

PHARMACY AND POISONS.

1° AND 2° GEO. VI., No. LI.

No. 51 of 1937.

AN ACT to amend the Pharmacy and Poisons Act, 1910.

[Assented to 18th January, 1938.]

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, 1937*, and shall be read as one with the Pharmacy and Poisons Act, 1910 (as contained in Appendix B to the Pharmacy and Poisons Compilation Act, 1910, No. 7 of 1910), hereinafter referred to as the principal Act.

Amendment of s. 3. 2. Section three of the principal Act is amended as follows:—

(a) by inserting before the definition of "Council" definitions as follow:—

Fed. Ty. Ord.
No. 10 of
1931. s. 44.

"Automatic machine" means any machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal

manipulation or attention of the seller or supplier or his employee or other agent at the time of the sale or supply.

“Company” means any company registered under the provisions of the Companies Act, 1893, or any Act amending the same;

(b) by inserting after the definition of “Regulations” a definition as follows:—

“Sale” includes exposing or offering for sale or having in possession for sale and also delivery, whether with or without consideration, in any shop or store or premises appurtenant thereto by the keeper thereof or by his servant or agent; and the verb “to sell” has a corresponding meaning;

(c) by inserting at the end of the section a definition as follows:—

“Wholesale dealing” means—

(a) sale or supply by wholesale dealers in the ordinary course of wholesale dealing to persons licensed or specifically authorised by this Act or the Regulations thereunder, or by any other Act or regulations, to be in possession of or to sell or supply poisons or poisonous substances or preparations or narcotic or dangerous drugs or potent drugs or other substances or preparations to which this Act applies; and

(b) sale or supply by wholesale dealers or other dealers of the several articles mentioned in paragraph (a) hereof to any persons, other than those persons mentioned in the said paragraph when the said articles are sold or supplied in wholesale quantities in the ordinary course of wholesale dealing for use in connection with any profession, business, trade, or industry, or any public institution to which the Governor by

See Victoria
No. 3918 of
1930, s. 2.

proclamation shall declare this paragraph to apply and not intended for resale or supply retail.

New section. 3. A section is inserted in the principal Act after section five, as follows:—

Council a
body corpor-
ate.

Power of
Council in
relation to
land.

5A. (1.) The Council, under the style aforesaid, shall be a body corporate, with perpetual succession, and a common seal, and shall be capable of suing and being sued in its corporate name, and of acquiring, holding, and disposing of real and personal property.

(2.) The Council shall be deemed to have the powers of an institution within the meaning of the Public Institutions and Friendly Societies Lands Improvement Act, 1892, and may exercise in respect of lands vested in the Council such powers as are thereby given to institutions:

Provided that the portions of the said Act requiring the concurrence of three-fourths of the members of an institution shall for the purposes of this Act be deemed to be eliminated.

(3) The Council shall also have power, subject to subsection (5) hereof, to sell, lease, or exchange any lands vested in it, and to pay or receive money by way of equality of exchange.

(4.) The powers of selling, exchanging, mortgaging, or leasing lands which are conferred upon the Council by this Act shall extend to land held in trust for any special purpose, notwithstanding the terms of the trust; but the proceeds of any such sale, and the land or money obtained by any such exchange, shall be subject to the like trusts, so far as may be, as the land so disposed of.

(5.) No power conferred by subsections (2), (3), or (4) of this section shall be exercised by the Council without the consent of the Governor.

New sections. 4. Sections are inserted in the principal Act after section fourteen, as follows:—

License to
practise as a
pharmaceu-
tical chemist.

14A. (1.) No pharmaceutical chemist shall practise or carry on business as a pharmaceutical chemist, or either as agent, employee, or otherwise

be engaged with any other person in the practice or business of a pharmaceutical chemist, except under the authority of a license from the Council as prescribed by the regulations.

Penalty Fifty pounds.

(2.) An application for a license under this section shall be made in the prescribed manner, and shall be accompanied by the prescribed fee, which shall not exceed twenty-one shillings, and every license under this section shall be in the prescribed form.

(3.) An applicant whose application is refused by the Council may appeal against such refusal. Such appeal shall be made in the prescribed manner to the Governor, who may by order in council direct the Council to grant the license applied for.

(4.) Every license issued under this section shall, unless cancelled, remain in force until the thirtieth day of June next ensuing after the date of the issue thereof.

(5.) Any registered pharmaceutical chemist convicted of an offence under subsection (1) hereof shall be liable, at the discretion of the Council, to have his name erased from the register for such period and subject to such conditions as the Council may determine.

Provided that an appeal may be made in the prescribed manner to the Governor against the decision of the Council, and the Governor, on such appeal, may affirm, set aside, or vary the decision appealed against.

14B. No pharmaceutical chemist, whether holding a license under section fourteen A of this Act or not, shall practice or carry on business as a pharmaceutical chemist or druggist or either as agent, employee, or otherwise be engaged with any other person in such practice or business in more than two places of business concurrently.

Chemists not to carry on business in more than two places of business concurrently.

Penalty: Fifty pounds.

5. Section seventeen of the principal Act is amended by adding thereto subsections as follows:—

Amendment of s. 17.

(2) When the name of a pharmaceutical chemist has been erased from the register as provided for

in subsection (1) hereof, any license issued to him under section fourteen A of this Act shall be deemed to be thereby cancelled.

(3.) Provided that the Council may at any time after the name of a pharmaceutical chemist has been erased from the register as aforesaid, subject to the regulations and upon payment of the prescribed fee, reinstate the name of such pharmaceutical chemist in the register, and thereupon the license under section fourteen A aforesaid, deemed to have been cancelled by virtue of subsection (2) hereof, shall again become of full force and effect, unless it shall have expired by effluxion of time.

Amendment
of s. 22.

6. Section twenty-two of the principal Act is amended by adding thereto a further proviso, as follows:—

Provided also that the Governor, on the recommendation of the Council, may by proclamation do all or any of the following things, namely:—

- (a) remove the name of any article from either Part I. or Part II. of the Fifth Schedule to this Act;
- (b) remove the name of any article from Part I. of the said Fifth Schedule and add the name of such article to Part II. of such Schedule;
- (c) remove the name of any article from Part II. of the said Fifth Schedule and add the name of such article to Part I. of such Schedule; and
- (d) amend by adding to, taking away from, varying or modifying any of the items contained in the Ninth Schedule to this Act.

Amendment
of s. 23.

7. Section twenty-three of the principal Act is amended by inserting after the word "Schedule" in line three, the words "or is exempted by section thirty-five of this Act."

Amendment
of s. 24.

8. Section twenty-four of the principal Act is amended by inserting after the word "Chemist" where it appears in lines two and three, the words "who holds a license under section fourteen A of this Act."

9. Section twenty-five of the principal Act is amended by adding thereto a proviso as follows:—

Amendment
of s. 25.

Provided that production of the said certificate shall not be necessary in the case of a pharmaceutical chemist who holds a license under section fourteen A of this Act.

10. Sections are inserted in the principal Act after section twenty-five as follows:—

New sections.

25A. No such license shall be issued to a company or friendly society, although such company or friendly society is lawfully carrying on business as a pharmaceutical chemist; but such license may be issued to any pharmaceutical chemist entitled thereto for his own use, who is *bona fide* employed by or engaged with such company or friendly society in the business of a pharmaceutical chemist and may be used by him for the benefit of such company or friendly society.

License to
sell poison
not to be
issued in
name of a
company or
friendly
society.

Provided that, where any such license is used by a pharmaceutical chemist for the benefit of any company or friendly society as aforesaid, such company or friendly society, and the manager or other officers thereof respectively and the said pharmaceutical chemist, shall be jointly and severally liable in respect of any offence under this Act committed by any servant or other agent of such company or friendly society in relation to the sale or possession of poisons.

25B. (1.) Every application for a license to sell poison under this Act shall be made in the manner prescribed by regulations; and subject to this Act and the regulations a license may be issued by the Council to the applicant upon payment of the prescribed fee.

Application
for license to
sell poison.

(2.) Every license to sell poison issued under this section shall, unless cancelled, remain in force until the thirtieth day of June next ensuing after the date of the issue of the license.

11. Section twenty-six of the principal Act is amended by inserting in paragraph (b) after the word "kept" in line six of the said paragraph, the words "at the place of business of the licensee."

Amendment
of s. 26.

Amendment
of s. 29.

12. Section twenty-nine of the principal Act is amended by adding thereto a proviso as follows:—

Provided that in the case of patent and proprietary medicines, it will be sufficient if the name and address of the vendor and the word "poison" appear on the outer wrapper in which the immediate container of such patent or proprietary medicine is contained when such immediate container has the word "poison" conspicuously printed thereon and is wrapped in an original wrapper as well as the outer wrapper.

New section.

13. A section is inserted in the principal Act after section thirty-one, as follows:—

31A. No person shall—

(a) sell; or

(b) hawk or peddle or distribute or cause to be distributed as a sample

any poison, narcotic drug or poisonous substance in any street or public place or from house to house.

Penalty: Fifty pounds.

Prohibition
against sale
of poison or
the hawking
or peddling
of poison in
a street or
public place
or from house
to house.

cf. Fed. Ord.
No. 37 of
1933, p. 5.

Amendment
of s. 32.

14. Section thirty-two of the principal Act is amended by deleting paragraph (a) of subsection (1) and inserting in lieu thereof a paragraph as follows:—

(a) sells, hawks, peddles, or distributes, or causes to be distributed any poison, narcotic, drug, or poisonous substance contrary to the provisions of this Act; or

Amendment
of s. 34.

15. Section thirty-four of the principal Act is amended by adding thereto a subsection, as follows:—

(2.) Where a pharmaceutical chemist holds a license under section fourteen A and also a license to sell poison under this Act, and the former license is cancelled as provided for in this Act, then the license to sell poison shall also be deemed to be cancelled during such period as the said license under section fourteen A aforesaid remains cancelled.

Amendment
of s. 35.

16. Section thirty-five of the principal Act is repealed and a section is inserted in lieu thereof, as follows:—

35. Subject to the provisions of this section this Act shall not extend to any person, firm, or company

Act not to
extend to
certain sales
of poisons.

engaged in wholesale dealing in any poison specified in the Fifth Schedule to this Act, or to the sale of any poison when made up or compounded in a medicine by a duly qualified medical practitioner for patients under his care, or by a pharmaceutical chemist carrying on business as a chemist or druggist, or to any medicine compounded according to the prescription of a duly qualified medical practitioner, or in the form of homoeopathic medicine, unless in the crude state or mother tincture, nor to the sale of patent or proprietary medicines when sold by pharmaceutical chemists or other licensed persons, nor to the sale of medicines dispensed by veterinary surgeons for animals under their treatment; nor shall it extend to the sale in the ordinary course of wholesale dealing by any person, firm, or company engaged in wholesale dealing in any of the poisonous substances or preparations specified in the Ninth Schedule to this Act, if an order in writing signed by the purchaser is given for the supply of the same and the bottle or other vessel, wrapper, or cover, box, or case immediately containing the poison or poisonous substance or preparation bears thereon the word "Poison" or "Poisonous substance," as the case may be, and section twenty-nine of this Act is in all respects duly complied with in relation to such sales.

Provided that any medicine for external application containing any poison shall not be sold, except in the prescribed type of container, and unless the container bears the word "Poison" printed conspicuously thereon, together with the name and address of the vendor.

17. Sections are inserted in the principal Act after section thirty-five, as follows:— New sections

35A. (1.) Except as provided by section one hundred and twenty-six of the Vermin Act, 1918, no person other than a person holding a license to sell poison or otherwise authorised by this Act to sell poison or otherwise authorised by this Act to sell poison without holding such a license shall sell or offer or expose for sale any of the poisonous substances or preparations specified in the Ninth Schedule to this Act, unless he holds from the Council a license to do so as prescribed by the regulations.

Sales of certain poisonous substances except by licensed persons prohibited.

Penalty: Fifty pounds.

(2.) Any person may apply to the Council in the prescribed manner for the issue to him of a license under this section, but shall lodge with his application a certificate from a duly qualified medical practitioner and a certificate from a stipendiary or resident magistrate, or, where there is no such magistrate available within five miles of the place of residence of the applicant, a certificate from a justice of the peace that the applicant is a fit and proper person to hold such license.

(3.) The Council may issue a license in the prescribed form to sell the poisonous substances or preparations specified in the Ninth Schedule aforesaid to any applicant who complies with the requirements of subsection (2) hereof, upon payment of the fee of five shillings; and such license shall be held by the applicant in all respects subject to the regulations.

(4.) Every license issued under this section shall, unless cancelled or suspended, remain in force until the thirtieth day of June next ensuing after the date of the issue thereof.

(5.) If any person holding a license under this section is convicted of any offence, or by reason of habitual drunkenness or for any other reason is in the opinion of the Council unfit to hold such license, the Council may cancel such license, either absolutely or upon such conditions as it may determine, or may suspend such license for the whole or any portion of the unexpired period of the license, as the Council may determine.

Provided that the licensee may appeal in accordance with the regulations to the Governor against the decision of the Council, and the Governor may affirm, set aside, or vary the decision appealed against.

Provided also, that during such time as a license is suspended as aforesaid, it shall be wholly inoperative as a license.

35B. Any person who—

- (a) instals any automatic machine for the sale or supply of any drug or medicine or

poison, or permits any such automatic machine to be so installed; or

(b) sells or supplies any drug or medicine or poison by means of any automatic machine; or

(c) permits or suffers any person to purchase or be supplied with or otherwise obtain any drug or medicine or poison by means of any automatic machine

shall be guilty of an offence.

Penalty: Ten pounds.

18. Section thirty-six of the principal Act is amended, Amendment
of s. 36.
as follows:—

(a) by deleting paragraph (b) of the first subsection, and inserting in lieu thereof a paragraph as follows:—

(b) a company or a friendly society registered under the Friendly Societies Act, 1894-1923, and respectively engaged in carrying on the business of a chemist and druggist or of a pharmaceutical chemist by and under the immediate supervision of a licensed pharmaceutical chemist, provided that such company or friendly society does not employ in the dispensing of medicines more than three persons who are not pharmaceutical chemists to every pharmaceutical chemist who is so employed; or

(b) by adding at the end of the first subsection a proviso as follows:—

Provided that—

(i) nothing in this section contained shall extend to or be deemed to give any right to a company to carry on such business other than a company now registered and carrying on such business under the immediate personal supervision of a pharmaceutical chemist, and, save as aforesaid, it shall not be lawful for any company or association of persons, not being licensed pharmaceutical chemists, to carry on or assist in the carrying on of such business aforesaid, or to assume or use or exhibit any title, direction, or

sign which can be considered to mean that such company or association of persons is or are carrying on any such business as aforesaid, or that any of such persons is or are qualified as a pharmaceutical chemist; and

(ii) every company now carrying on business as aforesaid under the authority of this Act shall be and is hereby limited to the carrying on of such business at one place or shop or premises, and no more; and

(iii) the legal personal representative of a pharmaceutical chemist who may have died whilst carrying on such business, or any person seizing or taking possession of the stock-in-trade of a pharmaceutical chemist under a mortgage, bill of sale, or other security, or the liquidator of any company in the course of being wound up, or any mortgagee or receiver seizing and taking possession of the stock-in-trade of a company under a mortgage, bill of sale, or other security, may continue to carry on the business of the pharmaceutical chemist or of the company, as the case may be, for a period not exceeding twelve months, or for such further period as may be permitted by the Council upon and subject to the express condition that such business is so carried on by and under the immediate personal supervision and management of a duly licensed pharmaceutical chemist; and

(iv) nothing in this section shall operate so as to prevent a person, not being a company or a friendly society or a registered or licensed pharmaceutical chemist, who has been and still is at the time of the commencement of this paragraph of this proviso carrying on the business of a chemist and druggist, from continuing himself in person to continue to carry on the said business in the same place: provided he does so constantly under the immediate personal supervision of a licensed pharmaceutical chemist until he ceases to carry on such business in such place, or sells, assigns, or otherwise disposes of the said business.

19. Section thirty-seven of the principal Act is amended by adding at the end of subsection (2) thereof the words "and on every label, invoice, or other document which is issued or used in or in connection with such business."

Amendment
of s. 37.

20. New sections are inserted in the principal Act after section forty-two, as follows:—

New sections.

42A. 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 such contract, signifies that it is satisfied that the principal has at his disposal sufficient facilities and material for the proper training of the apprentice.

Provisions
relating to
apprentices.

42B. The Council may promote, establish, or maintain or assist in the promotion, establishment, or maintenance of schools of pharmacy or of a course of instruction for pharmaceutical students, and may use the funds of the Council for any of the purposes aforesaid.

Council may
establish
schools and
use funds for
maintenance
of same.

21. Section forty-three of the principal Act is amended by deleting subsection (1) thereof and inserting in lieu thereof a subsection, as follows:—

Amendment
of s. 43.

(1.) The Governor, either with or without the recommendation of the Council, may make regulations, not inconsistent with this Act, for all or any of the following purposes, that is to say:—

- (a) regulating the meetings and proceedings of the Council and the conduct of its business;
- (b) prescribing the manner of and time and place for electing the members and the president of the Council;
- (c) prescribing the annual license fees to be paid by pharmaceutical chemists to the Council for the purpose of defraying the expenses necessary to carry out the provisions of this Act, the fees for the examination of persons qualifying to be registered as pharmaceutical chemists, and the fees for the registration of the same;

Meetings of
the Council
and conduct
of business.

Election of
Council and
president.

License fees
and examina-
tion and regis-
tration fees.

Additional subjects of examination.

(d) prescribing the subjects, in addition to those prescribed by this Act, for the examination of persons qualifying for registration as pharmaceutical chemists;

What pharmacy institutions may be recognised.

(e) prescribing that the certificates or diplomas of competency as a pharmacist or as a chemist and druggist of any specified society, college or board of pharmacy shall be recognised by the Council;

Issue, cancellation, and suspension of licenses.

(f) regulating the issue, cancellation, and suspensions of licenses by the Council;

Appeals.

(g) regulating appeals against the decisions of the Council in relation to the refusal, cancellation, or suspension of licenses;

Forms.

(h) prescribing forms;

License fees.

(i) prescribing fees;

Manufacture, storage, safe custody, and sale of poisons.

(j) regulating the manufacture, storage, safe custody and sale of poisons, poisonous substances, and narcotic drugs;

Colouring of poisons.

(k) regulating the colouring of any poison, poisonous substance, or narcotic drug;

Containers or packages.

(l) providing for the shape, size, and materials of the container or package in which any poison, poisonous substance, or narcotic drug may be sold;

Containers to have printed thereon name of remedy to counteract poison.

(m) requiring that the container or package in which any prescribed poison is cased, covered, enclosed, contained or packed for sale (whether by wholesale or retail) shall have printed thereon the name of some effective remedy (if any) to counteract the effects of such poison;

Inspection of books and documents.

(n) providing for general or particular inspections by the Council, or by any servant or officer of the Council authorised in that behalf by writing under the hand of the president of the Council, of any books, entries, letters, documents, instruments, or other writings required by the provisions of this Act to be kept by persons subject to the provisions of this Act;

General.

(o) prescribing all other matters and things necessary to be prescribed or which it is convenient to prescribe for more effectively carrying the

provisions of this Act into effect and of achieving the objects of this Act; and

- (p) prescribing a penalty, not exceeding the sum of fifty pounds, to be imposed upon and paid by any person found guilty of any breach or contravention of any regulation made under this Act.

Penalty for
breach of
regulation.

22. A Schedule is added to the principal Act, after the Eighth Schedule, to stand as the Ninth Schedule, as follows.—

New Schedule
—Ninth
Schedule.

NINTH SCHEDULE.

1. Agricultural and horticultural preparations containing any poison intended to be used exclusively for agricultural or horticultural purposes, or for the purpose of destroying birds or animals which are vermin under any Act relating to vermin, or for use exclusively as sheep dips, sheep washes, or weed killers, but so that the preparation when sold is contained in a vessel or receptacle which is adequately sealed.

2. Photographic chemicals consisting of or containing any poison and exclusively used for the purpose of photography.

3. Poisonous preparations intended to be used exclusively for destroying rats, mice, flies, or other insects.

4. Poisonous acids and chemicals for mining or trade purposes, when such are required in large quantities.

5. Such other poisonous substances and preparations as may be added to this Schedule by proclamation.

23. The principal Act as amended by this Act may be cited as the Pharmacy and Poisons Act, 1910-1937.

Citation of
principal Act
as amended.