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Bill 100

An Act to enact legislation to protect access to certain transportation infrastructure

The Hon. S. Jones
Solicitor General

Government Bill

1st Reading March 21, 2022

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Keeping Ontario Open for Business Act, 2022*. The Act establishes prohibitions and enforcement mechanisms to prevent persons from impeding access to, egress from or ordinary use of protected transportation infrastructure. “Protected transportation infrastructure” is defined in section 1 as any land or water border crossing point between Ontario and the United States, any airport that regularly accommodates flights directly between Ontario and a country other than Canada that is prescribed by the regulations made under the Act, and any other transportation infrastructure that is of significance to international trade that is prescribed by the regulations made under the Act. In the case of regulations prescribing other transportation infrastructure, subsection 17 (2) provides that any such regulation ceases to apply after 30 days, if it is not revoked earlier.

Section 2 sets out the main prohibitions in the Act. Subsection 2 (1) prohibits persons from impeding access to or egress from, or the ordinary use of, protected transportation infrastructure, or from directly or indirectly causing such access, egress or ordinary use to be impeded, if the impediment has or is reasonably expected to have the effect of disrupting ordinary economic activity or interfering with the safety, health or well-being of members of the public. Subsection 2 (4) prohibits persons from knowingly aiding a person in doing something prohibited under subsection (1). Subsections 2 (3) and (5) set out exceptions and circumstances in which the prohibitions do not apply.

Most of the rest of the Act addresses enforcement.

Sections 3 to 9 set out powers and procedures to deal with circumstances in which there are reasonable grounds to believe that there is or has been a contravention of a prohibition under section 2.

1. Section 3 empowers police officers to direct persons to cease contravening section 2, including to disperse, or to remove objects being used in a contravention of section 2. “Object” is defined in section 1 as including vehicles. In specified circumstances, police officers may remove an object.
2. Section 4 empowers police officers to direct owners or operators of vehicles being used in a contravention of section 2 to remove the vehicles. If they are not removed, they may be removed by police officers.
3. Section 5 provides that police officers may maintain possession of and store objects that have been removed under section 3 or 4, for up to 30 days. Subsection 5 (3) makes costs and charges arising from the removal or storage of an object a debt due by the owner of the object and other specified persons.
4. Section 6 provides for police officers to be assisted in the removal or storage of objects.
5. Section 7 empowers police officers to direct persons who use a vehicle in contravening section 2 to surrender their driver’s licence. At the same time, the driver’s licence is suspended for 14 days. Section 7 applies with respect to driver’s licences issued outside of Ontario, with specified modifications.
6. Section 8 empowers police officers to seize the number plates displayed on vehicles used in contravening section 2. At the same time, the plate portion of the permit for the vehicle is suspended for 14 days. Section 8 applies with respect to number plates and vehicle permits issued outside of Ontario, with specified modifications.
7. Section 9 empowers the Registrar of Motor Vehicles to make orders, without a hearing, suspending or cancelling the plate portion of a permit for a commercial motor vehicle or trailer or a CVOR certificate, if the holder of the permit or certificate has contravened section 2 or is the owner or operator of a commercial motor vehicle or trailer that has been used in a contravention under that section. If such an order has been made, the number plates displayed on the commercial motor vehicle or trailer may be seized. A request may be made for the order to be modified or rescinded, and the Registrar is required to review and consider the request. Section 9 applies with respect to commercial motor vehicles and trailers with vehicle permits issued outside of Ontario, with specified modifications.

Section 10 creates offences for contraventions under section 2 and other specified provisions of the Act, and section 11 sets out the penalties that apply on conviction. Under section 12, police officers are empowered to direct persons to provide identifying information for the purpose of commencing a proceeding under the *Provincial Offences Act*. Section 13 provides for specified related powers of arrest without a warrant.

Finally, under section 14, an application may be made to the Superior Court of Justice for an order restraining a person from continuing a contravention under section 2.

The remaining provisions of the Act deal with various matters:

1. Section 15 provides for immunity from personal liability for individuals in specified circumstances.
2. Section 16 requires a review of the first 12 months of the application of the Act.
3. Section 17 specifies the regulations that may be made under the Act.

The Act makes complementary amendments to the *Civil Remedies Act, 2001*. Additionally, section 46 of the *Highway Traffic Act* is amended to provide that a default on a fine payable on conviction under the *Keeping Ontario Open for Business Act, 2022* may result in the suspension of the convicted person's driver's licence.

The Act comes into force on Royal Assent.

An Act to enact legislation to protect access to certain transportation infrastructure

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

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Definitions

1 In this Act,

“commercial motor vehicle” means a commercial motor vehicle as defined in section 1 of the *Highway Traffic Act*; (“véhicule utilitaire”)

“CVOR certificate” means a CVOR certificate as defined in section 1 of the *Highway Traffic Act*; (“certificat d'immatriculation UVU”)

“object” includes a vehicle; (“objet”)

“operator” means, when used in reference to a commercial motor vehicle,

- (a) an operator as defined in subsection 16 (1) of the *Highway Traffic Act*, and
- (b) in the absence of evidence to the contrary, where there is no CVOR certificate, national safety code number under the *Motor Vehicle Transport Act* (Canada) or lease applicable to the vehicle, the holder of the plate portion of the vehicle permit; (“utilisateur”)

“owner” includes, when used in reference to a vehicle,

- (a) the holder of the vehicle permit, and
- (b) the holder of the vehicle permit corresponding to the number plate that is displayed on the vehicle; (“propriétaire”)

“protected transportation infrastructure” means,

- (a) any land or water border crossing point between Ontario and the United States,

- (b) any airport that regularly accommodates flights directly between Ontario and a country other than Canada and that is prescribed by the regulations, and
- (c) any other transportation infrastructure that is of significance to international trade and that is prescribed by the regulations; (“infrastructure de transport protégée”)

“Registrar” means the Registrar of Motor Vehicles under the *Highway Traffic Act*; (“registrateur”)

“regulations” means the regulations made under this Act; (“règlements”)

“trailer” means a trailer as defined in section 1 of the *Highway Traffic Act*; (“remorque”)

“vehicle” includes a commercial motor vehicle and a trailer; (“véhicule”)

“vehicle permit” means a permit as defined in section 6 of the *Highway Traffic Act* or a vehicle permit issued by another jurisdiction. (“certificat d’immatriculation de véhicule”)

Prohibitions respecting access to protected transportation infrastructure

Prohibition impeding access, etc.

2 (1) No person shall impede access to or egress from, or the ordinary use of, protected transportation infrastructure, or directly or indirectly cause such access, egress or ordinary use to be impeded, if the impediment has or is reasonably expected to have the effect of,

- (a) disrupting ordinary economic activity; or
- (b) interfering with the safety, health or well-being of members of the public.

Same

- (2) Subsection (1) applies whether the person is acting,
- (a) individually or in co-operation with others; and
 - (b) through the use of a vehicle or by any other means.

Exceptions

- (3) Subsection (1) does not apply if the effect of the impediment,
- (a) is or is reasonably expected to be trivial, transient or minor in nature; or
 - (b) can easily be avoided by persons attempting to access, use or depart from the protected transportation infrastructure.

Prohibition on assistance

(4) No person shall provide assistance to another person to knowingly aid that person to do anything prohibited by subsection (1), including by providing supplies, fuel or other materials.

Non-application

- (5) This section does not apply with respect to any activity,
- (a) for which authorization, in any form, has been granted by a person or entity who is authorized under an Act of Ontario or Canada to give the authorization;
 - (b) that is required under an Act of Ontario or Canada or a court order; or
 - (c) of a peace officer acting in the course of their duties, or of a person acting under the direction of such a peace officer.

Directions to cease, remove objects, disperse

Direction to cease, remove objects

3 (1) A police officer who has reasonable grounds to believe that a person is contravening subsection 2 (1) or (4) may direct the person to,

- (a) cease contravening the subsection; or
- (b) remove or cause to be removed any object that, as a result of any act or omission of the person, is being used in the contravention.

Direction to disperse

(2) A police officer who has reasonable grounds to believe that two or more persons are together contravening subsection 2 (1) or (4) may direct them to disperse.

Compliance

(3) A person who is the subject of a direction under subsection (1) or (2) shall promptly comply with the direction.

Removal of object by police officer

- (4) A police officer may remove an object, or cause it to be removed, if,
- (a) a person who is directed under clause (1) (b) to remove the object or cause it to be removed fails to promptly do so; or
 - (b) the police officer determines that the conditions for giving a direction under clause (1) (b) are met with respect to the object but that it is impracticable in the circumstances to give the direction.

Removal of vehicle being used in contravention

4 (1) A police officer who has reasonable grounds to believe that a vehicle is being used in a contravention of subsection 2 (1) or (4) may direct the owner or, if any, operator to remove the vehicle or cause it to be removed.

Direction

(2) A direction under subsection (1) may be given by any means the police officer reasonably believes would bring it to the owner or operator's attention.

Compliance

(3) An owner or operator who is directed to remove the vehicle or cause it to be removed shall promptly comply with the direction.

Removal of vehicle by police officer

(4) If the vehicle is not removed in accordance with the direction, the police officer may remove the vehicle or cause it to be removed.

Removed objects

- 5 (1) A police officer who, under subsection 3 (4) or 4 (4), removes an object or causes it to be removed, may,
- (a) maintain possession of the object for a period of up to 30 days beginning on the day on which the object was removed; and
 - (b) store the object or cause it to be stored during the period referred to in clause (a).

Notice

(2) The police officer shall make reasonable efforts to notify the object's owner of the location where the object is being stored.

Costs and charges

- (3) The costs and charges for the removal of an object under subsection 3 (4) or 4 (4), the storage of the object under subsection 5 (1) or both, as the case may be, are a debt due by the following persons, and for which they are jointly and severally liable:
1. If the object is a vehicle, the owner, the operator, if any, and the person who drove or otherwise brought the vehicle to the location from which it was removed.
 2. If the object is not a vehicle, the owner of the object and the person who most recently used the object in contravening subsection 2 (1) or (4).

Recovery

(4) A debt under subsection (3) may be recovered in any court of competent jurisdiction, and is a lien on the object that may be enforced in the manner provided by the *Repair and Storage Liens Act*.

Power to maintain possession

(5) The power to maintain possession of an object under this section is in addition to, and shall not be construed as derogating from, any power to maintain possession of the object under the *Civil Remedies Act, 2001* or any other Act or law, including, for greater certainty, the *Criminal Code* (Canada).

Assistance

6 A police officer may, for the purpose of subsection 3 (4), 4 (4) or 5 (1), request the assistance of any person who is reasonably qualified to assist in removing or storing the object, as the case may be, and the person is authorized to provide such assistance for that purpose.

Surrender, suspension of driver's licence

7 (1) In this section,

“driver's licence” means a licence issued under section 32 of the *Highway Traffic Act* or a driver's licence issued by another jurisdiction.

Same

(2) A police officer who has reasonable grounds to believe that a person is contravening or has contravened subsection 2 (1) or (4) and that the contravention involves or involved the person's use of a vehicle, may, subject to the regulations, direct the person to surrender their driver's licence.

Compliance

(3) The person shall promptly comply with the direction.

Suspension

(4) In the case of a driver's licence issued under section 32 of the *Highway Traffic Act*, the licence is suspended for a period of 14 days beginning on the day on which the direction is given.

Same

(5) In the case of a driver's licence issued by another jurisdiction, the person's privilege to drive a motor vehicle in Ontario is suspended for 14 days beginning on the day on which the direction is given, and section 53 of the *Highway Traffic Act* applies, with necessary modifications, to the suspension of that privilege as if there were a licence suspension during that period.

Same

(6) Subsections (4) and (5) apply regardless of whether the person complies or fails to comply with the direction.

Duties of police officer

(7) A police officer who gives a direction under subsection (2) shall,

- (a) notify the Registrar, or cause the Registrar to be notified, of that fact, in the form and manner and within the time specified by the Registrar;
- (b) keep a record of the driver's licence with the person's name and address and the date on which the suspension begins;
- (c) provide the person with a written statement indicating,
 - (i) the date on which the suspension begins,
 - (ii) that the suspension is for a period of 14 days, and
 - (iii) how a driver's licence can be obtained at the end of the suspension period; and
- (d) provide to the Registrar any other material or information that may be specified by the regulations.

Seizure of number plates, permit suspension**Seizure**

8 (1) A police officer who has reasonable grounds to believe that a vehicle has been used in a contravention of subsection 2 (1) or (4) may, subject to the regulations, seize the number plates displayed on the vehicle, including any number plates issued by another jurisdiction.

Suspension

(2) In the case of a vehicle permit issued in Ontario, the plate portion of the permit is suspended for 14 days beginning on the day of the seizure.

Same

(3) In the case of a vehicle permit issued by another jurisdiction, any privilege to use the vehicle in Ontario is suspended for 14 days beginning on the day of the seizure, and section 51 of the *Highway Traffic Act* applies, with necessary modifications, to the suspension of that privilege as if there were a permit suspension during that period.

Duties of police officer

(4) A police officer who makes a seizure under subsection (1) shall,

- (a) notify the Registrar, or cause the Registrar to be notified, of that fact, in the form and manner and within the time specified by the Registrar;
- (b) keep a record of the vehicle permit with the permit holder's name and address and the date on which the suspension begins;
- (c) if the driver, owner or operator, if any, is present, provide that person with a written statement indicating,
 - (i) the date on which the suspension begins,
 - (ii) that the suspension is for a period of 14 days, and
 - (iii) how number plates can be obtained at the end of the suspension period; and

(d) provide to the Registrar any other material or information that may be specified by the regulations.

Commercial motor vehicles and trailers

9 (1) The Registrar may, by order, provide that the plate portion of a vehicle permit issued in Ontario for a person's commercial motor vehicle or trailer or the person's CVOR certificate is suspended for a period specified by the Registrar or cancelled, if the Registrar has reasonable grounds to believe that,

- (a) the person has contravened subsection 2 (1) or (4); or
- (b) the person is the owner or operator of a commercial motor vehicle or trailer that was used in a contravention of subsection 2 (1) or (4).

Same

(2) If the vehicle permit for a person's commercial motor vehicle or trailer was issued by another jurisdiction and the Registrar has reasonable grounds to believe that clause (1) (a) or (b) applies with respect to the person, the Registrar may, by order, provide that any privilege to use the commercial motor vehicle or trailer in Ontario is suspended for a period specified by the Registrar or cancelled, and subsection 47 (8) of the *Highway Traffic Act* applies, with necessary modifications, to the suspension or cancellation of that privilege as if there were a permit suspension or cancellation.

No right to be heard

(3) The person is not entitled to a hearing before an order may be made under subsection (1) or (2).

Notice

(4) The Registrar may give notice of the order by any means the Registrar reasonably believes would bring the order to the person's attention.

Effect

(5) The order takes effect on the date and at the time specified in the order, regardless of whether the person has received notice of the order.

Seizure of number plates

(6) A police officer or officer appointed under section 223 of the *Highway Traffic Act* may seize any number plates displayed on a commercial motor vehicle or trailer that is the subject of an order under subsection (1) or (2), including any number plates issued by another jurisdiction.

Duties of officer

- (7) An officer who seizes a number plate under subsection (6) shall,
 - (a) notify the Registrar, or cause the Registrar to be notified, of that fact, in the form and manner and within the time specified by the Registrar;
 - (b) provide to the Registrar any other material or information that the Registrar may specify; and
 - (c) follow any directions of the Registrar with respect to the seized number plate.

Review of order

(8) An owner or operator of a commercial motor vehicle or trailer that is the subject of an order under subsection (1) or (2) may, no later than 30 days after the order is made, request that the Registrar modify or rescind the order.

Same

(9) The request shall be made in writing, and shall include any information that the owner or operator considers relevant.

Same

(10) The Registrar shall, following review and consideration of the request, confirm, modify or rescind the order.

No transfer, etc.

(11) If an order under subsection (1) is issued to an operator, no person with knowledge of the order shall, without the Registrar's consent, transfer or lease any commercial motor vehicle or trailer for which the operator's name is on the vehicle or plate portion of the vehicle permit, or do anything else that would result in a change of name on the vehicle or plate portion of the permit.

Same

(12) If the order under subsection (1) is for a suspension, subsection (11) applies only during the suspension period.

Same

(13) Subsection (11) ceases to apply if the Registrar rescinds the order.

Same

(14) If, for the purposes of subsection (11), the Registrar is satisfied that the transfer, lease or other action is not being made for the purpose of avoiding the effect of the order under subsection (1), the Registrar shall not withhold the consent.

Highway Traffic Act

(15) For greater certainty, this section applies in addition to any power under the *Highway Traffic Act* to suspend or cancel the plate portion of a vehicle permit or a CVOR certificate.

Offences

10 (1) A person who contravenes subsection 2 (1) or (4), or fails to comply with subsection 3 (3) or 4 (3), is guilty of an offence.

Same

(2) A person who interferes with or obstructs any person in the exercise of a power or performance of a duty or function under this Act is guilty of an offence.

Same, directors or officers

(3) A director or officer of a corporation who causes, authorizes, permits or participates in an offence under this Act by the corporation is guilty of an offence.

Separate offence

(4) A person is guilty of a separate offence on each day that an offence under subsection (1), (2) or (3) occurs or continues.

Penalties**Individuals**

11 (1) On conviction for an offence under section 10, an individual is liable,

- (a) in the case of an offence under subsection 10 (1) or (2), to a fine of not more than \$100,000, imprisonment for a term of not more than one year or both; or
- (b) in the case of an offence under subsection 10 (3), to a fine of not more than \$500,000, imprisonment for a term of not more than one year or both.

Corporations

(2) On conviction for an offence under section 10, a corporation is liable to a fine of not more than \$10,000,000.

Requirement to identify

12 (1) If a police officer has reasonable grounds to believe that a person has committed an offence under section 10, the police officer may, for the purpose of commencing a proceeding under Part I or III of the *Provincial Offences Act*, direct the person to provide their full name, date of birth and address.

Compliance

(2) The person shall promptly comply with the direction.

Offence

(3) A person who fails to comply in accordance with subsection (2) is guilty of an offence.

Arrest without warrant

13 A police officer may arrest without warrant a person whom the officer believes on reasonable grounds,

- (a) is contravening clause 3 (1) (a) or subsection 3 (2);
- (b) is guilty of an offence under subsection 10 (2); or
- (c) has failed to comply with subsection 12 (2).

Court order

14 (1) A judge of the Superior Court of Justice may, on application by the Crown in right of Ontario or a member of the Executive Council, make an order restraining a person who is contravening subsection 2 (1) or (4) from continuing the contravention.

Same

(2) Subsection (1) applies in addition to any other remedy or penalty.

No personal liability

15 (1) No cause of action arises against any individual for any act done in good faith in the exercise or performance, or intended exercise or performance, of the individual's powers, duties or functions under this Act or for any alleged neglect, default or other omission in the exercise or performance in good faith of those powers, duties or functions.

Crown remains vicariously liable

(2) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (1) does not relieve the Crown of liability to which it would otherwise be subject as a result of the individual's acts or omissions.

Municipality remains vicariously liable

(3) Subsection (1) does not relieve a municipality of liability to which it would otherwise be subject as a result of the individual's acts or omissions.

Same

(4) For the purposes of subsection (3), a municipality includes a local board as defined in the *Municipal Affairs Act*.

Proceedings barred

(5) No proceeding shall be commenced against an individual in respect of a matter referred to in subsection (1).

Same

(6) Subsection (5) does not apply with respect to an application for judicial review, but does apply with respect to any other court, administrative or arbitral proceeding claiming any remedy or relief, including specific performance, an injunction, declaratory relief, a remedy in contract, restitution, unjust enrichment or tort, a remedy for breach of trust or fiduciary obligation or any equitable remedy, enforcement of a judgment, order or award made outside Ontario or any form of compensation or damages including loss of revenue or profit.

Proceedings by Crown not prevented

(7) This section does not apply with respect to proceedings brought by the Crown.

Review of Act

16 (1) The Minister responsible for the administration of this Act shall, no later than 18 months after the day this Act comes into force,

- (a) conduct a review of the first 12 months of the application of this Act; and
- (b) prepare a written report respecting the review, and,
 - (i) table the report in the Assembly, and
 - (ii) make the report available to the public on a Government of Ontario website.

Same

(2) For the purposes of subclause (1) (b) (i), if the Assembly is not in session, the Minister shall table the report at the next session.

Regulations

17 (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing airports that regularly accommodate flights directly between Ontario and a country other than Canada for the purposes of clause (b) of the definition of "protected transportation infrastructure" in section 1;
- (b) prescribing any particular transportation infrastructure or part of it, or any class of transportation infrastructure, that is of significance to international trade for the purposes of clause (c) of the definition of "protected transportation infrastructure" in section 1;
- (c) requiring that a police officer who requests a person's assistance under section 6 provide the person with confirmation of the request, and governing the form and manner of providing the confirmation;
- (d) governing the giving of directions under subsection 7 (2) or seizures under subsection 8 (1), including,
 - (i) specifying conditions that must be met before a direction may be given or a seizure may be made,
 - (ii) specifying a period after which a direction may not be given or a seizure may not be made;
- (e) respecting the provision of material or information to the Registrar for the purposes of clause 7 (7) (d) or 8 (4) (d);
- (f) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purpose of this Act.

Time limit

(2) A regulation made under clause (1) (b) ceases to apply on the 30th day after the regulation comes into force, if it is not revoked before that day.

AMENDMENTS TO OTHER ACTS***Civil Remedies Act, 2001***

18 (1) Subsection 7 (1) of the *Civil Remedies Act, 2001* is amended by adding the following definition:

“injury to the public” includes,

- (a) any unreasonable interference with the public’s interest in the enjoyment of property,
- (b) any unreasonable interference with the public’s interest in questions of health, safety, comfort or convenience,
- (c) any expenses or increased expenses incurred by the public, including any expenses or increased expenses incurred by the Crown in right of Ontario, a municipal corporation or a public institution that belongs to a class prescribed by the regulations made under this Act, and
- (d) a contravention of subsection 2 (1) or (4) of the *Keeping Ontario Open for Business Act, 2022*; (“préjudice causé au public”)

(2) The definition of “instrument of unlawful activity” in subsection 7 (1) of the Act is amended by striking out “the acquisition of other property or in serious bodily harm” and substituting “the acquisition of other property, in injury to the public or in serious bodily harm”.

(3) Subsection 7 (2) of the Act is amended by striking out “the acquisition of other property or in serious bodily harm” and substituting “the acquisition of other property, in injury to the public or in serious bodily harm”.

(4) The definition of “injury to the public” in section 12 of the Act is repealed and the following substituted:

“injury to the public” has the same meaning as in Part III; (“préjudice causé au public”)

(5) Subsection 21 (1) of the Act is amended by adding the following clause:

(b.0.1) prescribing classes of public institutions for the purpose of clause (c) of the definition of “injury to the public” in subsection 7 (1);

Highway Traffic Act

19 Subsection 46 (1) of the *Highway Traffic Act* is amended by adding the following clause:

(c.1) under section 10 or subsection 12 (3) of the *Keeping Ontario Open for Business Act, 2022*;

COMMENCEMENT AND SHORT TITLE**Commencement**

20 This Act comes into force on the day it receives Royal Assent.

Short title

21 The short title of this Act is the *Keeping Ontario Open for Business Act, 2022*.