

(H. B. 1233)
(Conference)

(No. 143)

(Approved November 16, 2009)

AN ACT

To repeal Sections 4, 6, 7, 8, 9, 10, 12, and 13, amend Sections 2 and 3, renumber Section 5 as Section 4 and amend its text, renumber Section 11 as Section 5 and amend its text, and amend Section 14 and renumber the same as Section 6 of Act No. 1 of December 1, 1989, as amended, known as the “Act to Regulate the Operations of Business Establishments,” and to eliminate subsection (d) and rename subsections (e) and (f) as (d) and (e) of Section 4 of Act No. 379 of May 15, 1948, as amended, known as the “Working Day Act,” in order to accord citizens the free choice to go to business and industrial establishments at the time they may deem necessary and convenient to fulfill their own and their family’s needs, so as to conform society to the socioeconomic changes that Puerto Rico experiences at present; to enable business and industrial establishments to operate based on customer service considerations as these may be determined in an open freely competitive market; and for other related purposes.

STATEMENT OF MOTIVES

The Shop Closing Act was promulgated in the early 20th century, to act mainly as a labor protective device. As years have passed and so as to accommodate socioeconomic changes which have transformed Puerto Rico, exemptions on its applicability have been approved. Thus, by late 1970s, its scope of applicability was circumscribed to economic activities within the realm of retail-sale business. Even within this sector, not all activities were covered under the Law, inasmuch as drug stores, restaurants, owner-operated businesses, establishments in hotels, and others were exempted.

The application of the said Act, therefore, covered less than ten (10) percent of the wage-earning workforce.

The limited application of this legislative piece, coupled with the social changes experienced, have given way to a great controversy in terms of the Shop Closing Act. Thus, in the early 1980s, this Act was not enforced for a term of eight (8) years, owing to several reasons, including various judicial rulings. *Pueblo Internacional v. Secretario de Justicia*, 117 D.P.R. 7547 (1986). Act No. 1 of December 1, 1989, as amended, known as the “Act to Regulate the Operations of Business Establishments,” was subsequently approved. The latter Act was more liberal as to the business hours of business establishments, while maintaining a partial shop closing on Sundays and legal holidays.

Act No. 1, *supra*, more commonly known as the “Shop Closing Act,” regulates business hours for retail shops within the private business sector. Such Act applies to a limited number of employees within our workforce under the employ of commercial business. It does not apply to the manufacturing, services, wholesale business, banking, tourism, agricultural, real estate, communications, government or other sectors. Moreover, it applies to certain retail-sale businesses which, by definition, are exempted from the said Act.

However, further beyond the bounds of the above statements, our desire as a people is and should be to seek alternatives for our citizens in the pursuit and betterment of their welfare. All of us are well aware of the financial hardship that our people are enduring, and for such reason, it is of utmost necessity for every one of us to join efforts in order to lay solid foundations to build a better future.

There is no doubt that by the time the Shop Closing Act was approved in the early past century, such measure afforded protection for workers which was desirable and even progressive. Those were times in which there were few labor rights, which made it necessary to make provisions to lessen the exploitation of workers. However, the situation has changed in terms of labor protection. Puerto Rico boasts an ample body of labor laws which provides, among other things, for breastfeeding time; minimum wage; vacation, sick, and maternity leaves; limits as to the work schedule thus guaranteeing the payment of additional wages for overtime worked; protection for workers against discriminatory dismissals; the establishment of resting periods within the workday; and the prohibition on workday fractionalization, to name a few.

Another among the several issues that prompt the approval of an amendment to the Shop Closing Act is Puerto Rico's critical unemployment rate, which is extremely high. Furthermore, various studies have found that many of the social problems that we are experiencing share the little participation of certain sectors of our population in the labor market as a common denominator.

The aspiration of all Puerto Ricans or people residing in this Island is and should be to get jobs that make them productive members of our society. One of the sectors that would most benefit from an opening in Act No. 1, *supra*, would be, precisely, the labor market. We are all well aware of the fact that an amendment to the Shop Closing Act that allows for establishments to open for business on Sundays shall bring about the creation of thousands of jobs, which would undoubtedly be of benefit to people seeking jobs.

As for development opportunities for small businesses, it is important to recognize that recent years have borne witness to major and profound economic transformations, including market globalization and the creation of new technologies. Such developments create new settings for the operation and expansion of small businesses. On the one hand, all local small businesses are increasingly challenged by the global competition of multinational enterprises. This is evidenced by the expansion of large discount stores, outlets, and membership stores in the local market. These businesses compete against domestic business establishments on a most favorable footing.

Nevertheless, coupled with market globalization, along come opportunities for small businesses. Firstly, demand individualization is generating increasingly growing consumer demand for differentiated products, which large business establishments are unable to provide. Small businesses are more streamlined, which enables them to respond to the consumers' special interests. Moreover, the trend for large businesses, aware of this situation, is the increasing outsourcing of specific production and service processes for the merchandise in which they deal or which they generate. This trend favors the expansion of small businesses specialized in providing inputs or services to large producers or dealers.

Puerto Rico is the only United States jurisdiction that mandates the closing of business establishments during legal holidays. Under Federal laws, there are ten (10) legal holidays. On none of those dates, regardless of their significance, business establishments are mandated to close, but rather, such laws apply only to government entities. The mandatory closing of retail business establishments sets back all business, whether work-related or personal, which consequently affects the Island's productivity.

In view of this reality, it should be up to the consumers themselves to decide at which time they wish to run their different errands, and it should be up to business establishments to choose the hours of business that best accommodates consumer needs, while observing the plurality of interests present in our society. It is important to recognize that small businesses cannot isolate themselves from the market globalization trend. If the Puerto Rican economy, including the small business sector, wishes to operate successfully, it cannot turn a deaf ear to worldwide practices and try to live by old isolationist rules which are unsustainable and can only lead to ruin.

This Legislature is aware of the new socioeconomic reality of Puerto Rico and believes that the approval of this Act shall inure to the improvement of the Island's economic situation by placing us on the right track to collective progress. This legislative piece shall be one of the courses of action necessary to stimulate Puerto Rico's economy.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Sections 4, 6, 7, 8, 9, 10, 12, and 13 of Act No. 1 of December 1, 1989, as amended, are hereby repealed.

Section 2.—Section 2 of Act No. 1 of December 1, 1989, as amended, is hereby amended to read as follows:

“Section 2.—Definitions.—

For the purposes of this Act, the following terms shall have the meanings indicated hereinbelow:

(a) ...

(b) Business Establishment.—Shall mean any site, store or similar place where any type of business operation or commercial activity for the sale or transfer of retail articles is carried out, or that is owned by the same corporation or natural or juridical person.

(c) ...”

Section 3.—Section 3 of Act No. 1 of December 1, 1989, as amended, is hereby amended to read as follows:

“Section 3.—Full-day Closing.—

Business establishments operating in hotels, inns, condo-hotels, airports, sea ports or in zones marked as old or historical devoted primarily to the service or the sale of tourism-related items; establishments operating in facilities devoted to cultural, artisan, recreational or sports activities; establishments primarily devoted to the manufacture and the direct sale to the public of prepared meals; drug stores; gas stations and the business establishments located therein; book stores or stands or kiosks devoted to the sale of books, magazines, newspapers, and literary or musical recordings or publications; establishments operating as part of the facilities of a funeral home or cemetery; and establishments and farmers’ markets, shall not be subject to the opening restrictions under this Section.

Neither shall these restrictions apply to business establishments operated exclusively by their owners or their owners’ relatives within second-degree of consanguinity or affinity, nor to business establishments owned by natural or juridical persons which do not have more than twenty-five (25) employees in their weekly payroll, including employees under contract. When a business establishment engages in operations covered under the exceptions of this Section together with operations not subject to such exceptions, such business may only engage in exempted operations on full-day closing dates established in this Section and within the Sunday business-hour schedule established in Section 4. Business establishments not mentioned in this Section shall remain closed all day without any type of

work being performed, except that at the discretion of the owner, agent, manager or person in charge of the business, those tasks that are related to the continuity of its operations and maintenance may be performed on the following dates:

- (a) January 1
- (b) ...
- ...
- (i) December 25.”

Section 4.—Section 5 of Act No. 1 of December 1, 1989, as amended, is hereby renumbered as Section 4 and amended to read as follows:

“Section 4.—Sunday Opening and Pay.—

Business establishments, except for those mentioned in Section 3 of this Act, shall remain closed to the public on Sundays from 5:00 a.m. to 11:00 a.m. only, without being able to perform any kind of work outside of the hours established in this section, except that, at the discretion of the owner, agent, manager or person in charge of the business, such establishments may perform those tasks that are related to the continuity of their operations and maintenance of their physical facilities. As for drug stores and business establishments operating drug stores, the latter and the former may only sell before 11:00 a.m. on Sundays and on the dates listed in Section 3, prescription drugs, nonprescription drugs, and healthcare devices, as these terms are defined in Act No. 247 of September 3, 2004, as amended, and the regulations thereunder, as well as items for baby care, hygiene and grooming, baked goods, school supplies, newspapers, books, magazines, and such other items as the Department of Consumer Affairs may establish by regulation.

All business establishments, as defined in this Act, except for establishments listed in the following sentence, shall be under the obligation to pay employees working on Sundays a minimum compensation of eleven (11) dollars and fifty (50) cents per hour worked such days. An exemption on the minimum Sunday compensation clause is hereby provided for business establishments operated exclusively by their owners or their owners' relatives with second-degree of consanguinity or affinity; business establishments owned by natural or juridical person with not more than twenty-five (25) employees in their weekly payroll, including employees under contract; business establishments operating in hotels, inns, condo-hotels, airports, and sea ports; establishments operating in facilities devoted to cultural, artisan, recreational or sports activities; establishments primarily devoted to the manufacture and the direct sale to the public of prepared meals; book stores or stands or kiosks devoted to the sale of books, magazines, newspapers, and literary or musical recordings or publications; galleries, workshops, centers or kiosks devoted to the sale of Puerto Rican works of art or artisanry items; establishments and farmers' markets; and business establishments at funeral homes or cemeteries.”

Section 5.—Section 11 of Act No. 1 of December 1, 1989, as amended, is hereby renumbered as Section 5 and amended to read as follows:

“Section 11.—Penalties.—

All infractions of the provisions of this Act shall constitute unjust and unfair trade practices or tactics. The Department of Consumer Affairs shall oversee faithful compliance with this Act, and in terms of open business hour schedules and days, such Department shall impose on violators of this

Act, administrative fines of not less than five thousand (5,000) dollars and not greater than fifty thousand (50,000) dollars per infraction, which moneys shall be covered into the funds of such Department.”

Section 6.—Section 14 of Act No. 1 of December 1, 1989, as amended, is hereby renumbered as Section 6 and amended to read as follows:

“Section 6.—Suspension of Effectiveness.—

The Governor of Puerto Rico may, through executive order, suspend the effectiveness of Section 3 of this Act upon the occurrence of special circumstances that alter or threaten to alter the social and/or economic order, such as storms, hurricanes, earthquakes, tidal waves, other meteorological phenomena of great force, floods, fires of great proportions, wars, and strikes, among others. In the event of floods, storms, and hurricanes, the suspension may be decreed from the time the first warning advisory is issued and shall cease as soon as the Governor of Puerto Rico so decrees by Executive Order. The suspension of the effectiveness of Section 3 of this Act may also be decreed by Municipal Governments. The Executive Order or municipal ordinance issued under the provisions of this Section shall indicate, in each case, the reasons that motivated it, and which part of the jurisdiction of Puerto Rico is covered or whether only certain Municipalities are thus covered. The term of duration shall in no case exceed sixty (60) days.”

Section 7.—Subsection (d) is hereby eliminated and subsequent subsections are renumbered in Section 4 of Act No. 379 of May 15, 1948, as amended, to read as follows:

“Section 4.—Overtime.—

(a) ...

(b) ...

(c) ...

(d) The hours that an employee works for his employer in excess of such maximum working hours a day as the Minimum Wage Board may have fixed or may fix for the occupation, business, or industry in question;

(e) The hours that an employee works for his employer in excess of the maximum number of working hours a day fixed in a collective bargaining agreement.”

Section 8.—The approval of this Act shall not impair any approved collective bargaining agreement. Employees covered under such agreements shall be entitled to continue to enjoy any such benefits as established by virtue of such agreements while the same are in effect, until their due or termination date. Upon expiration of any such collective bargaining agreement, any other new bargaining agreement to be negotiated shall conform to the provisions of this Act.

Section 9.—This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 143 (H. B. 1233) (Conference)** of the **2nd Session of the 16th Legislature** of Puerto Rico:

AN ACT to repeal Sections 4, 6, 7, 8, 9, 10, 12, and 13, amend Sections 2 and 3, renumber Section 5 as Section 4 and amend its text, renumber Section 11 as Section 5 and amend its text, and amend Section 14 and renumber the same as Section 6 of Act No. 1 of December 1, 1989, as amended, known as the “Act to Regulate the Operations of Business Establishments,” and to eliminate subsection (d) and rename subsections (e) and (f) as (d) and (e) of Section 4 of Act No. 379 of May 15, 1948, as amended, known as the “Working Day Act,” in order to accord citizens the free choice to go to, etc.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 15th of December of 2009.

Solange I. De Lahongrais, Esq.
Director