

GOVERNMENT OF ZAMBIA

ACT

No. 15 of 2007

Date of Assent: 20th August, 2007

An Act to amend the Trades Licensing Act.

[24th August, 2007

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Trades Licensing (Amendment) Act, 2007 and shall be read as one with the Trades Licensing Act, in this Act referred to as the principal Act.

Short title

Cap. 393

2. Section *two* of the principal Act is amended —

Amendment
of Section 2

(a) by the deletion of the definition of “ local authority ” and the substitution therefor of the following new definition:

“ local authority ” means a city council, a municipal council or a district council established under the Local Government Act;

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(b) by the deletion of the definitions of “ township ” and “ township council ”;

(c) by the insertion in the appropriate place of the following new definitions:

“ agent ” means a person or business that manages the affairs of another person or business;

“ service ” means any service aimed at final consumption; and

“ trade inspector ” means a person appointed as such by the Minister or a licensing authority for the purposes of this Act;

3. Section *three* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

Amendment
of Section 3

(2) A person who sells any goods by way of business without a licence or does not comply with the terms of the licence commits an offence and is liable, on conviction —

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(a) to a fine not exceeding two thousand five hundred penalty units; and

(b) where the offence is a continuing offence to a fine not exceeding one thousand penalty units for each day during which the offence is continued;

and in default of payment to imprisonment for a period not exceeding six months.

Amendment
of section 5

4. Section *five* of the principal Act is amended in paragraph (b) of subsection (10) by the deletion of the word "township" and the substitution therefor of the word "district".

Insertion of
new section
5A

5. The principal Act is amended by the insertion immediately after section *five* of the following new section:

Prohibition of
wholesale
and retail
trade in same
shop

5A. (1) A person who is a holder of a trading (wholesale) licence shall not use the shop where that person conducts a wholesale business for the purposes of carrying out a retail business.

(2) A person who is a holder of a trading (retail) licence shall not use the shop where that person conducts a retail business for the purposes of carrying out a wholesale business.

(3) No two or more persons who are holders of separate trading (wholesale) and trading (retail) licences, whether individually or corporately, shall conduct wholesale business and retail business in the same shop.

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and shall be liable, on conviction to a fine not exceeding two hundred thousand penalty units; and in default of payment, to imprisonment for a period not exceeding six months.

(5) Where any person is convicted of contravening subsection (1), (2) or (3), the Court which convicts that person may in addition to the penalty specified in subsection (3), order that the licence shall be revoked and the licence holder shall be disqualified from holding the licence for a period not exceeding one year.

Amendment
of section 6

6. Section *six* of the principal Act is amended—

(a) in subsection (1) by the deletion of the words "the appropriate fee" after the words "at the time it is issued" and the substitution therefor of the words "such fee as the Minister may, by statutory instrument, prescribe."

(b) in the proviso to subsection (1) by the deletion of the word "appropriate" after the words "one - half of the" and the substitution therefor of the word "prescribed".

7. Section *nine* of the principal Act is amended in paragraph (a) of subsection (1)—

Amendment of section 9

(a) by the deletion of sub-paragraph (iii); and

(b) by the renumbering of subparagraphs (iv) and (v) as subparagraphs (iii) and (iv) respectively.

8. The principal Act is amended by the insertion immediately after section *nine* of the following new section:

Insertion of section 9A

9A (1) The Minister may revoke a power that is delegated to a Licensing Authority to issue licences under this Act if a Licensing Authority contravenes subsection (3) of section *six*.

Revocation of powers of Licensing Authority

(2) Where a power is revoked by the Minister under subsection (1), the Minister may, appoint an agent in the designated Council area or the Council that is nearest to the area where a Licensing Authority's power has been revoked, to issue a licence.

(3) No revocation of the delegated powers vested in a Licensing Authority under this Act shall invalidate a decision which has been made before the date of the revocation of Licensing Authority's power to issue licences.

(4) An application that is a subject of consideration of the Licensing Authority which has its delegated powers revoked under subsection (3), shall be valid under a newly appointed Licensing Authority.

9. The principal Act is amended by the insertion immediately after section *ten* of the following new section:

Insertion of new section 10A

10A. (1) Every Licensing Authority shall submit to the Minister, a copy of the register kept in terms of subsection (1) within seven days of the end of every quarter.

Duty to submit copies of register and annual report

(2) As soon as practicable but not later than 31st January after the expiry of each calendar year, the Licensing Authority shall submit to the Minister a report concerning the licences issued by the Authority during such calendar year.

Amendment of section 11 10. Section *eleven* of the principal Act is amended in subsection (2) —

(a) by the deletion of the full stop and the substitution thereof of a colon; and

(b) by the insertion after the colon of the following new proviso:

Provided that in an area where newspapers are not in circulation the notice of intention shall —

(a) be posted on the notice board of the district council in whose area it is intended to sell goods under such licence; and

(b) displayed in such other conspicuous place as the Licensing Authority may consider appropriate.

Amendment of section 13 11. Section *thirteen* of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection:

(3) A Licensing Authority shall inform an applicant of the decision made by the Licensing Authority in respect of an application made for a licence within fourteen days of making the decision.

Amendment of section 17 12. Section *seventeen* of the principal Act is amended —

(a) by the insertion of “ (1) ” between the number “ 17 ” and the words “ A Licensing Authority ”;

(b) by the insertion after subsection (1) of the following new sub-sections:

(2) A Licensing Authority shall not issue a licence under this Act to an applicant who is not a Zambian to conduct business in an area established as a Market under the Markets and Bus Stations Act, 2007.

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(3) Notwithstanding subsection (2), where a person who is not a Zambian was issued a licence to conduct business in area established as a market under the Markets and Bus Stations Act, 2007 before the commencement of this Act, that person shall on the commencement of this Act, continue to conduct such business in the market until the expiry of the licence but such licence shall not be renewed.

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Amendment of section 18 A 13. Section *eighteen A* of the principal Act is amended—

(a) in subsection (2) by the deletion of the words “ expires or ”;

(b) by the insertion immediately after subsection (2) of the following new subsection:

(3) A Licensing Authority shall require a holder of a licence to provide the Licensing Authority with a tax clearance certificate issued by the Commissioner-General of the Zambia Revenue Authority under the Income Tax Act at the time when the application to renew the licence is made.

14. The principal Act is amended by the repeal of section *twenty-one* and the substitution therefor of the following new section:

Repeal and replacement of section 21

21. (1) A trade inspector who is authorised, in writing, by the Minister or a Licensing Authority may, on the production of evidence of the trade inspector's identity to any person requiring it—

Entry on premises and production of licences

- (a) at any reasonable time, enter any premises where goods are being sold and require any person in charge of such premises to produce the licence issued in respect of such premises for inspection;
- (b) require any person selling goods as a hawker or a pedlar to produce a licence authorising such sale for inspection; or
- (c) require any person referred to in paragraph (a) or (b) to give such information as the inspector may reasonably require to enable the inspector to ascertain whether the provisions of this Act are being complied with.

(2) Where in the course of an inspection under subsection (1), a person is found to be trading in a shop, or to be selling goods as a hawker or pedlar, without a licence, the trade inspector may close down the shop in which the trade is being conducted or confiscate the goods being sold by the hawker or pedlar, as the case may be, and require the seller, hawker or pedlar to present oneself at the offices of the Licensing Authority.

(3) Any licence holder, or any person referred to in paragraph (b) of subsection (1), who —

- (a) fails to produce a licence upon being lawfully required to do so under subsection (1); or
- (b) hinders or obstructs an authorised person acting under subsection (1);

commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand penalty units, or to imprisonment for a term not exceeding six months, or to both.

Amendment of section 22

15. Section *twenty-two* of the principal Act is amended in subsection (2) by the deletion of the words “appropriate fee” and the substitution therefor of the words “such fee as the Minister may, by statutory instrument, prescribe”.

Insertion of new section 27A

16. The principal Act is amended by the insertion immediately after section *twenty-seven* of the following new section:

Power of Minister to restrict trade to Zambians

27A. (1) The Minister may, subject to subsection (1) of section *twenty-one* of the Citizens Economic Empowerment Act, 2006, by statutory instrument prescribe —

(a) a class or classes of goods which shall be sold only by Zambians; or

(b) a class or classes of services which shall be provided only by Zambians.

(2) Where the Minister issues the statutory instrument under subsection (1), a Licensing Authority shall not issue any licence to an applicant who is not a Zambian to sell the goods or provide the services specified in the statutory instrument.

Amendment of section 29

17. Section *twenty-nine* of the principal Act is amended by the insertion after subsection (4) of the following new subsection:

(5) Any company or individual who for purposes of obtaining a licence under this Act, engages in fronting commits an offence and shall be liable, upon conviction—

(a) in the case of an individual, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of a company, to a fine not exceeding five hundred thousand penalty units.

(6) Where at the trial of an individual or company for fronting, it is proved to the satisfaction of the Court that the company or individual was engaged in fronting for purposes of obtaining a licence under this Act, the court shall, in addition to the penalty specified in subsection (5), order that the individual or company shall be permanently barred from obtaining a licence under this Act.

(7) Where a company is convicted of an offence under this section, every director and senior officer of the company shall, on conviction, be liable as if such director or senior officer had personally committed the offence, unless the director or senior officer proves to the satisfaction of the court that the act constituting an offence under this section, was done without the knowledge, consent or connivance of that director or senior officer, or that the director or senior officer took sufficient steps to prevent the commission of the offence.

(8) For the purposes of this section, "fronting" includes an act where a person holds out as being a *defacto* director or shareholder in a company in order to hide the true identity of the director or shareholder of that company.

18. The principal Act is amended by the repeal of the Schedule.

Repeal of
Schedule
