



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 144
(2017, chapter 23)

**An Act to amend the Education Act and
other legislative provisions concerning
mainly free educational services and
compulsory school attendance**

**Introduced 9 June 2017
Passed in principle 3 October 2017
Passed 9 November 2017
Assented to 9 November 2017**

**Québec Official Publisher
2017**

EXPLANATORY NOTES

The main purpose of this Act is to extend the scope of the right to free educational services and strengthen measures to ensure compliance with compulsory school attendance.

To that end, various amendments are made to the Education Act. More particularly, preschool education services and elementary and secondary school instructional services are to be provided free to every person not resident in Québec within the meaning of that Act on the condition that the person having parental authority over that person ordinarily resides in Québec. In addition, educational services in vocational training and learning services in general adult education are to be provided free to certain persons not of full age who are not resident in Québec.

Certain provisions are clarified with regard to the situation of a child exempted from compulsory school attendance because the child receives appropriate homeschooling. The conditions on which such an exemption is granted are set out as is the Government's duty to determine regulatory standards for homeschooling.

Moreover, certain obligations are imposed on school boards and parents in order to ascertain and, if applicable, regularize a child's situation with respect to compulsory school attendance. A general prohibition against acting in any manner that compromises a child's attending school as required is introduced. In addition, persons designated by the Minister are given powers to ascertain more particularly whether the provisions on compulsory school attendance are being complied with.

The Act respecting private education is also amended to include provisions under which the existence of a judicial record may lead to a refusal to issue, or a revocation of, the permit required to operate a private educational institution. In addition, the powers conferred on the persons designated by the Minister to ascertain compliance with that Act are clarified.

Provisions are included to allow the communication of personal information needed for the purpose of applying the provisions related to a child's compulsory school attendance.

Lastly, consequential amendments and transitional measures are set out.

LEGISLATION AMENDED BY THIS ACT:

- Health Insurance Act (chapter A-29);
- Act respecting private education (chapter E-9.1);
- Education Act (chapter I-13.3);
- Act respecting administrative justice (chapter J-3).

REGULATION AMENDED BY THIS ACT:

- Basic school regulation for preschool, elementary and secondary education (chapter I-13.3, r. 8).

Bill 144

AN ACT TO AMEND THE EDUCATION ACT AND OTHER LEGISLATIVE PROVISIONS CONCERNING MAINLY FREE EDUCATIONAL SERVICES AND COMPULSORY SCHOOL ATTENDANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

EDUCATION ACT

1. The Education Act (chapter I-13.3) is amended by inserting the following sections after section 3:

“3.1. The services referred to in section 3 shall be provided free to every person who is not resident in Québec if

(1) the person having parental authority over that person ordinarily resides in Québec;

(2) in the case of a student of full age, that person ordinarily resides in Québec; or

(3) that person is in any other situation covered by government regulation.

The services referred to in the first paragraph of section 3 shall be provided free until the last day of the school calendar of the school year in which the person who is not resident in Québec reaches 18 years of age, or 21 years of age in the case of a handicapped person within the meaning of the Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration (chapter E-20.1). The services referred to in the second and third paragraphs of that section shall be provided free until the day that person reaches the age mentioned above that is applicable to him.

“3.2. The personal information gathered under this Act may not be communicated or used or its existence confirmed for the purpose of determining a person’s immigration status, except with the consent of the person concerned.

If the information has been communicated to a third person for any other purpose, it remains subject to the requirements of the first paragraph.

This section does not restrict the communication of documents or information required by a summons, warrant or order of any person or body having the power to compel their communication.

The procedures for identifying a child or his parents may not make the child's admission to the educational services provided for by this Act and by the basic school regulation made by the Government under section 447 conditional on the presentation of proof of his immigration status."

2. Section 15 of the Act is amended by replacing subparagraph 4 of the first paragraph by the following subparagraph:

"(4) a student who receives appropriate homeschooling, provided

(a) a written notice to that effect is sent by his parents to the Minister and to the school board that has jurisdiction;

(b) a learning project to impart knowledge to the student, foster his social development and give him qualifications, by the development of basic skills, including literacy, numeracy and problem-solving skills, and by the learning of French, is submitted to the Minister and implemented by his parents;

(c) the Minister monitors the homeschooling; and

(d) any other conditions or procedures determined by government regulation are complied with, including conditions or procedures relating to the characteristics of the learning project, the annual evaluation of the child's progress, and the process applicable in the event of problems related to the learning project or its implementation."

3. The Act is amended by inserting the following section after section 17:

"17.1. The school board must, at the Minister's request and using the information the Minister provides concerning a child who may not be attending school as required or concerning his parents, take any action with the child and his parents that is specified by the Minister to ascertain and, if applicable, regularize the child's situation.

On that occasion, the school board must also inform the parents of the obligations arising from sections 14 to 17 and of the educational services the child is entitled to under this Act. The parents must provide the school board with any information it requires on their child's situation within a reasonable time.

If the action taken does not allow the child's situation to be ascertained or regularized, the school board, after notifying the student's parents in writing, shall report this to the director of youth protection."

4. The Act is amended by inserting the following section after section 18:

"18.0.1. No one may act in any manner that compromises a child's attending school as required.

Any person who receives a child in a place where the child receives training or instruction not governed by this Act or the Act respecting private education (chapter E-9.1) is presumed to contravene the prohibition under the first paragraph on being notified by the Minister that the child is failing to attend school as required.

Such a presumption may be rebutted, in particular by proof that the child is or was received only during the month of July or August.

This section does not apply to parents with respect to their child.”

5. Section 204 of the Act is amended by inserting “and for the purposes of Division II of Chapter I” after “section 1” in the first paragraph.

6. Section 205 of the Act is amended by inserting “, including for the purpose of being exempted from compulsory school attendance,” after “English language school board”.

7. Section 207 of the Act is amended by inserting “or, in the case of a homeschooled child, by sending the notice provided for in subparagraph *a* of subparagraph 4 of the first paragraph of section 15” at the end of the first paragraph.

8. The Act is amended by inserting the following section after section 207.1:

“207.2. A school board shall contribute, to the extent provided for by this Act, to children’s attending school as required.”

9. Section 216 of the Act is amended

(1) by replacing “within the meaning of the regulation of the Government” in the first paragraph by “for services that are not free services under section 3.1”;

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

“Despite the first paragraph, the school board may, following a request made by a student or his parents, exempt the student from payment of the required financial contribution for humanitarian reasons or to avoid serious prejudice to him, particularly if the school board considers there is a risk he will not attend any school, in Québec or elsewhere, if the contribution is required. In the event of refusal by the school board, the Minister may, at the request of the same, order the school board to exempt the student from payment of the required financial contribution.”

10. Section 220.2 of the Act is amended by replacing “scolarisé à la maison” in the second paragraph in the French text by “qui reçoit un enseignement à la maison”.

11. Section 448 of the Act is amended

(1) by replacing “governing” in the second paragraph by “that a person resident in Québec must meet to qualify for”;

(2) by inserting “resident in Québec” after “person” in subparagraph 6 of the third paragraph.

12. The Act is amended by inserting the following section after section 448:

“448.1. The Government shall, by regulation, determine standards for homeschooling, which must, among other things, specify how the Minister is to monitor homeschooling and how the school board that has jurisdiction is to support the child.

When determining regulatory standards under subparagraph *d* of subparagraph 4 of the first paragraph of section 15, the Government shall take into account the instruction generally provided at school and the educational experience involved as well as the possibility for the child to attend a school.”

13. The Act is amended by inserting the following section after section 455:

“455.0.1. The Government may, by regulation, determine the situations in which, for the purposes of subparagraph 3 of the first paragraph of section 3.1, a person who is not resident in Québec may avail himself of the right of free access to services in accordance with that section.”

14. The Act is amended by inserting the following section after section 459:

“459.0.1. The Minister may enter into an agreement with a minister or a public body to collect from or communicate to the minister or body any information needed for the purpose of applying the provisions of this Act that relate to a child’s compulsory school attendance, in particular for the purpose of identifying, including by means of a comparison of files, the children who may not be attending school as required.

The Minister may also communicate to a school board personal information concerning any child who comes under its jurisdiction or concerning the child’s parents that is needed for the purpose of applying the provisions referred to in the first paragraph.”

15. The Act is amended by inserting the following sections after section 459.5:

“459.5.1. The Minister shall prepare a guide for school boards and parents on good homeschooling practices, and see that it is disseminated among school boards and parents.

“459.5.2. The Minister shall establish a Québec-wide advisory panel on homeschooling.

The panel shall advise the Minister on any matter he submits to it.

“459.5.3. The Minister may establish and implement a pilot project to experiment or innovate in the field of distance education, or to study, improve or define standards for distance education.

Within such a pilot project, the Minister may

(1) provide distance education services or authorize a school board or an educational institution governed by the Act respecting private education (chapter E-9.1) to provide such services, or a person to receive them, according to standards that depart from those established by or under this Act or the Act respecting private education, all in compliance with the right to free educational services; and

(2) issue directives establishing the applicable standards and rules.

The Minister may also, at any time, make changes or put an end to a pilot project after notifying all interested persons.

The maximum duration of a pilot project is three years, which the Minister may extend by up to two years if he considers it necessary. The Minister shall evaluate the pilot project and make the evaluation public every two years as well as at the end of the pilot project.”

16. Section 473 of the Act is amended by replacing “, within the meaning of the regulation of the Government, subject to the power of the Minister to exempt certain persons or categories of persons therefrom” in paragraph 1 by “for services that are not free services under section 3.1, and the exceptions applicable to the collection of that contribution for certain categories of persons covered by that section”.

17. Section 478 of the Act is amended

(1) by replacing “avoir accès” in subparagraph 1 of the second paragraph in the French text by “pénétrer”;

(2) by inserting the following subparagraphs after subparagraph 2 of the second paragraph:

“(2.1) enter, at any reasonable time, any place where the person has reason to believe children required to attend school are receiving training or instruction not governed by this Act or the Act respecting private education (chapter E-9.1) and require the persons present to provide their names and contact information and the names and contact information of the children and their parents;

“(2.2) take photographs or make recordings;”;

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

“Despite subparagraph 2.1 of the second paragraph, to enter a dwelling house, a designated person must obtain the occupant’s authorization or, failing that, a search warrant in accordance with the Code of Penal Procedure (chapter C-25.1).

The owner or person in charge of a place being inspected and any other person present is required to assist a designated person in the exercise of his functions.”

18. The Act is amended by inserting the following sections after section 478:

“478.0.1. A person designated under section 478 may, in a request sent by registered mail or by personal service, require any person to communicate any information or document relating to the application of this Act to the designated person, by registered mail or by personal service, within a specified reasonable time.

“478.0.2. The Minister may designate a person generally or specially to inquire into any matter relating to the application of this Act.”

19. The Act is amended by inserting the following sections after section 488:

“488.1. Every person who contravenes section 18.0.1 is guilty of an offence and is liable to a fine of not less than \$1,000 nor more than \$10,000 in the case of a natural person or, in the case of a legal person, to a fine of not less than \$3,000 nor more than \$30,000 and, for any subsequent conviction, to a fine of not less than \$2,000 nor more than \$20,000 in the case of a natural person or, in the case of a legal person, to a fine of not less than \$6,000 nor more than \$60,000.

“488.2. Every person who hinders a person designated under section 478 or 478.0.2 in the exercise of his functions or misleads the designated person by misrepresentation is guilty of an offence and is liable to a fine of not less than \$500 nor more than \$5,000 in the case of a natural person or, in the case of a legal person, to a fine of not less than \$1,500 nor more than \$15,000 and, for any subsequent conviction, to a fine of not less than \$1,000 nor more than \$10,000 in the case of a natural person or, in the case of a legal person, to a fine of not less than \$3,000 nor more than \$30,000.

The same applies to every person who refuses to provide any information or document to a person designated under section 478 that he is authorized to require under this Act.”

20. Section 491 of the Act is amended by replacing “under a provision of this chapter” by “under this chapter, except an offence under section 488.1 or 488.2”.

HEALTH INSURANCE ACT

21. Section 67 of the Health Insurance Act (chapter A-29) is amended by inserting the following paragraph after the thirteenth paragraph:

“Nor does it prohibit the disclosure to the Minister of Education, Recreation and Sports of information needed for the purpose of applying the provisions of the Education Act (chapter I-13.3) that relate to a child’s compulsory school attendance.”

ACT RESPECTING PRIVATE EDUCATION

22. Section 12 of the Act respecting private education (chapter E-9.1) is amended, in subparagraph 3 of the first paragraph,

(1) by replacing “présente loi,” in the French text by “présente loi ou”;

(2) by striking out “, or a criminal offence committed in relation to the operation of an educational institution”.

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

“**12.1.** The Minister may refuse to issue a permit if the applicant, one of the applicant’s directors or shareholders or an officer of the institution has a judicial record relevant to the abilities and conduct required to operate an educational institution.

The Minister may establish a committee of experts to advise the Minister on how to assess the relevance of a judicial record to the abilities and conduct required to operate an educational institution. The committee is made up of persons appointed by the Minister who have relevant interest, expertise or experience.

For the purposes of this section,

(1) “shareholder” means a natural person who, directly or indirectly, holds voting shares of a legal person not listed on a stock exchange; and

(2) “judicial record” means

(a) a conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence;

(b) a charge still pending for a criminal or penal offence committed in Canada or elsewhere; and

(c) a court order subsisting against a person in Canada or elsewhere.

“12.2. Police forces in Québec are required to communicate any information and documents required by regulation that are needed to verify the existence or absence of a judicial record referred to in section 12.1, 18.1 or 119.1.”

24. The Act is amended by inserting the following sections after section 18:

“18.1. The Minister may refuse to renew a permit if the permit holder, one of the holder’s directors or shareholders or an officer of the institution has a judicial record relevant to the abilities and conduct required to operate an educational institution.

The second and third paragraphs of section 12.1 apply to this section.

“18.2. The Minister may, instead of refusing to renew the permit of a holder for a reason mentioned in section 18.1, order the holder to apply the corrective measures he indicates within the time limit he fixes.

If the holder does not comply with the order, the Minister may refuse to renew his permit.

“18.3. The Minister may refuse to issue or renew a permit if he considers it warranted in the public interest. Section 22.2 does not apply to such a decision.”

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

“22.1. The Minister must, before refusing to issue or renew a permit, notify the applicant or holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the applicant or holder at least 10 days to present observations.

The Minister must notify the decision in writing, with reasons, to the person to whom he refuses to issue a permit or whose permit he refuses to renew.

“22.2. The Minister’s decision may, within 60 days of being notified, be contested before the Administrative Tribunal of Québec.

26. The Act is amended by inserting the following section after section 59:

“59.1. An institution may not solicit or receive a gift, legacy, subsidy, contribution or other benefit to which conditions incompatible with the educational services dispensed are attached.”

27. Section 111 of the Act is amended

(1) by inserting “, including those relating to the judicial record of the permit applicant or permit holder, the applicant’s or holder’s directors and shareholders and the officers of the institution” at the end of paragraph 2;

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

“(10) determine, among the information and documents provided by the permit holder, those that must be updated and how often they must be updated;

“(11) determine the information and documents that the permit holder must provide when there is any change in the holder’s directors or shareholders or the officers of the institution; and

“(12) determine the information and documents needed to verify the existence or absence of a judicial record that police forces are required to communicate to the Minister or to a permit applicant or permit holder.”

28. Section 115 of the Act is amended

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

“(1) enter, at any reasonable time, any place where the person has reason to believe educational services for which a permit is required under this Act are being dispensed and the facilities of any private educational institution;”;

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

“(2.1) take photographs or make recordings;”;

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

“Despite subparagraph 1 of the first paragraph, to enter a dwelling house, a designated person must obtain the occupant’s authorization or, failing that, a search warrant in accordance with the Code of Penal Procedure (chapter C-25.1).

The owner or person in charge of a place being inspected and any other person present is required to assist a designated person in the exercise of his functions.”

29. The Act is amended by inserting the following sections after section 115:

“**115.1.** A person designated under section 115 may, in a request sent by registered mail or by personal service, require any person to communicate any information or document relating to the application of this Act to the designated person, by registered mail or by personal service, within a specified reasonable time.

“115.2. The Minister may designate a person generally or specially to inquire into any matter relating to the application of this Act.”

30. The Act is amended by inserting the following section after section 119:

“119.1. The Minister may modify or revoke a permit if the permit holder, one of the holder’s directors or shareholders or an officer of the institution has a judicial record relevant to the abilities and conduct required to operate an educational institution.

The Minister may also modify or revoke a permit if the permit holder fails to provide any information or document required by regulation with regard to the holder’s judicial record, the judicial record of one of the holder’s directors or shareholders or the judicial record of an officer of the institution.

The second and third paragraphs of section 12.1 apply to this section.”

31. Section 120 of the Act is amended by inserting the following paragraph after the first paragraph:

“The Minister may do likewise instead of modifying or revoking the permit of a holder for a reason mentioned in section 119.1.”

32. The Act is amended by inserting the following section after section 120.1:

“120.2. The Minister may modify or revoke a permit if he considers it warranted in the public interest. Section 121.1 does not apply to such a decision.”

33. The Act is amended by inserting the following section after section 129:

“129.1. Every person who hinders a person designated under section 115 or 115.2 in the exercise of his functions or misleads the designated person by misrepresentation is liable to a fine of \$500 to \$5,000 in the case of a natural person or, in the case of a legal person, to a fine of \$1,000 to \$10,000.

The same applies to every person who refuses to provide any information or document to a person designated under section 115 that he is authorized to require under this Act.”

ACT RESPECTING ADMINISTRATIVE JUSTICE

34. Section 3 of Schedule I to the Act respecting administrative justice (chapter J-3) is amended by replacing “section 121.1” in paragraph 2.3 by “section 22.2 or 121.1”.

BASIC SCHOOL REGULATION FOR PRESCHOOL, ELEMENTARY AND SECONDARY EDUCATION

35. Section 31 of the Basic school regulation for preschool, elementary and secondary education (chapter I-13.3, r. 8) is amended by replacing “equivalent” in the first paragraph by “appropriate”.

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

36. The Government must, not later than 1 June 2018, make a first regulation respecting homeschooling under subparagraph *d* of subparagraph 4 of the first paragraph of section 15 and section 448.1 of the Education Act (chapter I-13.3), respectively replaced and enacted by sections 2 and 12.

That first regulation must be examined by the competent committee of the National Assembly for a period not exceeding three hours before it is made by the Government.

37. The first guide on good homeschooling practices prepared under section 459.5.1 of the Education Act, enacted by section 15, must be disseminated by the Minister not later than 1 July 2019.

38. The Québec-wide advisory panel on homeschooling provided for in section 459.5.2 of the Education Act, enacted by section 15, must be established by the Minister not later than 1 January 2018.

39. This Act comes into force on 9 November 2017, except sections 1, 2, 5, 6, 7, 9, 11, 13 and 16, which come into force on 1 July 2018 or any earlier date set by the Government.

