

Government Gazette 15374

STATE PRESIDENT'S OFFICE

No. 2476.  
29 December 1993

It is hereby notified that the Acting State President has assented to the following Act which is hereby published for general information:-

No. 186 of 1993: Businesses Amendment Act, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Businesses Act, 1991, so as to amend a certain definition; to make further provision regarding the grounds on which applications for certain licences may be refused; to further regulate the obligation of a licensing authority to furnish reasons for certain decisions; to further regulate the power of an Administrator to make regulations; and to empower a local authority to make by-laws regarding the carrying on of the business of street vendor, pedlar or hawker; to amend certain laws; and to provide for matters connected therewith.

(Afrikaans text signed by the Acting State President.)  
(Assented to 14 December 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 71 of 1991

1. Section 1 of the Businesses Act, 1991 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "regulation" of the following definition:

"`regulation' means a regulation made by an Administrator under section 6(1) or 6A(4)(a)(i);".

Amendment of section 2 of Act 71 of 1991

2. Section 2 of the principal Act is hereby amended-

(a) by the insertion in subsection (4) after paragraph (a) of the following paragraph:

*"(aA) 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;" ;*

(b) by the substitution for subsection (6) of the following subsection:

"(6) In considering an application for a licence, **referred to in item 1(1) or 2 of Schedule 1** 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 referred to* in subsection (4) (a) stipulated by the licensing authority and made known in writing to the applicant;

(ii) *an apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place referred to in subsection (4)(aA) 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) or (aA), *as the case may be; or*

(ii) within a specified period, comply with such a requirement." ;

(c) by the substitution in subsection (9) for subparagraph (ii) of paragraph (d) of the following subparagraph:

"(ii) any apparatus, equipment, **storing** 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." ; and

(d) by the substitution for subsection (10) of the following subsection:

"(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) **if requested therefor by the applicant or licence holder** furnish **him** *the applicant or licence holder concerned* in writing **within the prescribed period** with the reasons for its decision;

*(c) inform the applicant or licence holder concerned in writing of his right of appeal under section 3."*

Amendment of section 6 of Act 71 of 1991

3. (1) Section 6 of the principal Act is hereby amended-

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

*"(b) (i) the disposal of an 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;"*

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

*"(c) in connection with any matter contemplated in paragraph (a), **or (b)** the powers, duties and functions of local authorities in relation to any such matter, including-*

- (i) **except in the case of a matter referred to in paragraph (b)(iv)(aa) or (ee)** 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;*
- (ii) **formal requirements regarding the making, approval and promulgation of such by-laws."***

(c) by the substitution for subsection (4) of the following subsection:

*"(4) (a) The Administrator shall, not less than **three months one month** before promulgating a regulation under subsection (1), **or a notice under subsection (1)(b)(iv)(aa) or (ee)** cause a draft of the regulation **or notice** to be published in the Official Gazette, together with a notice declaring his intention to issue such a regulation **or notice** 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 **or notice** 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 **or notice."*** and

(d) by the substitution in subsection (5) for subparagraph (i) of paragraph (a) of the following subparagraph:

*"(i) in terms of this Act or in terms of a by-law contemplated in **subsection (1)(c)(i) section 6A(1)**; and"*

(2) The regulations made by the Administrator of the Cape of Good Hope under section 6(1)(b) of the Businesses, Act, 1991 (Act No. 71 of 1991), as it existed immediately before the commencement of this section, with the exception of regulations made under section 6(1)(b)(ii) or (iii) of the said Act as it so existed, shall, in so far as they apply -

- (i) in the area of a local authority, be deemed to have been made under section 6A(1) of the said Act;
- (ii) outside such an area, be deemed to have been made under section 6A(4)(a)(i) of the said Act,

and shall remain in force until amended or repealed by the local authority or Administrator concerned under the said subsection 6A(1) or (4) (a) (i), as the case may be.

Insertion of section 6A in Act 71 of 1991

4. (1) The following section is hereby inserted in the principal Act after section 6:

"Powers of local authority

6A. (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 an 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 wherein 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 vendor, 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 therefor, 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."

Amendment of Schedule 1 to Act 71 of 1991

5. Schedule 1 to the principal Act is hereby amended by the substitution for subitem (2) of item 1 of the following subitem:

"(2) For the purposes of subitem (1) 'perishable foodstuff' means any foodstuff or category of foodstuffs declared by **the Minister** an Administrator by notice in the Official Gazette to be a perishable foodstuff in the province concerned for the purposes of this item."

Repeal or amendment of certain laws, and savings

6. (1) The laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) By-laws or regulations made under a provision of a law repealed by, or deleted by virtue of an amendment in terms of, subsection (1) shall, notwithstanding such repeal or deletion, remain in force-

- (a) until the date on which such by-laws or regulations are repealed or substituted by by-laws or regulations made under section 6A of the Businesses Act, 1991 (Act No. 71 of 1991), by the local authority or Administrator concerned; or
- (b) until a date six months after the commencement of this Act, whichever is the earlier date.

Short title

7. This Act shall be called the Businesses Amendment Act, 1993.

Schedule

LAWS REPEALED OR AMENDED  
(Section 6)

No. and year	Title	Extent of repeals or amendments
Natal =====		
Ordinance No. 11 of 1973	Licences and Business Hours	The amendment of section 45 by the deletion of paragraph

	Ordinance, 1973	(f) of subsection (1).
Ordinance No. 25 of 1974	Local Authorities Ordinance, 1974	The amendment of section amendment of section 266 by the deletion in subsection (1) of subparagraph (viii) of paragraph (u).
Orange Free State =====		
Ordinance No. 8 of 1962	Local Government Government Ordinance, 1962	The amendment of section 146 by the deletion of deletion of subsection (19).
Ordinance No. 8 of 1972	Licences Ordinance, 1972	The amendment of section 38 by the deletion of paragraphs (n) and (o) of subsection (1).
Transvaal =====		
Ordinance No. 17 of 1939	Local Government Government Ordinance, 1939	1. The repeal of section 65. 2. The amendment of section 79 by the deletion of paragraph (g) of subsection (14). 3. The amendment of section 80 by the deletion of subsection (73).
Ordinance No. 19 of 1974	Licences Ordinance, 1974	1. The amendment of section 61 by the deletion of paragraph (k) of subsection (1). 2. The amendment of section 63 by the deletion of paragraph (b) of subsection (1).

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