
ILLICIT SALE OF LIQUOR.

No. 36 of 1913.

(Affected by Act No. 39 of 1958 and Act No. 113 of 1965.¹)

[As amended by Act:

No. 1 of 1917, assented to 2nd March, 1917;
and reprinted pursuant to the Amendments Incorporation Act,
1938.]

AN ACT to make better provision to prevent the Illicit Sale of Liquor, and to amend the Law relating to Licenses for the Sale of Australian Wine.

[Assented to 30th December, 1913.]

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

1. This Act may be cited as the *Illicit Sale of Liquor Act, 1913-1917*. Short title.

2. In this Act, unless the context otherwise indicates,— Interpreta-
tion.
See W.A.,
1911, No. 32,
s. 4.

“Liquor” means any spirits, wine, beer, or other fermented, distilled, or spirituous liquor capable of producing intoxication.

“License” means a license granted under the Licensing Act, 1911.

Illicit Sale of Liquor.

“Licensed person” or “licensee” means a person holding or entitled to exercise a license under the Licensing Act, 1911.

“Licensed premises” means premises in respect of which a license has been granted under the Licensing Act, 1911, and is in force.

“Police officer” includes any constable or officer of police.

“Premises” includes any house, shop, booth, shed, tent, stall, or place, and extends to every room, closet, cellar, yard, stable, out-house, or any other place whatsoever belonging to, or in any manner appertaining to such house or place, and also includes a ship, vessel, or boat.

Unlawful dealing in liquor.
See W.A., 1911, No. 32, s. 105.
Am. by No. 113 of 1965, s. 8.¹

3. (1) Any person who—

- (a) sells liquor; or
- (b) has liquor for sale in, on, or about any premises,

shall be deemed to unlawfully deal in liquor within the meaning of this Act, unless such person—

- (i) is a licensee holding a license granted under the Licensing Act, 1911, authorising the sale of such liquor; or
- (ii) is a servant or agent of such licensee, and is lawfully acting for the time being in that capacity; or
- (iii) is authorised by section forty-four of the Licensing Act, 1911, to sell such liquor without a license.

(2) Any person who unlawfully deals in liquor commits an offence.

Penalty.

Penalty: For a first offence, one hundred dollars, or imprisonment for three months, or both; for any subsequent offence after a previous conviction, four hundred dollars, or imprisonment with hard labour for twelve months, or both.

¹ Decimal Currency Act, 1965.

(3) Upon any conviction under this section the offender shall forfeit all liquor in his possession, with the vessels containing the same.

Forfeiture of liquor.

4. (1) Upon complaint on oath by any person that he believes that liquor is kept on any premises for illicit sale, a justice of the peace may grant a warrant to any police officer to enter and search such premises, and, if admission is refused, to break into the same, and to seize all liquor found therein, and any vessels containing liquor, and to detain the same until the summons hereinafter referred to is heard and determined.

Seizure of liquor unlawfully dealt in. See Q., 1912, No. 29, s. 159. W.A., 1911, No. 32, s. 123. Am. by No. 113 of 1965, s. 8.¹

A police officer may, without such warrant, exercise the powers conferred by a warrant granted under this subsection in respect of the premises of any person who, within the then last preceding twelve calendar months, has been convicted of unlawfully dealing in liquor.

(2) Any justice of the peace shall, upon being informed of such seizure, by summons under his hand, require any person in whose possession such liquor was found to appear before a court of petty sessions, at a time and place to be specified in the summons, to show how and for what purpose he became possessed of such liquor.

Summons. *Ibid.*

(3) If on the hearing of the case it appears to the court that such liquor was kept for the purpose of being illegally dealt in, then such liquor and vessels shall be forfeited, and shall be sold or otherwise disposed of as the court directs; and after payment of the expenses the proceeds shall be applied in like manner as in the case of penalties.

Forfeiture of liquor. *Ibid.*

(4) Where any police officer has entered any premises and seized any liquor, and such liquor has been forfeited under the provisions of this section, any person in whose possession such liquor was found at the time of such seizure shall, until the contrary is proved, be deemed to have unlawfully dealt in liquor, and shall be liable to the punishment prescribed by this Act for such offence. The charge

Persons in possession of liquor on premises where seizure made. See Q., 1912, No. 39, s. 159. N.Z., 1908, No. 16, s. 23.

¹ Decimal Currency Act, 1965.

may be heard and determined in the proceedings upon a summons issued under subsection two of this section.

Persons found on premises where seizure made.

(5) Any person found on the premises at the time of such entry and seizure of liquor as aforesaid, and being on such premises for the purpose of obtaining liquor, shall be liable to a penalty not exceeding twenty dollars; and any person so found on the premises shall be deemed to be on the premises for the purpose of obtaining liquor until the contrary is proved.

A person charged under subsection four of this section with the offence of unlawfully dealing in liquor and acquitted of such offence may, in the same proceedings, be convicted of an offence under this subsection.

Names of such persons may be demanded.

Ibid. (3), N.Z., 1908, No. 104, s. 231.

(6) Any police officer may demand the name and address of any person found on the premises on which he seizes or from which he removes any such liquor as aforesaid, and, if he has reasonable grounds to suppose that the name or address given is false, may examine such person further as to the correctness of such name and address and may, if such person fails upon such demand to give his name or address, or to answer satisfactorily the questions put to him, arrest him without warrant, and bring him as soon as practicable before a court of petty sessions.

Refusal or giving false name.

Ibid. (4), N.Z., 1908, No. 104, s. 231.

(7) Every person so required by a police officer to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding twenty dollars.

Arrest of keeper, and persons found drinking in unlicensed premises.

See W.A., 44 Vic., No. 9, s. 76. Q., 1912, No. 29, s. 158.

5. (1) When any police officer finds any person drinking liquor in or upon any unlicensed premises where liquor is sold, and a license authorising such sale is not on demand produced to such officer by the person appearing to have the management and control of such premises, the police officer may arrest not only the person appearing to have such management and control, but also every person so found drinking in or upon the premises.

(2) Every such person so found drinking shall be liable on conviction to a penalty not exceeding twenty dollars; and the person having the management and control of the premises shall on conviction be liable to the penalty hereinbefore prescribed for the offence of unlawfully dealing in liquor.

6. (1) No person shall, except on licensed premises, carry about liquor, or employ any other person to carry about liquor, from place to place for sale.

Liquor carried about for sale.
See W.A., 44 Vic., No. 9, s. 68.
N.S.W., 1898, No. 18, s. 99.
Q., 1912, No. 29, s. 160 (1).
Am. by No. 113 of 1965, s. 8.¹

Penalty: For a first offence, one hundred dollars, or imprisonment for three months, or both; for a subsequent offence after a previous conviction, four hundred dollars, or imprisonment with hard labour for not exceeding twelve months, or both.

(2) Whenever liquor is carried from one place to another, the burden of proving that such liquor was not so carried for sale shall rest upon the person carrying it.

N.S.W., 1898, No. 18, s. 99.
Q., 1912, No. 29, s. 160 (2).

(3) It shall be no defence to a charge under this section to prove that the accused person, or his employer, was a licensee.

(4) Any police officer may seize and deposit in a police station any liquor which he may reasonably suspect to be carried about from place to place for sale, and the vessels containing the same. He may also seize and detain any vehicle, truck, or boat, and any horse or other animal used in conveying such liquor.

See W.A., 44 Vic., No. 9, s. 68.
N.S.W., 1898, No. 18, s. 99.
Q., 1912, No. 29, s. 160.

(5) On a conviction under subsection one of this section in respect of liquor seized under the power conferred by subsection four, the court may order the liquor, and the vessels containing the same, and such vehicle, truck, boat, horse, or animal to be forfeited and sold, and the proceeds shall be disposed of in like manner as in the case of penalties under this Act.

See *ibid.*

¹ Decimal Currency Act, 1965.

Carriage of liquor for delivery after sale.

Am. by No. 113 of 1965, s. 8.¹

7. (1) No person shall carry liquor, or employ any other person to carry liquor, for delivery off the premises on which such liquor is sold, unless the barrel, cask, vessel, bottle, case, or package containing the liquor is labelled on the outside with the name and address in writing of the seller and of the purchaser or other person to whom the liquor is intended to be delivered, or the name and address of the seller and of the purchaser or other person to whom the liquor is intended to be delivered, and a description of the liquor and the quantity of liquor to be delivered, are written in a delivery book, invoice, or way-bill in the possession of the carrier.

Penalty: Forty dollars.

(2) Any person carrying liquor for delivery off the premises on which such liquor is sold shall, on demand by a police officer, permit such officer to inspect and take a copy of the label on the barrel, cask, vessel, bottle, case, or package containing the liquor, or the delivery book, invoice, or way-bill relating to such liquor.

Penalty: Forty dollars.

Sale of liquor under pretence.
Q., 1912, No. 29, s. 161.

8. Any person who, being a dealer in other things than liquor, gives away or delivers any liquor to any customer for other things, or under pretence of such person being a customer for other things, or under any other pretence whatsoever, shall be deemed to sell the liquor so given away or delivered.

Supply of liquor to persons convicted of unlawfully dealing prohibited.
Am. by No. 113 of 1965, s. 8.¹

9. (1) It shall be unlawful for any person to supply or deliver liquor to any other person who, within the last preceding six calendar months, has to the knowledge of the person by whom the liquor is supplied or delivered been convicted of unlawfully dealing in liquor.

Penalty: For a first offence, forty dollars; for any subsequent offence after a previous conviction, two hundred dollars, or imprisonment with hard labour for six months, or both.

¹ Decimal Currency Act, 1965.

(2) On the hearing of a complaint under this section proof of the service upon the person charged with the offence (or, if such person is a licensee, upon a servant of such licensee employed on the licensed premises), before the alleged offence of notice in writing signed by a police officer that a person therein named was on a date therein stated convicted of unlawfully dealing in liquor, shall be *prima facie* evidence of the knowledge of the person charged with the offence that the person named in the notice had been convicted of unlawfully dealing in liquor.

(3) The production of a copy of a notice under this section, with an endorsement setting forth the day, place, and mode of service, shall be *prima facie* evidence of such service, and the signature to such endorsement shall be *prima facie* evidence that the endorsement was signed by the person whose signature it purports to be.

Any false statement in an endorsement of service shall render the person making the same liable, on summary conviction, to imprisonment with or without hard labour for not exceeding six months.

10. In any proceedings for an offence against any of the provisions of this Act—

Liquid presumed to be liquor.
W.A., 1911, No. 32, s. 189.

- (a) Any liquid shall, until the contrary is proved, be deemed to be liquor; and
- (b) Every separate sale or supplying shall be a separate offence.

11. (1) In all proceedings under this Act against any person for unlawfully dealing in liquor such person shall, for all purposes connected with such proceedings, be deemed and taken to be unlicensed unless he produces a license authorising him to deal in such liquor.

Burden of proof.
W.A., 1911, No. 32, s. 193 (2).

(2) The delivery to any person of liquor shall be *prima facie* evidence of money or other consideration having been given or exchanged for such liquor.

Ibid., s. 196.

Certain persons not to be regarded as accomplices. W.A., 1911, No. 32, s. 195.

12. Notwithstanding any rule of law to the contrary, the evidence of a police officer in any proceedings against a person charged with an offence against this Act shall not be deemed or treated as the evidence of an accomplice or accessory, so as to require corroboration, by reason only of the fact that such police officer purchased or obtained the liquor, the subject of the prosecution, from the person charged.

Minimum penalty.

13. The minimum pecuniary penalty for any offence against this Act shall be one-fifth of the maximum penalty, and no minimum penalty shall be liable to reduction under any power of mitigation which would but for this section be possessed by the court.

As to penalties and their remissions. W.A., 1911, No. 32, s. 192.

14. On any conviction under this Act the court may in its discretion direct that any complainant or informer shall receive a portion not exceeding in any case one moiety of any penalty recovered under this Act.

Provided that the Governor may remit the whole or any part of such penalty.

Amendment of W.A., 1911, No. 32, Section 27.

15. Section twenty-seven of the Licensing Act 1911 is hereby amended by inserting between the eighth and ninth lines the words—

(ee) Australian Wine Bottle License.

Amendment of Section 32, *ibid.*

16. The Licensing Act 1911 is hereby amended by inserting a new Clause after Section thirty-two of that Act as follows:—

32a. An Australian Wine Bottle License shall, subject to the provisions of the Licensing Act 1911, authorise the licensee to sell and dispose of on the premises named in the license, any wine made in a State of the Commonwealth produced from fruit grown in the Commonwealth in any quantity of not less than one reputed pint not to be drunk on the premises in which such liquor is sold.

17. Section seventy-two of the Licensing Act, 1911, is hereby amended by adding after the word "license," in the sixth line thereof, the words "or an Australian wine bottle license." Amendment of s. 72, *ibid.*

18. The Second Schedule of the Licensing Act, 1911, is amended by adding between the forms of Australian Wine License and Packet License the following form:— Amendment of Second Schedule. *ibid.*

THE LICENSING ACT, 1911.

AUSTRALIAN WINE BOTTLE LICENSE.

WHEREAS the Licensing Court for the Licensing District of _____ at a sitting held on the day of _____, 19____, by its Certificate dated the day of _____, 19____, authorised the issue to _____ of _____ of an Australian Wine Bottle License for the sale of wine made in any State of the Commonwealth, for certain premises, situated at _____

And Whereas the said _____ has paid the sum of \$ _____ as the fee for the said license.

Now it is hereby declared that the said _____ is licensed to sell wine made in any State of the Commonwealth, the produce of fruit grown in the Commonwealth of Australia, on the said premises, under and subject to the provisions of the Licensing Act, 1911, and the Illicit Sale of Liquor Act, 1913.

The license to commence on the _____ day of _____, 19____, and continue until the 31st of December, 19____, if not forfeited in the meantime.

Dated this _____ day of _____, 19____.

Receiver of Revenue.

19. [*Repealed by No. 1 of 1917.*]

20. All proceedings upon a summons or arrest under this Act shall be heard and determined before and by a Police or Resident Magistrate. Complaints to be heard by a Magistrate.