



SAMOA

BUSINESS LICENCES ACT 1998

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BUSINESS LICENCES ACT 1998

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.

[Assent and commencement date: 24 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 comes 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 responsible for Finance;

“Ministry” means the Ministry responsible for Revenue;

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

3. Administration – (1) The Commissioner is responsible for the administration of this Act and has 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 the determination is a requirement under this Act.

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

(2) A person who commences or carries on any business or economic activity in contravention of subsection (1) commits an offence and is 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 is not a defence to a prosecution under subsection (2) that a licence has been issued for the business or economic activity, and if there is any breach of subsection (1) the licence is taken 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 or she has for that business or calling a current licence issued under this Act.

(2) A licence issued under this Act is 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; and
- (c) an overriding condition that the licensee shall, in the course of the licensee's 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 Acts shall:

- (a) be made to the Commissioner;
- (b) be in a 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) An application shall state the place or places of business, and where the applicant has or proposes to have 2 or more places of business, the application shall specify the principal place of business.

(3) An application shall also contain any 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) If 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, the Minister may direct that the licence be issued.

(4) If the application is for an economic activity for food business, the applicant must attach to the application a copy of the certificate of health issued under the Food Act 2015.

(5) It is a condition of a licensed business for economic activity in relation to any food business that the food business should not be opened for trading unless it has a certificate of health issued under the Food Act 2015.

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

- (a) under the age of 18 years; and
- (b) is a bankrupt who has not obtained his or her 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 is open for public inspection and a copy of any record may be obtained upon payment of the prescribed fee.

(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 is necessary to obtain 1 licence only in respect of each business or economic activity conducted by the partnership.

(2) Section 4 does not apply to a person only by reason of his or her employment as a servant.

11. Licences not transferable – (1) A licence issued under this Act is not transferable.

(2) A purported transfer or attempt to transfer a licence renders the licence invalid.

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

- (a) the Minister is satisfied that the application for that licence contained false information of a material particular; or
- (b) that licensee commits a breach of any law in the conduct of the business or economic activity; or
- (c) the licensee is in breach of any provision of this Act or a Regulation made under this Act; or
- (d) the licensee is in breach of any provision of any law relating to foreign investment.

(2) A licensee who is aggrieved by a decision of the Minister made under subsection (1) 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 31 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 under 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 licensee is not liable for prosecution for failing to hold a licence under this Act if he or she has made proper application for renewal within 30 days of the expiration of his or her licence and –

- (a) that renewal of licence is subsequently granted; and
- (b) the application for renewal is accompanied by the prescribed late application fee.

15. Licences to be produced on demand – (1) A licensee shall produce the licence or licences when required so to do by any of the following:

- (a) the Chief Executive Officer of the Ministry of Health or any officer of the Ministry of Health authorised in writing by the Chief Executive Officer;
- (b) a sworn officer of the Samoa Police Service;
- (c) a Sui-o-le-nuu 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) A licensee who fails to produce, upon demand, such licence or licences within a reasonable time or refuses to permit

the licence or licences to be examined and read by any person lawfully demanding production of the same commits an offence.

16. Licences to be displayed – A licence issued under this Act shall be fixed and kept by the licensee 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 is taken to be 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 or her licence in the Court or can show to the satisfaction of the Court that such licence was duly obtained.

18. Offences – (1) A person commits an offence 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.

(2) A person convicted of an offence against this Act for which no other penalty is provided is liable on conviction to a fine not exceeding 20 penalty units, and if the person is a licensee, the Court may cancel the licence or suspend the licence 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 licensee 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 make all such regulations as may in the Head of State's opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting subsection (1), regulations may be made 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 continue 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 licensed under this Act.
- (2A) The amount of a fee or charge prescribed in subsection (2):
- (a) shall be proposed by the Ministry; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

20. Repeal 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 31 December 1998 and are taken to have been granted under this Act.

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

Schedule 1
(Sections 4(1) and 19)

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.

Schedule 2*repealed***REVISION NOTES 2008 – 2017**

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 to 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” and “in accordance with” changed to “under”
 - (vii) Numbers in words changed to figures
 - (viii) “hereby” and “from time to time removed”
 - (ix) Renumbered paragraphs in correct order.
 - (x) “licence-holder” changed to “licensee”, for consistency in the use of “licensee” in the Act.

- (xi) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.
- (xii) Section 9(5) further divided into paragraphs.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Miscellaneous Fees Amendment Act 2008, No 25:

- Section 4(1) – substitute “Schedule” with “Schedule 1”
- Renumber Schedule as Schedule 1
- New Schedule 2 inserted

By the Food Act 2015, No 31:

Section 7 – insert new subsections (4) and (5).

By the Fees and Charges (Miscellaneous Amendments) Act 2017 No. 13:

- Section 2 - inserted definition of “Ministry”;
- Section 9(3) - replaced “a fee set by the Commissioner” with “the prescribed fee”;
- Section 14(2)(b) - replaced “a late application fee of \$200 or such other sum as may be later prescribed” with “the prescribed late application fee”
- Section 19 - inserted new subsection (2A)
- Schedule 2 - repealed



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry for Revenue.*
