



# **BILL NO. 2**

*Government Bill*

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*1st Session, 59th General Assembly  
Nova Scotia  
52 Elizabeth II, 2003*

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**An Act to Amend Chapter 402  
of the Revised Statutes, 1989,  
the Retail Business Uniform Closing Day Act,  
and Chapter 246  
of the Revised Statutes of 1989,  
the Labour Standards Code**

CHAPTER 7  
ACTS OF 2003 (SECOND SESSION)

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
OCTOBER 30, 2003**

The Honourable Michael G. Baker, Q.C.  
*Minister of Justice*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

**An Act to Amend Chapter 402  
of the Revised Statutes, 1989,  
the Retail Business Uniform Closing Day Act,  
and Chapter 246  
of the Revised Statutes, 1989,  
the Labour Standards Code**

Be it enacted by the Governor and Assembly as follows:

**1** Section 3A of Chapter 402 of the Revised Statutes, 1989, the *Retail Business Uniform Closing Day Act*, is repealed and the following Section substituted:

3A (1) Subsection (1) of Section 3 does not apply in respect of a Sunday between one o'clock in the afternoon and six o'clock in the afternoon

(a) from the sixteenth day of November, 2003, to the twenty-first day of December, 2003; or

(b) as permitted by regulations implementing the decision of the plebiscite held pursuant to Section 10.

(2) Notwithstanding any lease or agreement, no owner or operator of a retail business is required, and no person shall require the owner or operator of a retail business, to operate on Sunday as permitted by or pursuant to subsection (1).

(3) No person shall discriminate or retaliate against, penalize or refuse to renew the lease of any person because that person refuses to operate a retail business as permitted by or pursuant to subsection (1).

(4) Notwithstanding subsection (2) of Section 4 or any other enactment, a municipality or council of a municipality may not prohibit or restrict the operation of a retail business as permitted by or pursuant to subsection (1).

**2** Section 8 of Chapter 402 is amended by adding immediately after clause (b) the following clause:

(ba) permitting a retail business to operate on Sunday between one o'clock in the afternoon and six o'clock in the afternoon in order to implement the result of the plebiscite held pursuant to Section 10;

**3** Chapter 402 is further amended by adding immediately after Section 9 the following Section:

10 (1) The words and expressions used in this Section have same meaning as in the *Municipal Elections Act*.

(2) At the next regular election to be held under the *Municipal Elections Act* after the coming into force of this Section, the returning officer shall take a vote of the electors in the manner prescribed in the *Municipal Elections Act* at which the ballot reads as follows:

Please note that if there is to be Sunday shopping

- (a) it would only be from 1:00 p.m. to 6:00 p.m.; and
- (b) it would not be on New Year's Day, Easter Sunday, July 1st, Remembrance Day, Christmas Day or Boxing Day.

**Please answer both questions.**

**1** Should there be Sunday shopping (in retail businesses not now permitted to be open on Sunday)?

yes

no

**2** If there is to be Sunday shopping (in retail businesses not now permitted to be open on Sunday), should it be

on every Sunday (except as noted above)?

on only the six Sundays immediately before Christmas?

(3) The answer given to either of the questions set out in subsection (2) is not invalid by reason only of the failure to answer both questions or of the spoiling of the ballot with respect to the other question.

(4) The Minister of Justice shall give such directions and make such regulations and prepare such forms as may appear necessary for the purpose of this Section and for the guidance of the returning officers and other persons employed in the taking of the vote and may apply, modify or alter any of the provisions of the *Municipal Elections Act* and make due provision for circumstances that may arise and that are not otherwise provided for.

**4** Section 2 of Chapter 246 of the Revised Statutes, 1989, the *Labour Standards Code*, as amended by Chapter 14 of the Acts of 1991, is further amended by adding immediately after clause (p) the following clause:

(pa) "retail business" means a retail business as defined in the *Retail Business Uniform Closing Day Act* that is permitted to be open on Sunday pursuant to Section 3A of that Act;

**5 (1)** Subsection 21(1) of Chapter 246 is amended by adding "may" immediately after "and" in the last line.

**(2)** Subsection 21(3) of Chapter 246, as amended by Chapter 14 of the Acts of 1991, is further amended by

(a) striking out "Where" in the first line and substituting "Notwithstanding Section 72, where";

(b) striking out "and" at the end of clause (a);

(c) striking out the comma at the end of clause (b) and substituting "; and";  
and

(d) adding the following clause:

(c) for greater certainty and without limiting the generality of clauses (a) and (b), reinstate the employee,

**6** Subsection 26(2) of Chapter 246 is amended by

- (a) striking out “Where” in the first line and substituting “Notwithstanding Section 72, where”;
- (b) striking out “and” at the end of clause (a);
- (c) striking out the comma at the end of clause (b) and substituting “; and”; and
- (d) adding the following clause:
  - (c) for greater certainty and without limiting the generality of clauses (a) and (b), reinstate the employee,

**7 (1)** Subsection 30(1) of Chapter 246, as enacted by Chapter 14 of the Acts of 1991, is amended by

- (a) adding “, suspend, intimidate, penalize, discipline” immediately after “off” in the second line;
- (b) striking out “or” at the end of clause (c);
- (c) striking out the period at the end of clause (d) and substituting “; or”; and
- (d) adding the following clause:
  - (e) that person has refused or attempted to refuse to work on a Sunday in a retail business or refuses to sign a contract of employment or agreement that requires that person to work in a retail business on Sunday if the employee is not required to work on Sunday by or pursuant to Section 66A

**(2)** Section 30 of Chapter 246, as enacted by Chapter 14 of the Acts of 1991, is further amended by adding immediately after subsection (2) the following subsection:

- (3) In any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this Section lies with the employer.

**8** Chapter 246 is further amended by adding immediately after Section 30 the following Sections:

30A (1) Where the Director determines that an employer has contravened clause (e) of subsection (1) of Section 30, the Director shall require, by a specified date,

- (a) that the employer reinstate the employee pursuant to the same terms and conditions under which the employee was employed immediately before the termination;
- (b) that the employer pay any wages, salary, pay or other benefits that the employee would have earned but for the contravention;
- (c) that any reprimand or other references to the matter in the employer’s records on the employee be removed;
- (d) that the employer do the things that, in the opinion of the Director, are necessary to secure compliance with this Act and the regulations.

(2) Where an order or requirement of the Director pursuant to subsection (1) is not appealed pursuant to this Act, the order or requirement is final and binding.

**9** Clause 32(1)(a) of Chapter 246 is repealed and the following clause substituted:

(a) not later than ten months after the twelve-month period ends, shall give the employee an unbroken vacation of at least two weeks or, where the employee has been in the employ of the employer for more than eight years, an unbroken vacation of at least three weeks;

**10** Section 40 of Chapter 246 is amended by adding immediately after subsection (3) the following subsection:

(4) Notwithstanding anything contained in this Act, where an employee is required to work more than forty-eight hours in a week, that employee shall be paid one and a half times the employee's regular hourly wage for each additional hour worked in that week in excess of forty-eight hours.

**11** Section 51 of Chapter 246 is repealed and the following Section substituted:

51 (1) There is hereby established a committee to be known as the Minimum Wage Review Committee.

(2) The Minimum Wage Review Committee shall be composed of an equal number of employee and employer representatives appointed by the Minister.

(3) The function of the Minimum Wage Review Committee is to conduct an annual review of the minimum wage and submit to the Minister a report containing the recommendations of the Committee.

(4) The Minister shall

(a) make the report referred to in subsection (3) public within thirty days of receipt of the report; and

(b) make public the response of the Government to the report within sixty days of receipt of the report.

**12** Chapter 246 is further amended by adding immediately after Section 60D the following heading and Section:

#### SICK LEAVE

60E (1) An employee is entitled to a maximum of three days of unpaid leave per year where the leave is required

(a) due to the sickness of a child, parent or family member; or

(b) for medical, dental or other similar appointments during working hours.

(2) Section 60D applies *mutatis mutandis*.

**13** Chapter 246 is further amended by adding immediately after Section 66 the following Section:

66A (1) Notwithstanding any contract of employment or agreement made before or after the coming into force of this Section, no employee is required, and no employer

shall require an employee, to work or to sign a contract of employment or agreement that requires the employee to work in a retail business on Sunday as a result of the operation of a retail business as permitted by or pursuant to Section 3A of the *Retail Business Uniform Closing Day Act*.

(2) Where an employee to whom subsection (1) applies has agreed to work on Sundays, the employee may refuse to work on Sundays or on a particular Sunday if the employee gives the employer at least seven days notice to that effect before the employee is scheduled to begin such work or, where the employee receives less than seven days notice of being scheduled for such work, the employee gives the employer notice to that effect within two days of receiving the notice from the employer.

**14** Sections 93 to 98 of Chapter 246 are repealed and the following Sections substituted:

93 (1) Every person who

(a) does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by that person;

(b) does any act or thing prohibited by an order made under this Act, fails to perform an act required by an order made under this Act or otherwise contravenes an order made under this Act;

(c) being an employer, wilfully makes or causes to be made false or misleading entries in any record that the employer is required to keep by this Act or by the regulations or by an order of the Governor in Council;

(d) being an employer, wilfully supplies or causes to be supplied false or misleading information to the Director, an officer or the Tribunal;

(e) being an employer, refuses or neglects to permit an inspection or examination authorized by this Act; or

(f) being an employer, wilfully fails to furnish a bond when required to do so by the Tribunal,

is guilty of an offence.

(2) Where an employee by collusion with the employee's employer or otherwise wilfully works for less than the minimum wage to which the employee is entitled under this Act, or directly or indirectly returns to the employer any part of the employee's wages thereby in effect reducing the wages actually received and retained by the employee to an amount less than the minimum wage to which the employee is entitled, the employee and the employer are both guilty of an offence.

94 (1) A person that is guilty of an offence under this Act is liable on summary conviction to a fine of

(a) in the case of an employer that is a corporation, not more than twenty-five thousand dollars;

(b) in the case of an employer that is not a corporation or in the case of a director of a corporation, not more than five thousand dollars; or

(c) in the case of an employee, not more than two thousand five hundred dollars.

(2) A person guilty of a second or subsequent offence under this Act is liable, in addition to the fine under subsection (1), to

(a) an additional fine of not more than the maximum fine set out in subsection (1) for that person; or

(b) imprisonment for a term of three months,

or to both.

(3) Where a contravention or failure to comply continues for more than one day, the person is guilty of a separate offence for each day that the offence continues.

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