



Français

Retail Business Holidays Act

R.S.O. 1990, CHAPTER R.30

Consolidation Period: From June 1, 2021 to the e-Laws currency date.

Last amendment: 2021, c. 4, Sched. 6, s. 87.

Legislative History: [+]

Definitions

1 (1) In this Act,

"holiday" means,

- (a) New Year's Day,
- (b) Good Friday,
- (c) Victoria Day,
- (d) Canada Day,
- (e) Labour Day,
- (f) Thanksgiving Day,
- (g) Christmas Day,
- (h) Easter Sunday, and
- (i) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act; ("jour férié")

"municipality" means a regional municipality and a local municipality, other than a local municipality within a regional municipality, but does not include the City of Toronto; ("municipalité")

"retail business" means the selling or offering for sale of goods or services by retail; ("commerce de détail")

"retail business establishment" means the premises where a retail business is carried on. ("établissement de commerce de détail")
R.S.O. 1990, c. R.30, s. 1 (1); 1993, c. 14, s. 1; 1993, c. 27, Sched.; 1996, c. 34, s. 1 (1); 2002, c. 17, Sched. F, Table; 2006, c. 11, Sched. B, s. 12 (1).

Holidays designated for closing

(2) The Lieutenant Governor may by proclamation declare any day that is a public holiday other than a day named in clauses (a) to (h) of the definition of "holiday" in subsection (1) to be a holiday for the purposes of this Act. R.S.O. 1990, c. R.30, s. 1 (2); 1996, c. 34, s. 1 (2); 2006, c. 11, Sched. B, s. 12 (1).

Section Amendments with date in force (d/m/y) [+]

Non-application, City of Toronto

1.1 (1) This Act does not apply to the City of Toronto and it does not apply in respect of any by-law of the City or any retail business establishment located in the City. 2006, c. 11, Sched. B, s. 12 (2).

Exception

(2) Despite subsection (1), Part XVII of the *Employment Standards Act, 2000* shall be applied as if this Act applies to the City and to retail business establishments located in the City. 2006, c. 11, Sched. B, s. 12 (2).

Section Amendments with date in force (d/m/y) [+]**Non-application, municipalities**

1.2 (1) This Act does not apply to a municipality and does not apply in respect of any by-law of the municipality or any retail business establishment located in the municipality if there is in effect a by-law passed by the municipality providing that this Act does not apply to it. 2006, c. 32, Sched. D, s. 15 (1).

Condition for by-law to take effect

(2) A by-law under subsection (1) does not take effect until the municipality passes a by-law under section 148 of the *Municipal Act, 2001* requiring that one or more classes of retail business establishments be closed on a holiday. 2006, c. 32, Sched. D, s. 15 (1).

By-law valid

(3) Nothing in section 7 invalidates a by-law passed by a municipality under section 148 of the *Municipal Act, 2001* if the municipality has passed a by-law under subsection (1) providing that this Act does not apply. 2006, c. 32, Sched. D, s. 15 (1).

Exception

(4) Despite subsection (1), Part XVII of the *Employment Standards Act, 2000* shall be applied as if this Act applies to the municipality and to retail business establishments located in the municipality. 2006, c. 32, Sched. D, s. 15 (1).

Section Amendments with date in force (d/m/y) [+]**Prohibition**

2 (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.

Onus on employees, etc.

(2) No person employed by or acting on behalf of a 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. R.S.O. 1990, c. R.30, s. 2.

Exemptions: small stores

3 (1) Section 2 does not apply in respect of the carrying on of a retail business on a holiday where, on that day,

- (a) the only goods available for sale by retail in the retail business establishment are,

- (i) foodstuffs,
- (ii) tobacco or articles required for the use of tobacco,
- (iii) antiques, or
- (iv) handicrafts,

or any combination of them, or where the principal business is the sale of goods referred to in subclauses (i) to (iv), or any of them, by retail and no other goods are available for sale except as sundries; and

- (b) the number of persons engaged in the service of the public in the establishment does not at any time exceed three; and
- (c) the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet. R.S.O. 1990, c. R.30, s. 3 (1).

Idem, pharmacies

(2) Section 2 does not apply in respect of the carrying on of a retail business on a holiday in a pharmacy accredited under the *Drug and Pharmacies Regulation Act*, where, on that day,

- (a) the dispensing of drugs upon prescription is available to the public during business hours; and
- (b) the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes and no other goods are available for sale except as sundries; and
- (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. R.S.O. 1990, c. R.30, s. 3 (2); 1998, c. 18, Sched. G, s. 72.

Idem, special services

(3) Section 2 does not apply in respect of the carrying on of a retail business in a retail business establishment on a holiday where, on that day, the only goods available for sale by retail in the establishment are,

- (a) gasoline and motor oil and, in conjunction therewith, other goods for consumption in the operation of a motor vehicle; or
- (b) nursery stock or flowers, and in conjunction therewith, accessory gardening supplies; or
- (c) fresh fruit or vegetables in respect of holidays falling between the 1st day of April and the 30th day of November of the same year; or
- (d) books, newspapers or periodicals provided that no other goods are available for sale except as sundries, the number of persons engaged in the service of the public in the establishment does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet. R.S.O. 1990, c. R.30, s. 3 (3).

Idem, art galleries

(4) Section 2 does not apply in respect of the carrying on of the retail business of an art gallery on a holiday, where on that day the number of persons engaged in the service of the public in the art gallery does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the art gallery is less than 2,400 square feet. R.S.O. 1990, c. R.30, s. 3 (4).

Exemptions, liquor

(5) Section 2 does not apply in respect of the sale or offering for sale by retail of liquor under the authority of a licence or permit issued under the *Liquor Licence Act*. 2009, c. 33, Sched. 24, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 3 (5) of the Act is repealed and the following substituted: (See: 2020, c. 36, Sched. 26, s. 14)

Exemptions, liquor

(5) Section 2 does not apply in respect of the sale or offering for sale of liquor, other than liquor sold at a retail store as defined in the *Liquor Licence and Control Act*, 2019. 2020, c. 36, Sched. 26, s. 14.

Exemption, tourist establishments

(5.1) Section 2 does not apply in respect of the sale or offering for sale of retail goods or services from tourist establishments. 2009, c. 33, Sched. 24, s. 5.

Definition

(5.2) In subsection (5.1),

"tourist establishment" means any premise operated to provide sleeping accommodation for the travelling public or sleeping accommodation for the use of the public engaging in recreational activities, and includes the services and facilities in connection with which sleeping accommodation is provided, but does not include,

- (a) a camp operated by a charitable corporation approved under the *Charitable Institutions Act*, or
- (b) a summer camp within the meaning of the regulations made under the *Health Protection and Promotion Act*, or
- (c) a club owned by its members and operated without profit or gain. 2009, c. 33, Sched. 24, s. 5.

Exemptions, education, recreation, amusement

(6) Section 2 does not apply in respect of the admission of the public to premises for educational, recreational or amusement purposes or in respect of the sale or offering for sale of goods or services incidental thereto. R.S.O. 1990, c. R.30, s. 3 (6).

Idem, necessary services

(7) Section 2 does not apply in respect of services sold in connection with the sale or offering for sale by retail of any goods permitted by this Act to be sold, and does not apply in respect of goods or services sold or offered for sale by retail in the form of or in connection with,

- (a) prepared meals;
- (b) living accommodation;
- (c) laundromats and other coin-operated services;
- (d) rentals of vehicles or boats;
- (e) servicing and repair of vehicles or boats. R.S.O. 1990, c. R.30, s. 3 (7).

Section Amendments with date in force (d/m/y) [+]

Tourism exemption

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. 1991, c. 43, s. 1 (1).

Common pause day principle

(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. 1991, c. 43, s. 1 (1).

Tourism criteria

(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. 1991, c. 43, s. 1 (1).

Application for by-law

(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. 1991, c. 43, s. 1 (1).

Local municipality

(5) In a regional municipality, the council of a local municipality may also apply for a by-law under subsection (1). 2002, c. 17, Sched. F, Table.

Public meeting

(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 manner determined by the council;

(c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed by-law. 1991, c. 43, s. 1 (1); 2006, c. 32, Sched. D, s. 15 (2).

Council not obligated

(7) The council is not required to pass the by-law even if the tourism criteria are met. 1991, c. 43, s. 1 (1).

Commencement of by-law

(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. 1991, c. 43, s. 1 (1).

Procedures

(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. 1991, c. 43, s. 1 (1).

Regulations

(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. 1991, c. 43, s. 1 (1).

Idem

(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. 1991, c. 43, s. 1 (1).

Section Amendments with date in force (d/m/y) [+]**Unorganized territory**

4.1 The Lieutenant Governor in Council may by regulation permit retail business establishments in territory without municipal organization to be open on holidays. 1991, c. 43, s. 1 (1).

Section Amendments with date in force (d/m/y) [+]**Contents of by-laws and regulations**

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. 1991, c. 43, s. 1 (1).

Section Amendments with date in force (d/m/y) [+]

Appeal to Ontario Land Tribunal

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 Land Tribunal by filing a notice of appeal with the Tribunal setting out the objection to the by-law and the reasons in support of the objection. 2017, c. 23, Sched. 5, s. 109 (1); 2021, c. 4, Sched. 6, s. 87 (1).

Time for appeal

(2) The notice of appeal must be filed with the Tribunal not later than thirty days after the day the by-law is passed by the council. 1991, c. 43, s. 1 (1); 2017, c. 23, Sched. 5, s. 109 (2).

Dismissal without hearing

(3) The Tribunal 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. 2017, c. 23, Sched. 5, s. 109 (1).

Powers of Ontario Land Tribunal

(4) The Ontario Land Tribunal 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 Tribunal; or
- (c) quash the by-law. 2017, c. 23, Sched. 5, s. 109 (1); 2021, c. 4, Sched. 6, s. 87 (1).

Commencement of 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 Tribunal under clause (4) (b). 1991, c. 43, s. 1 (1); 2017, c. 23, Sched. 5, s. 109 (2).

Correction of errors

(6) The Tribunal 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. 1991, c. 43, s. 1 (1); 2017, c. 23, Sched. 5, s. 109 (2).

Non-application

(7) Section 23 of the *Ontario Land Tribunal Act, 2021* does not apply to an appeal under this section. 2021, c. 4, Sched. 6, s. 87 (2).

Time for decision

(8) The Tribunal shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9). 1991, c. 43, s. 1 (1); 2017, c. 23, Sched. 5, s. 109 (2).

Regulations

(9) The Lieutenant Governor in Council may make regulations prescribing a period of time for the purpose of subsection (8). 1991, c. 43, s. 1 (1).

Section Amendments with date in force (d/m/y) [+]

4.4 REPEALED: 1993, c. 14, s. 2.

Section Amendments with date in force (d/m/y) [+]

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.

Deemed subsidiaries

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

- (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. R.S.O. 1990, c. R.30, s. 5.

Commercial tenants

6 A provision in a lease or other agreement that has the effect of requiring a retail business establishment to remain open on a holiday or on a Sunday or on December 26 is of no effect even if the lease or agreement was made before section 2 of the *Boxing Day Shopping Act*, 1996 comes into force. 1996, c. 34, s. 2.

Section Amendments with date in force (d/m/y) [+]**Invalidity of certain municipal by-laws**

7 (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. R.S.O. 1990, c. R.30, s. 7 (1).

Transitional

(2) The following transitional rules apply to the by-laws of municipalities that were in force under this or any other Act at the end of the 30th day of November, 1991 and that relate to the opening or closing of a retail business establishment on holidays:

1. By-laws in force on the 3rd day of June, 1991 continue in force until the 1st day of December, 1992 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 1st day of December, 1991. 1991, c. 43, s. 1 (3).

Interpretation

(3) The definition of "municipality" in subsection 1 (1) does not apply for the purposes of this section. 2006, c. 11, Sched. B, s. 12 (3).

Section Amendments with date in force (d/m/y) [+]

Penalty

8 (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,

- (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. R.S.O. 1990, c. R.30, s. 8 (1-3).

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. 1991, c. 43, s. 1 (4).

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.

Advertisements 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.

Determination 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. R.S.O. 1990, c. R.30, s. 8 (4-6).

Section Amendments with date in force (d/m/y) [+]

Court orders

9 (1) Upon the application of counsel for the Attorney General or of a municipality to the Superior Court of Justice, 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. R.S.O. 1990, c. R.30, s. 9 (1); 2001, c. 9, Sched. D, s. 14.

Idem

(1.1) In addition to its powers under subsection (1), the Superior Court of Justice, 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. 1991, c. 43, s. 1 (5); 2001, c. 9, Sched. D, s. 14.

Idem

(2) An order under subsection (1) or (1.1) 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. 1991, c. 43, s. 1 (6).

Section Amendments with date in force (d/m/y) [+]

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