



ANALYSIS

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1984, No. 10

An Act to provide for the licensing and the promotion of businesses

(26 September 1984

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Business Development Fund Act 1984.

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2. Interpretation - In this Act, unless the context otherwise requires:

"business" means any form of trade, commerce, craftsmanship, calling or other activity carried on for the purpose of gain;

"licensing authority" means a licensing authority under the provisions of section 4;

"Minister" means the Minister of Trade Labour and Transport
"person" includes a partnership and any body of persons corporate or unincorporate and any branch of any partnership or any such body.

3. Application - (1) This Act shall apply to the islands of Rarotonga and Aitutaki.

(2) Notwithstanding subsection (1) of this section the Minister may by notice in the Gazette extend the provisions of this Act to any other island in the Cook Islands.

4. Licensing authorities - (1) There shall for the purpose of this Act be the following licensing authorities:

(a) in respect of Rarotonga, the Secretary for Trade Labour and Transport.

(b) in respect of any other island in the Cook Islands such person as the Minister may notify in the Gazette.

5. Designation of business - The Minister may, by notification in the Gazette, designate any business as being one in respect of which a licence is required by the provisions of this Act.

6. General provisions - (1) No person shall engage in any business designated under the provisions of section 5 without a licence issued by a licensing authority in respect of each place in which such business is carried on or, in the case of a hawk or other person carrying on business from or at no fixed address, in respect of such businesses.

(2) Any person who acts in contravention of the provisions of subsection (1) shall be guilty of an offence

7. Form and duration of licence - A licence issued under the provisions of this Act shall be in such form as may be decided by the licensing authority, and shall expire on the last day of December of the year in which it is issued. Every renewal thereafter shall be for a period of one year or for such shorter period as the Minister may, by notification in the Gazette, determine in any particular type or class of business.

8. Partnership, companies, etc - (1) Subject to the provisions of subsection (2), every licence issued under the provisions of this Act in respect of any business which is carried on by a partnership shall be issued in the name under which such business is carried on.

(2) Every person who sells goods as a hawker and every person who carries on business from or at no fixed address shall be individually licensed irrespective of whether he is a member of, or employed by, a partnership or is an employee of a body corporate or unincorporate.

(3) The several members of a partnership or the manager, secretary or other principal officer of a body corporate or unincorporate shall be liable for any contravention by such partnership or body of any of the provisions of this Act unless he establishes to the satisfaction of the court-

- (a) that he took all reasonable steps to prevent the commission of the offence; or
- (b) that he had no knowledge of the commission of such offence and could not by the exercise of due diligence have obtained such knowledge.

9. Application for licences - (1) Subject to the provisions of subsection (2), every application for the issue or renewal of a licence under the provisions of this Act shall be made to the licensing authority having jurisdiction under the provisions of section 4 in the place in which the applicant business premises are or are to be situated.

(2) Every application for a licence under the provisions of this Act in respect of a hawker or any person who carries on business from or at no fixed address shall be made to the licensing authority or authorities having jurisdiction under the provisions of section 4 in the place or places in which such hawker or person intends to conduct his business.

(3) Any person who, without reasonable cause for believing it to be true, makes, or is privy to the making of, any false statement in any application made under the provisions of this section shall be guilty of an offence.

10. License registers - (1) Every licensing authority shall keep a register of licences and shall enter therein the details of each issue, renewal and transfer.

(2) Any extract from a register of licences duly certified in writing by the licensing authority or by any officer authorised by it shall be prima facie evidence of the facts stated therein.

(3) The register of licences shall be available for inspection by any member of the public during such hours as the licensing offices shall be open.

11. Custody and production of licences - (1) Where any licence specifies the premises on which any business shall be carried on, such licence shall be displayed and kept displayed in a prominent place on such premises and shall be made available at any hour at which such premises are normally open for business for inspection by any person authorized under the provisions of subsection (2) to demand its production.

(2) Every licensing authority or person authorized in writing in that behalf by any licensing authority and every police officer is authorised to demand the production of any licence issued under the provisions of this Act.

(3) A licence holder or other person having custody of a licence who, without reasonable excuse, fails to produce such licence upon lawful demand being made to him in that behalf shall be guilty of an offence.

(4) Where a person is charged under the provisions of this Act with carrying on any business without a licence, the burden of proving that a licence was issued to him in respect of the current year shall be on that person.

12. Licences lost or destroyed - Where it is shown to the satisfaction of the licensing authority by which a licence was issued that such licence has been lost or destroyed, it shall, upon payment of the prescribed fee, issue a duplicate of such licence to the licence holder.

13. Transfer of licences - (1) Save as hereinafter provided, no licence shall be lent, transferred or assigned to any person and any licence holder who lends, transfers or assigns, or purports to lend, transfer or assign, his licence to any other person and any person who borrows or makes use of a licence granted to another shall be guilty of an offence.

(2) The licensing authority shall, when requested so to do by a person mentioned in paragraphs (a) to (e), transfer, without payment of any fee, any licence, other than that of a hawkler or person carrying on business at or from no settled address, to any of those persons in any of the following events:-

- (a) in the case of the death of the licence holder, to the widow or widower or the personal representative of the deceased licence holder;
- (b) in the case of the bankruptcy of the licence holder or assignment for the benefit of his creditors generally, to his lawfully appointed trustee or assignee;
- (c) in the case of a company in liquidation, to the lawfully appointed liquidator thereof;
- (d) in any case where the licence holder becomes subject to any legal disability, to any person lawfully appointed to administer his affairs;
- (e) in the case of a sale or transfer of the business, to the buyer or transferee thereof.

14. Temporary transfer of business premises - (1) A licence holder who wishes to transfer his business temporarily to premises other than those specified in his licence shall make application to the licensing authority for his licence to be endorsed accordingly.

(2) On receipt of such application, the licensing authority may endorse the licence permitting the business in such premises as it may specify and for such period as it may think fit.

15. Licensed premises to have sign - Every premises in which a business licensed under the provisions of this Act is carried on shall bear in legible Roman characters on or in a conspicuous part of the building the name of the licensee carrying on business thereon.

16. Revenue from licence fees - (a) All fees collected under the provisions of this Act shall be paid to and form part of the Public Account of the Government of the Cook Islands.

17. Regulations - The Minister may make regulations -

(a) in respect of any business, prescribing the fees to be charged the basis upon which they are charged and the manner in which they shall be paid under the provisions of this Act. Provided that the Minister in regulations made by him under this paragraph may differentiate in respect of such fees between different types or classes of business;

(b) generally for carrying the provisions of this Act into effect including the production of any records relating to a business.

18. Penalties - (1) Any person guilty of an offence against any of the provisions of this Act shall be liable on conviction to a fine not exceeding one thousand dollars:

(2) In addition to any penalty imposed under the provisions of subsection (1) the court may -

(a) order the convicted person to pay the fees which he is required to pay under the provisions of this Act;

(b) direct that any licence held by the convicted person shall be cancelled.

19. Repeals - The Regulations made the 19th day of June 1916 pursuant to the Cook Islands Act 1915 and which came into force on the 1st day of July 1916, making provisions for the licensing of certain trading premises is hereby repealed..

This Act is administered in the Department of Trade Labour and Transport.