

Hon. Mr. Seddon.

HAWKERS AND PEDLARS.

ANALYSIS.

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A BILL INTITULED

AN ACT to regulate the Licensing of Hawkers and Pedlars. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Hawkers and Pedlars Act, 1894." Short Title.

It shall come into force on the *first* day of *November*, in the now current year. Commencement.

2. In this Act, if not inconsistent with the context,— Interpretation.
 "Clerk" means the clerk of any local authority, and includes the person who may be appointed by the Governor to receive fees and issue licenses in any part of the colony where the Governor is the local authority:

New.

"Commercial traveller" means and includes every person who is permanently employed by a company or firm of wholesale merchants or traders as a commercial travelling agent for the purpose of receiving orders, making collections, and the like:

"Conveyance" includes any vehicle, vessel, or other contrivance of any sort which may be used for the carriage of commodities either by land or by water:

"District" means any portion of the colony under the administration of a local authority as herein defined:

- “District Fund” means the fund of a district as herein defined; and when the Governor is the local authority it means the Consolidated Fund:
- “Hawker and pedlar” mean and shall apply to any person who sells, or attempts to sell, or offers for sale, goods, wares, or merchandise carried about on the person, or on any animal, or in any movable conveyance, whether by land or water, ~~in any city, town, borough, street, road, or place within the colony:~~ 5
- “Local authority” means and includes the Council or Board of any borough or town district; and outside of such places means any County Council, or such Road and Town Boards as may be administering the functions of a County Council; and in the absence of such Boards within any county where “The Counties Act, 1886,” is suspended or not in force, and also in all parts of the colony not included in any borough, town district, or county, means the Governor: 10
- A town district, for the purposes of this Act, shall be deemed not to form part of the county wherein it is comprised: 20
- “Magistrate” means a Stipendiary Magistrate appointed under “The Magistrates’ Courts Act, 1893”:
- “Public notification,” “public notice,” “publicly notify” respectively mean the insertion of a notice in one or more newspapers having general circulation in the district or place affected by the matter contained in such notification or notice. 25

No person to act as hawker and pedlar unless licensed.

3. Every person, except as hereinafter mentioned in section *thirty-four*, who, not being duly licensed in manner hereinafter provided, or, being so licensed, from and after the expiration of such license, shall exercise the trade or business of a hawker and pedlar, or act in either such capacity, shall for every such offence be liable to a penalty not less than *two* pounds and not exceeding *ten* pounds. 30

Penalty.

Disqualification.

But no person shall be licensed under this Act as a hawker and pedlar— 35

(1.) Who has not resided for ~~twelve~~ *six* months continuously in the colony, or

(2.) Who, not being a British subject, has not been naturalised in New Zealand, and been resident therein as aforesaid. 40

Forms of licenses and fees.

4. Hawkers’ and pedlars’ licenses shall be of four sorts, and the fees to be paid for the same respectively shall be the following, namely,—

(1.) A district license, which shall authorise the holder thereof to exercise his trade as a hawker and pedlar in any part of the district wherein the same is issued— 45

(a.) With goods, wares, and merchandise carried on any animal, or in any movable conveyance, for which an annual fee of *two* pounds shall be paid; and

(b.) With goods, wares, and merchandise arrived about on the person, or any pack, box, bag, trunk, case, or basket, for which an annual fee of *ten* shillings shall be paid. 50

(2.) A general license, which shall authorise the holder thereof to exercise his trade in any part of the colony—

(c.) With goods, wares, and merchandise carried on any animal, or in any movable conveyance, for which the annual fee shall be *five* pounds;

(d.) With goods, wares, and merchandise carried on the person, or in any pack, box, bag, trunk, case, or basket, for which an annual fee of *two* pounds shall be paid.

10 5. Any person desirous of obtaining for the first time a hawker's and pedlar's license under this Act shall lodge with the Clerk of the Magistrate's Court which is holden nearest to the usual place of residence of such person a notice in writing of his intention to apply for the same, in the form in the *First* Schedule hereto, stating in such
15 notice his true name and place of abode, and whether he applies for a license for carrying goods for sale on his own person or by a conveyance of any sort; and shall also deliver with such last-mentioned notice a certificate of character, in the form attached to the said
20 schedule, signed by at least four ratepayers resident not less than six months in the district wherein the applicant usually resides, or within five miles of the place where the Court is held.

Application for certificate for license.

6. The Clerk of such Court shall, on receiving such notice as aforesaid :—

Applicants' names to be published.

25 (1.) Inform the applicant or person delivering such notice of the day on which the application will be considered, which day shall not be until after the expiration of *ten* clear days from the receipt of the notice; and

30 (2.) Forthwith transmit a copy thereof to the police-station nearest to the Court, and shall cause a list of all applications for hawkers' and pedlars' licenses, with their places of abode respectively, and the names and residences of the householders signing the aforesaid certificates, to be posted in some conspicuous place inside and outside of the Courthouse for at least *seven* days before the applications shall be heard.

35 Any person may lodge objections to any application for a new license, or any renewal of a license, at any time before the same is disposed of.

40 7. The Magistrate of the Court aforesaid shall hear and dispose of all such applications, and inquire into any objections thereto, and may examine on oath any witnesses he may think necessary, and after such examination, or without hearing any such evidence, and on proof that the notice of application has been lodged with the Clerk of the Court at least *ten* clear days previously, may in his
45 discretion grant to the applicants who may be approved of by him a certificate authorising the issue of the license in one or other of the forms aforesaid; but the said Magistrate may reject any such application, or adjourn the consideration thereof from time to time, as he shall see fit: Provided that such adjournments do not in the whole
50 exceed *three* weeks from the day when such application was first heard.

Magistrate to hear application, and may grant or refuse application.

8. Such certificate need not be of any particular form, but shall be signed by the Magistrate granting the same, and sealed with the seal of the Court, and delivered or sent by the Clerk of such Court
50 to the Clerk of the local authority, who, upon payment to him

Issue of license by local authority.

of the proper license-fee, shall issue to the applicant a license in the form in the *Second* Schedule, according to the tenor of the application, signed by the principal officer of the local authority issuing the same, and countersigned by the Clerk of such authority, which shall, for the period of its continuance, authorise the person therein named to carry on the business of a hawker and pedlar in the district, or in any part of the colony as shall be stated in the license, subject to forfeiture as hereinafter provided. 5

Licenses to be issued where place of abode situate.

9. No Clerk of any local authority shall issue any hawker's and pedlar's license to any person whose place of abode is not within the district for which such Clerk is appointed. 10

Penalty for Clerk improperly issuing license.

10. Every Clerk of any local authority who ~~improperly~~ knowingly issues a license, contrary to the provisions of this Act, shall be liable to a penalty not exceeding the amount of any license-fee payable in respect of the license so issued by him. 15

Governor to provide for issue of licenses in certain parts of the colony.

11. In all parts of the colony outside of any county, borough, or town district, and where "The Counties Act, 1886," is not in operation, or not wholly in force, or is suspended, the Governor may appoint persons to grant licenses and to receive the fees for the same, and may prescribe the form of application for such licenses, and by whom they shall respectively be issued and signed. 20

Saving as to existing licenses.

12. Every hawker's and pedlar's license in force at the commencement of this Act shall be deemed to have been issued under and shall be subject to the provisions of this Act, and shall remain in full force and effect until its expiration by effluxion of time or forfeiture. 25

The holder of every such license shall, on the expiry thereof by effluxion of time, make application in manner provided in section *five* as for a license to be obtained for the first time, and shall not be entitled to a renewal of his former license. 30

Renewals of licenses.

13. Certificates for renewal of licenses granted after the commencement of this Act may be granted by the Magistrate in his discretion on the application of the licensee after the publication of the application as required by section *five*; but a certificate of householders shall not be necessary to accompany the application in such case: Provided the holders of the said licenses have not been convicted of any offence under this Act, in which case they shall apply for a new license under section *five* as for a license to be obtained for the first time. 35

License-fees paid to local authority.

14. All sums received as license-fees under this Act shall belong to the local authority issuing the license, and shall be paid by the Clerk receiving the same into its district fund. 40

Exceptions.

All sums received as license-fees in any part of the colony wherein the Governor acts as the local authority for granting and issuing licenses shall be paid into the Public Account, and shall form part of the Consolidated Fund: *Provided that the hawkers' and pedlars' license-fees be paid to the Hospital and Charitable Aid Board of the district within which the local authority issuing the license has control.* 45

Duration of license.

15. Every license issued under the provisions of this Act shall take effect from the date of the issue thereof, and shall expire on the thirty-first day of December next following such date; and when any such license shall be issued on or after the first day of July in any year, one-half only of the license-fee shall be payable for the said licenses respectively. 50

16. Every person to whom any such license as aforesaid shall be issued, or who shall carry on the business of a hawker and pedlar under the authority of such license, shall cause to be written, painted, or printed, in large legible Roman letters, upon some conspicuous part of every pack, cart, dray, wagon, boat, or other vehicle or conveyance in or with which he shall so carry on such business the words "licensed hawker," together with his name at full length, and the number of his license.

Hawker's badge.

And every such person making default therein shall, on conviction for every such offence, be liable to a penalty not exceeding five pounds.

17. If any person who shall not have previously obtained any such license as aforesaid shall write, paint, or print, or cause to be written, painted, or printed, or keep or continue or cause to be kept or continued written, painted, or printed upon any pack, cart, dray, wagon, boat, or other vehicle or conveyance in or with which he shall sell or expose to sale any goods, or in or with which he shall convey any goods, the words "licensed hawker," or any other word or words to that effect, he shall, on conviction, be liable to a penalty not exceeding five pounds.

Assumption of badge by unlicensed person.

18. If any person, having obtained any such license as aforesaid shall have in his possession or on his cart, dray, wagon, boat, or other conveyance, any fermented or spirituous liquors, he shall on conviction for every such offence be liable to a penalty not exceeding fifty ten pounds.

Spirituous liquors not to be carried.

19. In case any person shall have reasonable ground for suspecting that any hawker and pedlar is carrying fermented or spirituous liquors contrary to the provisions of this Act, or otherwise offending against the same, such person may make oath before any Justice of the Peace, at his private residence or elsewhere, of the circumstances; and if it shall appear to such Justice that reasonable ground for suspicion exists, such Justice may grant a warrant authorising such person to examine and search the person, packs, baggage, boxes, trunks, cases, carts, drays, wagons, boats, or other conveyance of such hawker and pedlar therein named or described, such warrant to remain in force for such time as shall be therein mentioned.

Searching hawkers.

Any Justice of the Peace, police officer, or constable, having reasonable grounds for suspicion as aforesaid, may examine and search the persons, packs, baggage, boxes, trunks, cases, carts, drays, wagons, boats, or other conveyance of any sort of any such hawker and pedlar without a warrant for such purpose.

Upon any such person authorised by warrant as aforesaid, or any such Justice of the Peace, police officer, or constable, finding any such fermented or spirituous liquors carried contrary to law, he may seize the same; and such hawker and pedlar, on conviction of such offence in a summary way before two or more Justices of the Peace, shall be liable to a penalty not exceeding fifty ten pounds, or be imprisoned with hard labour for any period not exceeding six three months, at the discretion of such Justices.

20. Any Justice of the Peace, police officer, or constable may, without warrant, seize all such fermented and spirituous liquors as shall be hawked or conveyed about or exposed to sale in any street, road, footpath, or in any booth, tent, stall, or shed, or in any boat or vessel, or any other place whatever, by any person not licensed according to law to sell the same in such place, and the vessels containing the same, and all the vessels and utensils used for drinking or measuring the same, and any cart, dray, or other carriage, and any

Seizure and forfeiture of liquors.

horse or horses or other animal or animals employed in drawing or carrying the same, as well as any boat or vessel used in the conveyance of such liquors as aforesaid.

Liquors seized may be condemned and sold.

21. Any one or more Justice or Justices of the Peace may, on his or their own view, or if, after due inquiry and examination, it shall appear to the said Justice or Justices that any fermented or spirituous liquors were carried contrary to law, or were hawked and conveyed about for the purpose of being illegally sold or disposed of by retail, adjudge the said liquors and vessels and utensils containing the same, and ~~any cart, dray, or other carriage, horse or horses, or other animal or animals, as well as any boat or vessel used in conveying the same,~~ to be condemned and forfeited, and the same shall and may be sold, and the proceeds thereof shall be paid into the Public Account, and form part of the Consolidated Fund.

Nothing in this Act contained shall prevent any penalty or punishment being inflicted on any person so offending as aforesaid under any other law or Act now or hereafter to be in force in the colony, provided that such person be not punished twice in respect of the same offence.

Onus of proof as to carrying liquors.

22. In all cases where fermented or spirituous liquors shall be carried from one place to another the burden of proving that such fermented or spirituous liquors were not so carried for sale or exposed to sale shall be cast upon the party or parties so carrying them.

Selling smuggled or stolen goods.

23. If any hawker and pedlar shall be convicted of knowingly dealing in or selling any kind of smuggled or contraband goods, wares, or merchandise, or knowingly dealing in, vending, or selling any goods, wares, or merchandise fraudulently or dishonestly procured, either by himself or through the medium of others with his privity and knowledge, every such hawker and pedlar shall, from and after such conviction, forfeit his license, and for ~~ever thereafter~~ *such period not exceeding two years, as the convicting Court shall determine*, be incapable of obtaining or holding any new license, or dealing, trafficking, or trading under the same, and that over and above all such other forfeitures and incapacities, fines, and penalties to which he is or shall be by law subject and liable for such illicit and illegal trafficking and dealing.

Seizure of unlicensed person.

24. Any constable may seize and detain any person found by him carrying on the business of a hawker and pedlar within the colony without having previously obtained a license for such purpose, and may keep him so detained until the day next after the day on which he shall have been so seized for the purpose of being proceeded against for such offence, unless the same can be sooner disposed of.

Penalty for not exhibiting license on demand.

25. If any hawker and pedlar holding a license under this Act shall at any time, on demand thereof being made of him by any Justice of the Peace, police officer, or constable, or by any person to whom he shall within twenty-four hours previously have sold or offered to sell any goods, neglect or refuse within a reasonable time to produce and show to such Justice of the Peace, constable, or other person his said license, he shall, on conviction for every such offence, be liable to a penalty not exceeding *five pounds*.

By-laws to regulate conduct of hawkers and pedlars.

26. Every local authority, ~~whether or not having power to issue licenses under this Act,~~ and every Harbour Board may, nevertheless, in manner provided by any Act authorising such local authority or Harbour Board to make by-laws, from time to time make, alter, and repeal by-laws to regulate the conduct and provide against the misconduct of hawkers and pedlars who may be licensed under this Act.

Penalty.

Every breach of any such by-law shall entail the same punish-

ment as is provided in case of breach of other by-laws made by such local authority or Harbour Board under any such Act as aforesaid.

27. If any licensed hawker and pedlar shall exercise his business at any time or in any manner contrary to the provisions of this Act, or otherwise offend against this Act, he shall, for every such offence, in cases where no other penalty is provided, be liable to a penalty not exceeding *ten* pounds.

Penalty for selling contrary to Act.

28. Every licensed hawker and pedlar who has improperly obtained a license contrary to the true meaning of this Act shall, in the discretion of any two Justices of the Peace, forfeit his license, and thereafter shall be deemed to be unlicensed.

License improperly obtained to be forfeited.

29. Every person who shall forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, any license, or any seal or signature to any license, or shall use or travel with, produce or show, with intent to use the same as a genuine instrument, or shall tender in evidence, any such forged, counterfeited, or altered license, or seal, or signature, knowing the same to be forged, counterfeited, or altered, shall be liable to imprisonment with hard labour for any term not exceeding *three two* years.

Penalty for forging, &c., license.

30. Every person shall be liable to a penalty not exceeding *fifty twenty* pounds for every separate offence who shall let out, or hire, or lend, any license issued to him, or shall trade with or under colour of any license issued to any other person whomsoever, or of any license in which his own name shall not be inserted as the name of the person to whom the same is issued.

Penalty for lending or hiring, &c., license.

31. In all proceedings against any person for having acted as a hawker and pedlar without a license, such person, unless he shall produce his license or bring any other satisfactory proof of his having been licensed at the time at which the offence was committed, shall be deemed to have been unlicensed.

Non-production of license.

32. If any hawker and pedlar holding a license under this Act shall be convicted of an offence under this Act, and thereafter be convicted of a second or any subsequent offence of any kind under this Act, the convicting Magistrate or Justices may, in addition to any other penalty, cancel his license.

License may be cancelled.

33. All offences under this Act, except under section *twenty-nine*, may be heard and determined, and all fines and penalties may be recovered, in a summary way before a Magistrate or any two or more Justices of the Peace, and shall be paid into the Public Account, and form part of the Consolidated Fund.

Recovery of penalties, &c., to be paid to Public Account.

Struck out.

34. The selling or offering for sale goods carried about on the person, or on any animal, or in any movable conveyance whether by land or water, in any city, town, street, road, or place within the colony shall be deemed to be carrying on the business of a hawker and pedlar within the meaning of this Act.

Who deemed hawkers and pedlars, and who exempt from Act.

Provided that nothing in this Act shall be construed—

(1.) To prevent any person from selling or offering for sale any printed newspaper, water, fuel, fish, fruit, milk, or vegetables of any description without having previously obtained a license under this Act; nor to prevent the sale without such license of any goods whatever in any market that may be legally established in the colony, or in any house or shop occupied by the person so selling or offering to sell the same :

(2.) To alter or affect the provisions of any law or by-law now or hereafter to be in force relating to the sale or exposing for sale of any articles or goods whatsoever within the limits of any borough or town district.

New clauses.

Saving.

34A. Nothing in this Act shall be construed to prevent any person selling or offering for sale any newspapers, periodicals, or any bread, meat, fish, fruit, water, fuel, milk, vegetables, or victuals of any description, or any agricultural produce, nor any goods or merchandise made or worked by the person selling or offering them for sale, or sold or offered for sale by his children, apprentices, agents, or servants usually residing in the same house with him, nor any goods, wares, or merchandise in any market or fair legally established in New Zealand. 5 10

34B. Nothing in this Act contained shall apply to commercial travellers. 10

Enactments repealed.

35. The following enactments are hereby repealed:—

1886, No. 49.—“The Counties Act, 1886,” section three hundred and two. 15

1886, No. 50.—“The Municipal Corporations Act, 1886,” part section four hundred and twenty-two, namely, the paragraph and subsections thereof beginning with the words “In respect of pedlars and hawkers.”

Schedules.

SCHEDULES.

FIRST SCHEDULE.

APPLICATION FOR LICENSE.

To the Clerk of the Magistrate's Court at I [A.B.], now residing at , do hereby give notice that it is my intention, at the expiration of ten days from this date, to apply for a certificate for a district [or general] hawker's and pedlar's license, authorising me to carry goods, wares, and merchandise for the purpose of sale on my own person, travelling on foot only, without any horse or other animal bearing or drawing burden.

[If the license is to be for trading with pack or draught animals, omit the words after “sale,” and insert instead thereof “by packhorse” (or by other animal, or by cart or other vehicle, or by boat or other craft, as the case may be).]

Dated this day of , 18 .

A.B.

Form of Certificate of Character to be attached to the above, to be signed by four ratepayers resident in the District where the Applicant resides.

WE hereby certify that we are well acquainted with [A.B.], the above applicant, and know him to be a respectable person, and fit to be intrusted with a hawker's and pedlar's license.

[Names and Residences:] { 1. 3.
2. 4.

SECOND SCHEDULE.

FORM OF LICENSE.

WHEREAS [A.B.], of , hath deposited in this office a certificate from the Magistrate of the Magistrate's Court at , authorising the issue of a hawker's and pedlar's license under “The Hawkerc and Pedlars Act, 1894,” to the said [A.B.]: And whereas the said [A.B.] has this day paid into my office the sum of pounds as the fee for such license: Now, therefore, I do hereby declare that the said [A.B.] is licensed to trade as a hawker and pedlar within the district [or within the colony].

This license authorises the said [A.B.] to carry goods, wares, and merchandise for the purpose of sale on his own person, or in any pack, box, bag, trunk, case, or basket, travelling on foot only, without any horse or other animal bearing or drawing burden [or by packhorse, or by other animal, or by cart or other vehicle, or by boat or other craft, as the case may be].

This license shall continue in force until the *thirty-first* day of December ensuing next after the date hereof and no longer, provided it be not forfeited in the meantime.

Dated this day of , 18 .

C.D., Mayor [or Chairman].
E.F., Clerk, Local Authority.