

1989

## c 3 Retail Business Holidays Amendment Act, 1989

Ontario

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## CHAPTER 3

### **An Act to amend the Retail Business Holidays Act**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Clause 1 (1) (a) of the *Retail Business Holidays Act*, being chapter 453 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (a) “holiday” means,
  - (i) New Year’s Day,
  - (ii) Good Friday,
  - (iii) Victoria Day,
  - (iv) Canada Day,
  - (v) Labour Day,
  - (vi) Thanksgiving Day,
  - (vii) Christmas Day,
  - (viii) the 26th day of December,
  - (ix) Sunday, and
  - (x) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act;
- (aa) “municipality” means, except in section 6,
  - (i) a local municipality, other than a local municipality within a metropolitan, regional or district municipality or the County of Oxford,

- (ii) a metropolitan, regional or district municipality and the County of Oxford.

**2. Subsection 2 (1) of the said Act is repealed and the following substituted therefor:**

Prohibition

(1) No person carrying on a retail business in a retail business establishment shall,

- (a) sell or offer for sale any goods or services therein by retail; or
- (b) admit members of the public thereto,

on a holiday.

**3.—(1) Clause 3 (2) (c) of the said Act is repealed and the following substituted therefor:**

- (c) the total area used for serving the public or for selling or displaying to the public in the establishment is less than 7,500 square feet.

**(2) Subsection 3 (4) of the said Act is repealed and the following substituted therefor:**

Transition

(4) Despite clause (2) (c), until the 365th day following the day this subsection comes into force, the maximum total area that may be used in a pharmacy for serving the public or for selling or displaying to the public may exceed 7,500 square feet.

**(3) Subsection 3 (8) of the said Act is repealed.**

**4. Section 4 of the said Act is repealed and the following substituted therefor:**

Municipal powers

**4.—(1)** Despite sections 2 and 3, the council of a municipality may by by-law permit retail business establishments to be open on any holiday or may require that retail business establishments be closed on any holiday.

Public meeting

(2) Before passing a by-law under subsection (1), the council of a municipality,

- (a) shall hold a public meeting in respect of the proposed by-law;
- (b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality

at least thirty days before the meeting is to be held;  
and

- (c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed by-law.

(3) The Lieutenant Governor in Council may by regulation, in respect of retail business establishments in territory without municipal organization, exercise the same powers that a council of a municipality may by by-law exercise under subsection (1). Regulations, territory without municipal organization

(4) A by-law or regulation under this section does not apply so as to prevent the sale or offering for sale of goods and services exempted under subsection 3 (5) or (7) from the operation of section 2. Limitation

(5) A by-law or regulation under this section may be restricted to one or more retail business establishments or to any class or classes of retail business establishment as specified in the by-law or regulation. Application of by-law or regulation

(6) A by-law or regulation under this section, Contents of by-laws and regulations

- (a) may apply to any part or parts of the municipality or territory;
- (b) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;
- (c) may permit the opening or require the closing of retail business establishments on certain holidays and not on others;
- (d) may restrict the opening of retail business establishments on holidays to specific periods of the year or require the closing of retail business establishments on holidays during specific periods of the year;
- (e) may classify retail business establishments by size, number of persons employed, character of business, geographic location or any other criteria.

(7) The council may establish a plan setting out the criteria to be considered by it in determining whether a by-law should be passed under subsection (1). Establishment of plan

Plan to be  
made public

(8) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality.

Sunday  
exception

5.—(1) Despite any other provision of this or any other Act or the by-laws or regulations under this or any other Act, a retail business may be carried on in a retail business establishment on a Sunday if the retail business establishment is always closed to the public throughout another day of the week by reason of the religion of the owner of the retail business.

Definition

(2) For the purpose of subsection (1), “religion of the owner” means,

- (a) in the case of a sole proprietorship, the religion of the sole proprietor;
- (b) in the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners;
- (c) in the case of a corporation, the religion named in the by-laws of the corporation.

Affiliated  
corporation

(3) The exception set out in subsection (1) does not apply to a corporation that is the affiliate of another corporation unless all the retail business establishments in Ontario of the corporation and its affiliates close on the same day.

Deemed  
affiliation

(4) For the purposes of this section,

- (a) a corporation shall be deemed to be affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person; and
- (b) the affiliates of every corporation shall be deemed to be affiliated with all other corporations with which the corporation is affiliated.

Deemed  
control

(5) For the purposes of this section, a corporation shall be deemed to be controlled by a person if,

- (a) securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect directors of the corporation are held other than by way of security only by or for the benefit of that person; and

- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

(6) For the purposes of this section, a corporation shall be deemed to be a subsidiary of another corporation if, Deemed subsidiaries

(a) it is controlled by,

(i) that other,

(ii) that other and one or more corporations each of which is controlled by that other, or

(iii) two or more corporations each of which is controlled by that other; or

(b) it is a subsidiary within the meaning of clause (a) of a corporation that is that other's subsidiary.

**5a.** A provision in a lease or other agreement that has the effect of requiring a retail business to remain open on a holiday is of no effect even if the lease or agreement was made before the coming into force of this section. Provisions requiring holiday openings invalid

**5. Section 6 of the said Act is repealed and the following substituted therefor:**

**6.—(1)** Subject to subsection (2), a by-law of a municipality passed under any other Act is invalid to the extent that it requires the closing of a retail business establishment on a holiday. Invalidity of certain municipal by-laws

(2) A by-law of a municipality that was in force under this or any other Act immediately before the coming into force of this subsection and that relates to the opening or closing of a retail business establishment on holidays continues in force until the 1st day of January, 1994 or until repealed, whichever occurs first. Transition

(3) In this section, "municipality" means any municipality and includes a metropolitan, district or regional municipality and the County of Oxford. Definition

**6. Section 7 of the said Act is repealed and the following substituted therefor:**

**7.—(1)** Every person who contravenes section 2 or a regulation under section 4 is guilty of an offence and on conviction is liable to a fine of not more than the greater of, Penalty

- (a) \$50,000; or
- (b) the gross sales in the retail business establishment on the holiday on which the contravention occurred.

Idem,  
municipal  
laws

(2) A by-law under subsection 4 (1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the by-law is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

- (a) \$50,000; or
- (b) the gross sales in the retail business establishment on the holiday on which the contravention occurred.

Idem,  
coercion or  
counselling

(3) Every person who coerces, requires or counsels another person to contravene section 2, a regulation under section 4 or a by-law under subsection 4 (1) is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

- (a) \$50,000; or
- (b) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred.

Gross sales  
to be  
considered in  
determining  
fines

(4) In determining the amount of the fine, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the holiday on which the contravention occurred.

Advertise-  
ments  
admissible as  
evidence

(5) A sign or advertisement giving the hours of a retail business establishment is admissible as evidence that the retail business establishment was open during those hours.

Determi-  
nation of  
total area  
of a retail  
business  
establishment

(6) For the purpose of enforcing this Act or a by-law or regulation under this Act, the total area of a retail business establishment used for serving the public or for selling or displaying to the public on a holiday shall be deemed to be the greater of,

- (a) the total area actually used on a holiday for serving the public or for selling or displaying to the public; and

- (b) the total area normally used for serving the public or for selling or displaying to the public on days other than a holiday.

(7) Subsection (6) does not apply to any retail business establishment, other than a pharmacy, until the 365th day following the day this subsection comes into force. When  
subs. (6)  
to apply

**8.—(1)** Upon the application of counsel for the Attorney General or of a municipality to the Supreme Court, the court may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act. Court orders

(2) An order under subsection (1) is in addition to any other penalty that may be imposed and may be made whether or not proceedings have been commenced in the Provincial Offences Court for a contravention of section 2 or of a by-law or regulation under this Act. Idem

**7. This Act comes into force on the day it receives Royal Assent.** Commence-  
ment

**8. The short title of this Act is the *Retail Business Holidays Amendment Act, 1989*.** Short title



