

PHARMACY AND POISONS.

12° and 13° GEO. VI., No. LXVI.

No. 66 of 1948.

AN ACT to amend the Pharmacy and Poisons Act 1910-1937.

[Assented to 21st January, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Pharmacy and Poisons Act Amendment Act, 1948*, and shall be read as one with the Pharmacy and Poisons Act, 1910-1937 (Act No. 7 of 1910, reprinted, as amended by Act No. 51 of 1937, pursuant to the provisions of the Amendments Incorporation Act, 1938, in Volume I. of the Reprinted Acts of the Parliament of Western Australia, 1939), hereinafter referred to as the principal Act.

Citation of
principal Act
as amended
by this Act.

2. The principal Act as amended by this Act may be cited as the Pharmacy and Poisons Act, 1910-1948.

3. Section one of the principal Act is amended by adding a subsection as follows:— Amendment
of s. 1.

(3) Subject to the Minister, and the provisions of this Act, the Council shall be responsible for the administration of this Act.

4. Section two of the principal Act is amended by inserting after the figure "43" in line eleven the following:— Amendment
of s. 2.

PART VA.—SALE OF CERTAIN DRUGS—SS. 43A-43C.

5. Section three of the principal Act is amended by— Amendment
of s. 3.
(a) inserting after the interpretation, "Gazette" an interpretation as follows:—

"Medical practitioner" means a person registered pursuant to the provisions of the Medical Ordinance, 1869, or the Medical Act, 1894-1946; Cf. No. 36 of
1894, ss. 3
and 19, Vol. 2
of 1943
reprint.

(b) inserting after the interpretation "State" the following:—

"Veterinary surgeon" and "veterinary practitioner" mean a person whose name appears as that of veterinary surgeon or veterinary practitioner, respectively, in the Veterinary Register of Western Australia, kept pursuant to the provisions of the Veterinary Act, 1911; Cf. 51 of
1911 as
amended by
46 of 1923,
ss. 2 and 25.

(c) substituting for the interpretation, "Wholesale dealing" the following:—

"Wholesale dealing" means sale or supply by any wholesale dealer in the ordinary course of wholesale business—

of poisons, poisonous substances or preparations, narcotic, dangerous, or potent drugs, or other substances, or preparations, to which the provisions of this Act apply—

to any person—

(a) who is licensed or otherwise expressly authorised by, or pursuant to the provisions of

this or any other Act, to acquire, sell or supply any of those things;

(b) who is not so licensed or authorised but who—

(i) acquires any of those things in bulk quantities, for use, other than resale, or supply, by retail, in connection with any profession, business, trade or industry;

(ii) acquires any of those things with the council's written authority for use in connection with any public institution authorised by proclamation to acquire the thing for that use.

Amendment of s. 6 by transposition of s. 52 of reprint in Vol. I, 1936, as s. 6 (6).

6. Section six of the principal Act is amended by adding after subsection (5) a subsection as follows:—

(6) The council may promote, establish and maintain or assist in the promotion, establishment and maintenance of schools of pharmacy or courses of instruction for pharmaceutical students, and may use the funds of the council for those purposes.

Amendment of s. 7. Election of council.

7. Section seven of the principal Act is repealed and substituted by the following:—

7. (1) At the expiration of the term, for which members of the council in office at the commencement of the Pharmacy and Poisons Act Amendment Act, 1948, are elected—

(a) pharmaceutical chemists may elect, in the manner and for such term or varying terms and subject to such conditions as

to eligibility for and tenure of office, as shall be prescribed, seven of their number to form the council; and

- (b) the members of the council formed pursuant to the provisions of the last preceding paragraph, shall elect, as often as shall be necessary, for such term and subject to such conditions as to eligibility and tenure of office as shall be prescribed, one of their number to the office of president.

(2) The provisions of this section shall not affect the validity of the constitution or the powers or functions of the council in office at that commencement, or the term of office of its members.

8. Section fourteen of the principal Act is amended Amendment of s. 14. by adding a subsection as follows:—

(3) A certificate under the hand of the registrar certifying that a person is duly qualified and registered according to the provisions of this Act shall be *prima facie* evidence in all courts of justice and in all legal proceedings that the person is so qualified and registered.

9. Section nineteen of the principal Act is amended Amendment of s. 19. by substituting for all words in line two, the words “place of residence, business, or employment, shall notify the change at the time and in the manner prescribed”.

10. Section twenty of the principal Act is amended Amendment of s. 20. by—

- (a) deleting subsection (1);
 (b) inserting before subsection (2) the following subsections:—

(1a) If—

in the opinion of the council a pharmaceutical chemist is guilty of impropriety, misconduct, or infamous conduct in a professional respect—

or—

is convicted of any offence, which, in

the opinion of the council, renders him unfit to practice as a pharmaceutical chemist—

or—

is addicted to alcohol or any deleterious drug to a degree, which renders him unfit so to practise—

the council may serve upon him a notice, requiring him to attend before the council at a specified time and place to show cause why he should not be dealt with in accordance with the appropriate provisions of the next succeeding subsection, and specifying the council's opinion and the grounds of the opinion in sufficient particularity to enable him to show cause.

(1b) If a pharmaceutical chemist, upon whom a notice is served pursuant to the provisions of the last preceding subsection, fails to show cause to the satisfaction of the council why it should not do so, the council may—

- (a) order that his name be erased from the register and so erase his name accordingly;
 - (b) order that he be suspended from practising as a chemist for a period not exceeding twelve months;
 - (c) order him to pay any costs or expenses of and incidental to the inquiry;
 - (d) censure him;
 - (e) require him to give such undertaking as it considers just;
- (c) substituting for the words "subsection (1) hereof" in subsection (2), lines two and three, the words, "the last preceding subsection";
- (d) adding after subsection (3) the following subsections:—

(4) When any costs are ordered to be paid by any pharmaceutical chemist under the provisions of this section, those costs shall be recoverable as a debt due by him to the council in any court of competent jurisdiction.

(5) No person shall employ a person whose name is erased from the register under the provision of this section, in any capacity in the business or at the address at which the latter is carrying on business or is employed when his name is so erased.

(6) The council may erase from the register the name of any pharmaceutical chemist, who, after adequate inquiry, it considers is unfit by reason of physical or mental incapacity, to practise as a pharmaceutical chemist.

(7) The proceedings of the council in the exercise of any of the powers conferred upon it by this section, shall be in accordance with regulations prescribed, and until prescribed, the council shall regulate its own proceedings.

(8) Any person, who is aggrieved by any decision of the council made pursuant to the powers conferred upon it by the provisions of subsections (1b) and (6) of this section may appeal within the time and in the manner prescribed against the decision, to a Magistrate, who may affirm, set aside, or vary it.

Cfs. 16 (3)
ante and s.
42 (5) post.

11. The principal Act is amended by adding after section twenty-two a section as follows:—

22A. No contract of apprenticeship shall be recognised or have any force or effect in law unless and until the council by an indorsement on the instrument evidencing the contract, signifies that it is satisfied that the principal has at his disposal sufficient facilities and material for the proper training of the apprentice.

Section 22A
added by
transposing
s. 51 of re-
print in Vol.
I, 1936.

Provisions
relating to
apprentices.
No. 51 of
1937, s. 20.

Repeal and re-enactment of s. 23.

12. Section twenty-three of the principal Act is repealed and substituted by the following:—

Council may direct examinations. 58 Vict. No. 35, s. 23.

23. The council shall control and direct all examinations it considers requisite for the purposes of this Act, in such subjects as may, from time to time be prescribed by the regulations.

Amendment of s. 25.

13. Section twenty-five of the principal Act is amended by substituting for the word "Schedule" in line two, the words "and Ninth Schedules to this Act".

Amendment of s. 26.

14. Section twenty-six of the principal Act is amended by substituting for the words "contained in the Sixth Schedule" in lines two and three, the word "prescribed".

Repeal and re-enactment of s. 28.

15. Section twenty-eight of the principal Act is repealed and substituted by the following:—

28. A license referred to in section twenty-six of this Act shall not be granted to any person unless he produces to the council a certificate which is in the form and which is completed and signed in the manner prescribed, or unless he holds a license granted and in force pursuant to the provisions of section sixteen of this Act.

Amendment of s. 31.

16. Section thirty-one of the principal Act is amended by—

(a) substituting for the words in lines one and two the words "Every person licensed to sell poisons referred to from time to time in the Fifth Schedule to this Act, shall, as regards those poisons—";

(b) adding after the word "poison" in paragraph (d), line four, the following paragraph.—

(e) Refuse to sell and refrain from selling any poison to any person who is—

(i) apparently under eighteen years of age;

(ii) unknown to the vendor, unless the sale be made in the presence of some witness who is known to the vendor,

and to whom the purchaser is known, and that witness signs his name together with his place of abode, to the required entry before the delivery of the poison to the purchaser;

- (c) substituting for the words "in paragraph (b)" in line one of the proviso, the words "in paragraph (b) and subparagraph (ii) of paragraph (e) of this section".

17. Section thirty-four of the principal Act is repealed and substituted by the following:—

Repeal and re-enactment of s. 34.

34. No person shall sell any poison or poisonous substance unless the container immediately containing it is marked in such manner and with such particulars as shall be prescribed.

18. Section thirty-six of the principal Act is repealed.

Repeal of s. 36.

19. Section forty-one of the principal Act is repealed and substituted by the following:—

Repeal and re-enactment of s. 41.

41. Subject to the provisions of this section, the provisions of sections twenty-six to thirty-three, both inclusive, and of section forty-two of this Act shall not apply in respect of—

- (a) any wholesale dealing:

Provided that—

- (i) no poison or poisonous substance, shall be supplied in connection with the dealing, unless pursuant to a written order signed by the intending purchaser;
- (ii) all poisons and poisonous substances kept for the purpose of wholesale dealing, shall be kept in the custody and control of the vendor, his agents and servants, in such manner as to preclude access to them by the public;

- (b) a sale of any poison or poisonous substance when made up or compounded—
- (i) in a medicine by a medical practitioner for any patient whom he is treating;
 - (ii) in a medicine by a pharmaceutical chemist, carrying on business as a pharmaceutical chemist or druggist;
 - (iii) in a medicine by a veterinary surgeon or veterinary practitioner for any animal which he is treating;
 - (iv) in the form of any homeopathic medicine, except when in the crude state or mother tincture.

Amendment
of s. 42.

20. Section forty-two of the principal Act is amended by—

(a) substituting for subsection (2) the following subsection:—

(2) (a) A license to sell any of the poisonous substances, or preparations, specified in the Ninth Schedule to this Act—

(i) shall not be issued to any body corporate or partnership;

(ii) may be issued, in the manner and subject to the conditions prescribed by the council to any natural person, who applies for it in the manner, and pays the fee, prescribed, as an authority for him to sell any of them—

(I) on his own behalf; or

(II) as an employee, and on behalf, of any body corporate; or

(III) as an employee, or partner, and on behalf, of any partnership.

(b) When a license is issued pursuant to the provisions of item (II) or (III) of subparagraph (ii) of the last preceding paragraph, and an offence against the provisions of this Act, relating to the sale of those substances and preparations is committed by the holder of the license in connection with—

his employment, if he is an employee, or the business of the partnership, if he is a partner—

each of the following shall be guilty of a similar offence, and liable to punishment similar to that to which the holder is liable—

(i) in the case of a body corporate, that body and each of its executive officers, whether director, manager, secretary, or otherwise, who knowingly authorises, or who, through lack of reasonable supervision or otherwise, permits the offence;

(ii) in the case of a partnership, each partner who knowingly, or who, through lack of reasonable supervision or otherwise, permits the offence:

Provided that the provisions of this subsection shall not be construed so as to affect the liability of any person, who aids, counsels, procures, or is otherwise an accessory to the offence.

(c) The holder of a license issued pursuant to the provisions of this subsection shall observe and comply with the provisions of this Act and the regulations made in pursuance of those provisions, relating to the license and to any conditions specified in the license;

(b) repealing subsection (3).

Section 42A
added.

21. The principal Act is amended by adding after section forty-two the following section:—

42A. Poisons and poisonous substances, which are referred to in the Ninth Schedule to this Act, and which are kept for the purpose of sale or supply, shall be kept in the custody and control of the vendor, his agents and servants in such manner as to preclude access to them by the public and shall not be sold or supplied to any person who is apparently under the age of eighteen years.

Part VA
added.

22. The principal Act is amended by adding after section forty-three, the following:—

PART VA.—SALE OF CERTAIN DRUGS.

Tenth,
Eleventh and
Twelfth
Schedules.

43A. Subject to the provisions of this Act, any of the drugs or preparations referred to in the Tenth, Eleventh and Twelfth Schedules to this Act, shall not be sold, except by such persons and subject to such conditions as shall be prescribed:

Penalty—Fifty pounds.

Tenth,
Eleventh and
Twelfth
Schedules
may be
amended.

43B. (1) The Governor may, by order made by him, amend the Tenth, Eleventh and Twelfth Schedules to this Act by deletion, addition or other alteration.

Notice of
amendment
to Tenth,
Eleventh and
Twelfth
Schedules to
be advertised
in Gazette.

(2) Notice of any order made under the provisions of the last preceding subsection shall be published in the *Gazette* and thereupon shall take effect on the day specified in the notices, but if no day be specified, on the seventh day after that of the publication.

Exemption
of certain
wholesale
dealings.

43C. The provisions of this Part shall not apply to any wholesale dealing between a wholesale dealer and a person referred to in paragraph (a) or paragraph (b), subparagraph (ii) of the interpretation “Wholesale dealing” in section three of this Act.

Amendment
of s. 44.

23. Section forty-four of the principal Act is amended by—

(a) adding after the word “chemist” in subsection (1), paragraph (c), line three, the words “or assume or use or exhibit any title, direction,

or sign, whether including the word 'pharmacy' or otherwise, which can be considered to mean that he is carrying on that business.'";

(b) inserting after the word "sign" in paragraph (i) of the proviso, line twelve, the words "whether including the word 'pharmacy' or otherwise";

(c) adding after subsection (2), the following subsection:—

(2a) Except in cases of emergency—

no person shall accept any prescription for preparation of medicine—

otherwise than at a pharmacy at which the medicine shall be prepared and supplied.

24. Sections fifty, fifty-one and fifty-two of the principal Act are repealed. Repeal of ss. 50-52.

25. The principal Act is amended by adding after section fifty-two the following section:— S. 52A added.

52A. Any person who acts in contravention of, or fails to comply with, any of the provisions of this Act or the regulations made thereunder, shall be guilty of an offence against this Act, and where no special penalty is provided, be liable to a penalty not exceeding ten pounds. General penalty.

26. Section fifty-three of the principal Act is amended by— Amendment of s. 53.

(a) deleting the words "in addition to those prescribed by this Act" in paragraph (d), lines one and two;

(b) adding after the word "licenses" in paragraph (f), line two, and paragraph (g), line three, the words "and permits";

(c) deleting the word "narcotic" in paragraph (j), line three.

27. The principal Act is amended by deleting the Sixth and Seventh Schedules. Sixth and Seventh Schedules deleted.

Tenth,
Eleventh and
Twelfth
Schedules
added.

28. The principal Act is amended by adding after the Ninth Schedule the following Schedules:—

S. 43A.

Tenth Schedule.

Drugs and Preparations for Human Use.

Item.

A—Penicillin.

B—Products of salts of penicillin.

C—Benadryl.

D—Phenobarbitol.

E—Sulphonamides.

F—Preparations containing any of the drugs mentioned in the foregoing items of this Schedule.

S. 43A.

Eleventh Schedule.

Drugs and Preparations for Veterinary Use.

Item.

A—Penicillin.

B—Products of salts of penicillin.

C—Preparations containing any of the drugs mentioned in the foregoing items of this Schedule.

S. 43A.

Twelfth Schedule.

Drugs and Preparations for Veterinary Use.

Item.

A—Sulphonamides.

B—Substituted sulphonamides.

C—Preparations containing any of the drugs mentioned in the foregoing items of this Schedule.