

BUSINESSES ACT
NO. 71 OF 1991

[ASSENTED TO 15 MAY, 1991]
[DATE OF COMMENCEMENT: 24 MAY, 1991]

(Unless otherwise indicated)

(English text signed by the State President)

As amended by

Businesses Amendment Act, No. 186 of 1993

Films and Publications, No. 65 of 1996

[With effect from 16 January 1998]

National Road Traffic Act, No. 93 of 1996

[With effect from 1 August 2000]

ACT

To repeal or amend certain laws regarding the licensing and carrying on of businesses, and shop hours; to make certain new provision regarding such licensing and carrying on of businesses; and to provide for matters connected therewith.

2. Licensing authorities and licensing of businesses.

- (1) (a) An Administrator may by notice in the Official Gazette designate a local authority, or appoint any person or body, as a licensing authority for an area which the Administrator specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned.
 - (b) A local authority may so be designated or appointed for any area, whether in or outside its own area of jurisdiction, but in the province concerned, including the area of jurisdiction of any other local authority or any part of such an area.
 - (c) When an Administrator exercises any power under paragraph (a), he shall do so with the concurrence of-
 - (i) The local authority, or person or body, designated or appointed as licensing authority;
 - (ii) In the case of the designation or appointment of a local authority as licensing authority for an area comprising the area of jurisdiction of another local authority or any part thereof, that other local authority;
 - (iii) In the case of the appointment of a person or body as licensing authority for an area comprising the area of jurisdiction of a local authority or any part thereof, that local authority.
- (2) An Administrator may at any time, after consultation with the relevant licensing authority, amend or withdraw a notice under subsection (1) by notice in the Official Gazette.
 - (3) No person shall, with effect from the date specified in a notice under subsection (1) in respect of a specific licensing authority, carry on any business in the area of that licensing authority—

- (a) Unless, in the case of a business referred to in item 1 (1) or 2 of Schedule 1, he is the holder of an apposite licence issued to him by the licensing authority in respect of the business premises concerned;
 - (b) Unless, in the case of a business referred to in item 3 (1) of Schedule 1, he is the holder of a hawker's licence issued to him by the licensing authority;
 - (c) Contrary to a condition.
- (4) A licensing authority shall, subject to the provisions of subsection (6), issue a licence which is properly applied for unless—
- (a) In the case of a business referred to in item 1 (1) or 2 of Schedule 1, the business premises do not comply with a requirement relating to town planning or the safety or health of the public of any law which applies to those premises;
 - (b) In the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public;
 - (c) In the case of a business referred to in item 2 of Schedule 1, the licensing authority is satisfied that—
 - (i) The applicant, whether or not he is or will be in actual and effective control of the business; or
 - (ii) If another person is or will be so in control, that other person, is not a suitable person to carry on the business, whether by reason of his character, having regard to any conviction recorded against him, his previous conduct or for any other reason;
 - (d) In the case of an application for a hawker's licence, such a licence of which the applicant concerned was the holder, was withdrawn under subsection (9) at any time during the preceding 12 months.
- (5) (a) For the purposes of subsection (4) (b), a licensing authority may ask the South African Police for a report stating particulars of all convictions (if any) recorded against an applicant concerned or against any person referred to in subsection (4) (b) (ii).
- (b) For the purposes of such a report any member of the South African Police may require the applicant or person concerned to furnish such information and particulars (including any fingerprint, palm-print or footprint) as that member may consider necessary.
- (6) In considering an application for a licence, a licensing authority may—
- (a) Grant the application on condition that—
 - (i) The business premises concerned shall, before the licence is issued, comply with a requirement contemplated in subsection (4) (a) stipulated by the licensing authority and made known in writing to the applicant;
 - (ii) Any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place referred to in subsection (4) shall, before the licence is issued, comply with a

requirement contemplated in that subsection so stipulated and made known; or

- (b) Issue the licence subject to any condition therein specified in terms of which the licence holder shall in connection with the business premises or any such apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place—
 - (i) Comply with a specific requirement contemplated in subsection (4) (a) as the case may be; or
 - (ii) Within a specified period comply with such a requirement.

(7) A licensing authority may, on application by a licence holder, by way of endorsement on the licence—

- (a) Amend a condition;
- (b) Extend the period referred to in subsection (6) (b) (ii);
- (c) Revoke a condition;
- (d) Indicate that a condition specified in the licence has been complied with.

- (8)
 - (a) A licensing authority may at any time, after giving the licence holder concerned a reasonable opportunity to be heard, if it considers it necessary on the ground of changed circumstances in relation to a business or the relevant business premises, by way of endorsement on the licence concerned amend a condition or impose a condition referred to in subsection (6) (b).
 - (b) For the purposes of paragraph (a), a licensing authority may require a licence holder in writing to produce his licence to the licensing authority.

(9) A licensing authority may at any time, after giving the licence holder concerned a reasonable opportunity to be heard, withdraw or suspend a licence—

- (a) On the ground that the business premises do not comply with a requirement contemplated in subsection (4) (a);
- (b) On the ground that the licence holder failed to produce his licence to the licensing authority within 14 days after the receipt of a written request referred to in subsection (8) (b);
- (c) In the case of a business referred to in item 2 of Schedule 1, if the licensing authority is satisfied that, if application had been made at that time for the licence concerned, the application could have been refused by virtue of subsection (4) (b);
- (d) In the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, on the ground that-
 - (i) Any foodstuff sold by the licence holder does not comply with a requirement of a law relating to the health of the public;
 - (ii) Any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public.

(10) When a licensing authority decides to refuse an application for a licence, or to grant such an application subject to a condition contemplated in subsection (6) (a), or to issue a licence subject to a condition, or to amend or impose a condition under subsection (8), or to withdraw or suspend a licence, it shall as soon as practicable—

- (a) Notify the applicant or licence holder concerned in writing of its decision;
- (b) Furnish the applicant or licence holder concerned in writing with the reasons for its decision;
- (c) Inform the applicant or licence holder concerned in writing of his right of appeal under section 3.

(11) The issue of a licence shall not relieve the licence holder of complying with any law or legal requirement in connection with the business or premises concerned.

3. Appeals.

- (1) Any person who feels himself aggrieved by a decision of a licensing authority may appeal against the decision in accordance with the provisions of a regulation contemplated in section 6 (1) (a) (vi).
- (2) If a licensing authority fails to make a decision on any application in terms of this Act within 21 days after the receipt of the application or within such extended period as may be agreed upon between the licensing authority and the applicant concerned, it shall for the purposes of this section be presumed that the application was refused by the licensing authority.

6. Regulations.

- (1) An Administrator may make regulations for his province regarding—
 - (a) The attainment of the objects of sections 2 and 3, including, without prejudice to the generality of the foregoing-
 - (i) The constitution of any body appointed as a licensing authority;
 - (ii) The powers, duties and functions of licensing authorities;
 - (iii) Applications that are required or permitted to be made for the purposes of the said sections;
 - (iv) The issuing, amendment, suspension, withdrawal and transfer of licences;
 - (v) The issuing of duplicates of licences;
 - (vi) appeals in terms of section 3, including the referral of appeals to appeal committees, and the constitution, functions and procedures, and the legal effect of findings, of such committees;
 - (vii) The liability of any person for reasonable expenses in respect of inspections or the performance of any other act in relation to any matter specified in this paragraph;
 - (viii) The appointment of inspectors, and their powers, duties and functions;
 - (ix) The provision of administrative services to licensing authorities;

- (x) The delegation or assignment by a licensing authority of its powers or duties;
 - (xi) Any matter which in terms of this Act is required or permitted to be prescribed by regulation;
 - (b) (i) the disposal of any goods, receptacle, vehicle or movable structure removed and impounded as contemplated in section 6A (1) (d) (ii);
 - (ii) The liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;
 - (c) In connection with any matter contemplated in paragraph (a), the powers, duties and functions of local authorities in relation to any such matter, including the power to make by-laws in respect thereof and so to enact, subject to the provisions of this Act, such penal, differential and exempting provisions as may be deemed necessary.
- (2) Different regulations may be made in respect of different businesses, areas or local authorities.
- (3) A regulation may prescribe penalties not exceeding a fine of R1 000 or imprisonment for a period of three months for any contravention of or failure to comply with its provisions.
- (4) (a) The Administrator shall, not less than one month before promulgating a regulation under subsection (1), cause a draft of the regulation to be published in the Official Gazette, together with a notice declaring his intention to issue such a regulation and inviting interested persons to furnish him with comments thereon or representations in connection therewith.
- (b) If the Administrator determines upon any alteration on a draft regulation so published, as a result of comments or representations furnished to him in respect thereof, it shall not be necessary to publish the alteration in terms of this subsection before the amended draft is promulgated as a regulation.
- (5) The provisions of any law which warrants the seizure of articles, including Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall not apply in respect of the seizure of anything—
- (a) Which is concerned in or suspected to be concerned in the commission of an offence—
 - (i) In terms of this Act or in terms of a by-law contemplated in section 6A (1); and
 - ii) Relating to the carrying on of the business of street vendor, pedlar or hawker;
 - (b) Which may afford evidence of the commission or suspected commission of such an offence; or
 - (c) Which is intended to be used or is suspected to be intended to be used in the commission of such an offence.
- (6) A regulation shall in the province concerned have legal effect as if it were a proclamation issued by the Administrator under section 14 (2) (a)).

6A. Powers of local authority.

(1) (a) A local authority may, with the approval of the Administrator, make by-laws regarding—

(i) The supervision and control of the carrying on of the business of street vendor, pedlar or hawker;

(ii) The restriction of the carrying on of such business—

(aa) in a garden or park to which the public has a right of access;

(bb) on a verge as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989), contiguous to-

(A) A building belonging to, or occupied solely by, the State or the local authority concerned;

(B) A church or other place of worship;

(C) A building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969); (cc) in a area declared or to be declared under subsection (2) (a);

(iii) The prohibition of the carrying on of such business—

(aa) in a garden or park as contemplated in subparagraph (ii)

(aa);

(bb) on a verge so defined as contemplated in subparagraph (ii)

(bb);

(cc) in an area declared or to be declared under subsection (2)

(a);

(dd) at a place where-

(A) It causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;

(B) It causes an obstruction to vehicular traffic; or

(C) It substantially obstructs pedestrians in their use of a sidewalk as defined in section 1 of the Road Traffic Act, 1989;

(ee) on a verge so defined contiguous to a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, pedlar or hawker concerned, without the consent of that person;

(ff) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.

(b) A by-law made under this subsection, other than a by-law contemplated in paragraph (a) (ii), shall not—

(i) Restrict the carrying on of the business of street vendor, pedlar or hawker to—

(aa) specified hours or places; or

(bb) specified goods or services;

(ii) Impose a restriction or requirement in relation to a street vendor, pedlar or hawker that is not in terms of any other by-law or regulation of the local authority concerned imposed in relation to a person carrying on business in the same goods and services on fixed premises: Provided that this subparagraph shall not prevent the making of a by-law which is necessitated by reason of the

business concerned being carried on elsewhere than on fixed premises.

(c) No by-law made under this subsection shall—

(i) Require a street vendor, pedlar or hawker to hold a licence, permit, authority, certificate or approval in respect of such business:

Provided that a by-law may prohibit a person from carrying on such business on any stand or in any area contemplated in subsection (3)

(b) if he is not in possession of proof that he has hired such stand or area from the local authority concerned or that it has otherwise been allocated to him;

(ii) Prohibit the carrying on of such business—

(aa) within a specified distance from any specified place or point;

(bb) at any place for longer than a specified period;

(cc) if the business concerned is not periodically moved from place to place;

(iii) Protect any person against trade competition, except to the extent contemplated in paragraph (a) (iii) (ee).

(d) A by-law made under this subsection—

(i) May, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding three months;

(ii) May provide for the removal and impoundment by an officer of any goods, receptacle, vehicle or movable structure—

(aa) which he reasonably suspects is being used or intended to be used or has been used in or in connection with the carrying on of the business of street vendor, pedlar or hawker; and

(bb) which he finds at a place where in terms of a by-law under subsection (1) (a) (ii) or (iii), the carrying on of such business is restricted or prohibited and which, in his opinion, constitutes an infringement of such by-law, whether or not such goods, receptacle, vehicle or movable structure is in the possession or under the control of any person at the time of such removal or impoundment.

(2) (a) A local authority may, subject to the provisions of paragraphs (b) up to and including (j), by resolution declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendors, pedlar or hawker may be restricted or prohibited.

(b) A motion that steps be taken to declare an area under this subsection shall be dealt with at a meeting of the local authority.

(c) Before such a motion is adopted, the local authority shall have regard to the effect of the presence of a large number of street vendors, pedlars or hawkers in that area and shall consider whether—

(i) More effective supervision or control in that area, including negotiations with any person carrying on in that area the

- business of street vendor, pedlar or hawker or their representatives, will make such declaration unnecessary; and
- (ii) The intended restriction or prohibition will drive out of business a substantial number of street vendors, pedlars or hawkers.
- (d) If such a motion is adopted the local authority shall cause a plan to be prepared showing the position of the area concerned.
 - (e) On completion of the said plan the local authority shall cause to be published in a newspaper circulating in the area of jurisdiction of that local authority, a notice setting out its intention to effect the restriction or prohibition concerned as well as its reasons therefore, stating that the said plan is open for inspection at a place and during the hours mentioned in the notice and calling upon any person who has any objection to the intended restriction or prohibition to submit in writing to the local authority within a period mentioned in the notice, which period shall not be shorter than 21 days following the day upon which the notice appeared in the newspaper, such objection or objections.
 - (f) The local authority shall, at least 21 days before the last day on which objections may be submitted in terms of such notice, cause a copy of the said notice to be displayed at a suitable place in or near the area concerned.
 - (g) The local authority shall consider every objection submitted in terms of paragraph (e) or (f) and may thereafter resolve on the declaration of the area concerned.
 - (h) The local authority shall cause the declaration to be published in the Official Gazette, and such declaration shall take effect on the date of such publication.
 - (i) The local authority shall forthwith after the publication referred to in paragraph (h), submit to the Administrator a copy of the plan of the area, the notice published in the newspaper in terms of paragraph (e), the notice published in the Official Gazette in terms of paragraph (h) and all objections received, together with its comments thereon.
 - (j) The Administrator may within a period of 60 days after such submission and after consultation with the local authority concerned, by notice in the Official Gazette amend or revoke the declaration concerned.
 - (k) Notwithstanding the provisions of section 17C (2) of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983), a local authority shall not authorize any committee of, or any officer or employee in the service of, the local authority to perform any duty assigned to the local authority by or under paragraph (b), (c) or (g).
- (3) Notwithstanding the provisions of any other law, a local authority may—
- (a) By resolution, after compliance mutatis mutandis with the provisions of subsection (2) (b) up to and including (h), lease any verge as defined in section 1 of the Road Traffic Act, 1989, or any portion thereof, to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier;

- (b)
 - (i) set apart by resolution and demarcate stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority or on any other property in the occupation and under the control of the local authority; and
 - (ii) In like manner extend, reduce or disestablish any such stand or area;
 - (c) By agreement let or otherwise allocate any stand or area demarcated under paragraph (b) (i) or otherwise established for such purposes.
- (4) (a) An Administrator may, in respect of any area outside the area of jurisdiction of a local authority—
- (i) Make regulations regarding supervision and control of the carrying on of the business of street vendor, pedlar or hawker, the restriction on the carrying on of such business as referred to in subsection (1) (a) (ii) and the prohibition of the carrying on of such business as referred to in subsection (1) (a) (iii), and the provisions of subsection (1) (b), (c) and (d) shall mutatis mutandis apply in respect of such regulations;
 - (ii) Subject to the provisions of paragraphs (c) and (d), declare any place in such area to be an area in which the carrying on of such business may be restricted or prohibited;
 - (iii) Lease any verge as referred to in subsection (3) (a), or any portion thereof, to the owner or occupier of the contiguous land on the condition so referred to;
 - (iv) Set apart and demarcate stands and areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the Administrator or the Provincial Administration concerned or on any other property in the occupation and under the control of the Administrator or such Provincial Administration and in like manner extend, reduce or disestablish any such stand or area so set apart or demarcated;
 - (v) By agreement let or otherwise allocate any stand or area demarcated under subparagraph (iv) or otherwise established for such purposes.
- (b) Different regulations may be made under paragraph (a) (i) in respect of different areas.
- (c) Before the Administrator makes a declaration as contemplated in paragraph (a) (ii), he shall-
- (i) Have regard to the effect referred to in subsection (2) (c) and consider the factors contemplated in subsection (2) (c) (i) and (ii);
 - (ii) Cause a plan to be prepared as referred to in subsection (2) (d);

- (iii) Cause a notice to be published as referred to in subsection (2) (e);
 - (iv) Cause a notice to be displayed as referred to in subsection (2) (f);
 - (v) Consider every objection submitted in terms of paragraphs (iii) and (iv).
- (d) After the Administrator has made such declaration, he shall cause it to be published in the Official Gazette, and such declaration shall take effect on the date of such publication.

Schedule 1

BUSINESSES IN RESPECT OF WHICH A LICENCE IS REQUIRED

Item 1: Sale or supply of meals or perishable foodstuffs

- (1) The carrying on of business by the sale or supply to consumers of-
- (a) Any foodstuff in the form of meals for consumption on or off the business premises; or
 - (b) Any perishable foodstuff.
- (2) For the purposes of sub item 1 “perishable foodstuff” means any foodstuff or category of foodstuffs declared by an Administrator by notice in the Official Gazette to be a perishable foodstuff in the province concerned for the purposes of this item.

Item 2: Provision of certain types of health facilities or entertainment

The carrying on of business by-

- (a) Providing Turkish baths, saunas or other health baths;
- (b) Providing massage or infrared treatment;
- (c) Making the services of an escort, whether male or female, available to any other person;
- (d) Keeping three or more mechanical, electronic or electrical contrivances, instruments, apparatus or devices which are designed or used for the purpose of the playing of any game or for the purpose of recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disc therein or in an appliance attached thereto or in any other manner;
- (e) Keeping three or more snooker or billiard tables;
- (f) Keeping or conducting a night club or discothèque;
- (g) Keeping or conducting a cinema or theatre;
- (h) Conducting adult premises referred to in section 24 of the Films and Publications Act, 1996.

Item 3: Hawking in meals or perishable foodstuffs

- (1) The carrying on of business, whether as principal, employee or agent, by selling any foodstuff in the form of meals or any perishable foodstuff-
- (a) Which is conveyed from place to place, whether by vehicle or otherwise;
 - (b) On a public road or at any other place accessible to the public; or

(c) In, on or from a movable structure or stationary vehicle, unless the business is covered by a licence for a business referred to in item 1 of this Schedule.

- (2) For the purposes of sub item (1) “perishable foodstuff” means any foodstuff or category of foodstuffs declared under item 1 (2) of this Schedule to be a perishable foodstuff.

Schedule 2

BUSINESSES EXCLUDED FROM BUSINESSES REFERRED TO IN SCHEDULE

1

1. A business which is carried on by the State or a local authority.
2. A business which is carried on by a charitable, religious, educational, cultural or agricultural association, organization or institution of a public nature, if all profits derived from the business are devoted entirely to the purposes of that or any other such association, organization or institution.
3. In the case of a business referred to in item 1 (1) of Schedule 1, such a business which is carried on—
 - (a) By a social, sports or recreation club which is a non-proprietary club and restricts the business to the sale or supply to its members and their guests of foodstuffs for consumption on or in the business premises;
 - (b) By or on behalf of an employer for an employee as such of the employer.
4. A business referred to in item 1 (1) (a) of Schedule 1, if the meals concerned are prepared and sold in a private dwelling.
5. In the case of a business referred to in item 1 (1) (b) of Schedule 1, the sale of a perishable foodstuff referred to in that item, by a person who belongs to a category of persons which the Minister, in the relevant notice under item 1 (2) of that Schedule, has exempted from the provisions of section 2 (3) of this Act, read with the said item 1 (1) (b), in relation to the perishable foodstuff concerned.