

WESTERN AUSTRALIA

ANNO QUADRAGESIMO OCTAVO

VICTORIÆ REGINÆ

No. 14

An Act to amend 'The Wines, Beer, and Spirit Sale Act,
1880.' [Assented to 10th September, 1884.]

WHEREAS it is expedient to amend 'The Wines, Beer, and Spirit Sale Act, 1880': Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. After the coming into operation of this Act, 'The Wines, Beer, and Spirit Sale Act, 1880,' hereinafter called the principal Act, shall be read and construed as if this Act formed part of the said recited Act.

2. If the holder of any license, except a Packet License or a Temporary License, shall cease, by reason of any cause other than his decease or bankruptcy, to occupy the premises for which his license was granted, or to which it is attached, at any time during the currency of such license, and shall not previously to such cesser of occupation as aforesaid have obtained a removal of the said license from the afore-

Incorporation
with 44 Vic.,
No. 9

Application for a
compulsory
transfer of a
license

The Wines, Beer, and Spirit Sale Act, 1880—Amendment

said premises to other premises, according to the provisions of the principal Act in that behalf, and shall refuse to transfer such license to the person occupying or being about lawfully to occupy the licensed premises, on being tendered by such person the proportion of the annual fee paid on such license estimated with reference to the time during which such license has to run, such person lawfully occupying, or being about lawfully to occupy the licensed premises may apply in writing to the Resident or Police Magistrate of the district in which the premises are situate for a transfer to him of the said license.

3. It shall be a condition precedent to the transfer of such license that the applicant shall have given, at least seven days before the application, notice in writing to the holder of the said license of his intention to apply for a transfer of such license as aforesaid, and requiring the holder to produce the said license to such Resident or Police Magistrate, or to send it to the Magistrates' clerk within three days after such notice.

Condition relating to such application

4. The Resident or Police Magistrate may in his discretion transfer the said license from the holder thereof to the applicant, by endorsement upon the license in the form in the Schedule to this Act, for which a fee of Two pounds shall be paid by the applicant to the said Resident or Police Magistrate to the use of Her Majesty, her heirs and successors, for the public use of the Colony and the government thereof; and thereupon the transferee shall, until the first day of the month following the next quarterly licensing meeting and no longer, have all the rights and shall be subject to all the liabilities and conditions which the original holder would have had and been subject to during the same period.

Transfer may be by endorsement on the license

5. The Resident or Police Magistrate shall make it also a condition of the transfer of such license that the applicant shall forthwith pay to the holder of the license, or deposit with the Magistrates' clerk for the holder's use and benefit, a sum of money, being part of the annual fee that has been paid for such license, estimated with reference to the time yet to run until the first day of the month following the next quarterly licensing meeting.

Payment by transferee of proportional part of annual fee

6. If the holder of the license shall neglect to send or produce the same after being duly required as aforesaid, the Resident or Police Magistrate may in his discretion declare such license to be void, and grant a certificate to the applicant for a fresh license for the premises in question, upon payment or deposit of the proportional part of the annual fee as aforesaid. Provided that the person to whom such a certificate is granted shall pay the sum of two pounds to the proper officer authorised to issue licenses within fourteen days after the granting of the said certificate, otherwise the said certificate shall be void; and the said officer, upon the production to him of the said certificate and the payment of the said fee, shall forthwith issue a fresh license, to be in force until the first day of the month following the next quarterly licensing meeting and no longer.

Fresh license may be granted under certain circumstances

7. A certificate authorising the grant of a temporary Eating, Boarding, or Lodging House License, to be in force until the first day of the month following the next quarterly licensing meeting of the Justices of the district in which the premises for which such license is

Grant of temporary eating, boarding, or lodging-house license

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applied for are situate, may be granted at any time by the Resident or Police Magistrate of the said district, without any previous notice thereof being given by or on behalf of the applicant: Provided that the person to whom such a certificate is granted shall pay the sum of ten shillings to the proper officer authorised to issue licenses within seven days after the granting of the said certificate, otherwise the said certificate shall be void, and the said officer shall, upon the production to him of the said certificate and the payment of the said fee, issue an Eating, Boarding, or Lodging House License to be in force for the time aforesaid.

Grant of hotel
license

8. It shall be lawful for the licensing Justices to grant to any such person as may be approved of by them a certificate authorising the granting of a license to be called an Hotel License. An Hotel License shall be in the form contained in the Schedule hereto. The annual fee which shall be paid for such a license shall be Twenty-five pounds, subject to the proviso to section 15 of the principal Act as to part payment of such annual fee hereinafter enacted.

Effect of hotel
license

9. An Hotel License shall authorise the licensee to sell and dispose of any liquor, at any time, to lodgers or boarders in the hotel, for the use of such lodgers or boarders, or of their guests, to be consumed on the premises, or to persons taking a meal at the hotel, to be consumed during such meal; but it shall not authorise the licensee to sell or dispose of liquor to any other persons or in any other manner than as aforesaid.

Provisions ap-
plicable to hotel
licenses

10. All the provisions of the principal Act as to the conditions of obtaining licenses, the hearing of and objections to applications, the renewal and rehearing of applications for and the transfer and removal of licenses, shall apply to Hotel Licenses in as full and ample a manner as to the other licenses mentioned in the said Act; provided that the said provisions are applicable thereto and are not inconsistent with this Act. The holders of Hotel Licenses shall have all the rights and shall be subject to all the duties and liabilities of the holders of Publican's General Licenses under the said Act, subject to the proviso aforesaid; and section 49 of the principal Act shall apply to every house for which an Hotel License shall be granted.

No license re-
quired for sale of
wine by vine-
yard occupier
under certain
circumstances

11. No license under the principal Act shall be required for the sale by any person, the occupier of a vineyard or orchard of not less than one acre in extent, and the delivery after sale in quantities of not less than one gallon, at any one time, of wine, cider or perry, manufactured by such person from fruit grown in the Colony. Provided that such wine, cider or perry be not sold or delivered to any one in a state of intoxication, and be not consumed on the premises in the possession or occupation of such occupier or his servants, and be not sold or delivered on Sunday, Good Friday, or Christmas Day. Any person offending against the provisions of this clause shall be liable to a penalty for every such offence of any sum not exceeding Ten pounds.

Sale or possession
of adulterated
liquor

12. If any licensed person shall by himself, or his agent, or servant, sell or dispose of, or offer, or attempt to sell, or dispose of, or shall have upon his licensed house or premises, any liquor which is adulterated, or which is mixed with, or contains any tobacco, vitriol,

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opium, coculus indicus, grains of paradise, quassia, alum, salt of tartar, creosote, or any extract or preparation of any of the aforesaid substances, or any matter or ingredient which is injurious to health, he or she shall on conviction thereof before any two or more Justices of the Peace in Petty Sessions, be liable to pay a penalty not exceeding Fifty pounds, together with a fine of Two pounds in respect of the analysis of such liquor; which latter sum shall be paid to the sole use of Her Majesty, her heirs and successors, for the public use of the Colony and the government thereof; and the said Justices may also in their discretion, by order under their hands, declare the license of such person to be forfeited, and the same shall thereupon become void. Provided that no person shall be liable to be convicted under this section if he shall show to the satisfaction of the Justices before whom he is charged that he did not know that the said liquor was adulterated or mixed as aforesaid, and that he could not, with reasonable diligence, have obtained that knowledge.

13. It shall be lawful for the Governor of the Colony from time to time to appoint, in his discretion, some fit and competent person or persons to be public analysts of liquors under this Act, at such remuneration and on such terms as to the Governor may seem fit, and in his discretion to remove or dismiss such analysts from their appointments. Every such appointment shall be published in the 'Government Gazette.'

Appointment of public analysts

14. It shall be lawful for any Justice of the Peace or for any member of the police force to demand and take for analysis a sample or samples of any liquor found by him or being upon any licensed house or premises, upon payment of a reasonable sum for the same; and the licensee of the said house or other person for the time being in charge thereof shall be entitled to seal up the bottle or other vessel in which such liquor so taken as aforesaid shall be put. If the licensee or other person in charge of the said house shall not seal up the bottle or other vessel in which the liquor shall be put, the Justice or officer of police shall, as soon as possible after he shall have received any such sample, seal up the said bottle or vessel.

Any justice or police officer may demand samples of liquors for analysis

15. Any person who shall purchase any liquor at a licensed house or premises, or from any person or his agent licensed to sell liquors, and who shall desire to have such liquor analysed, shall, after the purchase shall have been completed, forthwith notify to the seller, or his agent selling the liquor, his intention to have the same analysed; and the licensee or seller or his agent as aforesaid shall be entitled to seal up the bottle or vessel in which such liquor shall be put. If the licensee, seller, or agent, as the case may be, shall not seal up the bottle or vessel in which the liquor shall be put, the purchaser shall, as soon as possible after the purchase, seal up the said bottle or vessel.

Any person may purchase liquor for analysis

16. If any licensed person or his servant or agent shall refuse to give to any Justice of the Peace or member of the police force any sample of liquor duly demanded as aforesaid, or shall obstruct any such Justice, police officer, or any other person lawfully demanding or buying liquor for analysis as aforesaid, he or she shall, on conviction thereof before any two or more Justices of the Peace in Petty Sessions, be liable to a penalty not exceeding Fifty pounds.

Obstruction of justices or other persons in taking samples of liquor

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Delivery and
analysis of
samples of;
liquor

17. Any sample of liquor taken or purchased as aforesaid may be delivered to the public analyst, or if there shall be more than one such analyst, to the analyst who shall be or reside nearest to the place where such liquor shall have been taken or purchased, together with the name and address of the licensed person from whom such liquor was taken or purchased; and the said analyst, upon being required to analyse such sample by the said Justice, police officer, or other person, or by the said licensed person, shall appoint a time and place at which he shall make an analysis of the said liquor, of which appointment due notice in writing shall be given or sent by him by post or otherwise to the licensed person whose liquor is about to be analysed, and such licensed person shall be entitled to be present personally, or by his agent in that behalf, at the breaking of the seal and the analysis of the liquor.

Certificate of
result of analysis

18. Every analyst acting under this Act shall set forth the result of his analysis in a certificate in the form in the Schedule hereto, or to the like effect, and he shall deliver without fee a copy thereof signed by him to the Justice, officer, purchaser, licensed person or his agent as aforesaid requiring the same, and he shall retain and keep one signed copy of his certificate.

Procedure on
prosecutions for
selling adulterated liquor

19. A prosecution of any licensed person for the sale or attempted sale, or possession of any liquor adulterated or mixed, as aforesaid, may be commenced at any time within six months from the taking or purchase of the liquor as aforesaid; and at the hearing of the complaint or charge, the production of a copy of the certificate of the analyst purporting to be signed by him as aforesaid shall be evidence of all the facts therein stated. The defendant and his or her wife or husband shall be competent but not compellable to give evidence on behalf of himself, or herself, or of the defendant at the hearing of such complaint or charge, and the analyst may be summoned as a witness at the hearing of the charge, and if a sufficient sum of money for his travelling and other expenses to and from the place of hearing shall be first paid or tendered to him, the said analyst shall attend as a witness at the said hearing, but not otherwise.

Penalty for per-
mitting dis-
orderly conduct
on licensed pre-
mises

20. If any licensed person shall permit any disorderly conduct to take place on any part of his premises, he shall on conviction thereof before any one or more Justices of the Peace in Petty Sessions be liable to a penalty not exceeding Twenty pounds.

Penalty for ob-
taining liquor by
false representa-
tions

21. Every person who, by falsely representing himself to be a *bonâ fide* traveller or a lodger, shall buy or obtain, or attempt to buy or obtain, at any licensed premises, liquor or refreshment during Sunday, Good Friday, or Christmas Day, or between the hours now prohibited under the fifty-ninth section of the principal Act, shall on conviction thereof before any one or more Justices of the Peace in Petty Sessions forfeit and pay for every such offence a sum not exceeding Five pounds.

Amendment of
sec. 15 of 44 Vic.,
No. 9

22. The proviso to section 15 of the principal Act is hereby repealed, and in lieu thereof the said section shall be read and construed as if the following words were added thereto, namely, 'Provided, nevertheless, that if the term of any such license shall commence on or after the first day of April in any year, the licensee shall pay only three-fourths of such annual license fee; if on or

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after the first day of July, one-half of such fee; and if on or after the first day of October, only one-fourth of such annual fee.'

23. Nothing in this Act shall affect or take away any other remedy against any offender under this Act, or in any way interfere with the rights and remedies belonging to contracts made with reference to any of the matters referred to in this Act.

Reservation of rights and remedies against offenders

24. From and after the commencement of this Act, the 71st and 72nd Sections of the principal Act shall be repealed; provided that this repeal shall not affect the prosecution of any person for any offence against the provisions of the 71st Section committed before the commencement of this Act, but such a prosecution may be commenced, continued, or concluded as if the said Sections still remained in force.

Repeal of Sections 71 and 72 of 44 Vic., No. 9

25. This Act shall come into operation on the first day of January, 1885.

Commencement of Act

26. This Act may be cited for all purposes as 'The Wines, Beer, and Spirit Sale Amendment Act, 1884.'

Short title

F. NAPIER BROOME,
GOVERNOR.

SCHEDULE

FORM OF ENDORSEMENT OF A LICENSE BY TRANSFER THEREOF
UNDER SECTION 4 OF THIS ACT

I, the undersigned, being the Resident (*or* Police) Magistrate for the District of _____ sitting at _____ this _____ day of _____ do hereby transfer the rights and privileges of the within License to C.D. for the residue of the term between this day and the first day of the month following the next quarterly licensing meeting.

A.B.

FORM OF AN HOTEL LICENSE

Western Australia, }
to wit. }

Whereas A.B., of _____, hath deposited in this office a certificate from the major part of the Justices of the Peace assembled at the quarterly licensing meeting held at _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, authorising the issue to the said A.B. of an hotel license for the house known (*or*, to be known) by the sign of _____, situate at _____, in the said Colony of Western Australia; And whereas the said A.B. hath paid into my office the sum of _____ pounds sterling as the duty on such license; Now I, by virtue of the powers vested in me, hereby license the said A.B. to keep an hotel and to sell liquor in any quantity in the house in which he now dwelleth (*or*, is about to dwell) being the sign of _____ situate at _____ aforesaid and in the appurtenances thereto belonging but not elsewhere, to lodgers or boarders in the said hotel for the use of such lodgers or boarders or of their guests, to be consumed on the premises, and to persons taking a meal at the said hotel; and this license shall commence upon the first day of _____ next and continue in force until the _____ day of _____ then next ensuing, both days inclusive, provided it be not forfeited in the meantime.

Given under my hand and seal at _____, this _____ day of _____, one thousand eight hundred and _____

C.D. (L.S.)
Collector of Internal Revenue.
(*or other person, as the case may be.*)

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FORM OF CERTIFICATE OF THE RESULT OF ANALYSIS OF LIQUOR

I, the undersigned, Public Analyst for the Colony of Western Australia, do hereby certify that I received on the _____ day of _____ from (*name and address of person delivering the sample*), a sample of (*description of liquor*) for analysis, and that I have analysed the same, and I declare the result of my analysis to be as follows:—

The said sample of liquor was not adulterated

or, The said sample of liquor was adulterated by the following foreign ingredients, that is to say:—

or, The said sample was mixed with or contained tobacco, &c.

or, The said sample was mixed with or contained a certain matter or ingredient injurious to health, that is to say:—

As witness my hand, this _____ day of _____ at _____
A.B., Public Analyst.
