

NORTH-WEST BUSINESS ACT, 1997

NO. 6 OF 1997

(English text signed by the Premier)

ACT

To consolidate and amend certain laws in force in the Province regarding the licensing and carrying on of businesses; to repeal or amend other laws regarding such licensing and carrying on of businesses; and to provide for matters connected therewith.

(English text signed by the Premier on 02 September 1997)

BE IT ENACTED by the Provincial Legislature of the Province of North West, as follows

Definitions

1. In this Act, unless the context otherwise indicates

(i) "business", for the purposes of section 2, means any business referred to in Schedule 1, but excluding a business mentioned in Schedule 2;

(ii) "business premises", in relation to a business referred to in item 1 (1) or 2 of Schedule 1, means the premises upon, in or from which the business is or is to be carried on;

(iii) "carry on business" includes the opening or keeping open of any premises for such purposes;

iv) "condition", in relation to a licence, means a condition imposed under section 2(6)(b) or 2(8)(a) and specified in the relevant licence;

(v) "employee" means any person employed by or working for any employer and receiving or entitled to receive any remuneration, and any other person whomsoever who in any manner assists in the carrying on or conducting of the business of an employer;

(vi) "employer" means any person whomsoever who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or her, or who permits any person whomsoever in any manner to assist him or her in the carrying on or conducting of his or her business;

(vii) "foodstuff" means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No 54 of 1972);

(viii) "hawker's licence" means a licence to carry on any business referred to in item 3(1) of Schedule 1;

(ix) "licence", in relation to a business, means a licence referred to in section 2(3);

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(x) "licence holder" means a person who is the holder of a licence;

(xi) "licensing authority" means any local authority, or person or body, designated or appointed under section 2 as a licensing authority;

(Xii) "local authority" means a transitional council, transitional metropolitan substructure or local government body contemplated in section 1 (1) of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

(xiii) "officer" means -

- (a) a traffic officer appointed under section 3 of the Road Traffic Act;
- (b) a member of the South African Police Service;
- (c) a peace officer contemplated in section 334 of the Criminal Procedure Act,

1977 (Act No. 51 of 1977);

(xiv) "premises" includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

(xv) "prescribed" means prescribed by regulation;

(xvi) "public road" means a public road as defined in section 1 of the Road Traffic Act;

(xvii) "regulation" means a regulation made by the responsible Member under section 6(1) or

7(4)(a)(I);

(xviii) "responsible Member" means the Member of the Executive Council responsible for economic affairs;

(xix) "Road Traffic Act" means the Road Traffic Act, 1989 (Act No. 29 of 1989), the Road Traffic Act, 1973 (Act No. 7 of 1973)(Bophuthatswana), whichever is in force in the areas concerned;

(xx) "sell" includes to prepare, process, store, offer or display for sale;

(xxi) "this Act includes a regulation.

Licensing authorities and licensing of business

2. (1) (a) The responsible Member may by notice in the Provincial Gazette designate a local

authority, or appoint any person or body, as a licensing authority for an area which the responsible Member specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned;

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(b) A local authority may so be designated-or appointed for any area, whether in or outside its own area of jurisdiction, including the area of jurisdiction of any other local authority or any part of such an area.

(c) when the responsible Member exercises any power under paragraph (a), he or she 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 jurisdiction of another local authority or any part thereof that other local authority;

(iii) in the case of the appointment of a person or a body as licensing authority for an area comprising the area of jurisdiction of a local authority in any part thereof, that local authority.

(2) The responsible Member may at any time, after consultation with the relevant licensing authority, amend or withdraw a notice under subsection (1) by notice in the Provincial 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 areas of that licensing authority -

(a) unless, in the case of a business referred to in item 1 (1) or (2) of Schedule 1, he or she is the holder of an appropriate licence issued to him or her 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 or she is the holder of a hawker's licence issued to him or her 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;

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(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 or she 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 or her character, having regard to any conviction recorded against him or her, his or her 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)(c), a licensing authority may ask the South African Police Service for a report stating particulars of all convictions, if any, recorded against an applicant concerned or against any person referred to in subsection (4)(c)(ii)

(b) For the purposes of such a report any member of the South African Police Service may require the applicant or person concerned to furnish such information and particulars including any finger-print, palm-print or foot-print 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;

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any apparatus, equipment, storage space, working surface, structure, vehicle,

conveyance, article or place referred to in subsection (4)(b,) 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

(b) as the case may be; or

(ii) within a specific 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 or her 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 or her licence to the licensing authority within 14 days after the receipt of a written request referred to in subsection (8)(b);

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(c) in the case of 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)(c);

(d) in the case of business referred to in item 1(1) or 3(1) of Schedule 1, on the ground that -

(i) any other foodstuff sold by the licence holder does not comply with a requirement of a law relating to the health of the public;

(i) 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. A licensing authority shall 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.

(ii) 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 or her right of appeal under section 3

(12) 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.

Appeals

3. (1) Any person who is 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).

(10)

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Amendment of Schedule 2

4. (1) The responsible Member may, whenever he or she deems it necessary or expedient in the public interest or for the better attainment of the objects of this Act, amend Schedule 2 by notice in the Provincial Gazette, by altering or adding any item.

(2) Different amendments may be so effected in respect of different areas.

Penal provisions

5 (1) Any person who contravenes a provision of section 2(3) shall be guilty of an offence and

liable on conviction -

(a) to a fine, or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment; and

(b) to an additional fine not exceeding R 10 for every day on which the offence continues.

(2)(a) When a person in control of a business, or a director, manager, employee or agent, of a licence holder performs any act which it would be an offence under subsection (1), read with section 2(3)(c), for that licence holder to perform himself or herself, the licence holder shall be deemed to have performed the act himself or herself, and shall be liable on conviction to the penalties mentioned in subsection (1), unless he or she proves to the satisfaction of the court that -

(i) in performing the act the person in control, or the director, manager, employee or agent, was acting without his or her knowledge or permission;

(ii) all reasonable steps were taken by him or her to prevent the performance of any act of the kind in question; and

(iii) it was not within the scope of the authority or the course of employment of the person in control, or the director, manager, employee or agent, to perform any act of the kind in question.

(b) The fact that a licence holder issued instructions forbidding any act referred to in

subsection (1), shall not by itself be accepted as sufficient proof that he or she took all steps referred to in paragraph (a)(ii)

(c) When a licence holder is by virtue of the provisions of paragraph (a) liable for

anything done by any other person, that other person shall also be liable as if he or

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she were the licence holder.

(3) In any prosecution for an offence referred to in subsection (1), an allegation in the charge concerned shall be presumed to be correct unless the contrary is proved, that

(a) any goods with which a business was carried on or which were used in connection with a business were or were not of a particular kind, class, type or description;

(b) any place is situate in a particular area;

(c) any person was in control of a business or was a director, manager, employee or agent of a licence holder,

(4) A fine imposed or bill estreated in respect of an offence under subsection (1), shall accrue-

(a) where the offence was committed within the areas of jurisdiction of a local authority, to that local authority;

(b) in any other case, to the Provincial Revenue Fund.

Regulations

6 (1) The responsible Member may make regulations 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

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(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;

(xii) in connection with any matter contemplated in this paragraph, 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;

(b)(i) the disposal of any goods, receptacle, vehicle or movable structure removed and impounded as contemplated in section 7(1)(d)(ii);

(ii) the liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal.

(2) Different regulations may be made in respect of different businesses, area or local authorities.

(3) A regulation may prescribe penalties of a fine, or imprisonment for a period not exceeding three months, for any contravention of a failure to comply with its provisions.

(4) (a) The responsible Member shall, not less than one month before promulgating a regulation under subsection (1), cause a draft of the regulation to be published in the Provincial Gazette, together with a notice declaring his or her intention to issue such a regulation and inviting interested persons to furnish him or her with comments thereon or representations in connection therewith.

(b) If the responsible Member determines upon any alteration on a draft regulation so published, as a result of comments or representations furnished to him or her 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 7(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.

Powers of local authority regarding business of street vendor, pedlar or hawker

7. (1) (a) A local authority may, with the approval of the responsible Member, 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, 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) 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 areas 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;

(ee) 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.

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

(b) No by-law restricting or prohibiting the carrying on of business in an area declared or to be declared under subsection (2)(a) shall be made under this subsection as contemplated in subparagraph (ii)(cc) or (iii)

(cc) unless the local authority has first considered a report of a committee appointed by the local authority from persons carrying on the business of street vendor, pedlar or hawker in that area or their representatives, the owners of and persons carrying on business in buildings in that area or their representatives, and such

members and officers of the local authority as it may determine, on whether the intended restriction or prohibition will drive out of business a substantial number of street vendors, pedlars or hawkers.

(c) 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

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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 other than on fixed premises. (d) 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 or she is not in possession of proof that he or she has hired such stand or area from the local authority concerned or that it has otherwise been allocated to him or her;

(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. (e) 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 or she 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 or she finds at a place where in terms of a by-law under paragraph (a)(ii) or (iii), the carrying on of such business is restricted or prohibited and which, in his or her 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

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of such removal or impoundment.

(2) (a) A local authority may, subject to the provisions of paragraphs (b) up to-and including

by resolution declare any place in its area of jurisdiction to be to be an area 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 a meeting of the local authority.

(c) Before such a motion is adopted, the local authority shall have regard to and consider a report of a committee appointed as contemplated in subsection (1)(b) on - (i) the effect of the presence of a large number of street vendors pedlars or hawkers in that area; and

(ii) whether 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.

(d) If such a motion is adopted the local authority shall cause a plan to be prepared showing the position of the areas 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 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 Provincial 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 responsible Member a copy of the plan of the area, the notice published in the newspaper in terms of paragraph (e), the notice published in the Provincial Gazette in terms of paragraph (h) and all objections received, together with its comments thereon.

G) The responsible Member may within a period of 60 days after such submission and after consultation with the local authority concerned, by notice of the Provincial Gazette

amend or revoke the declaration concerned.

Notwithstanding the provisions of section 17Q2) 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, 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 or 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) The responsible Member may, in respect of any area outside the area of jurisdiction of a local authority

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(i) subject to the provisions of paragraph (b), 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

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(1)(a)(iii), and the provisions of subsection (1)(c), (d) and (e) shall mutatis mutandis apply in respect of such regulations;

(ii) subject to the provisions of paragraphs (d) and (e) 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 an-y- 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 government of the Province or on any other property in the occupation and under the control of the

government of the Province and in like manner extend, reduce or disestablish any such stand or areas 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) Before the responsible Member makes a regulation as contemplated in paragraph

(a)(i), he or she shall consider the factor contemplated in subsection (1)(b).

(c) Different regulations may be made under paragraph (a)(i) in respect of different

areas.

(d) Before the responsible Member makes a declaration as contemplated in paragraph

(a)(ii), he or she shall -

(i) have regard to the effect referred to in subsection (2)(c)(i) and consider the factor contemplated in subsection (2)(c)(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).

After the responsible Member has made such declaration, he or she 'shall cause it to be published in the Provincial Gazette, and such declaration shall take effect

on the date of such publication.

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Repeal of Act 71 of 1991

8. (1) The laws mentioned in Schedule 3, in so far as they are in force in any part of the Province of North West, are hereby repealed to the extent indicated in the third column there of

(2) Anything done or deemed to have been done under a provision of a law repealed by subsection (1),-and which is capable of being done under a provision of this Act, shall be deemed to have been done under the last-mentioned provision.

Repeal of trade licensing laws in force in certain territories, continuation of certain pending matters, saving of certain licences and health and extension regulations, and saving of jurisdiction of certain licensing authorities.

9 (1) The laws mentioned in Schedule 4, in so far as they are in force in any part of the Province

of North West, are hereby repealed.

(2)(a) Notwithstanding the repeal of any law by subsection (1), any application made before the commencement of this Act in terms of such a law for a licence or authority in respect of a business as defined in this Act and not disposed of shall, subject to the provisions of paragraph (b), be continued and disposed of as if that law were not so repealed.

(b) The provisions of section 2(4), (5), (6) and (10) of this Act shall mutatis mutandis apply in relation to an application contemplated in paragraph (a).

(3) Any licence or other authority which has been issued or granted in terms of a law

making of street trading bylaws, and temporary saving of such bylaws.

(4)(a) The responsible Member may-

(I) make provision in relation to the constitution of any licensing authority contemplated in paragraph (a) and in relation to inspectors and the provision of administrative services to such authority, by regulation as contemplated in section 6(1)(a)(I), (viii) and (ix) of this Act;

(ii) amend the area for which any such licensing authority is deemed to be appointed or withdraw such appointment, by notice in the Provincial Gazette as contemplated in section 2(2) of this Act.

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Deletion of provisions of local government laws in force in certain territories authorising making of street trading bylaws and temporary saving of bylaws.

10 (1) The laws specified in Schedule 5, in so far as they are in force in any part of the Province of North West, are hereby amended to the extent indicated in the third column thereof.

(2) Bylaws made under a provision of a law deleted by virtue of an amendment in terms of subsection (1) shall, notwithstanding such deletion, remain in force -

(a) until the date on which such bylaws are repealed or substituted by bylaws or regulations made under section 7 of this Act by the local authority concerned

or the responsible Member; or

(b) until a date six months after the commencement of this Act, whichever is the earlier date.

Repeal or amendment of other laws in force in certain territories affecting trade licensing or street trading.

11. The laws specified in Schedule 6, in so far as they are in force in any part of the Province of the North West, are hereby repealed or amended to the extent indicated in the third column thereof.

Repeal of licensing provisions of Ordinance 17 of 1939

11(1) Subject to the provisions of subsections (2) and (3), the provisions of the Local

Government Ordinance, 1939 (Ordinance No. 17 of 1939), are hereby repealed in so far as they confer a power to make by-laws prohibiting the carrying on of any business unless a licence, permit, authority, certificate or approval has been issued or granted in respect of the business concerned.

(2) The repeal by subsection (1) of any particular provision shall take effect on a date determined by the responsible Member by notice in the Provincial Gazette.

(3) Different dates may under subsection, (2) be so determined in respect of different provisions, different areas of jurisdiction of different local authorities, or different defined areas.

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Short title

13. This Act shall be called the North-West Business Act, 1997.

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Schedule 1

BUSINESS IN RESPECT OF WHICH A LICENCE IS REQUIRED

[section 2]

Item 1: Sale or supply of meals or perishable foodstuffs

(1) The carrying on of business by the sale 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 the responsible Member by notice in the Provincial Gazette to be a perishable foodstuff 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 infra-red 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 discotheque

(g) keeping or conducting a cinema or theatre.

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Item 3: Hawking in meals or perishable foodstuffs

(1) The carrying on of business, Whether as principal, employee or agent, by seffing 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 0 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 the 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.

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Schedule 2

BUSINESS EXCLUDED FROM BUSINESS REFERRED TO IN SCHEDULE 1

1. A business which is carried on by the State or local authority.

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.

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 responsible Member, 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.

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Schedule 3

BUSINESS LAWS REPEALED

[section 81

Number

And year

Title of Law

Extent of Repeal or

Amendment

Act No. 71 of 1991 Business Act, 1991

The whole, except section 7 in so far as it repeals or amends any provision of the Shop Hours Ordinance, 1986 (Ordinance No. 8 of 1986 Transvaal), the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), or the Road Traffic Act, 1989 (Act No. 29 of 1989).

Act No. 186 of 1993 Businesses Amendment The whole

Act 1993

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Schedule 4

LICENSING LAWS REPEALED

[section 91

Bophuthatswana

Act No. 26 of 1979

Act No. 50 of 1980

Act No. 9

Act No. 23 of 1988

Act No. 7 of 1993

Business and Trading Undertakings Act, 1979

Business and Trading Undertakings

Amendment Act, 1980

Business and Trading Undertakings

Amendment Act, 1983

Business and Trading Undertakings

Amendment Act, 1988

Business and Trading Undertakings

Amendment Act, 1993

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SCHEDULES

STREET TRADING LAWS REPEALED OR AMENDED

[SECTION 101

No. And year-of law

Bophuthatswana

Ordinance No. 20 of 1974

Title of law

Extent of repeal or amendment

Municipal Ordinance, 1974 The amendment of section 188 by the deletion of subsection (77)

0

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Schedule 6

OTHER LAWS REPEALED OR AMENDED

[section 11)

Number And year of law South Africa Proclamation R.293 of 1962

Bophuthatswana

Act No. 7 of 1973

Title or sub ect matter of law

Regulations for the
Administration and
Control of townships
In black areas

Road Traffic Act, 1973

Extent of repeal or Amendment

1. The amendment of regulation 2 of Chapter 3 by the insertion after subregulation (1) of the following subregulation: "(A) Subregulation (1) shall not apply to the carrying of the business of street vendor, pedlar or hawker".

2. The repeal of regulations 18 and 19 of chapter 3

1. The amendment of section 116 by the insertion after subsection (1) of the following subsection:

"(A) The provisions of subsection (1)(e) shall not apply to any vehicle, other than a motor vehicle, while it is being used in carrying on the business of street vendor, pedlar or hawker, unless it exceeds such maximum, length or mass as may be prescribed".

7.

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2. The substitution for section 134 of the

following section:

Trading on public roads

134 Except -

(a) on or in premises licensed or zoned or demarcated for that purpose by competent authority in terms of any law: or

(b) in such circumstances and in accordance with such regulations as may be prescribed

no person shall sell, display, offer for sale or deliver pursuant to a sale, any goods -

(a)(1) on a public road, within 180 metres of a railway level crossing or any road traffic sign denoting a blind corner or rise thereon or within [10] five metres of any intersection thereon; or

(b)(1) on any public road outside an urban area".

3. The amendment of section 169 -

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

(b) subject to the provisions of the

Businesses Act, 1996, and my regulations

or by-law made thereunder in relation to

the restriction, regulation or control of the
operation of the business of street
vendor, pedlar or hawker, the stopping and
parking of any vehicle on any public road
or portion thereof;" -

(b) by the substitution for paragraph (f) of

j

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- subsection (1) of the following paragraph

For the purpose of the provisions of the

Businesses Act, 1996, and any regulation

or by-law made thereunder in relation to

the restriction, regulation or control of the

operation of the business of street

vendor, pedlar or hawker, any public road

which is not to be used by wy vehicle,

either generally or at specified times:"