

SAMOA

Arrangement of Provisions

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1998, No. 39

AN ACT to repeal the Business Licences Ordinance 1960 and to consolidate the law relating to licences to engage in any business, trade or profession. [24th December 1998]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Business Licences Act 1998.

(2) This Act shall come into force on the date that it is assented to by the Head of State.

2. Interpretation – In this Act, unless the contrary intention appears:

“Business” or “Business or economic activity” includes any activity aimed at generating revenue in trade, commerce or industry, and includes any trade or profession:

“Commissioner” means the Commissioner of Inland Revenue:

“Minister” means the Minister of Finance:

“Register” means the Register of Business Licences kept pursuant to section 9.

3. Administration-(1) The Commissioner shall be responsible for the administration of this Act and shall have all necessary powers incidental to the performance of any right, power or obligation under this Act.

(2) In the event that any necessary procedure or form is not prescribed by this Act or any Regulation made under it, the Commissioner may determine, for the time being, an appropriate procedure or form, and such determination shall be a requirement under this Act.

4. Prohibited activities-(1) No person shall commence or carry on any business or economic activity which involves, at any time, any of the activities specified in the Schedule.

(2) Any person who commences or carries on any business or economic activity in contravention of subsection (1) commits an offence and shall be liable, in addition to any other penalty under this Act or any other Act, to a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) It shall not be a defence to a prosecution under subsection (2) that a licence has been issued for the business or economic activity, and upon there being any breach of subsection (1) any such licence shall be deemed to be cancelled.

5. Licences required- (1) No person shall commence or carry on any business or economic activity whether jointly with any other business or economic activity, or otherwise, unless he shall have for that business or calling a current license issued under this Act.

- (2) Any licence issued under this Act shall be subject to –
- (a) Any general conditions as are prescribed by Regulation; and
 - (b) Any special condition attaching to a class of licence prescribed by Regulation;
 - (c) An overriding condition that the holder of the licence shall, in the course of his business or economic activity, comply with all relevant laws; and
 - (d) Where the business or economic activity has any ownership that is not held by a Samoan citizen any law relating to foreign investment.

6. Application for a Licence-(1) An application for a licence under this Act shall –

- (a) Be made to the Commissioner;
 - (b) Be in such form as is prescribed or otherwise required under this Act;
 - (c) Be accompanied by the prescribed fee; and
 - (d) Where relevant, contain proof of compliance with any law relating to foreign investment.
- (2) Every application shall state the place or places of business, and where the applicant has or proposes to have two or more places of business, the application shall specify the principal place of business.
- (3) Every application shall also contain such other particulars as may be prescribed or as may be reasonably required by the Commissioner.

7. Commissioner shall issue licences-(1) Upon receipt of an application in compliance with section 6 the Commissioner will consider the business or economic activity or the proposed business or economic activity, and within the prescribed time, either –

- (a) Issue a licence if the application:

(i) is for a business or economic activity that is one to which section 4 does not apply; and

(ii) relates to a business or economic activity, or proposed business or economic activity which complies with all conditions applicable under this Act; and

(iii) indicates compliance with section 8; or

(b) Advise the applicant that the application has been refused on the basis that it is considered that the business or economic activity or proposed business or economic activity is one in respect of which section 4 applies or that the application does not otherwise comply with the provisions of this Act.

(2) In the event that the Commissioner is unable to determine whether the business or economic activity is one to which section 4 applies, the Commissioner shall refer the matter to the Minister, whose determination in this respect shall bind the Commissioner.

(3) If an application is rejected on the grounds that it does not otherwise comply with the provisions of this Act the Applicant may appeal in writing to the Minister against that decision and if the Minister is satisfied that the provisions of this Act will not be contravened, he may direct that the licence be issued.

8. Qualifications for applicants – No licence issued under this Act shall be valid if the holder, not being a body corporate, is –

(a) Under the age of 18 years; and

(b) Is a bankrupt who has not obtained his order of discharge or whose order of discharge is suspended for a term not yet expired or is subject to conditions not yet fulfilled.

9. Business Licence Register-(1) The Commissioner shall maintain a register of licences issued under this Act.

(2) The Register shall record the particulars of each licence issued as follows –

- (a) The name of the licensee;
- (b) The name of the owner or owners;
- (c) The address or location of the place or places of business;
- (d) The date of issue;
- (e) The type of business or economic activity; and
- (f) Such further or other particulars as may be prescribed.

(3) The Register shall be open for public inspection and a copy of any record may be obtained upon payment of a fee set by the Commissioner.

(4) In the event of any change in relation to any matter appearing in the register, the licensee shall advise the Commissioner in writing within 30 days of it occurring.

(5) In the event of a failure to give any notification required under subsection (4), the Commissioner may –

- (a) Cancel or suspend the licence; and
- (b) Impose a penalty upon the licensee of \$200 or such other sum as may be later prescribed.

10. Partners or employees-(1) In any case where 2 or more persons are operating as a partnership or in a joint venture it shall be necessary to obtain one licence only in respect of each business or economic activity conducted by the partnership.

(2) The provisions of section 4 hereof shall not apply to any person only by reason of his employment as a servant.

11. Licences not transferable-(1) No licence issued under this Act shall be transferable.

(2) Any purported transfer or attempt to transfer a licence shall render the licence invalid.

12. Licences may be cancelled-(1) The Minister, acting on the recommendation of the Commissioner, may cancel a licence if –

- (a) He is satisfied that the application for that licence

contained false information of a material particular; or

- (b) That licence-holder commits a breach of any law in the conduct of the business or economic activity; or
- (c) The licence-holder is in breach of any provision of this Act or a Regulation made under this Act; or
- (d) The licence-holder is in breach of any provision of any law relating to foreign investment.

(2) A licence-holder who is aggrieved by any decision of the Minister made under subsection (1) of this section may by motion appeal to the Supreme Court against such decision and the Supreme Court after hearing such evidence as may be relevant to the question may make such order including any interim order, as shall to the Court seem just, and may substitute its discretion for that of the Minister.

13. Duration of Licences-(1) Subject to subsection (2) and to the provisions of this Act, a licence shall remain valid until the 31st December of the year in which it is issued.

(2) The Head of State, acting on the advice of Cabinet, may by Order declare that licences issued under this Act shall remain valid for a period of 12 months from the date of their issue, unless they are earlier invalidated in accordance with this Act.

14. Renewal of Licences –(1) Applications for renewal of licences shall be made at least 1 month prior to their expiration and shall be made in the prescribed form.

(2) A licence-holder shall not be liable for prosecution for failing to hold a licence under this Act if he has made proper application for renewal within 30 days of the expiration of his licence and -

- (a) That renewal of licence is subsequently granted; and
- (b) The application for renewal is accompanied by a late application fee of \$200 or such other sum as may be later prescribed.

15. Licences to be produced on demand – (1) Any person required to hold a licence or licences pursuant to the provisions of this Act shall produce such licence or licences when required so to do by -

- (a) The Director of Health or any officer of the Health Department authorised in writing by the Director;
- (b) Any officer of Police;
- (c) Any Pulenuu with authority in the place where the business or economic activity is being carried on; or
- (d) The Commissioner or any officer of the Inland Revenue Department authorised in writing by the Commissioner.

(2) If the person upon whom demand is made pursuant to subsection (1) of this section fails to produce such licence or licences within a reasonable time or refuses to permit the said licence or licences to be examined and read by any person lawfully demanding production of the same he shall be guilty of an offence against this Act.

16. Licences to be displayed – Every licence issued under this Act shall be fixed and kept by the licence-holder in some conspicuous place in or upon the premises described in such licence or where the business or economic activity is being carried on.

17. Onus of proof – In any prosecution under this Act charging any person with carrying on any business or economic activity without a licence the charge shall be deemed proved if it is shown to the satisfaction of Court that the accused did actually carry on the business or economic activity, unless the accused person can produce his licence in the Court or can show to the satisfaction of the Court that such licence was duly obtained.

16. Offences—(1) Any person who carries on a business or economic activity, or has an interest in any business —

- (a) Which has not had issued for it a licence under this Act; or whose licence has been cancelled, suspended or deemed invalid by this Act; or
- (b) That involves any activity of the types to which section 4 applies; or
- (c) That is in contravention of any condition applicable to it under this Act —

shall be guilty of an offence.

(2) Any person convicted of an offence against this Act for which no other penalty is provided shall be liable on conviction to a fine not exceeding 20 penalty units, and if the person is the holder of a licence under this Act, the Court may cancel such licence or suspend the same for such period as it thinks fit.

(3) In addition to any fine imposed under subsection (2), upon conviction for an offence against subsection (1)(b) or that involves a breach relating to any provision of any law relating to foreign investment, the Court shall order the seizure of all assets of every description whatever held by the licence-holder for the purpose of the business or economic activity, and that such assets be sold at public auction and for the proceeds of sale to be paid into the Treasury Account.

19. Regulations—(1) The Head of State, acting on the advice of Cabinet, may from time to time make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting this power, regulations may be made under this section for all or any of the following purposes -

- (a) Prescribing the conditions which are to attach to any class or classes of licence;
- (b) Providing for any business or economic activity not for the time being specified in any Schedule to this Act to be included in such of the Schedules as may be specified in the regulations;
- (c) Clarifying any activity referred to in any schedule by the inclusion of further description or detail;

- (d) Declaring that any business or economic activity for the time being specified in any Schedule to this Act shall cease to be included in that Schedule and be included in any other Schedule to this Act;
- (e) Prescribing the forms and other documents to be used in carrying out the provisions of this Act; and
- (f) Prescribing fees provided for under this Act;
- (g) Prescribing with regard to the premises in which any class or classes of business or economic activity may be carried on, the conditions which must exist before any licence may be granted under this Act and so long as any such licence continues in force, and in particular –
 - (i) a minimum area, stud height, and standard of construction, lighting, and ventilation of any building and any living accommodation attached thereto;
 - (ii) the distance from any main business building or living accommodation of any copra shed or other detached building;
 - (iii) requirements as to sanitary conveniences and water supply;
 - (iv) requirements in regard to the cleanliness of the premises, provisions and description of bulk stores, containers, display cabinets, shelves and counters for food for human consumption, the screening of any building, and the exclusion of insect and animal life therefrom; and
 - (v) the inspection of premises to ensure that the provisions of any regulations made under this paragraph are at all times complied with;
- (h) Prescribing fines, not exceeding 10 penalty units, for the breach of any regulations made under this Act;
- (i) Granting exemptions to businesses or classes of business from the requirement to be licenced under this Act.

20. Repeals and Savings-(1) The Business Licences Ordinance 1960 is repealed.

(2) Subject to subsection (3), all licences issued under the Business Licences Ordinance 1960 that are valid and in force immediately prior to the commencement of this Act shall remain in force until the 31st December 1998 and shall be deemed to have been granted under this Act.

(3) The Commissioner may require any holder of a licence issued under the Business Licences Ordinance 1960 to make application for a licence under this Act prior to the 31st December 1998 if, in his opinion, it is appropriate to ensure compliance with the provisions of this Act.

SCHEDULE

PROHIBITED ACTIVITIES

- Nuclear and toxic waste disposal or storage
- Export of products that are prohibited under any law.
- Prostitution
- Processing and export of endangered species
- Production of weapons of warfare.