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c 43 Retail Business Establishments Statute Law Amendment Act, 1991/Loi de 1991 modifiant des lois en ce qui concerne les établissements de commerce de détail

Ontario

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An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them

Assented to November 25th, 1991

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

PART 1
RETAIL BUSINESS HOLIDAYS ACT

1.-(1) Section 4 of the Retail Business Holidays Act, as re-enacted by the Statutes of Ontario, 1989, chapter 3, section 4, is repealed and the following substituted:

4.-(1) Despite section 2, the council of a municipality may by by-law permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism.

(2) The council in passing a by-law under subsection (1) shall take into account the principle that holidays should be maintained as common pause days.

(3) A by-law may be passed under subsection (1) only if there is compliance with the tourism criteria set out in the regulations made under this section.

(4) Subject to the regulations made under this section, the council shall consider a by-law under subsection (1) only on the application of one or more persons carrying on retail business in the municipality or on the application of an association, whether or not incorporated, representing persons carrying on retail business in the municipality.

(5) In a district, metropolitan or regional municipality and in the County of Oxford, the council of a local municipality may also apply for a by-law under subsection (1).

(6) Before passing a by-law under subsection (1), the council,

(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.

Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements

Sanctionnée le 25 novembre 1991

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

PARTIE 1
LOI SUR LES JOURS FÉRIÉS DANS LE COMMERCE DE DÉTAIL

1 (1) L'article 4 de la loi intitulée Retail Business Holidays Act («Loi sur les jours fériés dans le commerce de détail»), tel qu'il est adopté de nouveau par l'article 4 du chapitre 3 des Lois de l'Ontario de 1989, est abrogé et remplacé par ce qui suit :

4.-(1) Malgré l'article 2, le conseil d'une municipalité peut adopter, par règlement, l'ouverture des établissements de commerce de détail dans la municipalité le jour des fêtes pour le maintien ou le développement du tourisme.

(2) Le conseil, lorsqu'il adopte un règlement conformément à l'article 1, tiendra compte de la principale qui stipule que les fêtes doivent être maintenues comme des jours de repos.

(3) Un règlement peut être adopté conformément à l'article 1 seulement si le critère touristique est rempli.

(4) Conformément aux règlements adoptés dans cette section, le conseil tiendra compte d'un règlement adopté conformément à l'article 1 seulement sur la demande d'une ou plusieurs personnes exerçant le commerce de détail dans la municipalité ou sur la demande d'une association, qu'elle soit ou non une association, représentant les personnes exerçant le commerce de détail dans la municipalité.

(5) Dans une municipalité du comté de Oxford, le conseil d'une municipalité locale peut également demander un règlement conformément à l'article 1.

(6) Avant d'adopter un règlement conformément à l'article 1, le conseil,

(a) tiendra un conseil public en vue de l'adoption du règlement;

(b) publiera la notification de ce conseil public dans un journal de distribution générale dans la municipalité au moins trente jours avant la tenue de la réunion; et

(c) permettra à toute personne se présentant au conseil public l'occasion de faire des représentations en vue de l'adoption du règlement.
(7) The council is not required to pass the by-law even if the tourism criteria are met.

(8) Subject to section 4.3, a by-law under this section comes into force on the thirty-first day after it is passed by the council.

(9) Subject to the regulations made under this section, the council may,

(a) establish procedures and fees for the processing of applications;

(b) combine two or more applications;

(c) hold one public meeting with respect to two or more applications;

(d) limit the number of applications that will be considered in any year.

(10) The Lieutenant Governor in Council may make regulations,

(a) prescribing tourism criteria for the purposes of this section;

(b) governing the procedures and fees for processing applications, the combining of applications and public meetings and limitations on the number of public meetings held by a council;

(c) setting out the contents of the application;

(d) requiring that a by-law that applies to a retail business establishment within such class of retail business establishments as may be set out in the regulation may be considered only on the application of the person carrying on the business.

(11) A regulation under clause (10) (a) or (d) may classify retail business establishments and may prescribe different tourism criteria for the different classes of retail business establishments.

4.1 The Lieutenant Governor in Council may by regulation permit retail business establishments in territory without municipal organization to be open on holidays.

4.2 A by-law under section 4 or a regulation under section 4.1,

(a) may apply to one or more retail business establishments or to one or more classes of retail business establishments;

(b) may apply to all or any part or parts of the municipality in case of a by-law or to all or any part of a territory without municipal organization in the case of a regulation;

(c) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;

(d) may permit the opening of retail business establishments on some holidays and not on others;

(e) may restrict the opening of retail business establishments on holidays to specific periods of the year;

(f) may classify retail business establishments.

4.3—(1) Any person who objects to a by-law made by the council of a municipality under section 4 may appeal to the Ontario Municipal Board by filing a notice of appeal with the Board setting out the objection to the by-law and the reasons in support of the objection.
(2) The notice of appeal must be filed with the Board not later than thirty days after the day the by-law is passed by the council.

(3) The Board may, if it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing, but before doing so shall notify the appellant and afford the appellant an opportunity to make representations as to the merits of the appeal.

(4) The Board may,

(a) dismiss the appeal;

(b) dismiss the appeal on the condition that the council amend the by-law in a manner specified by the Board; or

(c) quash the by-law.

(5) If one or more appeals are taken under this section, the by-law shall not come into force until,

(a) the day all appeals have been dismissed under subsection (3) or clause (4) (a); or

(b) the day the by-law is amended in the manner specified by the Board under clause (4) (b).

(6) The Board may, without a hearing, correct an error in an order or decision under this section if the error arises from an accidental slip or omission.

(7) Sections 42 and 94 of the Ontario Municipal Board Act do not apply to an appeal under this section.

(8) The Board shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9).

(9) The Lieutenant Governor in Council may make regulations prescribing a period of time for the purpose of subsection (8).

(2) The Act is amended by adding the following section:

4.4 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 the Sundays in December preceding Christmas Day.

(3) Subsection 6 (2) of the Act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 5, is repealed and the following substituted:

1. By-laws in force on the 3rd day of June, 1991 continue in force until the first anniversary of that subsection coming into force or until the by-law is repealed, whichever is first.

2. By-laws that come into force on or after the 4th day of June, 1991 are repealed on the day on which that subsection comes into force.

(4) Section 7 of the Act, as re-enacted by the Statutes of Ontario, 1989, chapter 3, sec-

(2) La Loi est modifiée par adjonction de l'article suivant :

4.4 Malgré toute autre disposition de cette Loi ou de toute autre Loi ou des règlements ou des by-laws de cette Loi ou de toute autre Loi, un commerce peut être exercé dans un établissement de commerce de détail les dimanches précédant Noël.

(3) Le paragraphe 6 (2) de la Loi, tel qu’il est adopté par l’article 5 du chapitre 3 des Lois de l’Ontario de 1989, est abrogé et remplacé par ce qui suit :

(2) Les règles transitionnelles suivantes s’appliquent à des by-laws de municipalités qui étaient en vigueur au moment de la promulgation de cette Loi ou de toute autre Loi et qui sont en vigueur au moment de l’adoption de cette Loi, immédiatement avant la mise en vigueur de la sous-section 1 (3) de la Loi d’amendement des Statuts de commerce de détail, 1991 et qui se rapportent à l’ouverture ou la fermeture d’un établissement de commerce de détail:

1. Les by-laws en vigueur à la date du 3e jour de juin, 1991 continuent en vigueur jusqu’au premier anniversaire de la sous-section entrant en vigueur ou jusqu’à l’abrogation du by-law, ladite sous-section venant en vigueur, de même que le by-law est abrogé, le premier ou l’autre le premier.

2. Les by-laws qui entre en vigueur le 4e jour de juin, 1991 sont abrogés le jour dans lequel cette sous-section entre en vigueur.

(4) L’article 7 de la Loi, tel qu’il est adopté de nouveau par l’article 6 du chapitre 3 des
Chap. 43 RETAIL BUSINESS ESTABLISHMENTS

**Section 6, is amended by adding the following subsection:**

**Minimum penalty**

(3.1) The minimum fine for an offence under this Act, other than for a contravention of subsection 2 (2), is $500 for a first offence, $2,000 for a second offence and $5,000 for a third or subsequent offence.

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**(5) Section 8 of the Act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 6, is amended by adding the following subsection:**

**Idem**

(1a) In addition to its powers under subsection (1), the Ontario Court (General Division), on the application of any interested person, 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.

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**(6) Subsection 8 (2) of the Act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 6, is repealed and the following substituted:**

**Idem**

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

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**PART II EMPLOYMENT STANDARDS ACT**

**2.-(1) Part XI-B of the Employment Standards Act, as enacted by the Statutes of Ontario, 1988, chapter 7, section 1 and amended by 1989, chapter 4, section 2, is repealed and the following substituted:**

Application

**39e.**—(1) This Part applies with respect to retail business establishments as defined in subsection 1 (1) of the Retail Business Holidays Act to the employees and employers in those establishments and to persons acting on behalf of those employers.

Non-application

(2) This Part does not apply with respect to retail business establishments in which the primary retail business is one,

(a) that sells prepared meals;

(b) that rents living accommodations;

(c) that is open to the public for educational, recreational or amusement purposes; or

(d) that sells goods or services incidental to a business described in clause (a), (b) or (c) and that is located in the same premises as the business.

Period of rest

In every seven-day period, an employer shall allow each employee at least thirty-six consecutive hours of rest.

Right to refuse work

An employee may refuse an assignment of work on a Sunday or other holiday as defined in subsection 1 (1) of the Retail Business Holidays Act.

Notice of refusal

An employee who accepts an assignment of work on a Sunday or other holiday may then refuse the assignment only
upon giving the employer notice at least forty-eight hours before the first hour of the work on the Sunday or holiday.

Prohibition

**39ec.** No employer or person acting on behalf of an employer shall dismiss, threaten to dismiss, discipline, suspend, lay off, intimidate, coerce or impose a penalty on an employee,

(a) because the employee has refused, or attempted to refuse, an assignment of work on a Sunday or other holiday if the employee is permitted to do so under section 39eb;

(b) because the employee seeks to enforce his or her rights under this Part; or

(c) because the employee,

(i) makes representations in respect of a proposed by-law under section 4 of the *Retail Business Holidays Act* at a public meeting under that section,

(ii) commences or participates in an appeal to the Ontario Municipal Board of a by-law made under section 4 of the *Retail Business Holidays Act*, or

(iii) commences or participates in a challenge in any court to a by-law made under section 4 of the *Retail Business Holidays Act*.

Order by E.S.O.

**39f.**—(1) If an employer fails to comply with section 39ea or contravenes section 39ec, an employment standards officer may order what action, if any, the employer shall take or what the employer shall refrain from doing in order to constitute compliance with the section and may make an order to reinstate or recall the employee with or without compensation or to compensate the employee in lieu of reinstatement or recall for loss of earnings or other employment benefits.

(2) When ordering the employer to compensate the employee, the employment standards officer shall determine the amount of the compensation.

Compensation

(2) Clause 57 (1) (ea) of the Act, as enacted by the Statutes of Ontario, 1988, chapter 7, section 4, is repealed and the following substituted:

(2) L’alinéa 57 (1) (ea) de la Loi, tel qu’il est adopté par l’article 4 du chapitre 7 des Lois de l’Ontario de 1988, est abrogé et remplacé par ce qui suit:

(ea) has sought to enforce his or her rights under section 39ea;

(eb) has exercised a right to refuse work under section 39eb.

PART III

**COMMENCEMENT AND SHORT TITLE**

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

4. The short title of this Act is the *Retail Business Establishments Statute Law Amendment Act, 1991*.