An Act to amend "The Licensed Victuallers Act, 1880," and for other purposes.

[Assented to, December 19th, 1891.]

WHEREAS it is expedient to amend "The Licensed Victuallers Act, 1880"—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

PRELIMINARY.

1. This Act may be cited for all purposes as "The Licensed Victuallers Amendment Act, 1891."

2. This Act and "The Licensed Victuallers Act, 1880," herein-after termed "the principal Act," shall be read and construed together as forming one Act.

3. This Act shall be divided into six parts, relating to the following subject-matters:

   PART I. Licences to Clubs &c., section 4:
   PART II. Licence Fees, sections 5 and 6:
   PART III. Objections to Licences, sections 7 and 8:
   PART IV. Limitation of Licences, sections 9 to 28:
   PART V. Provisions as to Poll for Closing Licensed Premises on Sunday, sections 29 and 30:
   PART VI. Miscellaneous, sections 31 to 40.
4. The provisions of the principal Act relating to the sale of liquor shall not apply to the sale of liquor in the Parliamentary refreshment rooms, by the permission and under the control of the proper authority, or to liquors supplied to any member of the Volunteer or Military Force in any military canteen established under a permit issued under the hand of the Chief Secretary (which permit the Chief Secretary is hereby authorised to grant), or to the sale of liquors in any clubhouse: Provided that such liquors be sold only to members of such club, to be consumed on the premises, and provided such club is a *bona fide* association or company of not less than fifty persons in the case of a club established in the City of Adelaide, and not less than twenty-five persons in the case of a club established elsewhere, and with respect to which clubs the following conditions exist, that is to say—

(1) The club must be established upon premises of which such association or company are the *bona fide* occupiers, and maintained from the joint funds of the club, and no person must be entitled under its rules to derive any profit, benefit, or advantage from the club, or for the sale of liquor, which is not shared equally by every member thereof:

(2) It must have been proved to the satisfaction of the Licensing Bench, at an annual or quarterly meeting, that the club is such an association or company as in this section is defined, and that the premises of the club are suitable for the purpose:

(3) It must be proved to the satisfaction of the Licensing Bench that such club has a committee of management, and that some person has been appointed by them steward or manager of such club:

(4) The rules of the club must have been approved by the Licensing Bench, and a certified copy of such rules shall be kept in the possession of the manager of the club, to be produced by him when demanded by any inspector of public-houses, who shall have the right to enter the premises of any club at any time when he considers inspection necessary.

Upon such proof being made, the club shall be registered by the clerk of the licensing district in which the said club is situate, for which an annual registration fee of Ten Pounds shall be paid to the said clerk, who shall issue a certificate that the said club has been duly licensed for the period therein mentioned; and such certificate shall also state the name of the then manager or steward of the said club, which certificate, until receipt of a notice of the change of such manager or steward by the club, as provided herein, shall be *primâ facie* evidence of such person being such manager or steward. Upon any
any change in the steward or manager of any club the committee of management shall forthwith forward notice thereof to the clerk of the Licensing Bench of the district where the premises of such club are situate, which notice shall be prima facie evidence of the appointment of the person named therein as the steward or manager of such club. Upon the complaint of an inspector under this Act the manager, or steward, or other person conducting or managing a club may be called upon to show cause, before any Special Magistrate or two Justices, why the registration of the club should not be cancelled; and upon the hearing of the complaint, unless it is proved to the said Special Magistrate, or two Justices, that the conditions of this section continue to be fulfilled with respect to the club, the registration shall be cancelled, and the exemption aforesaid shall no longer extend or apply to persons selling liquor in such club. Licences to such clubs shall be renewable annually on payment of the annual fee of Ten Pounds. The Licensing Bench shall have power to refuse to renew the licence to any club whenever they deem fit, and no compensation shall be paid.

PART II.

LICENCE FEES.

5. Section 9 of the principal Act is hereby repealed, and the said Act shall be read and construed as if the next following section had been inserted therein in lieu of the section hereby repealed.

6. The annual fee to be paid for a publican's licence shall be as follows:—If the house or premises described in the licence be situate within the limits of a Municipal Corporation or District Council, and the same be assessed by such Corporation or District Council for rating purposes at an annual value of not exceeding the amount mentioned in the first column of this section, the annual fee for such licence shall be the amount specified in the second column opposite to the annual value mentioned in such first column.

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<th>First Column</th>
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<tr>
<td>Annual Value</td>
<td>Licence Fee</td>
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<td>£100</td>
<td>£15</td>
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<td>Over £400</td>
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If the house or premises shall be situated outside the limits of a Corporation or District Council, the annual fee for such licence shall be Fifteen Pounds.
PART III.

OBJECTIONS TO LICENCES.

7. Section 41 of the principal Act is hereby repealed, and the said Act shall be read and construed as if the next following section had been inserted therein, in lieu of the section hereby repealed.

8. The objections, of which notice may be given, shall be one or more of the following, and no objection whatever shall be heard or entertained unless notice thereof has been duly given by the person objecting:

I. — Publicans' Licences.

(a) As to all applications—That the applicant is of bad fame and character; that he is interested in keeping a brothel; that he is of drunken habits; that he has within six months previously been deprived of a licence under this Act; that there is within the same enclosure as the premises mentioned in the application any store, shop, or dwelling-house having means of communication with the yard belonging to such premises, and not separated therefrom by any division, wall, or fence:

(b) As to applications for premises not previously licensed—That such premises are not required for the accommodation of the public; that such premises are in the immediate vicinity of a church or other place of public worship, hospital, or school, and would, if licensed, be the cause of inconvenience or annoyance to the persons using or frequenting such church, place of worship, hospital, or school, or that the quiet of the locality in which such premises are situated will be disturbed if a licence be granted for the sale of liquor in such premises; but such last-mentioned objection shall not be entertained unless a petition against the granting of such licence for such premises shall be presented to the Bench, signed by at least two-fifths of the ratepayers residing in the immediate neighborhood of such premises; that if such premises be situated within ten miles of the City of Adelaide, the same has not, at least, two moderate sized sitting-rooms and two sleeping-rooms, properly ventilated and furnished, constantly ready and fit for public accommodation, independent of the rooms occupied by the applicant and his family, and decent and separate places of convenience for both males and females, and urinals on or near the premises for the use of the customers thereof, so as to prevent nuisances and offences against decency:

(c) As to application for renewal of licences—That the management of the licensed premises in such particulars as are specified in the notice has not been satisfactory; that any direction of the Bench as to additional accommodation has not been complied with:

(d) As
The Licensed Victuallers Amendment Act.—1891.

PART III.

(d) As to licences for premises not previously licensed, and as to renewal of licences.—That if such premises be situated more than ten miles from the City of Adelaide, such premises have not at least one sitting-room and two sleeping-rooms properly ventilated and furnished, constantly ready and fit for the accommodation of travellers, and separated from the bar by a space of at least twelve feet, with a separate entrance; that such premises have not decent and separate places of convenience for both males and females, and urinals on or near to the premises for the use of the customers thereof, so as to prevent nuisances and offences against decency; that there is not a stable on the premises capable of containing at least four horses, with a sufficient quantity of hay and corn: Provided that want of stable accommodation shall not be an objection to premises within the limits of municipalities whose population numbers two thousand or over.

II.—Wine Licences.

(a) As to all applications.—That the applicant is of bad fame and character; that the applicant is interested in keeping a brothel; that he is of drunken habits; that he has been within six months previously deprived of a licence under this Act:

(b) As to new applicants for licences for premises previously licensed, and as to renewals of licences.—That any direction of the Bench as to additional accommodation has not been complied with:

(c) As to renewals of licences.—That the management of the licensed premises in such particulars as are specified in the notice has not been satisfactory.

(d) As to licences for premises not previously licensed, and as to new applicants for premises previously licensed.—That the applicant has within six months previously been deprived of a licence under this Act:

(e) As to licences for premises not previously licensed.—That such premises are not required for the accommodation of the public; that such premises are in the immediate vicinity of a church, or other place of worship, hospital, or school, and would, if licensed, be the cause of inconvenience or annoyance to the persons using or frequenting such church, place of worship, hospital, or school; that the quiet of the locality in which such premises are situated will be disturbed if a licence be granted for the sale of mead, wine, cider, or perry in such premises (this objection shall not be entertained unless a petition against the granting of such licence for such premises shall be presented to the Board, signed by at least two-fifths of the ratepayers residing in the immediate neighborhood of such premises).

III.—Storekeepers'
III.—Storekeepers' Licences, Storekeepers' Colonial Wine Licences, and Billiard Licences.

(a) As to licences for premises not previously licensed—That the applicant is of bad fame and character, or is of drunken habits; or has, within six months previously, been deprived of a licence under this Act.

(b) As to new applicants for premises previously licensed—That the applicant is of bad fame and character; or is of drunken habits; or has, within six months previously, been deprived of a licence under this Act:

(c) As to renewals of licences—That the applicant is of bad fame and character; or is of drunken habits; or that the management of the licensed premises, in such particulars as are specified in the notice, has not been satisfactory.

PART IV.

LIMITATION OF LICENCES.

9. Each Municipal Corporation and each District Council now or hereafter created is hereby constituted a Local Option District.

10. All licences now existing shall, after fifteen years from the passing hereof, not be renewed as a matter of course, but the same shall thereafter be renewed or not, at the discretion of the Licensing Bench; and any licence granted after the passing hereof for premises not previously licensed shall be for one year only, and shall be renewed or not, entirely at the discretion of the Licensing Bench, and no such renewal shall be held to be a matter of course.

11. At any time after the coming into operation of this Act, one-tenth of the number of the persons resident in the district, and whose names are on the roll of ratepayers for such district, may petition the Governor in Council to cause a poll to be taken to determine—

i. Whether any new publicans', wine, or storekeepers' colonial wine licences in respect of premises not previously licensed shall be granted in such Local Option District:

ii. Whether the number of publicans', wine, or storekeepers' colonial wine licences in such Local Option District shall be decreased to any number below the then existing number or not.

12. The Governor shall, upon the receipt of any such petition or petitions, by an Order in Council direct the clerk of the Municipal Corporation or District Council of such Local Option District to take a poll of the ratepayers upon a day to be fixed in the said Order in Council; and the clerk of the Municipal Corporation or District Council, as the case may be, shall take such poll and shall
shall, within three days after the poll has been so taken, make a true return under his hand to the clerk of the Licensing Bench in whose district the poll has been taken, of the result of the poll: Provided that in any Local Option District where the number of publicans' licences exceeds five, it shall not be competent for the ratepayers at any poll to determine that the publicans' licences in such district shall be increased or decreased by more than one-third of the then existing number. And in any Local Option District where the number of publicans' licences does not exceed five, the number shall not be increased or decreased at any poll by more than one.

13. A poll of the ratepayers shall be taken by ballot, in accordance with regulations to be made by the Governor prescribing the mode in which such poll shall be taken and the form in which the ballot papers shall be framed: Provided that at any poll under this part of this Act one-fourth of the whole number of the ratepayers on the roll shall record their votes in order to constitute a poll.

14. Each ratepayer shall have only one vote under this Act in each Local Option District, and only those ratepayers shall be entitled to vote who reside in the district and whose names shall appear in the ratepayers' roll.

15. If the determination of the ratepayers of any Local Option District at any poll taken as aforesaid in any year be that the number of publicans' licences shall be reduced to any number below the existing number, then the Licensing Bench having jurisdiction in such Local Option District shall, in the month of March next ensuing, determine, as hereinafter provided, which of such publicans' licences shall not be renewed, and at the next annual sitting of such Bench the total number of such publicans' licences shall be reduced by the number required to carry out the determination arrived at; the owners and occupiers of the respective premises, publicans' licences for which are not to be renewed, shall be forthwith served with a notice to that effect by the clerk of the Licensing Bench, and such owners and occupiers shall be entitled to compensation, to be determined as hereinafter provided; and where the occupier is not the owner of any such premises, the lease or agreement under which such occupier holds the same shall, if he shall so elect, be deemed to be annulled: Provided that no person shall be deprived of a publican's licence in pursuance of any such determination unless and until he has received the compensation (if any) due to him in respect thereof under this Act, or the same has been tendered to him; and the Bench, in determining which of such licences shall not be renewed, shall consider the convenience of travellers, the site, and convenience of the majority of residents near such licensed premises, the length of time for which such premises were licensed, and the general character thereof, and the circumstances of any transfer of licence during the preceding three years.

16. If
### Part IV

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<tr>
<td>16.</td>
<td>If there be not a majority of the votes recorded in favor of decreasing the number of publicans' licences to some particular number, which is less than the existing number, but a majority record their votes in favor of an increase, new licences may be granted at the discretion of the Licensing Bench.</td>
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<td>17.</td>
<td>Every determination of the ratepayers for decrease or increase in the number of publicans' licences shall continue in force for three years, and thence until another determination has been made upon another petition.</td>
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<td>18.</td>
<td>The amount of compensation to be paid to the owner of any premises by reason of the annual value of such premises being diminished owing to the publican's licence being taken away therefrom in consequence of the determination of the ratepayers of the Local Option District in which such premises are situate, and to the occupier by reason of his lease or agreement being annulled, and for the loss of his licence and business as a publican, shall be determined by arbitration only.</td>
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<td>19.</td>
<td>On the request of the Treasurer the owner and occupier jointly shall, in writing, appoint one arbitrator, and the said Treasurer shall, in writing, appoint another arbitrator. If within fourteen days after making such request the owner and occupier jointly fail to appoint an arbitrator, then the single arbitrator appointed by the Treasurer shall have all the powers of three arbitrators under this Act.</td>
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<td>20.</td>
<td>When two arbitrators shall have been appointed, they shall nominate and appoint by writing a third person to act with them as arbitrator (who shall be either a Stipendiary Magistrate or a Special Magistrate).</td>
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<td>21.</td>
<td>The three arbitrators shall sit together and hear evidence upon oath, and call for the production of documents, and the amount of compensation shall be determined by the arbitrators or by a majority of them on the basis hereinafter provided. Every determination under this section shall be final and conclusive.</td>
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<td>22.</td>
<td>The compensation to be paid under this Act on the refusal of the Bench to renew any licence, in consequence of the result of the poll prescribed by this Act, shall be calculated on the following basis, and not otherwise, viz. The difference between the rental value of the premises as a licensed house and as an unlicensed house, from the time of the non-renewal of such licence until the period of fifteen years from the passing hereof. Should the holder of the freehold of the licensed premises and the licencee be different persons, or should the lessee and the licencee be different persons, or should there be more than one lease subsisting of the said premises, or should the premises be mortgaged, or should there be any lien thereon, the said compensation shall be divided between all...</td>
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all the persons interested in such proportions and manner as the said arbitrators, or a majority of them, may determine.

23. No compensation shall be payable to any person by reason of the refusal of the Bench to renew any licence, in consequence of the result of the poll prescribed by this Act, in cases where the licence has been granted after the passing of this Act to premises not previously licensed, or in respect of premises the licence for which has been allowed to lapse, and, after the coming into operation of this Act, has been renewed.

24. The arbitrators shall award to all persons entitled to compensation such amount for costs as they may deem proper.

25. The fees for all licences and permits granted under this and the principal Act shall be paid into the Treasury.

26. All amounts payable to any person for compensation under this Act shall be paid by the Treasurer of the said province; and, notwithstanding anything in this Act, no refusal of the renewal of any licence as a consequence of any poll shall take effect until the amount or amounts awarded by the arbitrators shall have been paid to the person or persons entitled thereto; and the total amount to be paid in any year for compensation under this Act shall not exceed the aggregate amount received into the Treasury in the preceding financial year for the granting of licences and permits under this and the principal Act.

27. The expenses of taking any poll under this Act shall be defrayed out of the funds of the Municipal Corporation or District Council comprising the Local Option District where such poll shall be taken.

28. Notwithstanding anything contained in the principal Act, no licence shall be removed to premises situate outside the Local Option District in which the same was granted.

PART V.

PROVISIONS AS TO POLL FOR CLOSING LICENSED PREMISES ON SUNDAYS.

29. Sections 98, 99, 100, 101, 102, and 103 of the principal Act are hereby repealed.

30. It shall be unlawful for any licensed person to sell or supply any liquor whatsoever at any hour on a Sunday to a person not being a bona fide traveller calling for liquor on his journey, and who is within five miles from his usual place of abode, or not being a bona fide lodger living or staying in the licensed premises; and
every licensed person who shall sell or supply any liquor in violation of this section shall, for every such offence, forfeit and pay a penalty of not more than Twenty Pounds. Every person who, by falsely representing himself to be a bonâ fide traveller or a lodger, and who shall falsely pretend to be more than five miles distant from his usual place of abode, shall buy or obtain, or attempt to buy or obtain, at any licensed premises liquor or refreshment on a Sunday shall forfeit and pay for every such offence a fine of not less than Five Pounds nor more than Ten Pounds: Provided that any such licensed person shall not be liable for the aforesaid penalties if it can be shown, to the satisfaction of the Court who shall hear the case, that the person holding such licence was imposed upon by the person who had been admitted to such house as a bonâ fide traveller by false representations.

PART VI.

MISCELLANEOUS.

31. For the purposes of serving any notice under this and the principal Act, the word "owner" shall mean and include the person for the time being receiving or entitled to receive the rents of any licensed premises, whether on his own account or as agent, trustee, or attorney for any other person.

32. Any Special Magistrate or two Justices may give permission in writing to the master or commander of any steamer or other vessel (in respect of which a packet licence shall not have been granted, or be then subsisting), on the occasion of any excursion or trip by such steamer or vessel, to sell any liquor on such steamer or vessel for a period not exceeding one day, by a certificate in duplicate. Every person obtaining such permission shall forward one of such certificates in a prepaid registered letter, together with a fee of One Pound, to the Commissioner of Police, within twenty-four hours after obtaining same. And the person to whom such certificate shall be granted may sell liquor on the said steamer or vessel during the period therein mentioned.

33. It shall not be lawful for any person to bring on board any of Her Majesty's ships or vessels any spirituous or fermented liquor of any description, without the previous consent of the officer commanding the ship or vessel on board of which the same may be brought; and it shall be lawful for any officer in Her Majesty's Service, or warrant or petty officer of the Navy, or non-commissioned officer of Marines, with or without seamen or persons under his command, to search any boat or vessel hovering about or approaching, or which may have hovered about or approached, any of Her Majesty's ships or vessels, and if any spirituous or fermented liquor be found on board such boat or vessel to seize such spirituous or fermented
fermented liquor, and the same shall be forfeited to Her Majesty; and if any person shall bring any spirituous or fermented liquor on board any of Her Majesty’s ships or vessels without such previous consent as aforesaid, or shall approach or hover about any of Her Majesty’s ships or vessels for the purpose of bringing any spirituous or fermented liquor on board the same, without such previous consent, or for the purpose of giving or selling, without such previous consent, spirituous or fermented liquor to men in Her Majesty’s Service, every such person shall, upon a summary conviction thereof, forfeit and pay any sum not exceeding Ten Pounds for every such act or offence; and it shall be lawful for any officer in Her Majesty’s Service, or any such warrant or petty officer, or non-commissioned officer as aforesaid, or for any constable or peace officer, with or without any warrant or other process, to apprehend, or cause to be apprehended, any such offender or person so acting, and to bring him, or cause him to be brought, before a Special Magistrate or two Justices of the Peace, for the purpose of having the offender summarily convicted of the same.

34. In lieu of the fees payable for certificates under section 60 of the principal Act the following fees shall be payable:—A fee of One Pound for the first day, and Ten Shillings for every subsequent day, for which a certificate is granted to any person holding a publican’s licence; and a fee of Ten Shillings a day for each day for which a certificate is granted to any person holding a wine licence.

35. Section 96 of the principal Act is hereby repealed, and the said Act shall be read and construed as if there were inserted therein in lieu of the section so repealed the following section.

36. The bar and taproom or taprooms on the premises of every licensed person shall, during the hours in which the sale or disposal of liquor to the public is prohibited, have every door, by which admission be gained thereto, whether from outside or inside the premises, shut; and if any such door be found open, except for the purpose of supplying bona fide travellers or lodgers, or if any person other than the licencee or his servant be found therein during any such hours as aforesaid, it shall be taken to be prima facie evidence of a sale of liquor during such hours. The licensed person on whose premises any contravention of the provision of this section occurs shall be deemed to have committed an offence against this Act, and shall be liable to a penalty of not less than Five Pounds nor more than Twenty Pounds.

37. On the death of the holder of a storekeeper’s licence, or of a storekeeper’s colonial wine licence, the legal personal representative or his nominee or assign, or any member of the family of the deceased, may enter upon the licensed premises of such holder and may, subject to obtaining a certificate from a Special Magistrate as is provided by the principal Act in case of the death of the holder of a publican’s or wine licence, continue and carry on the business thereof until the meeting of the Bench held next after the expiration
piration of twenty-eight days from such entry, at which meeting an application shall be made by such person in possession for a transfer of the licence or for a licence, as the case may be.

38. Where the day appointed for holding the annual or quarterly meeting of any Licensing Bench falls upon a public holiday, it shall be lawful for the Attorney-General, by notice in the Government Gazette, to alter the day for holding any such meeting to a day to be named in such notice.

39. Whenever, by reason of the absence of any members of the Licensing Bench, a quorum cannot be formed at any annual, quarterly, or other meeting of the Bench, as provided in the principal Act, the Justices present, or if no Justice present, then the clerk of the Licensing Bench, shall adjourn the meeting of the said Bench to such a day, within a period of fourteen days, as may be deemed convenient, and the said clerk shall enter in the minute-book of the Bench a memorandum of such adjournment and the cause thereof, and forward a copy of such memorandum forthwith to the Attorney-General.

40. Notwithstanding anything contained in the principal Act or this Act, no publican's licence or wine licence shall be granted to any person in respect of premises situated in that portion of the Province of South Australia comprised and described in "The Chaffey Brothers Irrigation Works Act, 1887," and in the schedule thereto, except with the consent of the Governor in Council.

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

KIN TO RE, Governor.

Adelaide: By authority, C. E. Bristow, Government Printer, North Terrace.