



ANNO VICESIMO QUINTO

**ELIZABETHAE II REGINAE**

A.D. 1976

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**No. 9 of 1976**

An Act to amend the Licensing Act, 1967-1975.

[Assented to 26th February, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Licensing Act Amendment Act, 1976".

(2) The Licensing Act, 1967-1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Licensing Act, 1967-1976".

Commencement.

2. This Act shall be deemed to have come into operation on the twenty-eighth day of September, 1967.

Amendment of principal Act, s. 37—  
Licence fees.

3. Section 37 of the principal Act is amended by striking out from subsection (1) the passage "subject to subsections (2) and (3) of this section," and inserting in lieu thereof the passage "subject to this Act".

Amendment of principal Act, s. 38—  
Court to fix percentage fee.

4. Section 38 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) The court shall fix the amount of any fee payable on a percentage basis under this Act.

(1a) A decision of the court fixing the amount of any such fee shall, subject to subsection (1b) of this section, be final and conclusive.

(1b) The court shall reassess an amount fixed under subsection (1) of this section—

(a) where the court is satisfied on the application of the holder of a licence, or of the Superintendent of Licensed Premises, that the amount should be reassessed by reason of some error or mis-estimation in the original assessment;

or

(b) where the court is satisfied on the application of the Superintendent of Licensed Premises that there should be a reassessment under section 39 of this Act.

(1c) The application for reassessment must be lodged with the clerk within two years after the day on which the court fixed the fee in respect of which reassessment is sought.;

(1d) No application for reassessment shall be made where the fee in respect of which reassessment is sought was fixed before the first day of July, 1974.

(ab) by striking out from subsection (3) the passage “the twelve months ended on the preceding thirtieth day of June” and inserting in lieu thereof the passage “such period as may be specified in the order”;

and

(b) by inserting after subsection (5) the following subsections:—

(6) Upon reassessment of a licence fee under this section, the Superintendent of Licensed Premises shall repay to the licensee any amount overpaid by him, or may recover from the person who was liable to pay the licence fee, as a debt, any amount underpaid.

(7) Where—

(a) proceedings for recovery of moneys would, but for the dissolution of a body corporate, lie against that body corporate under subsection (6) of this section;

or

(b) proceedings for the recovery of moneys lie against a body corporate under subsection (6) of this section but the body corporate fails to discharge its liability within 14 days after the day on which the Superintendent of Licensed Premises causes notice to be served on the body corporate requiring it to discharge its liability,

proceedings may be brought under subsection (6) of this section, and judgment executed, not only against the body corporate (where it is still in existence) but also against—

(c) any body corporate that was related to that body corporate;

and

(d) any person who was a director, member of the board of management or shareholder of the body corporate or of a related body corporate, at the time of the grant or renewal of the licence.

(8) A body corporate is related to another body corporate for the purposes of this section, if it is so related for the purposes of the Companies Act, 1962, as amended.

Amendment of principal Act, s. 39—  
Assessment of licence fees in certain cases.

5. Section 39 of the principal Act is amended by inserting after subsection (1) the following subsections:—

(1a) The court shall assess or reassess the fee for the grant of a new licence on the basis of the gross amount that would, in the opinion of the court, have been payable by the licensee for the purchase of liquor or to the licensee upon sale of liquor (as the case may require) during the relevant period if business of the same nature as the business conducted, or to be conducted in pursuance of the licence during the licence period had been conducted in pursuance of the licence during the relevant period.

(1b) Where, in respect of the renewal of a licence, the court is satisfied, upon the application of the Superintendent of Licensed Premises, that there is, has been, or will be, a material difference between the nature of the business conducted in pursuance of the licence during the licence period and the nature of the business conducted during the relevant period—

(a) by virtue of the removal of the licence;

(b) by virtue of some structural change to the licensed premises;

or

(c) by virtue of the adoption or cessation of a prescribed trading practice, or an increase or decrease in the scale on which a prescribed trading practice is carried on,

the court shall assess or reassess the fee as if the application for renewal of the licence were an application for the grant of a new licence.

(1c) The court shall not entertain an application by the Superintendent of Licensed Premises under subsection (1b) of this section unless the Minister has, by instrument in writing, authorized the application.

(1d) An apparently genuine document purporting to be an authorization under subsection (1c) of this section shall, in the absence of proof to the contrary, be accepted by the court as such an authorization.

(1e) In any proceedings under subsection (1b) of this section an apparently genuine document purporting to be an advertisement relating to certain licensed premises shall, in the absence of proof to the contrary, be deemed to have been published by or on behalf of the person who was licensee in respect of those licensed premises at the time of publication of the advertisement.

(1f) In this section—

“the licence period” in relation to a licence means the period for which the licence is granted or renewed:

“prescribed trading practice” means—

(a) the offering or advertising of liquor for sale at a discount or alleged discount;

or

(b) the making or offering of a gift to a purchaser or prospective purchaser of liquor:

“the relevant period” in relation to a licence means the period in respect of which the gross amount paid or payable by the licensee for the purchase of liquor, or to the licensee upon the sale of liquor is determined or estimated for the purpose of assessing or reassessing the fee payable for the grant or renewal of the licence:

“renewal” in relation to a licence, includes the grant of a special licence under section 35 of this Act.

(1g) If—

(a) any provisions enacted by the Licensing Act Amendment Act, 1976, are held by the High Court of Australia to be invalid;

or

(b) any provisions of this Act are held by the High Court of Australia to have been rendered invalid by the enactment of the Licensing Act Amendment Act, 1976,

this Act shall be read and construed as if the Licensing Act Amendment Act, 1976, had not been enacted.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor