

BUSINESSES ACT 71 OF 1991

[ASSENTED TO 15 MAY 1991]

[DATE OF COMMENCEMENT: 24 MAY 1991]

(Unless otherwise indicated; *see also* s. 7)

(English text signed by the State President)

as amended by

Businesses Amendment Act 186 of 1993

also amended by

Transformation of Certain Rural Areas Act 94 of 1998

[with effect from a date to be proclaimed]

NB: See Proclamation 18 in *Government Gazette* 16302 of 9 March 1995 concerning the extent of the assignment of the administration of this Act to the provinces.

ACT

To repeal or amend certain laws regarding the licensing and carrying on of businesses, and shop hours; to make certain new provision regarding such licensing and carrying on of businesses; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'**Administrator**' means an Administrator as defined in the Provincial Government Act, 1986 (Act 69 of 1986);

'**business**', for the purposes of section 2, means any business referred to in Schedule 1, but excluding a business mentioned in Schedule 2;

'**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;

'**carry on business**' includes the opening or keeping open of any premises for such purpose;

'**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;

'**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;

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

'**foods tuff**' means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);

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

'**licence**', in relation to a business, means a licence referred to in section 2 (3);

'**licence holder**' means a person who is the holder of a licence;

'**licensing authority**' means any local authority, or person or body, designated or appointed under section 2 as a licensing authority;

'**local authority**' means-

- (a) an institution or body referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961);

- (b) a local government body established by virtue of section 30 (2) (a) of the Black Administration Act, 1927 (Act 38 of 1927);
- (c) a local authority as defined in section 1 (1) of the Black Local Authorities Act, 1982 (Act 102 of 1982);
- (d) a Local Development Committee established under section 28A (1) of the Development Act (House of Representatives), 1987 (Act 3 of 1987);
- (e) a board of management or board as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987);
- (f) a local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act 94 of 1987);
- (g) the Local Government Affairs Council established by section 2 (1) of the Local Government Affairs Council Act (House of Assembly), 1989 (Act 84 of 1989);

'**Minister**' means the Minister of Trade and Industry and Tourism, acting after consultation with every Administrator or with the Administrator concerned, as the case may be;

'**officer**' means-

- (a) a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);
- (b) a member of the Force as defined in section 1 (1) of the Police Act, 1958 (Act 7 of 1958);
- (c) a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

'**premises**' includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

'**prescribed**' means prescribed by regulation;

'**public road**' means a public road as defined in section 1 of the Road Traffic Act, 1989;

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

[Definition of 'regulation' substituted by s. 1 of Act 186 of 1993.]

'**sell**' includes to prepare, process, store, offer or display for sale;

'**this Act**' includes a regulation.

2 Licensing authorities and licensing of businesses

(1) (a) An Administrator may by notice in the *Official Gazette* designate a local authority, or appoint any person or body, as a licensing authority for an area which the Administrator specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned.

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

(c) When an Administrator exercises any power under paragraph (a), he 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 area of jurisdiction of another local authority or any part thereof, that other local authority;
- (iii) in the case of the appointment of a person or body as licensing authority for an area comprising the area of jurisdiction of a local authority or any part thereof, that local authority.

(2) An Administrator may at any time, after consultation with the relevant licensing authority, amend or withdraw a notice under subsection (1) by notice in the *Official 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 area of that licensing authority-

- (a) unless, in the case of a business referred to in item 1 (1) or 2 of Schedule 1, he is the holder of an apposite licence issued to him 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 is the holder of a hawker's licence issued to him by the licensing authority;
- (c) contrary to a condition.

[Date of commencement of sub-s. (3): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(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;
- (aA) in the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public;

[Para. (aA) inserted by s. 2 (a) of Act 186 of 1993.]

- (b) 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 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 character, having regard to any conviction recorded against him, his previous conduct or for any other reason;
- (c) 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.

[Date of commencement of sub-s. (4): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(5) (a) For the purposes of subsection (4) (b), a licensing authority may ask the South African Police for a report stating particulars of all convictions (if any) recorded

against an applicant concerned or against any person referred to in subsection (4) (b) (ii).

(b) For the purposes of such a report any member of the South African Police 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.

[Date of commencement of sub-s. (5): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(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;
- (ii) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place referred to in subsection (4) (aA) shall, before the licence is issued, comply with a requirement contemplated in that subsection so stipulated and made known; or

(b) issue the licence subject to any condition therein specified in terms of which the licence holder shall in connection with the business premises or any such apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place-

- (i) comply with a specific requirement contemplated in subsection (4) (a) or (aA), as the case may be; or
- (ii) within a specified period comply with such a requirement.

[Sub-s. (6) substituted by s. 2 (b) of Act 186 of 1993.]

[Date of commencement of sub-s. (6): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(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.

[Date of commencement of sub-s. (7): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(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 licence to the licensing authority.

[Date of commencement of sub-s. (8): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(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 licence to the licensing authority within 14 days after the receipt of a written request referred to in subsection (8) (b);
- (c) in the case of a 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) (b);
- (d) in the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, on the ground that-
 - (i) any foodstuff sold by the licence holder does not comply with a requirement of a law relating to the health of the public;
 - (ii) 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.

[Sub-para. (ii) substituted by s. 2 (c) of Act 186 of 1993.]

[Date of commencement of sub-s. (9): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(10) When a licensing authority decides to refuse an application for a licence, or to grant such an application subject to a condition contemplated in subsection (6) (a), or to issue a licence subject to a condition, or to amend or impose a condition under subsection (8), or to withdraw or suspend a licence, it shall as soon as practicable-

- (a) notify the applicant or licence holder concerned in writing of its decision;
- (b) 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 right of appeal under section 3.

[Sub-s. (10) substituted by s. 2 (d) of Act 186 of 1993.]

[Date of commencement of sub-s. (10): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(11) 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.

[Date of commencement of sub-s. (11): in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

3 Appeals

(1) Any person who feels himself 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).

(2) If a licensing authority fails to 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, it shall for the purposes of this section be presumed that the application was refused by the licensing authority.

[Date of commencement of s. 3: in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

4 Amendment of Schedule 2

(1) The Minister may, whenever he 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 *Gazette*, by altering or adding any item.

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

5 Penal provisions

(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 not exceeding R1 000 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 R10 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, the licence holder shall be deemed to have performed the act himself, and shall be liable on conviction to the penalties mentioned in subsection (1), unless he 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 knowledge or permission;
- (ii) all reasonable steps were taken by him 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 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 were the licence holder.

(3) In any prosecution for an offence referred to in subsection (1), an allegation in the charge concerned 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,

shall be presumed to be correct unless the contrary is proved.

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

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

(b) in any other case, to the Administrator concerned.

[Date of commencement of s. 5: in the Cape Province: 1 January 1992; in Natal: 1 July 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

6 Regulations

(1) An Administrator may make regulations for his province 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;
 - (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;
- (b) (i) the disposal of any goods, receptacle, vehicle or movable structure removed and impounded as contemplated in section 6A (1) (d) (ii);
- (ii) the liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;

[Para. (b) substituted by s. 3 (1) (a) of Act 186 of 1993.]

- (c) in connection with any matter contemplated in paragraph (a), 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.

[Para. (c) substituted by s. 3 (1) (b) of Act 186 of 1993.]

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

(3) A regulation may prescribe penalties not exceeding a fine of R1 000 or imprisonment for a period of three months for any contravention of or failure to comply with its provisions.

(4) (a) The Administrator shall, not less than one month before promulgating a regulation under subsection (1), cause a draft of the regulation to be published in the *Official Gazette*, together with a notice declaring his intention to issue such a regulation

and inviting interested persons to furnish him with comments thereon or representations in connection therewith.

(b) If the Administrator determines upon any alteration on a draft regulation so published, as a result of comments or representations furnished to him in respect thereof, it shall not be necessary to publish the alteration in terms of this subsection before the amended draft is promulgated as a regulation.

[Sub-s. (4) substituted by s. 3 (1) (c) of Act 186 of 1993.]

(5) The provisions of any law which warrants the seizure of articles, including Chapter 2 of the Criminal Procedure Act, 1977 (Act 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 6A (1); and

[Sub-para. (i) substituted by s. 3 (1) (d) of Act 186 of 1993.]

(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.

[Date of commencement of sub-s. (5): in Natal: 1 July 1992; in the Cape Province: 28 August 1992; in the Orange Free State: 1 January 1993; in the Transvaal: 25 April 1994.]

(6) A regulation shall in the province concerned have legal effect as if it were a proclamation issued by the Administrator under section 14 (2) (a) of the Provincial Government Act, 1986 (Act 69 of 1986).

6A Powers of local authority

(1) (a) A local authority may, with the approval of the Administrator, make by-laws regarding-

(i) the supervision and control of the carrying on of the business of street vendor, pedlar or hawker;

(ii) the restriction of the carrying on of such business-

(aa) in a garden or park to which the public has a right of access;

(bb) on a verge as defined in section 1 of the Road Traffic Act, 1989 (Act 29 of 1989), contiguous to-

(A) a building belonging to, or occupied solely by, the State or the local authority concerned;

(B) a church or other place of worship;

(C) a building declared to be a national monument under the National Monuments Act, 1969 (Act 28 of 1969);

(cc) in an area declared or to be declared under subsection (2)

(a);

(iii) the prohibition of the carrying on of such business-

(aa) in a garden or park as contemplated in subparagraph (ii) (aa);

(bb) on a verge so defined as contemplated in subparagraph (ii) (bb);

(cc) in an area declared or to be declared under subsection (2) (a);

- (dd) at a place where-
 - (A) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (B) it causes an obstruction to vehicular traffic; or
 - (C) it substantially obstructs pedestrians in their use of a sidewalk as defined in section 1 of the Road Traffic Act, 1989;
- (ee) on a verge so defined contiguous to a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, pedlar or hawker concerned, without the consent of that person;
- (ff) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.

(b) A by-law made under this subsection, other than a by-law contemplated in paragraph (a) (ii), shall not-

- (i) restrict the carrying on of the business of street vendor, pedlar or hawker to-
 - (aa) specified hours or places; or
 - (bb) specified goods or services;
 - (ii) impose a restriction or requirement in relation to a street vendor, pedlar or hawker that is not in terms of any other by-law or regulation of the local authority concerned imposed in relation to a person carrying on business in the same goods and services on fixed premises: Provided that this subparagraph shall not prevent the making of a by-law which is necessitated by reason of the business concerned being carried on elsewhere than on fixed premises.
- (c) No by-law made under this subsection shall-
- (i) require a street vendor, pedlar or hawker to hold a licence, permit, authority, certificate or approval in respect of such business: Provided that a by-law may prohibit a person from carrying on such business on any stand or in any area contemplated in subsection (3) (b) if he is not in possession of proof that he has hired such stand or area from the local authority concerned or that it has otherwise been allocated to him;
 - (ii) prohibit the carrying on of such business-
 - (aa) within a specified distance from any specified place or point;
 - (bb) at any place for longer than a specified period;
 - (cc) if the business concerned is not periodically moved from place to place;
 - (iii) protect any person against trade competition, except to the extent contemplated in paragraph (a) (iii) (ee).

(d) A by-law made under this subsection-

- (i) may, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding three months;
- (ii) may provide for the removal and impoundment by an officer of any goods, receptacle, vehicle or movable structure-

- (aa) which he reasonably suspects is being used or intended to be used or has been used in or in connection with the carrying on of the business of street vendor, pedlar or hawker; and
- (bb) which he finds at a place where in terms of a by-law under subsection (1) (a) (ii) or (iii), the carrying on of such business is restricted or prohibited and which, in his opinion, constitutes an infringement of such by-law, whether or not such goods, receptacle, vehicle or movable structure is in the possession or under the control of any person at the time of such removal or impoundment.

(2) (a) A local authority may, subject to the provisions of paragraphs (b) up to and including (j), by resolution declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendor, pedlar or hawker may be restricted or prohibited.

(b) A motion that steps be taken to declare an area under this subsection shall be dealt with at a meeting of the local authority.

(c) Before such a motion is adopted, the local authority shall have regard to the effect of the presence of a large number of street vendors, pedlars or hawkers in that area and shall consider whether-

- (i) more effective supervision or control in that area, including negotiations with any person carrying on in that area the business of street vendor, pedlar or hawker or their representatives, will make such declaration unnecessary; and
- (ii) the intended restriction or prohibition will drive out of business a substantial number of street vendors, pedlars or hawkers.

(d) If such a motion is adopted the local authority shall cause a plan to be prepared showing the position of the area concerned.

(e) On completion of the said plan the local authority shall cause to be published in a newspaper circulating in the area of jurisdiction of that local authority, a notice setting out its intention to effect the restriction or prohibition concerned as well as its reasons therefor, stating that the said plan is open for inspection at a place and during the hours mentioned in the notice and calling upon any person who has any objection to the intended restriction or prohibition to submit in writing to the local authority within a period mentioned in the notice, which period shall not be shorter than 21 days following the day upon which the notice appeared in the newspaper, such objection or objections.

(f) The local authority shall, at least 21 days before the last day on which objections may be submitted in terms of such notice, cause a copy of the said notice to be displayed at a suitable place in or near the area concerned.

(g) The local authority shall consider every objection submitted in terms of paragraph (e) or (f) and may thereafter resolve on the declaration of the area concerned.

(h) The local authority shall cause the declaration to be published in the *Official Gazette*, and such declaration shall take effect on the date of such publication.

(i) The local authority shall forthwith after the publication referred to in paragraph (h), submit to the Administrator a copy of the plan of the area, the notice published in the newspaper in terms of paragraph (e), the notice published in the *Official Gazette* in terms of paragraph (h) and all objections received, together with its comments thereon.

(j) The Administrator may within a period of 60 days after such submission and after consultation with the local authority concerned, by notice in the *Official Gazette* amend or revoke the declaration concerned.

(k) Notwithstanding the provisions of section 17C (2) of the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983), a local authority shall not authorize any committee of, or any officer or employee in the service of, the local authority to perform any duty assigned to the local authority by or under paragraph (b), (c) or (g).

(3) Notwithstanding the provisions of any other law, a local authority may-

- (a) by resolution, after compliance *mutatis mutandis* with the provisions of subsection (2) (b) up to and including (h), lease any verge as defined in section 1 of the Road Traffic Act, 1989, or any portion thereof, to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier;
- (b) (i) set apart by resolution and demarcate stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority or on any other property in the occupation and under the control of the local authority; and
- (ii) in like manner extend, reduce or disestablish any such stand or area;
- (c) by agreement let or otherwise allocate any stand or area demarcated under paragraph (b) (i) or otherwise established for such purposes.

(4) (a) An Administrator may, in respect of any area outside the area of jurisdiction of a local authority-

- (i) make regulations regarding supervision and control of the carrying on of the business of street vendor, pedlar or hawker, the restriction on the carrying on of such business as referred to in subsection (1) (a) (ii) and the prohibition of the carrying on of such business as referred to in subsection (1) (a) (iii), and the provisions of subsection (1) (b), (c) and (d) shall *mutatis mutandis* apply in respect of such regulations;
- (ii) subject to the provisions of paragraphs (c) and (d), declare any place in such area to be an area in which the carrying on of such business may be restricted or prohibited;
- (iii) lease any verge as referred to in subsection (3) (a), or any portion thereof, to the owner or occupier of the contiguous land on the condition so referred to;
- (iv) set apart and demarcate stands and areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the Administrator or the Provincial Administration concerned or on any other property in the occupation and under the control of the Administrator or such Provincial Administration and in like manner extend, reduce or disestablish any such stand or area so set apart or demarcated;
- (v) by agreement let or otherwise allocate any stand or area demarcated under subparagraph (iv) or otherwise established for such purposes.

(b) Different regulations may be made under paragraph (a) (i) in respect of different areas.

(c) Before the Administrator makes a declaration as contemplated in paragraph (a) (ii), he shall-

- (i) have regard to the effect referred to in subsection (2) (c) and consider the factors contemplated in subsection (2) (c) (i) and (ii);
- (ii) cause a plan to be prepared as referred to in subsection (2) (d);
- (iii) cause a notice to be published as referred to in subsection (2) (e);
- (iv) cause a notice to be displayed as referred to in subsection (2) (f);
- (v) consider every objection submitted in terms of paragraphs (iii) and (iv).

(d) After the Administrator has made such declaration, he shall cause it to be published in the *Official Gazette*, and such declaration shall take effect on the date of such publication.

[S. 6A inserted by s. 4 of Act 186 of 1993.]

7 Repeal and amendment of laws

(1) Subject to the provisions of subsections (2), (3), (4) and (5)-

- (a) the provisions of any ordinance of a province in relation to an institution or body referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961), are hereby repealed in so far as they confer a power to make by-laws or regulations 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;
- (b) the laws mentioned in Schedule 3 are hereby repealed or amended to the extent indicated in the third column of that Schedule.

(2) The repeal or amendment by subsection (1) of any particular law shall take effect in a province on a date determined by the Administrator by proclamation in the *Official Gazette*.

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

(4) An Administrator may in any such proclamation enact such transitional provisions and savings as he may in connection with any particular law or provision thereof, or any regulation or by-law made thereunder, deem necessary.

(5) The amendment of a provision of an ordinance of a province by subsection (1) shall not affect the powers conferred upon the Administrator by section 14 (2) (a) of the Provincial Government Act, 1986 (Act 69 of 1986), in relation to the amendment, repeal or substitution of that or any other provision of that ordinance.

8 Short title and commencement

(1) This Act shall be called the Businesses Act, 1991.

(2) Subsections (3) up to and including (11) of section 2, and sections 3, 5 and 6 (5), shall come into operation in a province on a date fixed by the State President, after consultation with the Administrator, by proclamation in the *Gazette*.

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

Schedule 1

BUSINESSES IN RESPECT OF WHICH A LICENCE IS REQUIRED

(Section 2)

[Schedule 1 amended by s. 5 of Act 186 of 1993 and by s. 34 of Act 65 of 1996.]

Item 1: Sale or supply of meals or perishable foodstuffs

- (1) The carrying on of business by the sale or supply 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 subitem (1) 'perishable foodstuff' means any foodstuff or category of foodstuffs declared by an Administrator by notice in the *Official Gazette* to be a perishable foodstuff in the province concerned for the purposes of this item.

[Subitem (2) substituted by s. 5 of Act 186 of 1993.]

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 discothèque;
- (g) keeping or conducting a cinema or theatre;
- (h) conducting adult premises referred to in section 24 of the Films and Publications Act, 1996.

[Para. (h) added by s. 34 of Act 65 of 1996.]

Item 3: Hawking in meals or perishable foodstuffs

(1) The carrying on of business, whether as principal, employee or agent, by selling 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
- (c) 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 this Schedule.

(2) For the purposes of subitem (1) 'perishable foodstuff' means any foodstuff or category of foodstuffs declared under item 1 (2) of this Schedule to be a perishable foodstuff.

Schedule 2

BUSINESSES EXCLUDED FROM BUSINESSES REFERRED TO IN SCHEDULE 1

1. A business which is carried on by the State or a local authority.
2. 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.

3. 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 Minister, 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.

Schedule 3

LAWS REPEALED OR AMENDED

(Section 7)

[Schedule 3 amended by s. 93 (1) of Act 93 of 1996.]

[NB: The dates of commencement in the various provinces of the amendment or repeal of the laws mentioned in this Schedule are as follows: 1 January 1992 in the Cape Province (Administrator's Proclamation 83 of 1991 in Cape *Official Gazette* 4723 of 15 November 1991), 1 July 1993 in the Orange Free State (Administrator's Proclamation 20 of 1993 in OFS *Official Gazette* 27 of 25 June 1993), 1 April 1994 in Natal (Administrator's Proclamation 7 in Natal *Official Gazette* 4952 of 24 February 1994), and 25 April 1994 in the Transvaal (Administrator's Proclamation 29 in Tvl *Official Gazette* 4992 of 13 April 1994).]

[NB: Schedule 3 has been amended by s. 10 of the Transformation of Certain Rural Areas Act 94 of 1998, provisions which will be put into operation by proclamation.]

No and year	Title	Extent of repeal or amendment
Cape of Good Hope Ordinance 16 of 1976	Shop Hours Ordinance, 1976	<p>1. The amendment of section 1 -</p> <p>(a) by the insertion after the definition of 'council' of the following definition: "hawker" means any person who, whether as principal, employee or agent, carries on business by selling goods -</p> <p style="padding-left: 20px;">(a) which he conveys from place to place, whether by vehicle or otherwise;</p> <p style="padding-left: 20px;">(b) on a public road as defined in section 1 of the Road Traffic Act, 1989 (Act 29 of 1989), or at any other place accessible to the public; or</p> <p style="padding-left: 20px;">(c) in, on or from a movable structure or stationary vehicle;';</p>

(b) by the deletion of the definition of 'Licences Ordinance';

(c) by the deletion of the definition of 'public holiday';

(d) by the substitution for paragraphs (a) and (b) of the definition of 'shop' of the following paragraphs, respectively:

'(a) an auctioneer or a barber or hairdresser trades; and

(b) a person engages in the sale or supply of goods manufactured or produced by himself;'; and

(e) by the deletion of the definition of 'weekday'.

2. The amendment of section 4-

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

'(a) on a Sunday or religious public holiday;';

(b) by the deletion of paragraphs (b), (c), (d) and (e) of subsection (1); and

(c) by the substitution for subsection (2) of the following subsection:

'(2) The provisions of subsection (1) shall not apply to a hawker: Provided that no hawker and no employee or agent of a hawker shall trade in any goods other than the goods mentioned in Schedule 1, whether in a shop or otherwise, on a Sunday or religious public holiday.'.

3. The repeal of sections 5 and 6.

4. The substitution for section 7 of the following section:

'7 Exemption from prohibition of trade on certain religious public holidays

(1) A council may, on application by any shopkeeper trading in a shop situated at a place which in the opinion of such council is a public resort, place of rest, seaside resort, caravan park, holiday centre, holiday camp or picnic place, exempt such shopkeeper in respect of any year from the provisions of section 4 (1) (a) in relation to trade in such shop on religious public holidays in such year.

(2) An applicant for exemption under subsection (1) shall furnish the council with the grounds for his application, full particulars in respect of the class of goods in which he normally trades and such further information as the council may require.

(3) No application under subsection (1) shall be granted unless the council is satisfied that at the place where the shop is situated there is a reasonable need for the supply to the public on religious public holidays, of goods in which the applicant normally trades.

(6) If a council refuses any application in terms of subsection (1), the applicant may in the manner and within the period prescribed by regulation appeal to the Administrator against the decision of the council.'

5. The repeal of sections 8, 9 and 10.

6. The amendment of section 11-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

'The provisions of section 4 (1) shall not apply in respect of trading-';

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

'(b) in a shop by a cafe or restaurant keeper in relation to the sale or supply of meals or refreshments for consumption on or off the business premises;';

(c) by the insertion after paragraph (b) of subsection (1) of the following paragraph:

'(bA) by a funeral undertaker;';

(d) by the substitution for paragraph (eA) of subsection (1) of the following paragraph:

'(eA) by a general dealer in a shop solely in relation to orders placed by, on behalf of or for the account of the owner of a seagoing vessel for delivery to such vessel;';

(e) by the deletion of subsection (3); and

(f) by the deletion of subsection (5).

7. The amendment of section 13 by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

<p>Ordinance 17 of 1981 Ordinance 12 of 1985</p>	<p>Licences Ordinance, 1981 Licences Amendment Ordinance, 1985</p>	<p>'A council may on application by any person register such person for the purpose of this section if it is satisfied that the applicant-'. 8. The repeal of section 14. 9. The amendment of section 20 by the deletion of subsections (2), (4) and (5). The repeal of the whole. The repeal of the whole.</p>
<p>Ordinance 19 of 1986</p>	<p>Licences Amendment Ordinance, 1986</p>	<p>The repeal of the whole.</p>
<p>Natal Act 24 of 1878</p>	<p>Law to provide for the better Observance of the Lord's Day, commonly called Sunday</p>	<p>The repeal of the whole.</p>
<p>Ordinance 11 of 1973</p>	<p>Licences and Business Hours Ordinance, 1973</p>	<p>1. The amendment of section 1 by the deletion of all the definitions, except the definitions of 'Administrator', 'business hours', 'closed', 'closed hours and open hours', 'goods' and 'shop'. 2. The repeal of Chapters II to V inclusive. 3. The amendment of section 30- (a) by the substitution for the words preceding paragraph (a) of the following words: 'The provisions of this Chapter shall not apply to-'; and (b) by the deletion of paragraph (l). 4. The amendment of section 31 by the substitution for subsection (1) of the following subsection: '(1) The Administrator may, if he considers it desirable in the public interest, by notice in the Official Gazette exempt any shop or any category of shops from any or all of the provisions of this Chapter, either generally or in relation to the selling or supplying of such goods as may be specified in the notice.' 5. The repeal of section 33. 6. The amendment of section 34 by the substitution for subsection (1) of the following subsection. '(1) Subject to any designation in terms of section 32, all shops shall be closed on Christmas Day, Good Friday, Easter Sunday, Ascension day and the Day of the Vow.' 7. The repeal of sections 36, 37 and 38. 8. The amendment of section 39- (a) by the deletion of subsection (2); (b) by the deletion in subsection (3) of the words 'or the proceeds of the sale of any such goods in terms of section 38 (2)'; and (c) by the deletion of subsection (6). 9. The repeal of sections 40 and 41. 10. The amendment of section 42 by the deletion of subsections (2), (3) and (4). 11. The repeal of sections 43, 44 and 45. 12. The amendment of section 46 by the deletion of subsections (1) and (3).</p>

Ordinance 8 of 1986	Shops Hours Ordinance, 1986	<p>1. The amendment of section 1 - (a) by the deletion of the definition of 'auctioneer'; (b) by the substitution for the definition of 'hawker' of the following definition:</p> <p>"hawker' means any person who, whether as principal, employee or agent, carries on business by selling goods -</p> <p>(a) which he conveys from place to place, whether by vehicle or otherwise;</p> <p>(b) on a public road as defined in section 1 of the Road Traffic Act, 1989 (Act 29 of 1989), or at any other place accessible to the public; or</p> <p>(c) in, on or from a movable structure or stationary vehicle, and 'hawk' means to carry on business as a hawker;';</p> <p>(c) by the substitution for the definition of 'normal trading times' of the following definition:</p> <p>"normal trading times' means any other weekday and any other Saturday than Good Friday, Ascension Day, Day of the Vow or Christmas Day;' and</p> <p>(d) by the deletion of the definition of 'public holiday'.</p> <p>2. The amendment of section 6 - (a) by the deletion of paragraph (b) of subsection (1); (b) by the substitution in subsection (1) for the words following paragraph (b) of the following words:</p> <p>'sell or supply any goods referred to in Schedule III to this Ordinance and any other goods, excluding toilet requisites and other photographic apparatus than films, in which he normally trades.';</p> <p>(c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:</p> <p>'A person who carries on business in, on or from a motor garage by repairing, renovating, servicing or dismantling motor vehicles or spares thereof, or any employee of such a person, may at any time-';</p> <p>(d) by the deletion of paragraph (b) of subsection (2); and</p> <p>(e) by the deletion of subsection (4).</p> <p>3. The amendment of section 7 by the deletion of subsections (2), (3) and (4). 4. The repeal of section 8. 5. The amendment of section 9 - (a) by the deletion in subsection (1) of the words 'or is authorized to trade after the closing hour in terms of section 7 (2)';</p>
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		<p>(b) by the deletion in subsection (2) of the words 'or, where applicable, outside the normal trading times as restricted in terms of section 8'; and</p> <p>(c) by the deletion of subsection (3).</p> <p>6. The amendment of section 11-</p> <p>(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph: '(c) keeps open or opens a shop contrary to the proviso to section 7 (1);'; and</p> <p>(b) by the deletion of paragraph (d) of subsection (1).</p> <p>7. The amendment of section 14 by the deletion of paragraph (e) of subsection (1).</p> <p>8. The amendment of Schedule I by the deletion in item 9 of the following words: 'whether or not a licence is required in terms of item 12 of Schedule I to the Licences Ordinance 1974, for the sale thereof'.</p> <p>9. The amendment of Schedule II by the deletion in column 1 of item 3 of the following words: 'whether or not a licence is required in terms of item 12 of Schedule I to the Licences Ordinance 1974, for the sale thereof'.</p>
<p>Republic Act 8 of 1917</p>	<p>Lord's Day Act (Natal) Amendment Act, 1917</p>	<p>The repeal of the whole.</p>
<p>Act 38 of 1927</p>	<p>Black Administration Act, 1927</p>	<p>The amendment of section 30 by the deletion of paragraph (o) of subsection (2).</p>
<p>Act 101 of 1965</p>	<p>Medicines and Related Substances Control Act, 1965</p>	<p>1. The amendment of section 22A-</p> <p>(a) by the substitution for subsection (1) of the following subsection: '(1) Subject to the provisions of this section, no person shall sell any medicine or Scheduled substance except in accordance with the prescribed conditions.';</p> <p>(b) by the deletion of subsection (2); and</p> <p>(c) by the substitution in subsection (3) for the words preceding the proviso of the following words: 'Any Schedule 1 substance, not being any such substance prescribed for the purposes of this subsection, shall not be sold by any person other than a medical practitioner, dentist, pharmacist or veterinarian:'.</p> <p>2. The amendment of section 35-</p> <p>(a) by the deletion of paragraph (xiii) of subsection (1); and</p> <p>(b) by the substitution for paragraph (xvi) of subsection (1) of the following paragraph:</p>

Act 65 of 1976	Financial Relations Act, 1976	'(xvi) prescribing the conditions on which Schedule 1 substances or certain specified Schedule 1 substances may be sold under section 22A (1);'. 1. The repeal of section 12. 2. The amendment of Schedule 1 by the deletion of paragraph 7. 3. The amendment of Schedule 2 by the substitution for paragraph 8 of the following paragraph: '8. The regulation of the hours of opening and closing of shops on a Sunday or on any public holiday mentioned in the Second Schedule to the Public Holidays Act, 1952 (Act 5 of 1952).'
Act 102 of 1982	Black Local Authorities Act, 1982	1. The amendment of section 56 by the deletion of paragraph (oA) of subsection (1). 2. The amendment of the Schedule by the deletion in item 14 of the words 'street trading and purveying and'.
Act 9 of 1987	Rural Areas Act (House of Representatives), 1987	1. The amendment of section 26 by the deletion of paragraph (m). 2. The amendment of section 27- (a) by the deletion in paragraph 14 of the words 'for regulating the sale, preparation, manufacture, storing, keeping, conveying, handling and exposure for sale of food,'; (b) by the deletion of paragraphs (15) and (16); (c) by the substitution for paragraph (26) of the following paragraph: '(26) for appointing and regulating places to be used for the landing, gutting, curing and packing of fish, and for regulating the removal of refuse from such places and from fish markets;'; and (d) by the deletion of paragraph (59). 3. The repeal of section 39.
Act 29 of 1989 Proclamation 208 of 1989 Removal of certain licensing and shop hours restrictions on economic activities The repeal of the whole.

ANNEXURE
(Substitution of First Schedule to Ordinance 19 of 1952, OFS)
'FIRST SCHEDULE

Class of shop	Business which may be carried on and goods which may be sold	Days and hours
Chemist shop.	To supply medicines, surgical requirements and infants' and invalids' foods and requirements and to sell toilet requisites.	At any time on any day.
Bakery.	To sell the goods in which the shop normally trades.	On Sundays, Good Friday, Ascension Day, Day of the Vow and Christmas Day: From six to nine o'clock in the forenoon.

Fish-shop.	To sell fresh fish.	On Sundays, Good Friday, Ascension Day, Day of the Vow and Christmas Day: From six to nine o'clock in the forenoon.
Butchery.	To sell fresh meat (including poultry meat).	On Good Friday, Ascension Day, Day of the Vow and Christmas Day: From six to nine o'clock in the forenoon.
Fruit and vegetable shop.	To sell fresh fruit and vegetables and flowers and plants.	On any day except Sunday: Up to any hour.
Cafe, restaurant or eatinghouse.	To supply meals and refreshments and to sell the goods declared to be privileged goods by the Administrator by notice in the Official Gazette.	At any time on any day.
General dealer's shop	To sell petrol or oil which is urgently required.	At any time on any day.
General dealer's shop restricted to sell only fruit, nuts, vegetables, flowers, plants, tobacco, cigars, cigarettes, matches, eggs, poultry, fresh fish, honey, bread, biscuits, cakes, pastry, confectionery, sweets or dairy produce.	To sell the goods mentioned in the first column.	On any day except a Sunday: Up to any hour.
Milk depot, dairyshop or shop used in connection with the business of a dairy farm.	To sell fresh milk.	At any time on any day.