

2015-07-02

### **OBJECTS AND REASONS**

This Bill would repeal and replace the *Shops Act*, Cap. 356A in order to

- (a) make new provision for the opening and closing hours of shops;
- (b) make better provision for the terms and conditions of service under which shop assistants are employed;
- (c) make better provision for health and safety standards in shops; and
- (d) extend certain provisions of this Act to cinemas and laundries and to businesses providing floral services, barber services, beauty and cosmetic services as well as businesses providing betting and gaming services.

*Arrangement of Sections*

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## **BARBADOS**

A Bill entitled

An Act to repeal and replace the Shops Act to make better provision with respect to the opening and closing hours of shops, the terms and conditions under which persons are employed in shops and certain other businesses, and with respect to health and safety standards in shops and for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I  
INTERPRETATION AND APPLICATION

**Short title**

1. This Act may be cited as the *Shops Act, 2015*.

**Interpretation**

2. In this Act,

“Chief Fire Officer” includes any member of the Barbados Fire Service;

“Chief Labour Officer” includes the Deputy Chief Labour Officer and any other Labour Officer;

“closed day” means Good Friday, Easter Sunday, Independence Day and Christmas Day.

“Independence Day” in relation to closed day means November 30th, but where November 30th is a Sunday, the closed day shall be the following day, December 1st.

“members of the occupier’s family” means the spouse, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother or sister of the occupier;

“night” means the period commencing from 23:00 hours on any day to 07:00 hours on the following day;

“occupier” means the owner of the business carried on in any shop and includes any person for the time being having immediate control over a shop;

“public holiday” means any day that is a public holiday by virtue of section 3 of the *Public Holidays Act, Cap. 352*;

“shop”

- (a) means, subject to 3(2), any premises or place in which a person
  - (i) conducts, manages or carries on any retail or wholesale trade or business; or
  - (ii) conducts business by providing services in respect of the sale or hire of commodities,

whether or not the business is conducted, managed or carried on to the exclusion of, or in addition to, any other business; and

- (b) includes any place used for the storage of goods, the receipt of orders for goods, or the despatch or delivery of goods dealt with in the business;

“shop assistant” means any person, except a member of the occupier’s family directly or indirectly,

- (a) employed in operations carried on for the purpose of the sale or hire of articles; or
- (b) employed in connection with the trade or business of a shop, including clerical or other office work;

“spouse” includes

- (a) a woman who is living with a man as his wife;
- (b) a man who is living with a woman as her husband;

“week” means a period of 7 consecutive days.

### **Application**

**3.(1)** The terms and conditions of service prescribed in Part III of this Act apply, with the necessary changes, to employees of the following businesses:

- (a) cinemas;

- (b) laundries; and
  - (c) businesses providing betting and gaming services.
- (2) For the purposes of subsection (1), “employee” means a person directly employed to provide services for customers of the business.
- (3) The health and safety standards prescribed in Part IV of this Act apply, with the necessary changes, to employees of the following businesses:
- (a) cinemas;
  - (b) laundries;
  - (c) businesses providing betting and gaming services;
  - (d) businesses providing floral services;
  - (e) businesses providing barber services; and
  - (f) businesses providing beauty and cosmetic services.
- (4) The Minister may by order amend subsection (1) or (3) for the purpose of extending the application of this Act to any business.
- (5) The Minister may by order exempt any shop from the application of this Act or any enactment made under this Act.
- (6) An order made under this section is subject to negative resolution.

## PART II

### OPENING AND CLOSING OF SHOPS

#### **Opening of shops**

- 4.(1)** Subject to subsections (4) and (5), a shop may be opened for business from 7:00 hours on Mondays continuously through to 22:00 hours on Sundays except on a closed day.
- (2) The Minister may by order amend the hours specified in subsection (1).

- (3) An order made under subsection (2) is subject to negative resolution.
- (4) The Chief Labour Officer may, on the application of the occupier, grant that occupier a licence on such conditions as may be specified by the Chief Labour Officer, authorising the occupier to open his shop for business on a closed day.
- (5) Notwithstanding subsections (1) and (4), where the occupier engages in any of the businesses specified in the First Schedule, the shop is not subject to the opening hours specified in subsection (1) and may be opened for business on a closed day.
- (6) The Minister may by order amend the First Schedule.
- (7) Notwithstanding anything contained in this section, the occupier of a shop may open that shop for the purpose of cleaning the shop and to allow preparatory work to be carried out before the opening hour and after the closing hour specified in this section; but no customers shall be allowed in the shop, and the doors of the shop shall be kept closed.

### **Family shops**

- 5. Sections 4, 6, 7 and 16 do not apply to a shop in which only members of the occupier's family are employed.

## **PART III**

### **WORKING HOURS AND WAGES OF SHOP ASSISTANTS**

#### **Working hours and wages of shop assistants**

- 6.(1) The number of hours in any one week, excluding intervals for meals, during which a shop assistant may be required to work in a shop shall not exceed 40.
- (2) Subject to subsection (6), no shop assistant shall be required to work
  - (a) on any day for more than 4½ consecutive hours without an interval of one hour for mealtime and for more than 8 hours in the aggregate to

run continuously from the time he commences work, but excluding intervals for meals;

- (b) unless that shop assistant is given an interval of not less than 12 hours off between each shift;
- (c) for more than five days in a week.

(3) In reckoning the number of hours during which a shop assistant has worked in any shop in a week or on any day for the purposes of this section, account must not be taken of any extended hours during which that shop assistant undertakes voluntarily to be employed and for which the shop assistant is paid at a rate of pay specified in subsection (4) (a) or (b), as the case may be.

(4) Where a shop assistant works

- (a) on any public holiday or day-off, that shop assistant is entitled to be paid twice as much as his ordinary rate;
- (b) overtime, that shop assistant is entitled to be paid time and one half that shop assistant's ordinary rate.

(5) The occupier shall keep a record for each week, which shall be signed by him, showing in respect of every shop assistant

- (a) the period of employment during each day;
- (b) the number of hours that the shop assistant worked during that week;
- (c) the times at which intervals for meals were allowed and the duration of each interval;
- (d) the wages paid for normal work during that week; and
- (e) the wages paid for overtime work during that week.

(6) No shop assistant shall be required without his consent,

- (a) to work overtime; or
- (b) to work on the day he observes as the day of religious worship.

(7) An occupier who dismisses or otherwise penalises a shop assistant for refusing

(a) to work overtime; or

(b) to work on the day the shop assistant observes as the day of religious worship,

is guilty of an offence and liable on summary conviction to a fine of \$50 000 or to imprisonment for three years or to both.

(8) In a prosecution under subsection (7) it is for the occupier to prove that the shop assistant was not dismissed or otherwise penalised as the case may be for refusing

(a) to work overtime; or

(b) to work on the day the shop assistant observes as the day of religious worship.

#### PART IV

#### HEALTH AND SAFETY REQUIREMENTS

##### **Seats for shop assistants**

7.(1) The occupier of a shop shall, in every room where shop assistants are employed, provide not less than one seat for every 3 shop assistants employed therein, and where there are less than 3 shop assistants employed in a room, the occupier shall provide at least one seat.

(2) The occupier carrying on business in a shop referred to in subsection (1) shall

(a) permit the shop assistants to make use of the seats whenever the use of the seats does not interfere with their work; and

(b) give notice in the form set out in the Second Schedule to the shop assistants that they are entitled to use the seats.

(3) Where, in addition to any other shop assistants, cashiers are employed in a shop, the occupier shall, in addition to the seats provided pursuant to subsection (1), provide one seat for each cashier employed in the shop.

### **Facilities for eating**

**8.**(1) Subject to subsections (2) and (3), every occupier carrying on business in a shop in which 5 shop assistants or more are employed shall provide an adequate room for the eating of meals by those shop assistants.

(2) Where there are less than 5 shop assistants employed in a shop in which no room is provided for the eating of meals, the occupier shall separate an area of the shop by a screen for the eating of meals by those shop assistants.

(3) In the case of shopping malls, the owner of the mall shall provide adequate facilities for the eating of meals by shop assistants employed at the mall.

(4) The Chief Labour Officer

(a) shall determine whether the facilities provided pursuant to this section for the eating of meals are adequate; and

(b) shall, where he determines that the facilities are inadequate, give directions to the occupier or in the case of a mall, the owner, for the purpose of making the facilities adequate.

(5) Where a direction is given by the Chief Labour Officer under subsection (4), the occupier or owner of the mall as the case may be shall comply with the directions.

### **First aid supplies**

**9.** Where any shop assistant is employed in a shop, the occupier shall provide a first aid kit containing such first aid supplies as the Chief Labour Officer on the advice of the Chief Medical Officer may direct.

**Supply of drinking water**

**10.** The occupier shall provide an adequate supply of drinking water free of cost for the use of shop assistants in the room or area set aside for the taking of meals by shop assistants.

**Supply of lavatories and sanitary facilities**

**11.(1)** The occupier shall provide an adequate number of lavatories for shop assistants and other sanitary facilities for the washing and drying of hands.

(2) In the case of shopping malls, the owner of the mall shall provide an adequate number of lavatories for the use of shop assistants employed at the mall as well as sanitary facilities for the washing and drying of hands.

(3) The occupier shall allow shop assistants to use the lavatory and other sanitary facilities referred to in subsection (1) when necessary.

**Means of access**

**12.** The occupier shall provide a safe means of access to every place where shop assistants work and shall to the satisfaction of the Chief Labour Officer, maintain those means of access.

**Ventilation**

**13.** The occupier shall ensure that adequate ventilation is provided and maintained in the shop.

**Employment of shop assistants at night**

**14.(1)** No shop assistant shall be employed in a shop during the night unless the occupier obtains a certificate from the Chief Labour Officer permitting him to do so.

(2) The Chief Labour Officer shall, before issuing a certificate under subsection (1) satisfy himself that the occupier of the shop

- (a) has made adequate arrangements for transporting each employee to and from the place of work at night where adequate public transportation is not available;
- (b) has put in place adequate security measures for the safety of employees working at night.

### **Adequacy of facilities**

**15.(1)** The Chief Labour Officer

- (a) shall determine, after consultation with the Chief Medical Officer where appropriate, whether the facilities provided pursuant to sections 7 to 13 are adequate; and
- (b) shall, where he determines that the facilities are inadequate, give directions to the occupier for the purpose of making the facilities adequate.

(2) Where it appears to the Chief Labour Officer that there is any sanitary defect or nuisance in any shop or in the vicinity of any shop, he shall give notice thereof to the Chief Medical Officer; and the Chief Medical Officer shall give such directions as he considers appropriate to the occupier to rectify the situation.

### **Display of information for employees**

**16.(1)** The occupier shall keep the following documents exhibited in a conspicuous place in the shop for the information of employees:

- (a) a copy of sections 6 and 7 of this Act;
- (b) a copy of the notice referred to in section 7 (2)(b);
- (c) a list, signed by the occupier, of the names of every shop assistant together with the hours of employment of each such shop assistant; and
- (d) a copy of every order made under this Act while it is in force.

- (2) In addition to the requirements of subsection (1), the Chief Labour Officer may require an occupier to keep exhibited in a conspicuous place in a shop, any extracts from this Act or a notice specifying any of the requirements of this Act.
- (3) An occupier who fails to comply with subsection (1) or with any requirements of the Chief Labour Officer made pursuant to subsection (2) is guilty of an offence.

## PART V

### FIRE SAFETY REQUIREMENTS

#### **Fire safety certificate**

- 17.(1)** No shop may be opened for business unless there is a fire safety certificate issued by the Chief Fire Officer in respect of that shop.
- (2) No certificate may be issued pursuant to subsection (1) unless
  - (a) the requirements under this Part have been complied with; and
  - (b) any directions issued by the Chief Fire Officer under section 18(4) have been complied with.
- (3) A fire safety certificate issued by the Chief Fire Officer under subsection (1) is valid for one year.
- (4) The Chief Fire Officer shall revoke a certificate granted under subsection (1) where at any time an examination of the premises of a shop indicates that the occupier has failed to comply with the requirements set out in this Part or where for any other reason, a fire hazard is posed.
- (5) Where a shop is opened for business in respect of which there is not a valid fire safety certificate, the occupier of that shop is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or imprisonment for one year or both.

(6) For a period of one year after the commencement of this Act, a shop may be opened for business although a fire safety certificate has not been issued under this section.

### **Fire safety and prevention**

**18.(1)** The occupier shall provide and maintain to the satisfaction of the Chief Fire Officer

- (a) such means of escape in case of fire for the persons in the shop as may reasonably be required in the circumstances; and
- (b) equipment for firefighting which shall be so placed as to be easily available for use.

(2) An occupier shall ensure that

- (a) all employees are trained in the basic use of the firefighting equipment referred to in subsection (1); and
- (b) a suitable number of employees are specially trained in the use of the firefighting equipment referred to in subsection (1).

(3) At least one person who has been specially trained in the use of the firefighting equipment provided under subsection (1) shall be available on the premises at all times.

(4) Notwithstanding that a fire safety certificate has been granted in respect of a shop, the Chief Fire Officer may at any time issue directions to an occupier where, in the opinion of the Chief Fire Officer, the fire safety or fire prevention measures in any shop are deficient.

### **Fire safety plan**

**19.** Every occupier shall ensure that a fire safety plan which is approved by the Chief Fire Officer is put in place and that all employees are informed of the plan and suitably trained in its application.

**Building requirements for fire safety**

**20.(1)** The occupier shall ensure that any door opening on any staircase or corridor from any room in which any person is employed or any customer is allowed and any door affording a means of exit from the shop for persons in the shop is, except where the doors are sliding doors, constructed to open outwards.

- (2) The occupier shall ensure that while any person is within a shop,
- (a) the doors of the shop and of any room therein; and
  - (b) any door that affords a means of exit for persons in the shop from any building or from any enclosure in which the shop is situated,

is not locked or fastened in such manner that it cannot be easily and immediately opened from within.

(3) The occupier shall ensure that any staircase or flight of steps leading from one floor to another or to the ground is provided with suitable handrails and shall, if the Chief Fire Officer so directs in writing, be provided with slats or some other appropriate means to prevent slipping.

(4) The occupier shall ensure that effective provision is made in the shop for giving a visible and audible warning in case of fire, and such warning must be clearly audible and visible throughout the shop.

(5) The occupier shall ensure that the contents of any room in which persons are employed or customers are allowed, are so arranged or placed that there is a free passage for all persons in the room to a means of escape in case of fire.

**Enforcement of fire safety requirements**

**21.(1)** The Chief Fire Officer may at any time enter any shop and inspect the premises for the purpose of ensuring that the provisions of this Part have been complied with.

- (2) Every occupier is guilty of an offence who, whether by
- (a) himself;

(b) any person employed by him; or

(c) any person acting under his direction or with his consent,

refuses or fails to admit or obstructs the Chief Fire Officer when the Chief Fire Officer is carrying out his duties pursuant to subsection (1).

## PART VI

### ENFORCEMENT OF ACT

#### **Entry and inspection**

**22.(1)** The Chief Labour Officer or a member of the Police Force may at any time enter and inspect any shop for the purpose of ascertaining whether this Act is being complied with.

(2) Every occupier is guilty of an offence who, whether by

(a) himself;

(b) any person employed by him; or

(c) any person acting under his direction or with his consent,

refuses or fails to admit or obstructs the Chief Labour Officer or any member of the Police Force when the Chief Labour Officer or the member of the Police Force is carrying out his duties pursuant to subsection (1).

#### **Protection of Chief Labour Officer and staff**

**23.** No action or other proceedings for damages shall be instituted against the Chief Labour Officer or any person acting on his behalf in the discharge or purported discharge of his functions under this Act, unless it is shown that the act or omission was in bad faith.

**Examination of persons**

**24.(1)** The Chief Labour Officer may in relation to any shop, examine a customer, an employee or a former employee if that person consents, for the purpose of obtaining evidence necessary for the enforcement of the provisions of this Act.

(2) An employee of a shop who is required under this Part to make any disclosure to the Chief Labour Officer shall not by reason of making that disclosure be regarded as being in breach of his duty to his employer; and no action, suit or proceeding lies against an employee in respect of any information given under subsection (1).

**Evidence of employment**

**25.(1)** In any proceedings against an occupier for employing a shop assistant in his shop or allowing any shop assistant to be employed or to work in the shop contrary to this Act, the fact that the shop assistant was found in the shop is *prima facie* evidence that he was then being employed therein.

(2) The presumption under subsection (1) shall not apply where the occupier satisfies the court that the shop assistant was not being employed in the shop or was there either against the orders or without the knowledge, consent or connivance of the occupier.

(3) The fact that a person other than the occupier is engaged in a shop in connection with the serving of customers, the receipt of money or orders for goods or the delivery or despatch of goods is *prima facie* evidence that the person is being employed as a shop assistant in the shop.

**Liability for wages**

**26.** The fact that an occupier has been convicted of an offence under this Act does not relieve him of any civil liability in respect of wages or other payments that are recoverable from him.

**Offence re shop assistants**

**27.** Every occupier who employs a shop assistant in breach of this Act is guilty of an offence.

PART VII  
OFFENCES

**General offence**

**28.** A person is guilty of an offence if he fails to comply with

- (a) this Act;
- (b) any order or regulations made under this Act; or
- (c) any directions given by the Chief Labour Officer, the Chief Fire Officer or the Chief Medical Officer pursuant to this Act.

**Discrimination offence**

**29.(1)** No person shall on account of his race, colour or creed be refused

- (a) access to any shop; or
- (b) the opportunity to avail himself of any facility, service or amenity offered to the public by any shop by way of trade or business incidental thereto.

(2) An occupier who contravenes subsection (1) is guilty of an offence.

(3) Where an occupier who is charged with an offence under this section alleges that the offender is

- (a) his employee;
- (b) his agent; or
- (c) some other person,

on giving to the prosecution not less than 3 days' notice in writing, the occupier is entitled to have the person whom he alleges to be the actual offender brought before the court at the time appointed for hearing the charge.

(4) Where, after the commission of the offence referred to in subsection (3) has been proved, the occupier proves to the satisfaction of the court that

- (a) he used all due diligence to enforce the execution of this section; and
- (b) the other person had committed the offence in question without his consent, connivance or wilful default,

that other person may be convicted of the offence and punished in accordance with the provisions of this Act and the occupier acquitted.

(5) Where the occupier avails himself of the defence specified in subsections (3) and (4), the prosecution and the person against whom the occupier brings a charge may,

- (a) if the occupier gives evidence, cross-examine him and any witnesses called by him; and
- (b) call evidence in rebuttal.

### **General penalty**

**30.(1)** Every person who commits an offence against this Act for which no other penalty is provided, is liable on summary conviction to a fine of \$10 000 or imprisonment for one year or to both.

(2) Where a person is convicted of an offence under this Act, and the failure to comply is continuous, that person is liable to a further fine of \$500 for each day during which the failure to comply continues.

### **Prosecutions**

**31.** The Chief Labour Officer may, although not an attorney-at-law, prosecute or conduct before a court of summary jurisdiction, any proceedings relating to an offence committed under this Act.

### **Powers of the Court on conviction of the occupier**

**32.(1)** Where an occupier is convicted of an offence under this Act, the magistrate, in addition to or in lieu of imposing any punishment otherwise authorised by this Act, may by order require the accused to do any specified work or to adopt any specified means for the purpose of securing compliance with this Act, and may specify in the order a time within which the work must be done or the means adopted, as the case may be.

(2) The time specified in any order under subsection (1) may be extended on the application of the accused.

(3) The magistrate referred to in subsection (1) shall adjourn the proceedings until the expiration of the time specified in the order, if an order under subsection (1) is made in lieu of imposing a fine, and if the order is duly obeyed he may, if he thinks fit, impose no fine in respect of the offence.

(4) Where an accused fails to comply with an order made under subsection (1), the accused is liable to a fine of \$100 for every day during which default continues if default is made in obeying an order made under subsection (1) within the time or extended time so specified; and the fine shall be in addition to any other fine imposed.

## **PART VIII**

### **GENERAL**

#### **Regulations**

**33.(1)** The Minister may make regulations

- (a) respecting any shop or the conditions of employment of shop assistants and other persons working in shops; and
- (b) generally for the purpose of giving effect to this Act.

(2) Regulations made under subsection (1) are subject to negative resolution.

**Repeal of Cap. 356A etc.**

**34.(1)** The *Shops Act*, Cap. 356A is repealed.

(2) The *Shops Order, 1985* (S.I. 1985 No. 194) is repealed.

**FIRST SCHEDULE**

*(Section 4(5))*

*Shops which are not subject to any opening hours*

- 1.** Shops engaged in the sale or purchase of any drugs or surgical appliances or any article required in the case of illness of any person or animal, where
  - (a)* the shop is opened only for the sale of such items; and
  - (b)* the shop is kept closed except for the admission and exit of the customer.
- 2.** Shops located in theatres, cinemas, concert halls and other places of entertainment which are primarily engaged in the sale of refreshments.
- 3.** Shops engaged in the sale of cooked food in respect of the sale or purchase of such food in the shop and alcoholic or non-alcoholic beverages.
- 4.** Shops engaged in the sale of bread, milk, milk products or fresh meat, if the shop is open for such purpose only.
- 5.** Shops operated by clubs.
- 6.** Shops engaged in the sale of newspapers.
- 7.** Any shop engaged in the sale or purchase of goods of any kind, sort or description that are required for the use of any ship or aircraft.
- 8.** Shops at petrol filling stations engaged
  - (a)* in the repair and service of motor vehicles;
  - (b)* in the sale of spare parts for motor vehicles; and

(c) in the sale of petroleum products, lubricants and accessories.

- 9.** Any shop engaged in the sale of handicraft originating in the Common Market within the meaning of section 6 of the *Caribbean Community Act*, Cap. 15 or items produced from cottage industries, if the shop is open only for the sale of such items.
- 10.** Shops located on the premises of the Grantley Adams International Airport or the harbour as defined in the *Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act*, Cap. 285B.
- 11.** Shops located on the premises of a hotel or a guesthouse.
- 12.** Shops engaged in the business of funeral undertaking, if the shop is open in respect of such business only.
- 13.** Shops licensed to sell spirits, malt liquors and wines in accordance with the *Liquor Licences Act*, Cap. 182, in respect only of the sale or purchase of spirits, malt liquors, wines, non-alcoholic beverages, cigarettes, cigars, tobacco and matches.
- 14.** The making of articles of clothing, boots and shoes to order in shops where no other business is carried on.

**SECOND SCHEDULE**

*(Section 7(2))*

*Notice under the Shops Act, 2015-*

NOTICE IS HEREBY GIVEN that seats are provided in this shop for shop assistants and that the shop assistants are entitled to make use of the seats whenever the use of the seats does not interfere with their work.

(Signed) .....

*(Occupier)*

Read three times and passed the House of Assembly this  
day of , 2015.

**Speaker**

Read three times and passed the Senate this                      day of  
, 2015.

**President**