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Bill 195

An Act to enact the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

The Hon. S. Jones
Solicitor General

Government Bill

1st Reading July 7, 2020

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*.

The Act continues orders made under sections 7.0.2 and 7.1 of the *Emergency Management and Civil Protection Act* in relation to COVID-19. Continued orders will cease to apply after 30 days but can be extended by the Lieutenant Governor in Council for additional periods of up to 30 days.

Orders may be amended by the Lieutenant Governor in Council, subject to limitations. A continued section 7.0.2 order may be amended if the amendment would have been authorized under the *Emergency Management and Civil Protection Act* and if it satisfies other specified requirements. Certain continued section 7.0.2 orders listed in the Act may not be amended. Any continued order may be amended to address transitional issues. Orders may also be revoked.

The power to extend, amend or revoke orders can be delegated to a Minister.

The powers to extend or amend orders cease to apply after one year but the Assembly, on the recommendation of the Premier, may extend those powers for additional periods of up to one year.

Enforcement provisions are included to provide for court orders to restrain contraventions and to provide for offences. Those provisions are based on provisions of the *Emergency Management and Civil Protection Act*.

The Premier, or a Minister, is required to report regularly to the public and, at least once every 30 days, appear before, and report to, a standing or select committee of the Assembly. The Premier is required to table a report in the Assembly after one year and after any extension of the power to extend or amend orders.

If the COVID-19 declared emergency has not already been terminated, the Act provides for its termination.

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

An Act to enact the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

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

INTERPRETATION

Definitions

1 In this Act,

“continued section 7.0.2 order” means an order continued under section 2 that was made under section 7.0.2 of the *Emergency Management and Civil Protection Act*; (“décret pris en vertu de l’article 7.0.2 et maintenu”)

“COVID-19 declared emergency” means the emergency declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*. (“situation d’urgence déclarée en raison de la COVID-19”)

ORDERS

Orders continued

2 (1) The orders made under section 7.0.2 or 7.1 of the *Emergency Management and Civil Protection Act* that have not been revoked as of the day this subsection comes into force are continued as valid and effective orders under this Act and cease to be orders under the *Emergency Management and Civil Protection Act*.

Exception

(2) Subsection (1) does not apply to the order filed as Ontario Regulation 106/20 (Order Made Under the Act — Extensions and Renewals of Orders).

Clarification

(3) For greater certainty, an order that is in force is continued under subsection (1) even if, on the day that subsection comes into force, the order does not apply to any area of the Province.

Time limit on application of orders

3 (1) An order continued under section 2 ceases to apply 30 days after it is continued under section 2, subject to extension under subsection (2).

Extension of orders

(2) The Lieutenant Governor in Council may by order, before it ceases to apply, extend the effective period of an order for periods of no more than 30 days.

Power to amend orders

4 (1) The Lieutenant Governor in Council may, by order,

- (a) subject to subsections (2) and (5), amend a continued section 7.0.2 order in a way that would have been authorized under section 7.0.2 of the *Emergency Management and Civil Protection Act* if the COVID-19 declared emergency were still in effect and references in that section to the emergency were references to the COVID-19 pandemic and its effects;
- (b) amend an order continued under section 2 to address transitional matters relating to the termination of the COVID-19 declared emergency, the enactment of this Act or the continuation of orders under section 2.

Limitation on amendments

(2) An amendment may be made under clause (1) (a) only if,

- (a) the amendment relates to one or more of the subject matters listed in subsection (3); or
- (b) the amendment requires persons to act in compliance with any advice, recommendation or instruction of a public health official.

Same

(3) The subject matters referred to in clause (2) (a) are the following:

1. Closing or regulating any place, whether public or private, including any business, office, school, hospital or other establishment or institution.
2. Providing for rules or practices that relate to workplaces or the management of workplaces, or authorizing the person responsible for a workplace to identify staffing priorities or to develop, modify and implement redeployment plans or rules or practices that relate to the workplace or the management of the workplace, including credentialing processes in a health care facility.
3. Prohibiting or regulating gatherings or organized public events.

Definition of “credentialing process”

(4) In paragraph 2 of subsection (3),

“credentialing process” means the activities, processes, procedures and proceedings for appointing and reappointing health care staff and determining the nature and scope of privileges assigned to them.

Orders that may not be amended

(5) Amendments may not be made under clause (1) (a) to the following orders:

1. Ontario Regulation 75/20 (Order Under Subsection 7.0.2 (4) of the Act — Drinking Water Systems and Sewage Works).
2. Ontario Regulation 76/20 (Order Under Subsection 7.0.2 (4) of the Act — Electronic Service).
3. Ontario Regulation 80/20 (Order Under Subsection 7.0.2 (4) of the Act — Electricity Price for RPP Consumers).
4. Ontario Regulation 114/20 (Order Under Subsection 7.0.2 (4) of the Act — Enforcement of Orders).
5. Ontario Regulation 120/20 (Order Under Subsection 7.0.2 (4) of the Act — Access to COVID-19 Status Information by Specified Persons).
6. Ontario Regulation 129/20 (Order Under Subsection 7.0.2 (4) of the Act — Signatures in Wills and Powers of Attorney).
7. Ontario Regulation 132/20 (Order Under Subsection 7.0.2 (4) of the Act — Use of Force and Firearms in Policing Services).
8. Ontario Regulation 141/20 (Order Under Subsection 7.0.2 (4) of the Act — Temporary Health or Residential Facilities).

9. Ontario Regulation 190/20 (Order Under Subsection 7.0.2 (4) of the Act — Access to Personal Health Information by Means of the Electronic Health Record).
10. Ontario Regulation 192/20 (Order Under Subsection 7.0.2 (4) of the Act — Certain Persons Enabled to Issue Medical Certificates of Death).
11. Ontario Regulation 210/20 (Order Under Subsection 7.0.2 (4) of the Act — Management of Long-Term Care Homes in Outbreak).
12. Ontario Regulation 240/20 (Order Under Subsection 7.0.2 (4) of the Act — Management of Retirement Homes in Outbreak).
13. Ontario Regulation 241/20 (Order Under Subsection 7.0.2 (4) of the Act — Special Rules Re Temporary Pandemic Pay).
14. Ontario Regulation 345/20 (Order Under Subsection 7.0.2 (4) of the Act — Patios).

Amendments may change requirements, extend application

(6) For greater certainty, an amendment made under clause (1) (a) may do the following, subject to subsection (2):

1. Impose more onerous or different requirements, including in different parts of the Province.
2. Extend the application of the order being amended, including the geographic scope of the order and the persons it applies to.

Amendments may be retroactive

(7) An amendment, if it so provides, may be retroactive to a date specified in the amending order that is on or after the day subsection (1) came into force.

Regulations to define “public health official”

(8) The Lieutenant Governor in Council may make regulations defining “public health official” for the purposes of clause (2) (b).

Power to revoke orders

5 The Lieutenant Governor in Council may by order revoke an order continued under section 2.

Delegation of powers

6 The Lieutenant Governor in Council may by order delegate to a minister of the Crown any of the powers of the Lieutenant Governor in Council under section 3, 4 or 5.

Provisions applying with respect to orders

7 (1) Subsections 7.2 (3) to (8) of the *Emergency Management and Civil Protection Act* continue to apply, with necessary modifications, with respect to orders continued under section 2, including any amendments to such orders made under this Act.

Same

(2) Subsections 7.0.2 (6) to (9) of the *Emergency Management and Civil Protection Act* continue to apply, with necessary modifications and the modifications specified in subsection (3), with respect to continued section 7.0.2 orders, including any amendments to such orders made under this Act.

Modifications

(3) The modifications referred to in subsection (2) are the following:

1. The reference, in paragraph 1 of subsection 7.0.2 (7) of the *Emergency Management and Civil Protection Act*, to the emergency is deemed to be a reference to the COVID-19 pandemic and its effects.
2. The reference, in paragraph 2 of subsection 7.0.2 (7) of the *Emergency Management and Civil Protection Act*, to when the declared emergency is terminated is deemed to be a reference to when the order in relation to which that paragraph applies is revoked or ceases to apply.

Expiry of power to amend, extend orders

8 (1) The following powers cease to apply on the first anniversary of the day orders are continued under section 2:

1. The power under subsection 3 (2) to extend orders.
2. The power under section 4 to amend orders.

Extension by Assembly resolution

(2) The Assembly, on the recommendation of the Premier, may by resolution extend the expiry date mentioned in subsection (1) for additional periods of no more than one year.

Same

(3) If there is a resolution before the Assembly to extend the expiry date, the powers listed in subsection (1) shall continue until the resolution is voted on.

Effect of orders after expiry of power to amend, extend

(4) An order extended under subsection 3 (2) continues in effect until the date to which it was extended, even if that date is after the time the powers listed in subsection (1) cease to apply, unless it is revoked before that date.

ENFORCEMENT

Proceedings to restrain contravention of order

9 Despite any other remedy or any penalty, the contravention by any person of a continued section 7.0.2 order may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Crown in right of Ontario or a member of the Executive Council and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.

Offences

10 (1) Every person who fails to comply with a continued section 7.0.2 order or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by such an order is guilty of an offence and is liable on conviction,

- (a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;
- (b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and
- (c) in the case of a corporation, to a fine of not more than \$10,000,000.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues.

Increased penalty

(3) Despite the maximum fines set out in subsection (1), the court that convicts a person of an offence may increase a fine imposed on the person by an amount equal to the financial benefit that was acquired by or that accrued to the person as a result of the commission of the offence.

Exception

(4) No person shall be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that has been amended retroactive to a date that is specified in the amendment, if the failure to comply, interference or obstruction is in respect of conduct to which the retroactive amendment applies and the conduct occurred before the retroactive amendment was made but after the retroactive date specified in the amendment.

REPORTING

Reports to public

11 The Premier, or a Minister to whom the Premier delegates the responsibility, shall regularly report to the public with respect to the orders continued under section 2 that continue to apply.

Reports to Assembly committee at 30-day intervals

12 At least once every 30 days, the Premier, or a Minister to whom the Premier delegates the responsibility, shall appear before, and report to, a standing or select committee designated by the Assembly concerning,

- (a) orders that were extended during the reporting period; and
- (b) the rationale for those extensions.

Report to Assembly after one year

13 (1) Within 120 days after the first anniversary of the day orders are continued under section 2, the Premier shall table a report in the Assembly concerning,

- (a) orders that were amended under this Act;
- (b) orders that were extended under this Act; and
- (c) the rationale for those amendments and extensions, including how any applicable conditions and limitations on the making of the amendments were satisfied.

Report, if extension under s. 8

(2) If the expiry date mentioned in subsection 8 (1) is extended under section 8, the Premier shall, within 120 days after the end of each extension period, table an additional report in the Assembly concerning,

- (a) the rationale for recommending the extension;
- (b) orders that were amended during the extension period;
- (c) orders that were extended during the extension period; and
- (d) the rationale for those amendments and extensions, including how any applicable conditions and limitations on the making of the amendments were satisfied.

GENERAL

Protection from action

14 Section 11 of the *Emergency Management and Civil Protection Act* applies, with necessary modifications, with respect to orders continued, amended, extended or revoked under this Act.

Action not an expropriation

15 (1) Section 13.1 of the *Emergency Management and Civil Protection Act* applies, with necessary modifications and the modification specified in subsection (2), with respect to this Act and orders continued, amended, extended or revoked under this Act.

Modification

(2) The modification referred to in subsection (1) is the following:

- 1. The reference, in subsection 13.1 (2) of the *Emergency Management and Civil Protection Act*, to the emergency is deemed to be a reference to the COVID-19 pandemic and its effects.

Crown bound

16 This Act binds the Crown.

Termination of COVID-19 declared emergency

17 Unless it has been terminated before this section comes into force, the COVID-19 declared emergency is terminated and Ontario Regulation 50/20 is revoked.

COMMENCEMENT AND SHORT TITLE

Commencement

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

Short title

19 The short title of this Act is the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*.