

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

VENDING ACT 2015

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SCHEDULE 1 FEES

SCHEDULE 2 OFFENCES AND PENALTIES

WHEREAS it is necessary to enact legislation governing vending in Bermuda; to enable the Executive Director of the Bermuda Economic Development Corporation to facilitate vending by issuing vending licences or temporary vending licences; to set fees for obtaining the various vending licences; to create offences, a ticketing scheme and penalties; and to repeal the Pedlars Act 1894;

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:

PART I PRELIMINARY

Citation

- 1 This Act may be cited as the Vending Act 2015.

Interpretation

- 2 In this Act, unless the context otherwise requires—
 - “Bermudian” means a person who possesses Bermudian status under the Bermuda Immigration and Protection Act 1956;
 - “Corporation” means the Bermuda Economic Development Corporation;

- “designated vending area” means any area or place designated by the Executive Director as an area where vending may occur;
- “Executive Director” means the Executive Director of the Bermuda Economic Development Corporation;
- “licence” includes a vending licence and a temporary vending licence;
- “licensee” means a person licensed to operate as a vendor under this Act;
- “Permanent Secretary” means the Permanent Secretary responsible for the Bermuda Economic Development Corporation;
- “prescribed fee” means a fee prescribed in Schedule 1;
- “temporary vending licence” means a licence granted under section 5 to temporarily operate as a vendor;
- “vending licence” means a licence granted under section 5 to operate as a vendor;
- “vendor” means a person who sells, offers or exposes goods for sale to passersby from a stall.

PART II
VENDING

Vending

- 3 (1) Vending means selling goods by retail to passersby in a public place and includes offering or exposing goods for such sale.
- (2) The following activities are not vending for the purposes of this Act—
- (a) the sale of goods by the holder of a licence under section 1 of the Auctioneers Act 1955;
 - (b) the sale of agricultural produce or horticultural produce by the producer of such produce or his servants or agents;
 - (c) the sale of fish by a fisherman registered under regulation 12 of the Fisheries Regulations 2010;
 - (d) supplying a service;
 - (e) the sale of food and drink by a person temporarily licensed to operate a food stall that is a victualling establishment under regulation 5 of the Public Health (Food) Regulations 1950;
 - (f) the sale of Bermuda-made products;
 - (g) selling newspapers;
 - (h) selling goods only at a fair, carnival, circus, or public exhibition; or
 - (i) selling goods where the profits are used solely for a charitable purpose.

- (3) The Minister may make regulations to amend subsection (2).

PART III
LICENSING

Eligibility for a vending licence

4 A person shall be eligible for a vending licence or a temporary vending licence if he has attained sixteen years of age and—

- (a) is Bermudian;
- (b) is the spouse of a Bermudian; or
- (c) holds a permanent resident's certificate under the Bermuda Immigration and Protection Act 1956.

Application for the grant or renewal of a licence

5 (1) An application for the grant or renewal of a licence shall—

- (a) be made in writing and be in such form as the Executive Director shall determine;
- (b) contain such particulars, and meet such other requirements as the Executive Director may require; and
- (c) be accompanied by such fee as prescribed in Schedule 1.

(2) The particulars referred to in subsection (1) shall include a description of the articles or things the applicant intends to vend.

(3) The Executive Director shall consider every such application and may in his discretion either grant or renew, or refuse to grant or renew a licence.

Form of licence

6 A licence granted under this Act shall be in such form as the Executive Director may determine and shall specify—

- (a) the name of the licensee;
- (b) a picture of the licensee;
- (c) the date upon which the licence comes into force;
- (d) the date upon which the licence is to expire;
- (e) the date upon which the licence is granted; and
- (f) any terms or conditions attached to the licence.

Duration of a licence

7 (1) A vending licence granted by the Executive Director pursuant to an application under section 5 shall come into force on the date specified therein and shall continue in force for a period of one year from that date or a shorter period as may be specified therein.

(2) A temporary vending licence granted by the Executive Director pursuant to an application under section 5 shall be granted for a period not exceeding 3 months but may, pending further application, be renewed for further 3-month periods.

Register of licensed vendors

8 (1) The Executive Director shall cause to be kept and maintained a register to be known as the Register of Vendors, setting out the name, address and the type of licence of all licensees, and any such particulars respecting those persons as this Act may require or as may be prescribed by regulations made under this Act.

(2) The register may be inspected by any person during the office hours of the Corporation, and a copy of the register shall be published in the Gazette as soon as may be after the first day of January in each year.

Revocation of licence

9 The Executive Director may, in writing, at any time revoke a licence granted under section 5 if he is satisfied that a person—

- (a) has made a false declaration in an application for a licence under this Act or submitted false information or documentation;
- (b) has failed to comply with any condition of his licence or any provision of this Act; or
- (c) is no longer a fit and proper person to operate as a vendor.

Notice of intention to revoke or vary a licence

10 The Executive Director shall, before he varies or revokes a licence—

- (a) give the licensee notice in writing of the ground or grounds on which he intends so to do;
- (b) afford the licensee an opportunity to object in writing within the period of 21 days after receipt of the notice; and
- (c) take any such objection into consideration,

and, if the Executive Director, decides to vary a condition in the licence or revoke the licence, he shall cause the instrument varying a condition in the licence or revoking the licence to be served on the licensee.

Appeals

11 (1) A person aggrieved by any decision of the Executive Director referred to in subsection (2) may, within 21 days, appeal in writing to the Permanent Secretary and the Permanent Secretary may make such decision as appears to be just.

- (2) The person referred to in subsection (1) may appeal against the following—
- (a) a decision not to grant or renew a licence;
 - (b) a decision to attach or vary any conditions to a licence;
 - (c) a decision to revoke a licence.

PART IV
OFFENCES

Vending without a licence

12 Any person who vends without a licence commits an offence.

Designated vending area

13 (1) The Executive Director may designate any area outside a municipality, except roadside verges, as a vending area where licensees may vend.

(2) Any person who vends in an area that is not designated as a vending area commits an offence.

(3) Notwithstanding subsection (2), a licensee may vend on public land or a roadside verge with a lease or licence from the Minister responsible for public lands under the Public Lands Act 1984.

Display of licence or lease

14 A licensee who fails to display in a prominent manner where he is vending—

- (a) his licence; and
- (b) where applicable, his lease or licence obtained under section 13(3),

commits an offence.

Transferring or borrowing a licence; offence

15 (1) A licensee who transfers or lends his licence to any other person commits an offence.

(2) Any person who borrows, attempts to make use of or makes use of a licence issued to another person commits an offence.

False licences

16 Any person who—

- (a) makes a false representation with a view to obtaining a licence;
- (b) forges, alters or counterfeits a licence;
- (c) procures to be made a forged or counterfeit licence;

(d) produces a forged, altered or counterfeit licence (to a police officer),
commits an offence.

General penalty

17 (1) Offences against this Act shall be prosecuted before a court of summary jurisdiction.

(2) A person found guilty of an offence against this Act is liable to a fine of \$1,000.

PART V

TICKETING

Ticket summons

18 Without prejudice to the procedure set out in the Summary Jurisdiction Act 1930 for the laying of an information and for issuing a summons, an information may be laid and a summons issued for offences specified in Schedule 2 by means of a ticket issued in accordance with this Part.

Form of ticket

19 (1) A ticket shall, subject to this Part, be in the form prescribed in regulations made under section 27 and shall consist of three parts: an information, a summons and a record of conviction.

(2) The use on a ticket of any word or expression in Schedule 2 describing the offence, or any word or expression substantially to the same effect, in relation to an offence under this Act is sufficient for all purposes in connection with proceedings for that offence to describe the offence.

Issue of ticket

20 Where a police officer has reasonable cause to suspect that a person has committed an offence under this Act, he may issue a ticket under this Part.

Delivery of summons

21 (1) Upon completing the ticket the issuing officer shall affix his signature to the summons portion and shall deliver the summons portion to the person charged with an offence under this Act.

(2) The issuing police officer shall request the person charged with an offence under this Act to enter his signature on the information portion of the ticket and such signature shall be sufficient proof of receipt of the summons.

(3) A person charged with an offence under this Act who refuses without reasonable excuse to accept delivery of the summons part of the ticket under subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$100.

Payment of penalty out of court

22 (1) Subject to this section, there may be endorsed upon a summons a notice that the person to whom the summons is directed may, within seven days of the service of the summons, pay out of court a specified penalty.

(2) Where a summons is endorsed under subsection (1), it shall provide for a plea of guilty in the following form—

“PLEA OF GUILTY

I am aware that I have a right to a hearing in respect of the offence with which I am charged and that by signing this plea of guilty I am waiving my right to a hearing and my signature may result in a conviction against me without a hearing. I hereby plead guilty to the offence as charged and consent to be convicted of the offence in my absence.

[blank]

Signature of Defendant”

(3) A signature affixed to the form of Plea of Guilty purporting to be that of the person to whom the summons is directed is prima facie proof that it is the signature of that person.

(4) Upon receipt of a summons duly signed with a plea of guilty and of the amount of the penalty specified in the summons, an officer of the court shall issue an official receipt for the amount of that penalty and shall place the summons before the court.

(5) The court shall formally convict the person charged with an offence under this Act specified in the summons and no further penalty may be imposed in respect of the offence.

(6) If a person charged with an offence under this Act does not plead guilty to the offence and pay the penalty specified in the summons, the person shall appear at the time and place specified in the summons for the hearing of the charge, and if he fails to appear, the court may proceed in accordance with section 4 of the Summary Jurisdiction Act 1930.

Information

23 (1) The information part of the ticket shall be —

- (a) signed by the police officer who issues the ticket;
- (b) sworn before a justice of the peace or a magistrate; and
- (c) deposited with the court, together with the record of conviction part of the ticket.

(2) The information part of the ticket need not be sworn before the summons part is delivered or served and the police officer who signed, swore and issued the ticket need not be the person who delivers or serves the summons.

Amount of penalty

24 Nothing in this Act prevents the court from imposing any penalty authorized by law in regards to offences under this Act if—

- (a) no amount is entered on the summons; or
- (b) the person charged does not plead guilty to the offence and pay the penalty specified in the summons.

Record of conviction

25 Where the court makes a conviction on a ticket information in respect of an offence under this Act, the court shall complete the record of conviction part of the ticket and an officer of the court shall cause a copy of it to be forwarded to the Commissioner of Police.

Prescription of ticket by the Minister

26 The Minister may make regulations prescribing the form of ticket for the purposes of this Act.

PART VI
MISCELLANEOUS

Regulations

27 (1) The Minister may make such regulations as may appear to him necessary or desirable for the purposes of this Act.

(2) The negative resolution procedure shall apply to regulations made under this Act.

Consequential amendments

28 (1) The Government Fees Regulations 1976 are amended by deleting Head 46.

(2) The Public Health (Food) Regulations 1950 regulation 5(1)(b)(iii) is amended by deleting “hawker or pedlar” and substituting “vendor”.

Transitional

29 (1) Any pedlar’s certificate in force immediately before the coming into operation of this Act shall on and after that day be deemed to be a licence granted by the Executive Director and shall remain in force until 31 December next following that day.

(2) In subsection (1), “pedlar’s certificate” means a certificate issued at the Magistrates’ Court under the Pedlars Act 1894 to allow a person to carry on the business of a pedlar in Bermuda.

Repeal of Pedlars Act 1894

30 The Pedlars Act 1894 is hereby repealed.

VENDING ACT 2015

Commencement

31 This Act comes into operation on 1 September 2015.

VENDING ACT 2015

SCHEDULE 1

(Section 5)

FEES

Issuing a vending licence	\$100
Issuing a temporary vending licence	\$25
Renewal of a vending licence	\$100
Renewal of a temporary vending licence	\$25

VENDING ACT 2015

SCHEDULE 2

(Section 18)

OFFENCES AND PENALTIES

DESCRIPTION OF OFFENCE	PROVISION OF LAW	PENALTY
Vending without a licence	section 12	\$500
Vending outside a designated area	section 13(2)	\$350
Failure to display licence	section 14	\$250
Transferring or lending a licence	section 15(1)	\$350
Borrowing licence from a licensee	section 15(2)	\$350
False licence	section 16	\$250

VENDING BILL 2015

EXPLANATORY MEMORANDUM

This Bill makes new provisions for regulating vending and repeals the Pedlars Act 1894.

Clause 1 is the title of the Bill.

Clause 2 defines terms used in the Bill.

Clause 3 provides the meaning of vending and sets out activities that are not considered vending under the Bill.

Clause 4 sets out the requirements to be eligible for a vending licence.

Clause 5 sets out the application process for the grant or renewal of a licence.

Clause 6 enables the Executive Director to prescribe the form of licence.

Clause 7 provides the duration of a licence.

Clause 8 enables the Executive Director to keep and maintain a Register of Vendors listing the name, address and type of licence for each registered vendor, and to publish the Register in the Gazette.

Clause 9 enables the Executive Director to revoke a licence.

Clause 10 provides that the Executive Director must provide a licensee with notice of his intention to revoke a licence.

Clause 11 enables a person aggrieved by a decision of the Executive Director to appeal to the Permanent Secretary.

Clause 12 creates the offence of vending without a licence.

Clause 13 (a) enables the Executive Director to designate an area, except a roadside verge, as a vending area; (b) creates the offence of vending outside a designated vending area; and (c) enables the Minister responsible for public lands to issue a lease or licence to a licensed vendor to vend on public land or on a roadside verge.

Clause 14 creates the offence of failing to display a licence or, where applicable, a lease or licence from the Minister responsible for public lands.

Clause 15 creates the offences of borrowing or lending a licence.

Clause 16 creates the offence of false licences.

Clause 17 creates a general penalty for offences committed under the Bill.

Clause 18 establishes under law the authorization of ticketing for offences under the Bill.

Clause 19 sets out the form of ticket to be used for offences under the Bill.

VENDING BILL 2015

Clause 20 provides the grounds on which a police officer can issue a ticket under the Bill.

Clause 21 provides the methodology for issuing the summons part of a ticket.

Clause 22 sets out the method for the payment of a penalty out of court.

Clause 23 provides the methodology for dealing with the information part of a ticket.

Clause 24 gives the court the discretion to impose a penalty for offences under the Bill where no amount of money has been entered on a summons or where a person charged does not plead guilty to an offence.

Clause 25 provides the regime for recording and entering a conviction record for offences committed under the Bill.

Clause 26 allows the Minister to make regulations prescribing the form of ticket issued for offences under the Bill.

Clause 27 empowers the Minister to make regulations.

Clause 28 provides the consequential amendments to the Government Fees Regulations 1976 and the Public Health (Food) Regulations 1950.

Clause 29 provides the transitional.

Clause 30 provides for the repeal of the Pedlars Act 1894.

Clause 31 provides the commencement of the Bill.