

A BILL

entitled

LIQUOR LICENCE AMENDMENT ACT 2019

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WHEREAS it is expedient to amend the Liquor Licence Act 1974 to reconstitute the Liquor Licensing Authority to modernize the application process for a licence or permit to sell or supply intoxicating liquor by reconstituting the liquor licensing authority as one

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authority rather than three licensing authorities for three licensing districts; to provide that the Minister appoints the members of the reconstituted authority; to create a new class of permit for restaurants offering catering services; to create new classes of licence in relation to itinerant restaurants and special events; to provide the fees for the new classes of licence; and to increase the fees and fines for existing licences and offences;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Liquor Licence Act 1974 ("the principal Act"), may be cited as the Liquor Licence Amendment Act 2019.

Amends section 1

2 The principal Act is amended in section 1(1)—

(a) by deleting the definition of "the chairman" and substituting—

" "chairman" means the chairman of the liquor licensing authority appointed under paragraph 5 of the Fifth Schedule";

(b) by deleting the definition of "licensing authority" and substituting in its proper alphabetic place—

" "liquor licensing authority" means the licensing authority established by section 4;";

(c) by deleting the definition of "licensing district".

Inserts Part IA

3 The principal Act is amended by inserting the following after section 2—

"PART IA

GENERAL

Guidance

2A (1) The Minister may issue such guidance for the purposes of this Act as he considers appropriate and such guidance shall be taken into account when assessing compliance with the provisions of this Act.

(2) The Minister may from time to time revise any guidance issued under this section.

(3) The Statutory Instruments Act 1977 does not apply to any guidance published under this section."

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Repeals section 3

4 Section 3 of the principal Act is hereby repealed.

Repeals and replaces section 4 and inserts section 4AA

5 Section 4 of the principal Act is repealed and replaced with—

“Liquor licensing authority

4 (1) There shall be established a liquor licensing authority (in this Act referred to as the “licensing authority”).

(2) The provisions of the Fifth Schedule shall have effect with respect to the constitution and procedure of the liquor licensing authority.

Functions of the licensing authority

4AA The functions of the licensing authority are—

- (a) to receive, consider and determine applications for liquor licences or renewal of liquor licences;
- (b) to maintain a register containing a record of the liquor licences granted under the Act;
- (c) to advise the Minister of any policy matters, including the total number of licences granted, and matters related to this Act and its administration;
- (d) to make recommendations to the Minister on any matter, including policy matters, related to this Act and its administration;
- (e) to assist the Minister in the formulation of policies and strategies relating to this Act and its administration;
- (f) make periodic reviews of the Act for the purpose of making recommendations to the Minister as to any necessary amendments to the Act.”.

Amends section 5

6 Section 5 of the principal Act is amended in the heading, subsection (1) and subsection (2) by deleting “licensing authorities” and substituting “licensing authority”.

Amends sections 6 and 12

7 Section 6(1) and section 12(3) and (5) of the principal Act are amended by deleting “a licensing authority” and substituting “the licensing authority”.

Amends section 9

8 Section 9 of the principal Act is amended in subsection (1) by deleting “be of nine” and substituting “include the following”.

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Amends section 17

9 Section 17(1) of the principal Act is amended in paragraph (b) by deleting “within the same licensing district,”.

Amends section 17A

10 Section 17A(1) of the principal Act is amended by deleting “or a tourism event licence” and substituting “, a tourism event licence, a catering permit, an itinerant restaurant licence or a special event licence”.

Inserts section 21B

11 The principal Act is amended by inserting the following next after section 21A—

“Catering permit

21B (1) The licensing authority may grant a permit authorizing the sale and provision of intoxicating liquor at an event (hereinafter referred to as the “catered event”) located away from the licensed premises to a person who—

- (a) is the holder of a Restaurant Licence; and
- (b) provides catering services as a part of the business for which the Restaurant Licence has been granted.

(2) The authorization conferred by a catering permit shall not apply, unless the sale or provision of intoxicating liquor under the permit is ancillary to the event in respect of which the permit is granted.

(3) Where a catering permit is granted under subsection (1), the location of the catered event shall be deemed for the purposes of this Act to be included within the licensed premises under the Restaurant Licence.

(4) A catering permit shall be produced forthwith on the request of a police officer or an inspector by the person responsible for the sale or supply of intoxicating liquor at the catered event.

(5) A person who fails to produce a catering permit under subsection (4) commits an offence and shall be liable on summary conviction to a fine of \$500.”

Inserts sections 22B and 22C

12 The principal Act is amended by inserting the following next after section 22A—

“Itinerant restaurant licence

22B (1) For the purposes of this section, an “itinerant restaurant” means—

- (a) any restaurant operating for a temporary period in connection with an event or gathering; or
- (b) any moveable stand or vehicle from which food is prepared and sold,

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and for which a licence has been granted under regulation 5(1) of the Public Health (Food) Regulations 1950.

(2) The chairman may, on an application duly made by or on behalf of a person who operates an itinerant restaurant, grant a licence (in this Act referred to as a "itinerant restaurant licence") authorizing that person to sell or supply intoxicating liquor to persons attending an event or gathering as specified in the itinerant restaurant licence for a period not exceeding the time specified in the itinerant restaurant licence.

(3) An itinerant restaurant licence granted under subsection (2) shall specify—

- (a) the period of time intoxicating liquor may be sold or supplied; and
- (b) the description and location of the event or gathering at which intoxicating liquor may be sold or supplied.

(4) An application under this section—

- (a) shall be made by notice in writing to the chairman and a copy of the application shall be served on the Commissioner of Police; and
- (b) shall be accompanied by a certified copy of a licence granted under regulation 5(1) of the Public Health (Food) Regulations 1950.

(5) The authorization conferred by an itinerant restaurant licence shall not apply unless the sale or supply of intoxicating liquor under the licence is ancillary to the event in respect of which the licence is granted.

(6) An itinerant restaurant licence shall be produced forthwith on the request of a police officer or an inspector by the person responsible for the sale or supply of intoxicating liquor at the event or gathering.

(7) A person who fails to produce an itinerant restaurant licence under subsection (6) commits an offence and shall be liable on summary conviction to a fine of \$500.

Special event licence

22C (1) For the purposes of this section, a "special event" means an event of an infrequent or temporary nature and includes, but is not limited to—

- (a) events where there is no intent to profit from the sale of intoxicating liquor and only invited guests will attend (private event);
- (b) events that allow for profit from the sale of intoxicating liquor and are open to the public (public event);
- (c) events held to promote a product through sampling with no intent to gain or profit from the sale of intoxicating liquor at the event (promotional event).

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(2) The chairman may, on an application duly made by or on behalf of a person organizing an event where intoxicating liquor may be sold or supplied, grant a licence (hereinafter referred to as a "special event licence") authorizing that person to sell or supply intoxicating liquor to persons attending such event as specified in the special event licence for a period not exceeding the time specified in the special occasion licence.

(3) The licensing authority may grant a special event licence for an event of an infrequent or temporary nature that is not within section 22C(1).

(4) A special event licence granted under subsection (2) shall specify—

(a) the period within which intoxicating liquor may be sold or supplied; and

(b) the description location of the event at which intoxicating liquor may be sold or supplied.

(5) An application under this section shall be made by notice in writing to the chairman and a copy of the application shall be served on the Commissioner of Police.

(6) The authorization conferred by a special event licence shall not apply, unless the sale or supply of intoxicating liquor under the licence is ancillary to the special event in respect of which the licence is granted.

(7) Subsection (6) shall not apply to a wine-tasting or similar event.

(8) A special event licence shall be produced forthwith on the request of a police officer or inspector by the person responsible for the sale or supply of intoxicating liquor at the event.

(9) A person who fails to produce a special event licence under subsection (8) commits an offence and shall be liable on summary conviction to a fine of \$500."

Amends section 27

13 Section 27 of the principal Act is amended by deleting subsections (2) and (2A).

Amends Part V

14 The principal Act is amended in Part V—

(a) by deleting the heading "**MISCELLANEOUS AND GENERAL**" and substituting "**INSPECTORS AND POLICE ASSISTANCE**";

(b) by inserting the following after the heading in Part V—

"Inspectors

43A For the purposes of this Act, the Minister may appoint such number of persons as may be required to act as inspectors on such terms and conditions as the Minister may determine.

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Duties of inspectors

43B The duties of an inspector shall include—

- (a) entering and inspecting premises where a notice of application is made for a liquor licence;
- (b) entering and inspecting licensed premises;
- (c) making enquiries to ascertain whether the provisions of this Act and any terms and conditions of a licence or permit are being complied with; and
- (d) any other functions deemed to be necessary for the purposes of this Act.

Identification

43C An inspector shall be issued with a form of identification signed by the Minister and upon entering any licensed premises shall produce such form of identification to the holder of a licence or permit.

Police assistance

43D A police officer shall assist in the enforcement of this Act and shall, in relation to the duties assigned to an inspector, have the same powers under this Act as an inspector.”.

Moves sections 51 and 51A

15 The principal Act is amended by moving sections 51 and 51A to follow section 47 and be renumbered 47A and 47B.

Inserts Part VI

16 The principal Act is amended by inserting the following immediately before section 52—

“PART VI MISCELLANEOUS”.

Amends section 56A

17 Section 56A of the principal Act is amended—

- (a) in subsections (1) and (2)(c) by deleting “licensing authorities” and substituting “licensing authority”;
- (b) in subsection (2)(b) by deleting “any” and substituting “the”.

Amends the First Schedule

18 The First Schedule to the principal Act is amended in paragraph 12 by—

- (a) deleting “\$150” and substituting “\$250”;

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- (b) deleting "\$300" and substituting "\$400";
- (c) deleting "\$500" and substituting "\$600";
- (d) deleting "\$525" and substituting "\$700".

Repeals and replaces the Second Schedule

19 The principal Act is amended by repealing the Second Schedule and replacing it with—

"SECOND SCHEDULE

(Section 27)

LICENCE FEES

Class of Licence	Fee
Licence (A)	\$3,000
Restricted Licence (A)	\$1,500
Licence (B)	\$2,000
Hotel Licence—	
(a) where sleeping accommodation is provided for not less than 30 but not more than 100 guests	\$2,000
(b) where sleeping accommodation is provided for more than 100 but not more than 300 guests	\$3,000
(c) where sleeping accommodation is provided for more than 300 guests	\$5,000
Restaurant Licence	\$3,000
Night Club Licence	\$4,000
Proprietary Club Licence	\$1,100
Members' Club Licence	\$375
Tour Boat Licence—	
where the boat is licensed under the Marine Board (Island Boats) Regulations 1965—	
(a) to carry not more than 50 passengers	\$500
(b) to carry not less than 50 passengers but not more than 100 passengers	\$1,000
(c) to carry more than 100 passengers	\$1,500
Occasional Licence	\$200
Tourism Event Licence—	
(a) one-day event	\$300
(b) two-day event	\$500
(c) three-day event	\$650
Itinerant Restaurant Licence	\$300
Special Event Licence	\$200 "

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Inserts the Fifth Schedule

20 The principal Act is amended by inserting the following after the Fourth Schedule—

“FIFTH SCHEDULE

(Section 4(2))

CONSTITUTION OF THE LICENSING AUTHORITY

1 The licensing authority shall consist of seven members appointed by the Minister, as follows—

- (a) a barrister with at least eight years' experience;
- (b) a person with knowledge of and a background in security;
- (c) a person with knowledge, experience and expertise in drug treatment and prevention or social work;
- (d) a person with knowledge and experience in the hospitality industry;
- (e) a person with knowledge and experience in the retail sector;
- (f) two other suitable persons.

2 Appointment as a member under paragraph 1 shall be made for a term not exceeding three years and a member is eligible for re-appointment.

3 A person shall not be appointed as a member under paragraph 1 if he is directly or indirectly interested in the sale of intoxicating liquor; and for the purposes of this paragraph the owner of licensed premises, or premises in respect of which a licence is applied for shall be deemed to be an interested person, but a member of a licensed club shall not for such purposes thereby be deemed to be an interested person.

4 Paragraph 3 shall apply in relation to service by a person as chairman or deputy chairman of a licensing authority as it applies in relation to the appointment of a person as a member of such an authority.

5 The Minister shall appoint one of the members to be the chairman and another to be the deputy chairman.

6 In the absence of the chairman, the deputy chairman shall act as chairman and shall have all the powers conferred on the chairman under this Act.

7 A member may resign at any time by notice in writing given to the Minister.

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8 The Minister may declare the office of a member vacant if he is satisfied that the member—

- (a) is unable through mental or physical incapacity or absence from Bermuda to perform the functions his office;
- (b) has failed, without adequate cause, to attend three successive meetings of the licensing authority;
- (c) is otherwise unable, unfit or unwilling to carry out his functions as chairman or deputy chairman.

9 (1) A person appointed to fill the place of a member of the licensing authority before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

(2) Where the place of a member of the licensing authority becomes vacant before the end of his term of office and the unexpired portion of his term of office is less than three months, the vacancy need not be filled.

10 The licensing authority may act notwithstanding any vacancy in its membership, and no act of the licensing authority shall be deemed to be invalid only by reason of a defect in the appointment or election of a member thereof.

11 A member of the licensing authority shall not be personally liable for damages for anything done or omitted to be done in the discharge or purported discharge of the licence authority's functions under this Act, unless the act or omission was done or made in bad faith.

12 Fees shall be paid to members of the licensing authority in accordance with the Government Authorities (Fees) Act 1971."

Increases fines

21 The provisions of the principal Act specified in the first column of the Schedule and the corresponding entry for the fines specified in the second column of the table are amended in the manner respectively specified in the third column of the Schedule.

Consequential amendments

22 (1) The Government Authorities (Fees) Act 1971 is amended by deleting the line item "Liquor Licensing Authorities" and substituting—

"Liquor Licensing Authority- established by section 4 of the Liquor Licence Act 1974".

(2) The Schedule to the Liquor Licence (Forms) Regulations 1974 is amended by inserting the following after item "Form 16"—

"FORM 17

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CATERING PERMIT

Issued under the Liquor Licence Act 1974

THIS LICENCE issued under section 21B of the Liquor Licence Act 1974 authorizes [blank] on behalf of [blank] being a person who holds a Restaurant Licence and a catering permit to sell or supply intoxicating liquor to persons attending an event namely [blank] to be held at [blank] on [blank], 20[blank].

The sale of intoxicating liquor under this permit is allowed between the hours of [blank] and [blank] on [blank], 20[blank].

This permit is authority for the sale or supply of intoxicating liquor for consumption only at the place specified above.

This permit is granted subject to the following conditions—

Given under my hand this [blank] day of [blank] 20[blank].

[blank] Chairman of the Licensing Authority

FORM 18

ITINERANT RESTAURANT LICENCE

Issued under the Liquor Licence Act 1974

THIS LICENCE issued under section 22B of the Liquor Licence Act 1974 authorizes [blank] on behalf of [blank] being a person who operates an itinerant restaurant to sell or supply intoxicating liquor to persons attending an event namely [blank] to be held at [blank] on [blank] 20[blank].

The sale of intoxicating liquor under this licence is permitted between the hours of [blank] and [blank] on [blank], 20[blank].

This licence is authority for the sale or supply of intoxicating liquor for consumption only at the place specified above.

This licence is granted subject to the following conditions—

Given under my hand this [blank] day of [blank] 20[blank].

[blank] Chairman of the Licensing Authority

FORM 19

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SPECIAL EVENT LICENCE

Issued under the Liquor Licence Act 1974

THIS LICENCE issued under section 22C of the Liquor Licence Act 1974 authorizes [blank] on behalf of [blank] being a person who holds a special event to sell or supply intoxicating liquor to persons attending an event namely [blank] to be held at [blank] on [blank] 20[blank].

The sale of intoxicating liquor under this licence is permitted between the hours of [blank] and [blank] on [blank], 20[blank].

This licence is authority for the sale or supply of intoxicating liquor for consumption only at the place specified above.

This licence is granted subject to the following conditions—

Given under my hand this [blank] day of [blank] 20[blank].

[blank] Chairman of the Licensing Authority”.

Transitional provisions

23 (1) A licence validly granted by a liquor licensing authority before commencement shall not be rendered invalid only by reason of the amendments made by this Act.

(2) Where an application for grant or renewal of a licence has been made to a liquor licensing authority before commencement but not dealt with before commencement, that application shall be dealt with by the liquor licensing authority appointed on or after commencement.

(3) Where, on commencement, there is a hearing presently before or scheduled to be before a liquor licensing authority, the hearing shall be continued before the liquor licensing authority appointed on or after commencement.

(4) The chairman of a liquor licensing authority before commencement shall, in accordance with section 56A of the principal Act (annual report), make a report to the Minister on the works of the licensing authorities for such period preceding commencement as the Minister may request.

(5) In this section, “commencement” means the date on which this Act comes into operation.

Commencement

24 This Act shall come into operation on such day as the Minister may appoint by notice in the Gazette.

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(Section 21)

INCREASE OF FINES

Column 1	Column 2	Column 3
s. 2(2)- sale of intoxicating liquor without a licence-	\$1,000	\$1,570
s. 19(6)- false information in a members' club books-	\$200	\$320
s. 20(2)- failing to comply with the conditions of a licence-	\$500	\$790
s. 22(3E)- failing to produce occasional licence to police-	one hundred dollars	\$160
s. 22A(7)- failing to produce tourism event licence to police-	\$500	\$790
s. 26(2)- failure to surrender licence-	\$200	\$320
s. 28(2)- selling intoxicating liquor outside permitted hours-	\$300	\$480
s. 32(2)- failing to display permitted hours-	\$20 for each day	\$40 for each day
s. 33(2)- selling or supplying alcohol of a kind other than ethyl alcohol-	\$500	\$790
s. 34(2)- allowing consumption of alcohol in unlicensed parts of premises-	\$500	\$790
s. 35(2)- certain licensed person employing a minor-	\$300	\$480
s. 36(2)- failure to lock up intoxicating liquor outside of permitted hours-	\$200	\$320
s. 37(2)- failing to leave licensed premises when asked by the licensed person or a police officer-	\$100	\$160
s. 38- failure to produce a licence to a police officer-	\$100	\$160
s. 39- a licensed person, his servant or agent drunk on a licensed premises-	\$300	\$480
s. 39A(5)- no security measures in a licensed premises with music after 10:00pm-	\$3000	\$4,710
s. 39B(3)- failure to train managers, supervisors or persons in charge of the bar of a licensed premises-	\$3000	\$4,710

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s. 40(4)- failing to leave bar when asked due to failing to produce identification or producing fake identification-	\$500	\$790
S. 40(6)- failure of the various licensed premises to ask for identification-	\$10,000	\$15,700
s. 41- consuming intoxicating on or near Licence (A) premises-	\$300	\$480
s. 43(1)- persons on licensed premises outside permitted hours or period-	\$300	\$480
s. 43(2)- failing to give the name and address of a person referred to in 43(1)-	\$100	\$160
s. 45(2)- failing to permit a police officer to enter a licensed premises on demand-	\$200	\$320
s. 47- obstructing a police officer-	\$100	\$160
s. 51- failing to close a licensed premises on occurrence of riot	\$500	\$790
s. 51A(2)- failing to close a licensed premises when required by the police after an incident of serious disorder-	\$5,000	\$7,850
s. 52(1)- disorderly conduct when meeting the licensing authority	\$50	\$80
s. 52(2)- disorderly person after excluding from meeting with licensing authority returns-	\$100	\$160
s. 53(2)- permitting the consumption intoxicating liquor at an unlicensed premises-	\$200	\$320
s. 53(3)- consuming intoxicating liquor at an unlicensed premises-	\$100	\$160

LIQUOR LICENCE AMENDMENT BILL 2019

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Liquor Licence Act 1974 ("the principal Act") to modernize the application process for a licence or permit to sell or supply intoxicating liquor by reconstituting the liquor licensing authority as one authority rather than three licensing authorities for three licensing districts, to provide that the Minister appoints the members of the reconstituted authority, to create a new class of permit for restaurants offering catering services, to create new classes of licence in relation to itinerant restaurants and special events, to provide the fees for the new classes of licence, and to increase the fees and fines for existing licences and offences.

Clause 1 is the title of the Bill.

Clause 2 amends the definitions of "chairman" and "licensing authority", and deletes the definition of "licensing district".

Clause 3 inserts Part IA and section 2A into the principal Act to provide that the Minister shall issue and publish general guidance on the principal Act, particularly on the various classes of licence and permit.

Clause 4 repeals section 3 of the principal Act to remove reference to the three licensing districts in the principal Act. The reconstituted single licensing authority will bear responsibility over all licensed persons or licensed premises for the previous eastern, central and western licensing districts.

Clause 5 repeals and replaces section 4 of the principal Act and inserts section 4AA to provide for the establishment of one liquor licensing authority and for the functions of the authority.

Clause 6 amends section 5 of the principal Act to change the reference "licensing authorities" to "licensing authority" to reflect the reconstituted single authority.

Clause 7 amends section 6 and 12 of the principal Act to change the references to "a licence authority" to "the licence authority" to reflect the reconstituted single authority.

Clause 8 amends section 9 of the principal Act to remove the reference to "nine" due to the increase in the number of classes of licence.

Clause 9 amends section 17 of the principal Act to remove the reference to "licensing district".

Clause 10 amends section 17A of the principal Act to include a catering permit, an itinerant restaurant licence and a special occasion licence in the mandatory condition of licences (production of valid identification) granted under the Act.

Clause 11 inserts section 21B into the principal Act to provide for a catering permit to allow the holder of a Restaurant Licence to sell or supply alcohol at events catered outside of the restaurant (licensed premises).

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Clause 12 inserts section 22B and 22C into the principal Act to create new types of liquor licences in circumstances where there is a catered event (an itinerant restaurant) and a special occasion event.

Clause 13 amends section 27 of the principal Act to move subsections (2) and (2A) to the Second Schedule to the principal Act which provides for the annual fees.

Clause 14 amends Part V of the principal Act to insert sections 43A to 43D into the Act for the appointment and duties of inspectors.

Clause 15 moves and renumbers sections 51 and 51A of the principal Act as sections 47A and 47B in Part V.

Clause 16 inserts a Part VI heading into the principal Act.

Clause 17 amends section 56A of the principal Act to replace references to "licensing authorities" with "licensing authority" to reflect the reconstituted single authority.

Clause 18 amends the First Schedule to the principal Act to increase the annual fees for an island boat liquor permit.

Clause 19 amends the Second Schedule to the principal Act to increase the fees for various classes of licence.

Clause 20 inserts the Fifth Schedule to the principal Act to provide the constitution of the reconstituted licensing authority.

Clause 21 provides for the fines in the principal Act to be increased in the Schedule to the Bill.

Clause 22 provides consequential amendments to amend the reference to the Liquor Licensing Authorities in the Government Authorities (Fees) Act 1971 and insert the forms for a catering permit, an itinerant restaurant and a special occasion licence into the Liquor Licence (Forms) Regulations 1974.

Clause 23 provides the transitional provisions.

Clause 24 provides for the commencement of the Bill.