

THE LIQUOR LICENSING ACT, 2011

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GOVERNMENT OF ZAMBIA

ACT

No. 20 of 2011

Date of Assent: 12th April, 2011

An Act to regulate the manufacture, possession, sale and supply of intoxicating liquors; repeal and replace the Liquor Licensing Act, 1959; and provide for matters connected with, or incidental to, the foregoing.

[15th April, 2011

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Liquor Licensing Act, 2011.

Short title

2. In this Act, unless the context otherwise requires—

Interpretation

“authorised officer” means a principal officer, a health inspector or a police officer;

“bar”, in relation to any licensed premises, means any open drinking bar or any part of such premises exclusively or mainly used for the sale and consumption of intoxicating liquor;

“beer” means any drink which is brewed from grain or vegetable matter;

“child ” means a person under the age of eighteen years;

“de-natured spirit ” means an intoxicating liquor which, by the addition of some substance, is rendered unfit for use as a beverage;

“health facility” has the meaning assigned to it in the Health Professionals Act, 2009;

Act No. 24
of 2009

“health inspector ” means an officer appointed as such by a local authority or the Ministry responsible for health for purposes of enforcing the provisions of this Act;

“hotel ” has the meaning assigned to it in the Tourism and Hospitality Act, 2007;

Act No. 23
of 2007

“intoxicating liquor ” includes any spirits, wine, ale, beer, porter, cider, perry or other potable liquor containing more than three percent of proof spirits;

- “licence” means a liquor licence granted under the provisions of this Act;
- “licensed premises” means any premises in respect of which a licence is in force;
- “licensee” means the holder of a licence;
- Cap. 281 “licensing committee” means a licensing committee of a local authority established pursuant to the Local Government Act;
- “liquor” means —
- (a) any spirit, wine or beer which contains three percent or more by volume of alcohol, excluding methylated spirit;
 - (b) fermented, distilled, spirituous or malted drink which contains three percent or more by volume of alcohol; or
 - (c) any drink or concoction which the Minister may, by statutory instrument, prescribe to be liquor;
- Cap. 281 “local authority” means a district, municipal or city council established under the Local Government Act;
- “meal” means any substantial refreshment or food served to, and consumed by, a person at a licensed premises and to which the sale of intoxicating liquor may be ancillary;
- Cap. 107 “officer in charge of police” has the meaning assigned to it by section *two* of the Zambia Police Act;
- “police officer” means a police officer above the rank of sergeant;
- Cap. 281 “principal officer” has the meaning assigned to it in the Local Government Act;
- “permitted hours” means the hours of the day during which intoxicating liquor may lawfully be supplied in licensed premises;
- “proof spirits” means spirits which, at a temperature of eleven degrees Celsius weigh twelve thirteenth parts of an equal measure of distilled water, and includes intoxicating liquor containing over 1.713 percent of alcohol by volume or 1.363 percent of alcohol by weight;
- “public place” means any building, premises, conveyance or other indoor or outdoor area, whether privately or publicly owned, to which the public have access by right or by invitation, whether by payment of a fee or not, but does not include a place used exclusively by one or more persons for a private gathering or other personal purpose;
- “register” means a register of licences kept under section *nineteen*;
- Cap. 167 “repealed Act” means the Liquor Licensing Act, 1959;

“ sealed ”, in relation to a container or vessel, means hermetically sealed or closed with a plug, stopper or cap and so secured that the container or vessel cannot be opened without the destruction of such plug, stopper or cap or of some other substance;

“ spirits ” includes distilled liquor of any description, and all mixtures, compounds and preparations made with such liquor, and any fermented liquor containing more than fifty percent of proof spirits;

“ traditional beer ” means—

(a) the drink which is brewed from grain or other vegetable matter and is commonly known as local beer; and

(b) such other intoxicating liquor as the Minister may, by statutory instrument, prescribe; and

“ Tribunal ” means the Appeal Tribunal established under section *twenty three*.

3. This Act does not apply to—

(a) any medical doctor or pharmacist administering or selling for purely medical purposes any *bona fide* medicine containing intoxicating liquor;

(b) any person selling any spirituous or distilled perfume or perfumery, medicated or methylated or otherwise denatured spirits or any medicated wine;

(c) the sale of intoxicating liquor on any aircraft in flight over the Republic in the course of a normal passenger service;

(d) the sale of intoxicating liquor by any person acting under the order of a court or selling the intoxicating liquor forfeited to the Government;

(e) the sale of intoxicating liquor by an executor, administrator or trustee in bankruptcy where such liquor forms part of the estate of a deceased or bankrupt person who was not a licensee;

(f) the sale by private arrangement of intoxicating liquor which is the residue of a reasonable stock held for private consumption by a person about to leave the Republic;

(g) the sale of intoxicating liquor to members of the Defence Force by any *bona fide* organisation engaged in supplying food or drink solely to such members and approved as such by the Minister; or

(h) the sale of intoxicating liquor, in any canteen approved for such purpose by the Minister, to members of the Zambia Police Force, Defence Force or Zambia Prison Service.

Non-
application
of Act

PART II
LICENSINGApplication
for licence

4. (1) An application for a licence shall be made in the prescribed manner and form to the appropriate licensing committee.

(2) A licensing committee shall not consider an application for the grant of a licence unless —

(a) the applicant has given at least fourteen days' notice of the applicant's intention to make the application in accordance with subsection (3); and

(b) the applicant has, not less than fourteen days before the application is made, lodged with the licensing committee a plan of the premises in respect of which the application is made, together with a certificate from the planning authority that the said plans have received its approval.

(3) The notice referred to in paragraph (a) of subsection (2) shall be made in the prescribed form and shall be published by the local authority concerned at its offices, and put in not less than ten conspicuous public places in its area and on its website, and the period of fourteen days mentioned in paragraph (a) of subsection (2) shall be calculated from the date of the last publication of the notice.

(4) A licensing committee shall, in considering an application for the grant of a licence —

(a) take into account—

(i) the social and welfare consequences which the business or undertaking to be conducted in terms of the licence will have for the residents of the area of the local authority concerned;

(ii) whether the business or undertaking to be conducted in terms of the licence is likely to create a public nuisance or annoyance in the vicinity of the business;

(iii) the need to avoid the establishment of licensed premises within three hundred metres of an educational institution, health facility or a church;

(iv) the suitability of the premises upon which the licensed business or undertaking is to be conducted relating to the safety, health and town planning requirements in respect of accommodation and sanitary facilities;

(v) the possibility of a monopolistic condition in the liquor

trade which is detrimental to the public interest being created or aggravated by the grant of the licence; and

(vi) whether the name of the business or undertaking to be conducted in terms of the licence will not be offensive to the community it will serve or is not similar to or may be confused with the name of any business conducted in terms of any existing licence; and

(b) not take into account any commercial factors or any economic consequences for existing licences, except where such factors or consequences are considered for the purposes of subparagraph (v) of paragraph (a).

(5) A licensing committee may, when granting an application for a licence, impose conditions which —

(a) prohibit or restrict the sale or the consumption of liquor in respect of—

(i) certain parts of the premises concerned;

(ii) certain times of the day; or

(iii) certain kinds of liquor;

(b) require the applicant to effect alterations or improvements to the premises relating to the standard of accommodation, facilities or amenities, the sanitary or safety arrangements or as to any other aspect of public convenience on, or health or police supervision of, the premises concerned;

(c) are, in the opinion of the licensing committee, necessary or desirable; or

(d) may be prescribed in respect of the licence.

5. A person who intends to oppose an application for the grant, renewal, transfer or removal of a licence shall give notice, in writing, of that intention to the applicant and to the licensing committee concerned, specifying in general terms the grounds of the opposition, and including an address at which service of notices and other documents may be made, not later than fourteen days after the last publication of the notice referred to in paragraph (a) of subsection (2) of section *four*; and unless the notice of intention has been so given, the licensing committee shall not allow the objection.

Notice of
intention to
object

6. (1) A licensing committee shall, where an application for a licence meets the requirements of this Act, issue a licence in the prescribed form subject to such terms and conditions as the licensing committee may determine.

Grant of
licence

(2) Subject to the other provisions of this Act, a licence issued under this section shall be valid for three years.

Restrictions relating to grant of licence

7. (1) A licence shall not be granted to—

- (a) a person who is under the age of twenty-one years;
- (b) a sheriff's officer or any other officer entrusted with the execution of the legal process of any court;
- (c) a person who has been convicted of forging a licence or of making use of a forged licence knowing it to have been forged;
- (d) a person who has been convicted, whether under this Act or otherwise, of permitting to be kept, or keeping, as a brothel, premises for which at the time of such conviction the person held a licence;
- (e) a person who has been disqualified by a court from holding a licence while such disqualification remains in force;
- (f) a person who does not reside within the Republic;
- (g) a person whose licence has been forfeited until after the expiration of five years after the date of such forfeiture; or
- (h) a person who has been convicted of an offence relating to the sale of intoxicating liquor without a licence, until after the expiration of five years after the date of such conviction.

(2) A bar shall not be established within three hundred metres of an educational institution, health facility or church:

Provided that this subsection shall not apply to premises that were licensed before the coming into operation of this Act.

(3) A licence shall not be granted to a company, society, partnership or other association of persons:

Provided that —

- (a) nothing in this subsection shall be deemed to prevent the grant of a licence to a person in the employ of such company, society, partnership or association; and
- (b) where an employee to whom a licence was granted ceases to be employed in a position in which the employee is required to hold the licence, the employer may take such steps for the transfer of the licence to some other employee as a licensee may take under the provisions of this Act for the transfer of a licence to some other person.

Rejection of application for licence

8. A licensing authority may reject an application for a licence on any of the following grounds:

- (a) that the premises concerned do not comply with the provisions of any law for the time being in force;

- (b) that the grant of the licence shall conflict with any approved or proposed town plan or zoning area;
- (c) that the grant of the licence is calculated to cause nuisance or annoyance to persons residing in the neighbourhood of the premises concerned;
- (d) that the applicant is not a fit and proper person to hold a licence;
- (e) that, upon evidence given by the police, the licensing committee is satisfied that the grant of the licence would be detrimental to public order;
- (f) where the application is for a new licence, that the applicant has not satisfied the licensing committee that, having regard to all the circumstances of the case, including the number of existing licences in the area concerned, there is a public need for such licence;
- (g) in the case of a licence to be used at hotel premises, that the hotel is not licensed under the provisions of the Tourism and Hospitality Act, 2007;
- (h) in the case of a licence to be used for a restaurant—
 - (i) that, upon evidence given by the police, the licensing committee is satisfied that the grant of the licence would be detrimental to public order; or
 - (ii) that the applicant does not keep, upon the premises in respect of which the application is made, a *bona fide* restaurant at which meals will be regularly provided for guests, and that such premises do not provide reasonable facilities for persons taking meals in the restaurant; and
- (i) in the case of a licence to be used for retail purposes—
 - (i) that the applicant has not satisfied the licensing committee that, having regard to the circumstances of the case, including the number of existing licences, there is a public need for the licence; or
 - (ii) that the applicant carries on in the premises, or in premises directly communicating therewith, any other business for which a licence is not in force:

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Provided that—

(A) the provisions of sub-paragraph (ii) shall not apply where the only goods sold in the course of such other business are tobacco, tobacco products, smokers' and cocktail requisites, mineral waters, cordials and similar non-alcoholic beverages; and

(B) the provisions of this paragraph shall not apply where it is proved to the satisfaction of the licensing committee that, having regard to the area in which the premises are situate and to the amount of stock carried, such other business includes in its business a substantial grocery business.

- 9.** A licensee shall display a copy of the licence in a prominent place at the business premises. Display of licence
- 10.** A holder of a licence may, at any time during the validity of the licence, apply to the licensing committee concerned for the variation of the terms and conditions of the licence. Variation of licence
- 11.** Where a holder of a licence decides not to continue operating the business in relation to which the licence relates, the holder shall surrender the licence to the licensing committee concerned. Surrender of licence
- 12.** (1) For the purposes of this Act, the transfer of a licence means the substitution, upon payment of the appropriate fee, of some other person as licensee of the premises in place of the person who holds or has held a licence for such premises. Transfer of licence
- (2) A person applying for the transfer of a licence shall, not less than fourteen days before the application is made, give notice, in writing, of the intention to make the application to—
- (a) the licensee, where such application is not made by the licensee; and
- (b) the officer-in-charge of police in the area in which the licensed premises are situated.
- (3) The transfer of a licence shall not be granted except in the following cases and to the following persons:

- (a) where the licensee has died, to the licensee's representative or the new tenant or occupier of the premises;
- (b) where the licensee is incapable, through illness or other infirmity, of carrying on business under the licence, to the licensee's assigns or the new tenant or occupier of the premises;
- (c) where the licensee is adjudged bankrupt or a trustee is appointed in pursuance of a composition scheme to administer the property or manage the business of the licensee, or a trustee is appointed under a deed of arrangement for the benefit of the creditors of the licensee, to the licensee's trustee or the new tenant or occupier of the premises;
- (d) where the licensee has, or the licensee's representatives have, given up occupation of the licensed premises to the new tenant or occupier of such premises or to the person to whom the representatives or assigns have, for sale or otherwise, *bona fide* conveyed or made over the interest in the premises;
- (e) where the occupier of the licensed premises, being about to quit them, has wilfully omitted or neglected to apply for a renewal of the licence, to the new tenant or occupier of such premises; and
- (f) where an employer wishes a licence to be transferred from one employee to another in accordance with the proviso to subsection (3) of section *seven*.

(4) In a case arising under paragraph (f) of subsection (3), the licence may be transferred, notwithstanding that it has been forfeited, as if it were still valid.

(5) A licensing committee shall not grant a transfer of a licence unless it is satisfied that the transfer is to a fit and proper person.

Power to
carry on
business
after death,
etc. of
licensee

13. (1) Where a licensee dies or is adjudged bankrupt, a trustee is appointed in pursuance of a composition or scheme to administer the property or manage the business of a licensee or a trustee is appointed under a deed of arrangement for the benefit of the creditors of a licensee, section *twenty-six* shall not prohibit the sale of intoxicating liquor by the personal representatives or the trustee, as the case may be, during a period of three months after such death, adjudication or appointment:

Provided that this section shall not exempt from the prohibition imposed by the said section a sale that would not have been authorised if the licence had been transferred to the representatives or the trustee.

(2) Where an application is made for the transfer of a licence affected by subsection (1) within the period of three months mentioned in subsection (1) and the licensing committee adjourns consideration of the application, the period of three months shall, if necessary, be extended to the date of the determination of the application.

14. (1) For the purposes of this Act, the removal of a licence means taking the licence from the premises for which it is in force and endorsing it for other premises within the same district.

Removal of
licence

(2) An application for the removal of a licence shall be made in the prescribed manner and form by the person wishing to hold the licence after removal.

(3) Without prejudice to any other power of a licensing committee to refuse to grant the removal of a licence, the licensing committee shall not grant any removal unless it is satisfied that no objection is made thereto by the person or persons owning and having control of the business carried on in the licensed premises from which it is sought to remove such licence or by the licensee.

15. A licensing committee may amend a licence where—

Amendment
of licence

- (a) some other person has succeeded to the interest in the business belonging to the licensee, by substituting the name of the licensee with the name of the successor; or
- (b) the name of the business has changed, by substituting the name so changed.

16. (1) An application for the renewal of a licence shall be made to the licensing committee which granted the original licence in the prescribed manner and form upon payment of the prescribed fee.

Renewal of
licence

(2) A licensing committee may renew a licence on such terms and conditions as it may determine.

(3) A licensing committee shall inform an applicant of the grounds on which the grant or renewal of a licence has been refused or conditions have been imposed.

Cancellation
and
suspension
of licence

17. (1) Subject to the other provisions of this Act, a licensing committee may suspend or cancel a licence if the holder —

- (a) obtained the licence by fraud or submission of false information or statements;
- (b) contravenes this Act, any other written law relating to the licence or any terms and conditions of the licence;
- (c) has ceased to fulfil the eligibility requirements under this Act; or
- (d) the suspension or cancellation is in the public interest.

(2) A licensing committee shall, before suspending or cancelling a licence in accordance with subsection (1), give written notice to the holder thereof of its intention to suspend or cancel the licence and shall—

- (a) give the reasons for the intended suspension or cancellation; and
- (b) require the holder to show cause, within a period of not more than thirty days, why the licence should not be suspended or cancelled.

(3) A licensing committee shall not suspend or cancel a licence under this section if the licensee takes remedial measures to the satisfaction of the licensing committee within the period referred to in subsection (2).

(4) A licensing committee shall, in making its final determination on the suspension or cancellation of a licence, consider the submissions made by the licensee under subsection (2).

(5) A licensing committee may suspend or cancel a licence if the holder, after being notified under subsection (2), fails to show cause or does not take any remedial measures, to the satisfaction of the licensing committee, within the time specified in that subsection.

(6) A licensee shall, where the licence is suspended, cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension of the licence.

(7) Where a licence is cancelled, the holder of the licence shall cease to be entitled to the rights and benefits conferred under this Act, with effect from the date of such cancellation and shall return the licence to the licensing committee concerned.

(8) A licensing committee shall, where it suspends or cancels a licence under this section, publish the suspension or cancellation, as the case may be, in a daily newspaper of general circulation in Zambia.

18. (1) A licensee shall only sell intoxicating liquor within the hours prescribed by the Minister by statutory instrument. Permitted hours

(2) A local authority may, in special circumstances and upon payment of the appropriate fee, grant an extension of the hours during which intoxicating liquor may be sold on the premises of a licensee.

(3) An extension shall not be granted under the provisions of this section in respect of more than one period of twenty four hours at any one time.

(4) A person who contravenes subsection(1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

19. (1) A licensing committee shall cause to be kept a register of licences, in the prescribed form. Register of licences

(2) A licensing committee shall cause to be entered in the register of licences notice of any conviction of an offence by any licensee entered in the register, including an offence under the provisions of any written law relating to the adulteration of drink, and the clerk of the court by which the licensee is so convicted shall forthwith send notice of such conviction to the licensing committee concerned.

20. (1) Any register shall be received in evidence of the matters required by this Act, or any other written law, to be entered therein. Register to be evidence

(2) A document purporting to be certified by a licensing committee to be a true copy of an entry in a register shall be received as evidence of the matters contained in such entry.

21. On an application for the grant, renewal, transfer or removal of a licence, the licensing committee concerned shall have regard to any entries in the register relating to the person by whom, or the premises for which, the licence is to be held. Regard to be had to register

22. Any register shall be open to inspection by members of the public at all reasonable times upon payment of the appropriate fee: Inspection of register
Provided that a public officer shall not be required to pay any fee for inspection of a register.

PART III

APPEALS

Establishment of Tribunal

23. (1) The Minister shall appoint an Appeal Tribunal consisting of—

(a) a chairperson, who shall be a legal practitioner of not less than ten years legal experience; and

(b) two other members;

for the purpose of hearing appeals under the provisions of this Act.

(2) The Minister shall appoint a person to be secretary of the Tribunal.

Appeal to Tribunal

24. (1) A person who is aggrieved with the decision of a licensing committee may appeal to the Tribunal in the prescribed manner.

(2) Notice of an appeal under the provisions of this section shall be given to the Tribunal within thirty days of the decision appealed against:

Provided that the chairperson of the Tribunal may extend the time for giving notice of appeal.

(3) Upon the entry of an appeal under this section, the appellant shall pay the appropriate fee, and a notice of appeal shall not be deemed to have been given to the Tribunal until such fee is received by the secretary to the Tribunal.

(4) In an appeal under this section, the parties thereto shall be the appellant, any person who has validly taken objection to the original application and who wishes to appear on the appeal and the licensing committee concerned, and no other person shall be entitled to be heard on the appeal.

(5) An appellant in an appeal under this section shall serve on all persons who, by virtue of subsection (4), may be respondents to the appeal, copies of the notice and grounds of the appeal.

(6) A party to an appeal before the Tribunal may appear in person or by counsel, and a licensing committee may appear by counsel or by a member of the licensing committee nominated for such purpose by the chairperson of the licensing committee.

(7) Where a licensing committee is a party to an appeal before the Tribunal, the licensing committee may, in lieu of appearing before the Tribunal, send to the secretary thereof and to the appellant a statement of the reasons why the licensing committee considers that the appeal should not be allowed, and the statement, if it purports to be signed by the chairperson or secretary of the licensing committee shall be received in evidence by the Tribunal.

(8) A licence shall, pending the determination of an appeal against refusal to renew it, be deemed to remain in force until the determination.

(9) The Tribunal may—

(a) by notice, in writing, require any person, subject to the payment or tender of the reasonable expenses of that person's attendance, to attend as a witness and give evidence or to produce any documents in that person's possession or power which relate to any matter in question on an appeal under this section, and if any person, without reasonable excuse, fails to comply with any of the requirements of such a notice, that person commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units:

Provided that a person shall not be required to produce any book or account, voucher or receipt which directly refers to that person's business or trade;

(b) take evidence on oath and make such other investigations as it may consider necessary in assisting it to come to a decision regarding any matter before it; and

(c) award to any party to an appeal such costs as the Tribunal considers reasonable, and direct by what parties such costs are to be paid, and any person failing to comply with the provisions of any order made under this paragraph commits an offence and is liable to a fine not exceeding five thousand penalty units, and the costs awarded may be recovered from the party ordered to pay such costs by the party to whom they were awarded, by civil action:

Provided that where a licensing committee submits a statement under subsection (7) and does not appear before the Tribunal, no costs shall be awarded against the licensing committee.

(10) The Tribunal shall hear and determine any appeal before it and may make such order, in addition to, or in substitution for, the matter appealed against, as it thinks fit, or may refer the matter back to the licensing committee concerned with the directions of the Tribunal which shall be binding on such committee.

Appeal to
High Court

25. (1) A person aggrieved with the decision of the Tribunal may appeal to the High Court on a question of law but not on a question of fact, and notice of the appeal shall be given to the High Court within thirty days of the decision of the Tribunal.

(2) On the hearing of an appeal under the provisions of this section, the High Court may —

- (a) allow the appeal and direct the licensing committee concerned accordingly;
- (b) dismiss the appeal; or
- (c) refer the matter back to the Tribunal or the licensing committee for re-hearing in accordance with the directions of the High Court.

Rules of
Tribunal

26. (1) The Chief Justice may, by statutory instrument, make rules relating to—

- (a) the manner and form for lodging of appeals under this Part;
- (b) the mode of summoning persons before the Tribunal;
- (c) the form and manner of service of a summons requiring the attendance of a witness before the Tribunal and the production of any book, record, document or thing;
- (d) the procedure to be followed and rules of evidence to be observed in proceedings before the Tribunal; and
- (e) the appointment and functions of the assessors and experts to the Tribunal.

(2) Rules made under this section may, in particular, provide —

- (a) that before any matters are referred to the Tribunal they shall, in such manner as may be provided by the rules, have been brought before and investigated by the licensing committee concerned;
- (b) for securing notices for the proceedings and specifying the time and manner of the proceedings; and
- (c) for securing that any party to the proceedings shall, if that person requires, be entitled to be heard by the Tribunal.

PART IV

REGULATION OF SALE OF INTOXICATING LIQUOR

Selling liquor
without
licence

- 27.** (1) Subject to the provisions of this Act, a person who—
- (a) sells or offers for sale any intoxicating liquor without a licence; or
 - (b) being a licensee, sells any intoxicating liquor except in the licensed premises concerned;
- commits an offence and is liable—
- (a) upon a first conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both;
 - (b) upon a second conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both; and
 - (c) upon a third or subsequent conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.
- (2) A licensee shall, on the second or subsequent conviction under the provisions of this section, forfeit the licence.
- (3) The court by which a person is convicted of an offence under this section committed after a previous conviction of such an offence may order that person to be disqualified from holding a licence—
- (a) upon a second conviction, for a period not exceeding five years; and
 - (b) upon a third or subsequent conviction, for any term of years or for life.
- (4) The court by which a licensee is convicted of an offence under the provisions of this section may declare all intoxicating liquor found in that licensee's possession, and the vessels containing it, to be forfeited.

Brand
reliability
and alcohol
content

- 28.** A licensee shall not sell —
- (a) as a particular kind or brand of liquor or as liquor produced by a particular person, any liquor which is not of such kind or brand or which is not produced by such person; or
 - (b) any liquor in a sealed container unless the container has a label attached to it stating the alcohol content of the liquor expressed in a percentage by volume.

- 29.** (1) Subject to the provisions of this Act, a person shall not—
- (a) except during the permitted hours, by oneself or by that person's employee or agent, sell or supply to any person in any licensed premises any intoxicating liquor to be consumed either on or off the licensed premises; or
 - (b) except during the permitted hours, consume in, or take from, or permit any person to consume in or take from, the premises any intoxicating liquor.
- (2) Nothing in subsection (1) prohibits or restricts—
- (a) the sale or supply to, or consumption by, any person of intoxicating liquor in any premises where the person is residing, or the supply of intoxicating liquor for consumption on the premises of a licensed hotel to any person lodging therein and *bona fide* entertained by the person at that person's own expense, or the consumption of intoxicating liquor by persons so supplied; or
 - (b) the supply of intoxicating liquor for consumption on licensed premises to any friends of the licensee *bona fide* entertained by the licensee at the licensee's own expense, or the consumption of intoxicating liquor by persons so supplied.
- (3) A person who contravenes subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units.
- 30.** (1) A licensee shall not, without reasonable excuse, have in the licensee's possession on the licensed premises any liquor of a kind not authorised by the licence.
- (2) A licensee who contravenes subsection (1) commits an offence and is liable —
- (a) upon a first conviction, to a fine not exceeding two hundred thousand penalty units ; and
 - (b) upon a subsequent conviction, to a fine not exceeding three hundred thousand penalty units, and in either case, shall forfeit the spirits and the vessels containing it.
- 31.** (1) A person shall not supply any liquor to any person in the person's employ in lieu of, as part of, or as supplementing, the employee's wages or remuneration.
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Prohibition of sale, consumption, etc. of liquor except during permitted hours

Liquor of kind not authorised by licence not to be kept on premises

Supply of liquor to employees

- Consumption of liquor in public place
- 32.** (1) A person shall not consume liquor in a public place other than licenced premises.
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a period not exceeding six months, or to both.
- Prohibited concoctions, brews and drinks
- 33.** (1) A person shall not, without a licence, manufacture or have any traditional beer in that person's possession or custody.
- (2) A person shall not manufacture, have in that person's possession or custody, sell or supply to any person or consume any other drink, brew or concoction manufactured by means of the process of fermentation of any substance, the consumption of which drink, brew or concoction would be harmful or injurious to the health or well-being of any person.
- (3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units.
- Prohibited production
- 34.** (1) A person shall not manufacture or produce any alcoholic drink, brew or concoction by means of the process of the fermentation of sugar, treacle, malt or other substances, or by the distillation of a fermented or distillate produce, which drink, brew or concoction contains more than three percent of alcohol by volume, for the purpose of selling or supplying the drink, brew or concoction to any other person contrary to the standards prescribed under the Standards Act.
- Cap. 416
- (2) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units.
- Child or certain persons not to be employed in licensed premises
- 35.** (1) A licensee shall not employ in the licensed premises, a child or a person whose licence has been forfeited under this Act.
- (2) A person who contravenes subsection (1), commits an offence and is liable, upon a first conviction, to a fine not exceeding two hundred thousand penalty units and, upon a subsequent conviction, to a fine not exceeding three hundred thousand penalty units.
- (3) For the purposes of this section, a person shall be deemed to be employed by the person for whom that person works notwithstanding that that person does not receive a wage for that person's work.
- (4) Where in any proceedings under the provisions of this section it is alleged that a person was at any time a child and that person appears to the court to have been a child, for the purposes of the proceedings, that person shall be deemed to have been a child unless the contrary is shown.

- 36.** (1) A licensee shall not knowingly sell or deliver, or allow any other person to sell or deliver, intoxicating liquor to a child. Restriction on sale, delivery etc. of liquor to children
- (2) A licensee, or an employee of a licensee, shall not knowingly—
- (a) allow any child to consume intoxicating liquor in any bar in the premises; or
- (b) allow any child to enter or remain in a bar.
- (3) A child shall not—
- (a) consume any intoxicating liquor; or
- (b) enter or remain in any bar.
- (4) A person who contravenes this section commits an offence and is liable, on a first conviction, to a fine not exceeding five hundred thousand penalty units and, on a subsequent conviction, to a fine not exceeding seven hundred thousand penalty units. Licensee not to permit violence, etc.
- 37.** (1) A licensee shall not permit any violent, quarrelsome or riotous conduct to take place on the licensed premises.
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon a first conviction, to a fine not exceeding three hundred thousand penalty units and, upon a subsequent conviction, to a fine not exceeding four hundred thousand penalty units and to the forfeiture of that person's licence.
- 38.** (1) Without prejudice to any other right to refuse a person admission to premises or to expel a person from premises, a licensee or a licensee's employee or agent may refuse to admit to, or may expel from, the licensed premises any person who is drunken, violent, quarrelsome or disorderly, or whose presence in the licensee's premises would subject the licensee to a penalty under this Act or any other written law. Power to exclude drunkards, etc. from licensed premises
- (2) If a person liable to be expelled from any licensed premises under the provisions of this section if requested by the licensee or the licensee's employee or agent or any police officer to leave the premises fails to do so, the person commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units.
- 39.** (1) A licensee shall not use licensed premises as a brothel. Prohibition of using licensed premises as brothel
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding five years and to the forfeiture of the licence.

Closing of
premises in
case of riot

40. (1) An authorised officer may, where any riot or tumult occurs or is expected to occur in any place, order any licensed premises in or near the place to be closed during such time as the authorised officer may think fit.

(2) A person who resists or obstructs the execution of an order given under subsection (1) and any licensee who sells intoxicating liquor in contravention of such order commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units, and the licensee so convicted shall have the licence forfeited.

Forfeiture of
licence by
Minister

41. (1) The Minister may, where the Minister is satisfied that a licensee is or has engaged in or permits any activity on the licensed premises which is detrimental to the security of the Republic or to public order, by order, forfeit the licence of the licensee and a copy of the order of forfeiture shall be served on the licensee.

(2) An order of forfeiture shall take effect when the copy thereof is served on the licensee.

(3) An order of forfeiture shall, on its production in any proceedings or application before any court, licensing committee or the Tribunal, be conclusive evidence of the fact of forfeiture.

Disposal of
stock in
hand where
licence is
forfeited

42. Where a licence is forfeited under any provision of this Act, the principal officer of the District in which the licensed premises concerned are situated shall, upon the application of the licensee whose licence is forfeited, in writing, permit the licensee to dispose of the licensee's stock in hand at the date the forfeiture takes effect during the period of one month from that date, and thereupon the provisions of this Act relating to the regulation of licensees shall, during that period, apply to the person so permitted as they apply to a licensee.

Power to
require
structural
alterations

43. (1) A licensing committee may, upon the grant, renewal or removal of a licence, subject to the prior approval of the local authority, order that, within a time fixed by the order, such structural alterations shall be made by the licensee in the public rooms of the licensed premises where intoxicating liquor is sold or consumed as the licensing committee thinks are reasonably necessary to ensure the suitability of such rooms for the sale of intoxicating liquor and for the accommodation of the public.

(2) The secretary to a licensing committee shall serve on the owner of the licensed premises notice of any order made under the provisions of this section.

(3) Where an order made under the provisions of this section is complied with, the licensing committee shall not, without the written consent of the Minister, make any other such order in respect of the same premises within five years following the date of the first mentioned order.

(4) A licensee who fails to comply with the requirements of an order made under the provisions of this section commits an offence and is liable to a fine not exceeding five hundred thousand penalty units and to a further fine not exceeding three thousand penalty units for every day the default continues after the expiration of the time fixed by the order.

PART V

CONTROL AND INSPECTIONS

44. (1) An authorised officer may, at any reasonable time with or without a warrant, enter upon, inspect and search— Inspection of premises

- (a) any premises in respect of which an application for the granting of a licence or approval is pending;
- (b) any licensed premises for the purpose of inspecting the licensed premises;
- (c) any premises or vehicle, or any part thereof, in respect of which there are reasonable grounds to suspect that a contravention of any provision of this Act is being, or is about to be, committed; or
- (d) enter any premises on or in which liquor is being sold and demand that the current licence authorising the sale be shown to the authorised officer.

(2) A person exercising any power or performing any duty under this Act shall, on demand by any person affected by the exercise or performance of such powers or duties, produce proof of that person's identity and appointment or authority to exercise the powers or perform the duties.

(3) An authorised officer may, subject to subsection (4), seize and remove from any premises or vehicle, any article or thing if the authorised officer has reason to suspect that the possession or keeping of such article or thing on or in the premises or vehicle is unlawful or the article or thing is being used for the commission of an offence under this Act.

(4) An authorised officer shall, where the authorised officer seizes any article or thing under subsection (3), issue a receipt in the prescribed form in respect of the seized article or thing and shall give the receipt to the person in whose possession or under whose control the article or thing was found.

PART VI

GENERAL PROVISIONS

Offences by
licensee or
employee

45. A licensee or an employee of a licensee who—

- (a) allows any unlawful game or gambling to be carried on upon the licensed premises;
- (b) allows liquor to be consumed on the licensed premises at a time or on a day when, or at a place where, the consumption of the liquor is prohibited by this Act or not authorised in terms of the conditions of the licence in respect of such premises;
- (c) sells, supplies or deals in liquor in a manner not authorised by this Act or the conditions of the licence in terms of which the business on the licensed premises is conducted;
- (d) fails to comply with any condition imposed in respect of a licence; or
- (e) fails to display a licence or notice in terms of this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Offences in
general

46. (1) A person, whether or not the person is a licensee, who—

- (a) refuses or fails to comply with a lawful demand made by an authorised officer to furnish information relating to the person's name or address, or to produce a licence or other document;
- (b) obstructs or hinders an authorised officer or other person in the performance of any duty under this Act;
- (c) unlawfully and with the intent to deceive—
 - (i) alters, destroys, damages or renders illegible;
 - (ii) withholds from any person entitled to take possession or to scrutinise; or
 - (iii) uses fraudulently or for any unlawful purpose;

any licence or other document issued under, or for the purpose of, this Act;

- (d) submits to the licensing committee any written information, which information the person knows to be false, or any forged document or document which purports to be, but which is not, a true copy of the original of a document, or in any way assists any person in the submission of the document;
- (e) refuses or fails to leave any licensed premises when requested to do so by the licensee or an employee of the licensee, or by a police officer, as the case may be, or enters or is upon any restricted portion of any licensed premises, knowing that that person's presence upon the premises, or the restricted portion of such premises, is unlawful;
- (f) is or becomes intoxicated in the vicinity of or near—
 - (i) any road, park or public place;
 - (ii) any shop, warehouse, service station or garage;
 - (iii) any place of entertainment, restaurant or race course; or
 - (iv) any other place to which the public is admitted or has access, whether by payment or otherwise, and whether or not the right of admission to such place is reserved;
- (g) introduces into, possesses or consumes any liquor in any portion of a sports ground to which members of the public have or are granted access, except on such portion of such sports ground as may constitute licensed premises at the time of such possession or consumption;
- (h) purchases or obtains any liquor at a time when, or at a place at which, or in circumstances in which, it is unlawful for such liquor to be sold or supplied to, or to be obtained by, that person; or
- (i) fails to comply with an order made under this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who aids and abets another person in the commission of an offence under this section, or who is an accessory to the commission of the offence commits an offence and is liable, upon conviction, to the same penalties that the other person will, upon conviction, be liable to.

47. (1) A document purporting to be a licence and signed by a licensing committee shall be received in evidence.

Proof of
licences

(2) A document purporting to be a true copy of a licence certified under the hand of the licensing committee which issued the original licence shall be received in evidence on an application for the renewal, transfer or removal of the licence if the licensing committee to whom the application is made is satisfied by evidence that the original licence is lost or unlawfully withheld.

Evidence of
sale, etc.

48. (1) Evidence that a transaction in the nature of a sale of intoxicating liquor took place shall, in any proceedings relating to an offence under the provisions of this Act, be evidence of the sale of the liquor without proof that money passed.

(2) Evidence that consumption of intoxicating liquor was about to take place shall, in any proceedings relating to an offence under the provisions of this Act, be evidence of the consumption of intoxicating liquor without proof of actual consumption.

(3) Evidence that any person, other than the occupier of licensed premises or an employee employed in the licensed premises, consumed or intended to consume intoxicating liquor in the premises shall be evidence that the liquor was sold by, or on behalf of, the licensee to that person.

Search
warrant

49. (1) A magistrate may, where the magistrate is satisfied by information, on oath, that there is reasonable ground to believe that any intoxicating liquor is sold by retail at any place, being a place where that liquor may not lawfully be sold by retail, issue a search warrant to a police officer authorising the police officer at any time or times within thirty days from the date of the warrant to enter the place, which is named in the warrant, by force if need be, and search the place for intoxicating liquor and seize and remove any intoxicating liquor that the police officer has reasonable grounds to believe to be in the place for the purpose of unlawful sale there or elsewhere, and the vessels containing such liquor.

(2) If the owner or occupier of the place from which any intoxicating liquor has been removed under subsection (1) is convicted of selling by retail any intoxicating liquor that that owner or occupier is not authorised to sell by retail, or is convicted of having in the owner or occupier's possession intoxicating liquor that the owner or occupier is not authorised to sell, any intoxicating liquor so removed, and the vessels containing it, shall be forfeited.

Offences and
forfeitures

50. (1) For the purposes of any provisions of this Act imposing a penalty or forfeiture on a second or subsequent conviction, any conviction that took place more than five years previously shall be disregarded.

(2) Liquor or vessels forfeited under the provisions of this Act shall be sold or otherwise disposed of as the court imposing the forfeiture may direct, and the proceeds shall be applied as if they were a fine.

51. (1) Where the conviction of a licensee is entered in a register under subsection (2) of section *nineteen*, the person making such entry shall serve notice of the conviction on the registered owner of the premises.

Notice of conviction of licensee to be given to owner

(2) A notice served under subsection (1) may be served by registered post and shall be deemed to be properly addressed if it is addressed to any place that the owner has specified to the authority keeping such register as the owner's address or, if the owner has not specified the place, that the person serving the notice believes to be the owner's address.

52. (1) Where on conviction of an offence a licence is forfeited, and the person convicted appeals against such conviction, the convicting court may, in its discretion and on such conditions, if any, as it thinks just, grant a temporary licence, without payment of a fee, to be in force until the appeal is determined or ceases to be prosecuted.

Temporary licence pending appeal

(2) A temporary licence granted under subsection (1) shall be of the same type and, in addition to any conditions imposed under subsection (1), be subject to the same conditions as the licence which is forfeited.

53. (1) The Minister may, by statutory instrument, prescribe any matter which is necessary to be prescribed for the purpose of giving effect to the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provision for —

- (a) the hours during which different licensed premises may be open for business, or liquor may be sold or consumed on such premises;
- (b) the control, restriction or prohibition in respect of the manufacture, import, export, keeping, stocking, bottling, packaging, conveyance, possession, sale, supply or use of intoxicating liquor;
- (c) the form and manner in which, and the period of time in or during which an application, objection, submission, representation or notification under this Act may be made or lodged; and

(d) any other matter which is by this Act required or permitted to be prescribed.

(3) The matters referred to in paragraph (b) of subsection (2) shall be prescribed in consultation with the Ministers responsible for health and commerce.

Repeal of
Cap. 167
Act No. 1 of
1959

54. (1) The Liquor Licensing Act, 1959, is hereby repealed.

(2) Notwithstanding subsection (1)—

Cap. 167

(a) a licence issued under the repealed Act shall continue to be valid up to 31st December, 2011 after which the licensee shall apply for a licence in accordance with the provisions of this Act; and

(b) an application for a licence pending before a provincial licensing board or a licensing officer, immediately before the commencement of this Act, shall be dealt with by the relevant licensing committee in accordance with the provisions of this Act.
