



WESTERN AUSTRALIA.

ANNO QUARTO

GULIELMI IV. REGIS,

No. 3.

An Act to Regulate the Licensing of Public Houses.

WHEREAS it is expedient that Regulations should be made for Preamble.
ensuring the due licensing of Public Houses, and the main- Persons guilty of repeat-
tenance of good order therein;—Be it therefore enacted by His edly permitting Spiritu-
Honor the Lieut. Governor of Western Australia and its Dependen- ous or Fermented Liquors,
cies, with the advice of the Legislative Council, that if, from and after sold by them, to be con-
the first day of January next, any person shall repeatedly permit any sumed on their premises,
Spirituous or Fermented Liquors, sold by him or her, to be consumed without first obtaining the
by or on account of the Purchasers thereof in his or her house or License required by this
premises or any out-house, yard, garden, close or appurtenance ad- Act, subjected to a pen-
jacent thereto without having first obtained such license as is herein- alty not exceeding Fifty
after mentioned and required, every person so offending, being pounds,
thereof convicted, shall forfeit a sum not exceeding Fifty pounds; What shall be deemed a
and that two several acts or instances of permitting such unlicensed repeated permission of un-
consumption as aforesaid, shall be deemed a repeated permission of licensed consumption, to
warrant a first conviction
under this Act.

After a first conviction, every single instance of permitting such unlicensed consumption, shall be sufficient for a second or other further conviction. such consumption within the meaning of this Act to warrant a first conviction; and that every single act or instance of permitting such unlicensed consumption as aforesaid, occurring after a first conviction, shall be sufficient to warrant a second or other further conviction against the same offender. Provided that nothing herein contained shall prevent the consumption on the place of sale of any Liquors sold by Masters or Employers to their Journeymen, Workmen, Servants, or Labourers,—or of any Malt Liquors, or Ginger Beer sold over the counter, such sales respectively being unauthorized by any law now in force in the said colony.

Exception as to Liquors sold by Masters to Servants, or sold over the counter, under any existing Law.

General Annual Licensing Meetings of Justices; when and where to be holden for granting Licenses to keep Public Houses.

Such Meetings may be adjourned to suit the public convenience.

Justices under certain circumstances disqualified from acting at such Meetings.

In case of deficiency of district Justices, Justices

II. AND be it further enacted, that a General Meeting of the Justices of the Peace acting in, and for each district in the said colony, to be called the General Licensing Meeting, shall be holden on the 31st day of December in the present and every succeeding year, (or, in case the said day should fall on a Sunday or Public Holiday,) then on the next preceding day not being a Sunday or Public Holiday,) for the purpose of taking into consideration all applications which shall be made to them for Licenses to keep Public Houses during the ensuing year, commencing on the first day of January next after the day of such meeting; and it shall be lawful for the Justices assembled at such annual licensing meeting, being three in number at least, to grant to such persons as shall be approved by the majority of such Justices, after taking the required certificates and recognizances, licenses in the form numbered 1 in the schedule hereunto annexed; and to adjourn such annual licensing meeting, and the consideration of any applications there submitted to them, to such day or days, and to such place or places within the district for which such meeting shall be holden, as they may deem most convenient for enabling persons resident within such district to apply for licenses.

III. AND be it further enacted, that no Justice of the Peace, being a Brewer, Malster, or Distiller, or an Importer of or Dealer in Wine or any Malt or Spirituous Liquors, or concerned in partnership with any Brewer, Malster, Distiller, Importer, or Dealer in Wine or Malt or Spirituous Liquors,—or being the Owner or part owner of, or Trustee Manager or Agent for any Owner or part Owner of, any house about to be licensed or relicensed,—or being directly or indirectly interested in any such house; shall sit or act in any meeting of Justices, during the consideration of any application for a license, or of any thing relating thereto.

IV. AND be it further enacted, that whenever at any such Annual

Meeting to be holden for any district as aforesaid, or at any such special Sessions as is hereinafter mentioned, there shall not be present at least three Justices, who are not disqualified, it shall be lawful upon the request in writing of any Justice of such district, for the Justices of any adjoining district, not disqualified, to act within such first mentioned district and with the Justice or Justices thereof, not as hereinbefore disqualified, who shall be present at any such Annual Meeting or Special Session, for the purpose of granting or transferring Licenses under, or of hearing complaints for offences against this Act.

V. AND be it further enacted, that when at any such Annual Licensing Meeting as aforesaid, or at any such Special Session as is hereinafter mentioned, any question shall arise touching the granting, withholding, or transferring any License, or the fitness of the person applying for such Licence, or of the house intended to be kept by such person, such question shall be determined by the majority of Justices, not disqualified, who shall be present when such question shall arise.

VI. AND be it further enacted, that the Justices acting at any such Annual Licensing Meeting as aforesaid, shall receive all applications for Licenses with the certificates in support thereof which shall then be presented to them; but nevertheless it shall still be lawful for such Justices to grant Licenses to such persons only, as upon the said certificates, and upon other information before them, shall appear likely to keep orderly houses.

VII. AND be it further enacted, that every person desirous of obtaining a License for keeping a Public House under the Provisions of this Act, or of obtaining the renewal of a License before granted, shall, before such Annual Licensing Meeting as aforesaid, in every year, deliver to the clerk of the magistrates acting for the district in which such house may be situated, a notice in writing of his or her intention to apply for such license; and that in every such notice there shall be contained a full description of the dwelling house or premises proposed to be licensed, with a statement of the applicant's trade or calling and situation in life, and whether married or unmarried, together with the names, residences, and additions of his or her proposed sureties; and every such notice shall be accompanied by a certificate signed by two respectable householders within the district last aforesaid, purporting that the person delivering such notice and certificate is of good fame, and fit to keep a Public House, and is able to provide the accommodation hereinafter mentioned for the public convenience; and which notice and certificate shall be in the form numbered 2 in the said Schedule.

A recognizance with two Sureties to be entered into before any license be granted.

Conditions of such Recognizance.

VIII. AND be it further enacted, that every person applying for a license shall, before the same be delivered to him, enter into a recognizance, in the form numbered 3 in the said Schedule, in the sum of Fifty pounds with two sureties in the sum of Twenty-five pounds each, conditioned that the person licensed shall not fraudulently dilute or adulterate any liquors by him or her sold, or sell the same knowing them to have been fraudulently diluted or adulterated; and shall not use in the selling thereof any measures that are not of the legal standard; and shall not wilfully or knowingly permit drunkenness or other disorderly conduct in his or her house or premises; and shall not knowingly suffer any unlawful games or any gaming whatsoever therein; and shall not knowingly permit persons of notoriously bad character to meet together therein; and shall not keep open his or her house, or permit any person to remain tipping or drinking therein, after the hour of ten at night, always excepting refreshments to travellers and lodgers; or shall allow any Spirituous or Fermented Liquors to be drank in, or conveyed out of, his or her premises, during the usual hours of morning and afternoon Divine Service in the nearest church or chapel on Sunday, Christmas Day, or Good Friday; and shall not refuse to admit any Magistrate or Constable to any part of his or her house or premises by night or day, and shall maintain good order and rule therein.

If Applicant for License should be unable to attend such meeting from sickness or infirmity, Justices may dispense with such attendance.

IX. AND be it further enacted, that if any person desirous of applying at any such Annual Licensing Meeting as aforesaid, or at any such Special Session as is hereinafter mentioned, for a License under this Act, or for the transfer of any such License, shall be hindered by sickness, infirmity, or any other reasonable cause from attending in person at any such Meeting or Session; it shall be lawful for the Justices there assembled to grant or transfer such License to such person so hindered; proof being adduced to the satisfaction of such Justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause.

Made of issuing and duration of Licenses.

X. AND be it further enacted, that every License to be granted under the provisions of this Act, shall be signed by the majority of the Justices present, (and not disqualified,) at the Licensing Meeting or Session at which the same shall be granted; and shall be in force until the next General Annual Licensing Meeting, and no longer; and every such License shall forthwith, after the granting thereof, be deposited by the Clerk of the Magistrates granting the same with the Collector of Colonial Revenue, who shall forthwith, after receipt of the proper retail duty, issue the same to the person licensed thereby,

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together with a Publican's Retail License in the form numbered 4 in the said Schedule.

XI. AND be it further enacted, that if any person shall be desirous, after any such General Annual Licensing Meeting as aforesaid, of obtaining a License to keep a Public House for the residue of the then current year until the next Annual Licensing Day, or of transferring his or her License, and of such his or her desire shall give notice to the Clerk to the Magistrates of the district in which such license or transfer of license is desired to be given or made, such Clerk shall forthwith give notice of such application to the Magistrates of the said district, who shall with all convenient despatch hold a Special Session for the purpose of considering such application; and it shall be lawful for the majority of the Justices assembled at such Special Session, three at least being present, to grant Licenses for keeping Public Houses until the General Annual Licensing Meeting next following such Special Session, and to transfer the License of any house previously licensed to the appointee or appointees of the original holder of such license; provided that such appointee or appointees and the person or persons so newly licensed at any such Special Session, produce the like certificates and enter into the like recognizances as are hereinbefore required from persons obtaining Licenses at any such General Annual Licensing Meeting as aforesaid; and every License so granted or transferred at any such Special Session as aforesaid shall be lodged by the said Clerk with the Collector of Colonial Revenue, who shall thereupon issue to the person or persons entitled to receive the same, a corresponding Retail License, or transfer of Retail License, as the case may require.

Special Sessions for transferring Licenses—and granting Licenses for broken periods—how and when to be holden.

XII. AND be it further enacted, that it shall be lawful for the Clerk of the Justices at any such Licensing Meeting or Special Session as aforesaid to demand and receive from every person obtaining a License, or transfer of License, such fees or sums as the Justices of the said colony in quarter sessions assembled shall from time to time limit and appoint, but so as the same shall not in any case exceed the following fees or sums; that is to say, for every original License, the sum of ten shillings and sixpence; for every transfer of a License, the sum of two shillings and sixpence; for every notice, served on a district Magistrate for the purpose of assembling a Special Session, the sum of two shillings and sixpence; such notices not to exceed three in number, unless absolutely necessary; and for preparing and taking every recognizance and lodging the same with the Collector of Colonial Revenue, the sum of ten shillings and sixpence.

Fees to be received by Clerk to the Licensing Justices.

Executors or administrators may hold the License of deceased, without renewal, till the next licensing day.

XIII. AND be it further enacted, that the Executor or Administrator of any person holding a Licence under this Act shall be entitled to carry on the business of the house thereby licensed, without renewing such license, until the next General Annual Licensing Meeting following the decease of the person so holding such License: Provided, always, that the License of such house shall be subject to the same regulations as if it had continued to be holden by the person or persons to whom the same was originally granted, and that new recognizances be entered into according to the Provisions of this Act.

Subject to the same regulations, and under like recognizances, as the deceased.

Persons disqualified from keeping Public Houses.

XIV. AND be it further enacted, that no person holding office or employment under the Government, no Sheriff's Officer or Constable, shall hold any License under the Provisions of this Act; nor shall any Publican be received or taken as surety in any such recognizance as aforesaid.

No house to be licensed unless it contains certain accommodations.

XV. AND be it further enacted, that no house shall be licensed under this Act unless the same shall contain one sitting room and one sleeping room for public accommodation, independent of the apartments occupied by the family of the Publican; and if any keeper of a licensed Public House shall without reasonable cause, refuse to furnish reasonable lodging and refreshment to any traveller, or to the horse or horses of any traveller, by night or day, such keeper of such Public House shall forfeit a sum not exceeding Ten pounds.

Publicans refusing reasonable refreshment to travellers subject to a penalty not exceeding ten pounds.

Publicans to have their names, and the words "Licensed Publican," painted on some conspicuous part of their premises, under a penalty not exceeding forty shillings.

XVI. AND be it further enacted, that every person licensed to keep a Public House under this Act, shall have his or her name at length painted in legible letters, with the words "Licensed Publican" in like letters, on some conspicuous part of his or her premises; and any such licensed person who shall neglect to have his or her name with the said words so painted shall, for every such offence, forfeit a sum not exceeding Forty shillings.

Unlicensed persons, keeping up any sign, or other mark implying a license, subject to penalty not exceeding £20.

XVII. AND be it further enacted, that if any person not actually holding a License shall keep up any sign, writing, painting, or other mark, on or near to his house or premises, which may give reasonable cause to believe that such house is licensed as a Public House, every person so offending shall, for every such offence, forfeit a sum not exceeding Twenty pounds.

Licensed Publicans abandoning the licensed premises to the virtual keeper.

XVIII. AND be it further enacted, that if any licensed person shall abandon the occupation of his or her licensed house as his or

her usual place of residence, and permit any unlicensed person or persons to become virtually, or in effect, the keeper or keepers thereof; then, upon proof of such facts to the satisfaction of any two or more Justices of the Peace, it shall be lawful for such Justices to declare the License of such house absolutely void; or, at the discretion of such Justices, such licensed person shall forfeit a sum not exceeding Fifty pounds.

ing of any unlicensed person, subject to loss of license, or penalty not exceeding £50.

XIX. AND be it further enacted, that if the keeper of any Public House licensed under this Act shall take or receive from any person in payment or in pledge for Liquor, consumed in his or her house, any article of clothing or slops, or any tools or any other article or thing, excepting metallic or paper money, such keeper of a Public House so offending shall, for every such offence, forfeit a sum not exceeding Five pounds.

Publicans not to barter liquor, or take payment in any thing but money.

XX. AND be it further enacted, that if a Coroner's Jury, or any three Justices who shall inquire, by examination of witnesses, into the causes of the death of any person dying suddenly, or under any other extraordinary circumstances, shall find that the death of such person was caused by intoxication in a Public House, the keeper of such house shall, from the date of such finding, be deemed to be unlicensed; and no new License shall be granted to him.

Death by intoxication, found by Coroners' Jury, or Magistrates' inquiry, to avoid the license of the house in which the same shall happen.

XXI. AND be it further enacted, that it shall be lawful for any Justice of the Peace, or any Constable generally authorised by a Justice of the Peace in that behalf, to demand entrance into any licensed Public House at any time by day or night; and if admittance be not granted within such reasonable time as shall make it appear that no wilful delay was intended, the License shall be forfeited, upon conviction before any two Justices of the Peace; and no License shall again be granted to any person, who shall be so convicted of refusing or wilfully delaying admittance, for the space of one year from the date of such conviction: Provided that if such admittance be refused, or wilfully delayed, it shall be lawful for such Justice or Constable to break into such Public House with his assistants to serve process, or for any other lawful purpose.

Justices and Constables empowered to enter Public Houses at all hours.

XXII. AND be it further enacted, that if any person licensed under this Act shall offend against the tenor of his or her License, or shall in any respect commit a breach of, or otherwise be guilty of any offence against any condition of the recognizance by him or her entered into, he or she shall, on conviction thereof, forfeit and pay or

Penalties and disability incurred by breaches of conditions of recognizance.

A first conviction to incur a penalty not exceeding £5.

become liable to the several penalties and to the disability hereinafter mentioned; that is to say, for the first offence, a sum not exceeding five pounds and costs; and for the second offence, a sum not exceeding ten pounds and costs; for the third or any subsequent offence, it shall be lawful for any one Justice, upon complaint or information of such third or subsequent offence, to issue a summons requiring the person so complained of or informed against, to appear at the next Court of Quarter Sessions for the said colony, then and there to answer the matter of such complaint or information; and also bind the Complainant or Informant, and any other person or persons, to appear at such Sessions and give evidence against such licensed person; and the Justices of the Peace at such Sessions shall inquire into and decide in a summary manner the matter of such complaint or information; and if they find that such licensed person has committed the offence against the tenor of his or her license or recognizance in the said complaint or information specified, and that such licensed person has been twice or oftener previously convicted of offences against the tenor of his or her license or recognizance, it shall be lawful for the said Justices at such Sessions to adjudge the party so complained against guilty of such third or subsequent offence; which adjudication shall be final, and thereupon the said Justices shall have authority to punish the party so convicted by a fine or penalty not exceeding fifty pounds, or (at the discretion of the said Justices) by declaring his or her recognizance to be forfeited, and his or her license to be void; and such recognizance shall be forfeited, and such license shall be thenceforth void accordingly: and the person whose license shall so be declared void, shall be thenceforth incapable of receiving or holding any license to keep a Public House for the space of three years, to be computed from the date of such adjudication: and if the person complained against for such third or subsequent offence shall not appear at such next Quarter Sessions pursuant to the said summons, it shall be lawful for the Justices in such Session assembled, on proof of the service of such summons, to inquire into and determine the matter of the said complaint and information; and in all respects to proceed against the person so summoned, and not appearing, in the same manner as if he or she had appeared.

For a second conviction, a penalty not exceeding £10.

For the third offence, the offender to be summoned to the Quarter Sessions.

Court of Quarter Sessions to decide summarily.

On a third conviction, the offender to forfeit his License, or pay a penalty not exceeding Fifty pounds, at discretion of the Justices.

If the License be declared forfeited, the party forfeiting the same to be incapable of holding another License for the next three years.

Mode of recovering penalties imposed by this Act, by summary conviction before one Justice.

XXIII. AND be it further enacted, that all informations and proceedings in respect of any offence under this Act shall be heard and determined, and the forfeitures and penalties in respect of the same shall be awarded and imposed, in a summary way, by any one Justice of the Peace, (or by any two such Justices in cases herein-

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before appointed to be heard and determined by two Justices, who shall summon before him or them the party accused, and all necessary witnesses; and upon appearance of the party accused, (or in his absence upon proof by oath of his having been served with the said summons either personally, or by the same being left at his usual place of abode,) such Justice or Justices shall hear the matter of such information, and examine all necessary witnesses upon oath, and make such order thereon as to him or them shall seem meet; and in case the party accused shall be by him or them convicted, and shall fail to pay any fine or penalty, costs or expenses, awarded by such order, within three days next after such order shall have been personally served on him or left at his usual place of abode, it shall be lawful for such convicting Justice or Justices to levy and raise such fine or penalty, costs or expenses, by distress and sale of the goods and chattels of the party so convicted; and in case such goods and chattels shall be insufficient for that purpose, it shall be lawful for the convicting Justice or Justices to commit the party so convicted to any Jail or House of Correction for any term not exceeding six calendar months.

XXIV. AND be it further enacted, that in all proceedings against any person for the offence of keeping a Public House without due license, such person shall, for all purposes connected with such proceedings, be deemed and taken to be unlicensed, unless he or she shall, at the hearing of the case, produce and exhibit his or her license to the sitting Justices, or shall then or there produce other satisfactory proof of his or her being a licensed person. Burden of proof of License to lie upon accused.

XXV. AND be it further enacted, that all informations and proceedings in respect of offences against this Act, shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed. Limitation of convictions.

XXVI. AND be it further enacted, that if any person shall think himself aggrieved by any judgment or conviction made under this Act, such person may appeal therefrom to the next Court of Quarter Sessions; which Court shall hear and determine the matter of such appeal, and shall summon all necessary parties and witnesses, and shall make such order in affirmance or reversal of the judgment or conviction appealed from, and for payment of costs of the appeal, as to such court shall seem meet; and shall enforce such order, if necessary, by distress and sale of the goods and chattels of any person refusing or neglecting to obey such order, or by imprisonment of any Right of appeal to Quarter Sessions.

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(or Session,) do hereby authorize and empower A. B. to keep a Public House at and in the House now occupied by him at _____ under the sign of _____, and to permit all such Spirituous and Fermented Liquors, as the said A. B. shall be licensed and empowered to sell under the authority of any retail license issued by the Collector of Colonial Revenue, to be drunk or consumed in his said house, or premises thereto belonging. Provided that he do not fraudulently dilute or adulterate any liquors by him sold; or sell the same knowing them to have been fraudulently diluted or adulterated; and shall not use in the selling thereof any Measures that are not of the legal Standard; and shall not wilfully or knowingly permit drunkenness or other disorderly conduct in his house or premises; and shall not knowingly suffer any unlawful games or any gaming whatsoever therein; and shall not knowingly permit persons of notoriously bad character to meet together therein; and shall not keep open his house, or permit any person to remain tippling or drinking therein after the hour of Ten at night, always excepting refreshment to travellers and lodgers; and shall not allow any Spirituous or Fermented Liquors to be drunk in, or conveyed out of his premises during the usual hours of morning and afternoon Divine Service in the nearest Church or Chapel on Sunday, Christmas Day, or Good Friday; and shall not refuse to admit any magistrate or constable to any part of his house or premises by day or night; and shall maintain good order and rule therein. And this license shall continue and be in force until the next General Annual Licensing Meeting of the said Justices, and no longer.— Given under our hands and seals the day above written.

No. 2.

Form of Application for a License to keep a Public House, and of Certificate of Character.

To the Worshipful the Justices of the Peace acting for the District of I, AB, (trade or occupation, and whether single or married) do give notice,

that it is my intention to apply the next General Annual Licensing Meeting to be holden for the above District, for a License to permit Spirituous and Fermented Liquors, sold by Retail, to be consumed in my house, and premises thereunto belonging, situate at _____; and which I intend to keep as an Inn or Public House. And I propose C D, of _____ of _____, and E F of _____ as my sureties, to enter into the required Recognizance.

Dated this _____ day of _____

(Signed) A B.

We, the undersigned householders, residing at _____ hereby certify that the above named A B, _____ is a person of good fame and reputation, and fit to keep a Public House.

Witness our hands.

No. 3.

Form of Publicans' Recognizance.

Colony of Western Australia } Be it remembered, that on the day of
to wit. _____ } 183 _____, A B
of _____, C D, _____, of _____, and E F, _____ of
_____, came personally before us, the undersigned Justices
of the Peace for the said colony, acting for the district of _____,
in the said colony, and acknowledge themselves to owe to our
Sovereign Lord the King, to wit, the said A B _____ the sum of fifty
pounds; the said C D _____ the sum of twenty-five pounds; and the
said E F _____ the sum of twenty-five pounds, of lawful British
money, to be respectively levied of their several goods and chattels,
lands and tenements, to the use of our said Lord the King, his Heirs
and Successors, in case default shall be made in the performance of
any of the conditions hereunder written.

The conditions of this recognizance are such that whereas the said
A B _____ is to be licensed to keep a common Inn or Public
House at and in the house now occupied by him at _____
and to permit all such Spirituous and Fermented Liquors, as he may

be licensed and empowered to sell under the authority of any Retail License issued by the Collector of Colonial Revenue, to be drunk or consumed in his said house, or premises thereunto belonging, until the next General Annual Licensing Meeting of Justices of the Peace for the said district; if the said A B do not fraudulently dilute or adulterate any Liquors by him sold; or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in the selling thereof any Measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his house or premises; and do not knowingly suffer any unlawful games or gaming, whatsoever; and do not knowingly permit persons of notoriously bad character to meet together therein; and do not keep open his house, or permit any person to remain tippling or drinking therein after the hour of ten at night, always excepting refreshment to travellers and lodgers: and do not allow any spirituous or fermented liquors to be drunk in or conveyed out of his premises during the usual hours of morning and afternoon Divine Service in the nearest church or chapel on Sunday, Christmas Day, or Good Friday: and do not refuse to admit any Magistrate or Constable to any part of his house or premises by night or day: but do maintain good order and rule therein; then the said Recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above written, before us.

No. 4.

Form of Publican's Retail License.

THESE are to certify, (in pursuance of an Act of Council) intituled "An Act to regulate the Licensing of Public Houses," that A B, of _____, in the Colony of Western Australia, is duly licensed from the date hereof until the next General Annual Licensing Meeting for the District of _____, in the said Colony, to sell, exchange, or otherwise dispose of in retail, in any quantity, any Spirituous or Fermented Liquors in the house and premises thereunto belonging, now occupied by him at _____ aforesaid, under the sign of _____; but not elsewhere. And these are further to certify, that the said A B hath paid into my hands the sum of _____ pounds on account of such License.

Given under my hand the _____ day of _____
Collector of Colonial Revenue.

(Countersigned)

Auditor of Civil Accounts.