to exercise 25% or more of the voting rights attached to the shares or units;

(2) is the holder, even indirectly, or beneficiary of a number of shares or units the value of which corresponds to 25% or more of the fair market value of all the shares or units issued by the registrant;

(3) exercises control in fact of the registrant; or

(4) is a general partner of a limited partnership.

If natural persons holding shares or units of the registrant have agreed to jointly exercise the voting rights attached to the shares or units and the agreement confers on them, together, the power to exercise 25% or more of those voting rights, each of those natural persons is considered to be an ultimate beneficiary of the registrant.

In the case of a natural person operating a sole proprietorship, that person, unless he or she declares otherwise, is presumed to be the only ultimate beneficiary of the sole proprietorship.

The Government may make regulations determining other conditions according to which a natural person is considered to be an ultimate beneficiary.

“0.4. For the purposes of this Act, a government body includes

(1) any body referred to in the first paragraph of section 2 of the Financial Administration Act (chapter A-6.001);

(2) any body whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1); and

(3) the Commission de la construction du Québec.

In addition, persons designated by the National Assembly to exercise a function under its authority and municipal bodies referred to in section 5 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) are considered government bodies.”

2. Section 3 of the Act is amended

(1) by replacing “register described in Chapter II” in paragraph 1 by “enterprise register”;

(2) by adding the following paragraph after paragraph 3:

“(4) taking reasonable measures to improve the reliability of the information contained in the register.”

3. Section 18 of the Act is repealed.

4. Section 26 of the Act is amended by replacing “by regulation of the Minister” by “under subparagraph 1 of the second paragraph of section 148”.

5. Section 27 of the Act is amended by replacing “the information required under subparagraph 4 of the first paragraph of section 33 and” by “the domicile referred to in subparagraph 1 of the first paragraph of section 33 and the information required under”.

6. Section 31 of the Act is repealed.

7. Section 32 of the Act is amended by adding the following paragraph at the end:

“The Minister may make a regulation exempting a category of registrants from paying the fee referred to in the first paragraph subject to the conditions determined by the Minister.”

8. Section 33 of the Act is amended

(1) in the first paragraph,

(a) by striking out “Unless an exemption established by regulation of the Minister applies,” in the introductory clause;

(b) by replacing “the registrant’s name and” in subparagraph 1 by “the registrant’s name, domicile and, in the case of a natural person, date of birth as well as”;

(c) by striking out subparagraph 4;

(2) in the second paragraph,

(a) by inserting the following subparagraphs after subparagraph 2:

“(2.1) the names, domiciles and dates of birth of the ultimate beneficiaries as well as, according to the terms determined by regulation of the Government, the type of control exercised by each ultimate beneficiary or the percentage of shares or units each one holds or of which each one is a beneficiary;

“(2.2) the date on which a natural person became an ultimate beneficiary and, as applicable, that on which the person ceased to be an ultimate beneficiary;”;

(b) by replacing all occurrences of “the names and domiciles” by “the names, domiciles and dates of birth”;

(3) by replacing “subparagraph 4” in the third paragraph by “subparagraph 1”.

9. Section 34 of the Act is amended by replacing both occurrences of “the name and domicile” and the occurrence of “the names and domiciles” in paragraph 1 by “the name, domicile and date of birth” and “the names, domiciles and dates of birth”, respectively.

10. Section 35 of the Act is amended by replacing “the names and domiciles” in paragraph 5 by “the names, domiciles and dates of birth”.

11. The Act is amended by inserting the following section after section 35.1:

“35.2. A registrant who must declare the domicile of a natural person under a provision of this Act may also declare a professional address for the natural person.

If such an address is declared, the information relating to the domicile of that person may not be consulted.

A natural person may have only one professional address for the purposes of this Act.”

12. The Act is amended by inserting the following section after section 39:

“39.1. A registrant who must declare information relating to the registrant’s ultimate beneficiaries must take reasonable measures to locate them and to ascertain their identities.

The same applies to any updating required by this Act for the information concerning those ultimate beneficiaries.”

13. Sections 41, 45 and 46 of the Act are amended by replacing “35.1” in the first paragraph by “35.2”.

14. The Act is amended by inserting the following section after section 73:

“73.1. Despite section 73, if a registrant fails to comply with the obligation to update a professional address of a natural person, the registrant must make the required changes within 30 days after being requested to do so by the registrar.

A copy of the request is deposited in the register.

If the registrant fails to comply with the request, the information relating to the domicile declared for the person concerned may be consulted, provided the registrant does not again avail himself, herself or itself of the first paragraph of section 35.2.”

15. Section 98 of the Act is amended, in the first paragraph,

(1) by inserting the following subparagraph after subparagraph 6.1:

“(6.2) the names, domiciles and dates of birth of the ultimate beneficiaries as well as the type of control exercised by each ultimate beneficiary or the percentage of shares or units each one holds or of which each one is a beneficiary;”;

(2) by striking out “, if applicable,” in subparagraph 7;

(3) by inserting the following subparagraph after subparagraph 7:

“(7.1) the date on which a person became an ultimate beneficiary and that on which the person ceased to be an ultimate beneficiary;”;

(4) by adding the following subparagraph after subparagraph 17:

“(18) the professional address of a natural person.”;

(5) by replacing all occurrences of “the names and domiciles” and both occurrences of “the name and domicile” by “the names, domiciles and dates of birth” and “the name, domicile and date of birth”, respectively.

16. Section 99 of the Act is amended by adding the following paragraph at the end:

“Subject to section 35.2, the information contained in the register that may not be consulted is determined by regulation of the Government.”

17. Section 101 of the Act is amended by replacing the second paragraph by the following paragraph:

“However, such a compilation may not, unless it is requested by a person or a body referred to in any of subparagraphs 1 to 3 and 5 of the second paragraph of section 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) or section 67 or 68 of that Act, for the purposes set out in those provisions,

(1) be based on information that may not be consulted under this Act or on an address of a natural person; or

(2) contain information that may not be consulted under this Act.”

18. Section 102 of the Act is repealed.

19. Section 106 of the Act is amended

(1) by replacing “paragraph 2 of section 149” in the second paragraph by “subparagraph 3 of the second paragraph of section 148”;

(2) by inserting “and any other information that may not be consulted” at the end of the last paragraph.

20. Section 121 of the Act is amended

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

“The Minister may enter into an agreement with a government department, body or enterprise to allow the registrar to communicate to the department, body or enterprise all or part of the information contained in the register and any subsequent updates.”;

(2) by replacing subparagraph 2 of the third paragraph by the following subparagraph:

“(2) make, for its own purposes, a compilation of information that, unless it is made for the purposes set out in any of subparagraphs 1 to 3 and 5 of the second paragraph of section 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) or section 67 or 68 of that Act,

(a) is based on information that may not be consulted under this Act or on an address of a natural person; or

(b) contains information that may not be consulted under this Act.”

21. Section 123 of the Act is amended by striking out the second paragraph.

22. Section 148 of the Act is amended by adding the following paragraph at the end:

“The Minister may also

(1) in respect of a province of Canada and provided there is reciprocity with that province, make a regulation exempting certain registrants from designating an attorney in accordance with section 26;

(2) make a regulation exempting a category of registrants from paying the fee referred to in the first paragraph of section 32 subject to the conditions determined by the Minister; and

(3) make a regulation exempting a category of registrants from declaring certain information required under sections 33 to 35.1.”

23. Section 149 of the Act is repealed.

24. Section 150 of the Act is amended

(1) by adding the following paragraph before paragraph 1:

“(0.1) the conditions according to which a natural person is considered to be an ultimate beneficiary for the purposes of the fourth paragraph of section 0.3;”;

(2) by adding the following paragraphs at the end:

“(5) the terms relating to the declaration of the type of control exercised by each ultimate beneficiary or of the percentage of shares or units each one holds or of which each one is a beneficiary; and

“(6) the information contained in the register that may not be consulted.”

REGULATION RESPECTING THE APPLICATION OF THE ACT RESPECTING THE LEGAL PUBLICITY OF ENTERPRISES

25. Section 1 of the Regulation respecting the application of the Act respecting the legal publicity of enterprises (chapter P-44.1, r. 1) is amended by replacing “35.1” in subparagraph 1 of the first paragraph by “35.2”.

26. Section 5 of the Regulation is amended by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) the domicile referred to in subparagraph 1 of the first paragraph of section 33 of the Act and the information referred to in subparagraphs 1 and 8 of the second paragraph of that section;”.

TRANSITIONAL AND FINAL PROVISIONS

27. The provisions of the Regulation respecting the application of the Act respecting the legal publicity of enterprises (chapter P-44.1, r. 1) made under section 149 of the Act respecting the legal publicity of enterprises (chapter P-44.1) are deemed to have been made under the second paragraph of section 148 of that Act.

28. The provisions of this Act come into force on the date or dates to be determined by the Government.

