

New Zealand.



ANALYSIS.

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1882, No. 60.

Title. AN ACT for the Consolidation of the Laws with respect to the Carriage and Deposit of Explosive and Dangerous Goods.

[15th September, 1882.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

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| Short Title. | 1. The Short Title of this Act is "The Dangerous Goods Act, 1882." |
| Interpretation. | 2. In this Act, if not inconsistent with the context,—
"Petroleum" means and includes all such rock oil, Rangoon oil, Burmah oil, any product of them, and any oil made from petroleum, coal, |

schist, shale, peat, or other bituminous substance, and any product of them, as gives off an inflammable vapour at a temperature of less than one hundred and ten degrees of Fahrenheit's thermometer :

"Harbour" and "Harbour Board" have respectively the like meanings as are attached to such expressions by "The Harbours Act, 1878."

"Local authority" means and includes a County Council constituted under "The Counties Act, 1876;" a Borough Council constituted under "The Municipal Corporations Act, 1876;" the Council of a Municipal Corporation, or other body constituted under any Act or Ordinance in force providing for the constitution of such Corporations; a Town Board constituted under "The Town Districts Act, 1881;" and a Harbour Board :

"Warehouse-owner" includes all persons or bodies of persons owning or managing any warehouse, store, quay, or other premises in which goods are deposited :

"Carrier" includes all persons or bodies of persons carrying goods or passengers for hire by land or water.

(1.) TO WHAT GOODS ACT APPLIES.

3. The goods or article commonly known as nitro-glycerine or glonoine oil shall be deemed to be specially dangerous within the meaning of this Act; and petroleum, as herein defined, shall be deemed to be dangerous within the meaning of this Act.

Nitro-glycerine to be deemed specially dangerous.

4. The Governor in Council may from time to time declare that any goods named in such order, other than nitro-glycerine or glonoine oil, are to be deemed specially dangerous within the meaning of this Act, and may from time to time amend or repeal any such order; and any goods which are by any such order declared to be specially dangerous shall, so long as such order is in force, be deemed to be specially dangerous within the meaning of this Act.

Other goods may be declared specially dangerous by Order in Council.

5. The Governor in Council may from time to time declare that petroleum or any distillate or other product thereof, or any of the articles or products coming within the meaning of petroleum as herein defined, shall come within the provisions of this Act, or any one or more of such provisions, notwithstanding that they do not give off an inflammable vapour at a temperature of less than one hundred and ten degrees of Fahrenheit's thermometer.

Governor may declare petroleum, &c., to come within the Act in certain cases.

6. Any such Order in Council may declare that its provisions shall extend to the whole colony or to any part or parts thereof to be specified in such order, and may from time to time in like manner be revoked, altered, or amended.

Order may apply to whole colony, or only part.

So long as such order shall remain in force, the articles and products therein mentioned shall be subject to the provisions of this Act, or to such part thereof as in such order shall be prescribed.

(2.) AS TO SPECIALLY-DANGEROUS GOODS.

7. No person shall deliver any goods which are specially dangerous to any warehouse-owner or carrier, or send or carry or cause to be sent or carried any such goods upon any railway or tramway or in any vessel to or from any port in New Zealand, or deposit any such goods in or upon any warehouse or quay, unless the true name or description of such goods, with the addition of the words "specially dangerous," is distinctly written, printed, or marked on the outside of the package, nor, in the case of delivery to or deposit with any warehouse-owner or carrier, without also giving notice in writing to him of the name or description of such goods, and of their being specially dangerous.

Specially-dangerous goods to be marked, and notice of character of such goods to be given to carrier, &c.

As to forfeiture of goods.

Where goods are delivered, sent, carried, or deposited in contravention of this enactment, the same shall be forfeited, and shall be disposed of in such manner as the Commissioner of Trade and Customs directs, whether any person is liable to be convicted of a breach of the said enactment or not.

Penalty for not marking goods.

8. Any person who commits a breach of the last preceding section shall be liable to a penalty not exceeding five hundred pounds, or, at the discretion of the Court, to imprisonment with or without hard labour for any term not exceeding two years: Provided that—

(1.) No such person shall be liable to imprisonment, or to a penalty of more than two hundred pounds, if he shows to the satisfaction of the Court and jury before whom he is convicted that he did not know the nature of the goods to which the indictment relates; and

(2.) No person accused of having committed a breach of the said section shall be liable to be convicted thereof if he shows to the satisfaction of the Court and jury before whom he is tried that he did not know the nature of the goods to which the indictment relates, and that he could not, with reasonable diligence, have obtained such knowledge.

Warehouse-owners, &c., not bound to receive such goods.

9. No warehouse-owner or carrier shall be bound to receive or carry any goods which are specially dangerous.

(3.) AS TO SPECIALLY-DANGEROUS GOODS AND PETROLEUM.

Regulations to be observed by a ship carrying petroleum and specially-dangerous goods.

10. Every vessel carrying a cargo consisting wholly or in part of goods which are specially dangerous, or of petroleum, on entering any harbour within New Zealand shall, in respect to the place at which she is to be moored, conform to the provisions of "The Harbours Act, 1878," and any regulations made thereunder from time to time.

Penalty on master of vessel for breach of regulation.

11. If any vessel is moored in any place in contravention of such Act or regulations the owner or master of such vessel shall incur a penalty not exceeding twenty pounds for each day during which the vessel remains moored, and the Harbourmaster or any other person acting under his orders may cause such vessel to be removed at the expense of the owner thereof to such place as may be in conformity with the said Act or regulations, and all expenses incurred in such removal may be recovered from the owner or master in a summary way.

Prohibition of sale of petroleum unless bottle or vessel containing it marked.

12. No person shall sell, or expose for sale, for use within the colony, any petroleum as in this Act defined, unless the bottle or vessel containing such petroleum have attached thereto a label in legible characters, stating as follows: "Dangerous," by letters of not less than half an inch in length—"no light to be brought near," in letters of not less than a quarter of an inch in length.

Any person acting in contravention of this section shall, for each offence, be subject to a penalty not exceeding five pounds.

No specially-dangerous goods or petroleum to be kept except in public place of deposit. Forfeiture.

13. Except as herein provided, goods which are specially dangerous and petroleum shall not be kept in any place not being a public place of deposit for the same, otherwise than in pursuance of a license under this Act.

All petroleum or specially-dangerous goods kept in contravention of this section shall be forfeited, and in addition thereto the occupier of the place in which such petroleum or specially-dangerous goods are kept shall be liable to a penalty of twenty pounds a day for each day during which petroleum or specially-dangerous goods are so kept in contravention of this Act.

Exception as to ten gallons kept for private use.

This section shall not apply to any petroleum kept either for private use and not for sale, provided that the aggregate quantity so kept does not exceed ten gallons.

(4.) ADMINISTRATION BY LOCAL AUTHORITIES.

14. Every local authority shall have the following powers and authorities :—

- (1.) To build or construct, or acquire by purchase or otherwise, and to maintain any building, premises, vessel, or hulk as a public place of deposit for the safe custody of dangerous goods and specially-dangerous goods ;
- (2.) The power hereby conferred may be exercised within the limits of the jurisdiction of such local authority, or beyond the same, provided that no such place of deposit shall be established or maintained beyond such limits as aforesaid except with the consent of the local authority of the district or the Harbour Board of the port wherein it is proposed to establish or maintain the same ;
- (3.) To apply such portion of its funds or revenues for the above purposes as it may think reasonable and fit ;
- (4.) To make agreements with any other local authority for the joint establishment or purchase of any such place of deposit, and for the regulation, maintenance, and control of the same, and the apportionment of the cost thereof and revenue therefrom respectively ;
- (5.) Every power and authority hereby conferred upon a local authority shall be exercised in like manner as powers and authorities within the ordinary scope of its functions are exercised, subject however to the special provisions of this Act.

Local authority may establish public places of deposit for petroleum, &c.

15. Licenses under this Act may be granted by the authorities or persons hereinafter mentioned as follows :—

Local authority may grant licenses.

- (1.) By any local authority within the part of the colony under its control or management ;
- (2.) By any Harbour Board within the harbour under its control ; and, if the limits of such port or harbour are so defined as to bring any part thereof within the control of any local authority, then the Harbour Board shall alone have the power of granting licenses therein to the exclusion of such local authority ;
- (3.) Where the whole of "The Counties Act, 1876," is not in force in any part of the colony, and there is not therein any local authority, any Resident Magistrate shall have power to grant a license ; and if there shall be no Resident Magistrate therein, then any two Justices of the Peace may grant a license. All license-fees paid under this provision shall be revenue of the county in which the license is granted.

16. Licenses shall be valid if signed by two or more of the persons constituting the local authority or Harbour Board, or executed in any other way in which other licenses, if any, granted by such authority are executed.

Mode of granting licenses.

If granted by a Resident Magistrate or two Justices, then such licenses shall be signed by such Resident Magistrate or Justices.

Any licensee violating any of the conditions of his license shall be deemed to be an unlicensed person.

17. There may be annexed to any such license conditions as to all or any of the following matters :—

What conditions may be annexed to license.

- (1.) The quantity of dangerous and specially-dangerous goods respectively which may be stored in any premises ;
- (2.) The mode of storage and the nature and situation of the premises in which and the nature of the goods with which dangerous or specially-dangerous goods may be stored ;

- (3.) The mode of carrying dangerous and specially-dangerous goods within the district of the local authority ;
- (4.) The facilities for the testing of any such dangerous goods from time to time ; and
- (5.) Generally as to the safe-keeping of dangerous and specially-dangerous goods as may seem expedient to the local authority.

Any license-fee may be annual or for a limited time, and shall be payable on the granting of the license.

License may be for particular class of goods only.

18. Any such license may be for dangerous goods alone, or for specially-dangerous goods alone, or for both, and the conditions aforesaid may be made applicable to any specified articles, being dangerous or specially-dangerous goods, or to all such goods generally.

Saving of existing licenses, fees, and by-laws, &c.

19. All by-laws, fees, licenses, and appointments in force at the commencement of this Act shall be deemed to have been made respectively under this Act, and shall take effect accordingly.

In case of refusal of license, the applicant may memorialize the Commissioner of Customs.

20. If on any application for a license under this Act the local authority refuse the license, or grant the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, deliver to him in writing under the hand or hands of one or more of the persons constituting the local authority a certificate of the grounds on which they refused the license or annexed conditions to the grant thereof.

Within fifteen days from the time of the delivery of the certificate the applicant may transmit the same to the Commissioner of Trade and Customs, together with a memorial praying that notwithstanding such refusal the license may be granted, or that the conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial.

Commissioner of Customs may grant license.

21. The Commissioner, if he think fit, on consideration of such memorial and certificate, and if he think it necessary or desirable, after due inquiry from and a report by such person as he may appoint for that purpose, may grant the license prayed for, either absolutely or with such conditions as he thinks fit, or may alter or modify the conditions imposed by the local authority.

The license so granted, or altered and modified, as the case may be, when certified under the hand of the Commissioner, shall be to all intents as valid as if granted by the local authority.

Local authority may make and revoke by-laws, and fix rates, charges, and license fees.

22. Every local authority is hereby also empowered—

- (1.) To make, alter, and revoke by-laws not inconsistent with “The Harbours Act, 1878;” or “The Shipping and Seamen’s Act, 1877;” for the efficient administration of this Act ;
- (2.) To appoint and remove all necessary officers therefor ;
- (3.) By notice published in a newspaper circulating in the district of such authority to fix and from time to time alter any place of public deposit for the purposes of this Act ;
- (4.) To fix and vary the amount of rates and charges to be paid for the custody of dangerous or specially-dangerous goods in any public place of deposit, and of fees to be paid in respect of licenses issued under this Act, all which fees, rates, and charges shall be revenue of the local authority of the district wherein they arise respectively.

(5.) AS TO TESTING PETROLEUM.

Officer of local authority or police may enter premises to obtain samples of petroleum, &c.

23. Any person authorized by the local authority, and any officer of police, is hereby authorized to enter any building or premises, or any description of ship or vessel, at any reasonable hour in the daytime, where any petroleum or other

inflammable oil is kept, either in bulk or in detailed quantities, and may purchase such petroleum or oil from any dealer in it, or may, on producing a copy of his appointment purporting to be certified by the Clerk or some member of the local authority, or producing some other sufficient authority, require the dealer to show him every or any place and all or any of the receptacles in which any petroleum or inflammable oil in his possession is kept, and to give him samples thereof on payment of the value of such samples.

For the purposes of this and the next four succeeding sections the term "dealer" shall mean any dealer or vendor of petroleum or other inflammable oil, or his agent or servant, or the person in charge of any building, premises, ship or vessel, as aforesaid, where such petroleum or oil is kept.

24. When such person or officer has, by either of the means aforesaid, taken samples of such petroleum or oil he may declare in writing to the dealer that he is about to test the same or cause the same to be tested in manner set forth in the Schedule to this Act, and such person or officer may test the same or cause the same to be tested at any convenient place at such reasonable time as he may appoint, and the dealer or any person appointed by him may be present at the testing. Testing of petroleum.

25. If it appear to the officer or other person so testing that the petroleum or oil from which such samples have been taken is petroleum or oil to which this Act applies, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings that may be taken in pursuance of this Act. Further analysis in case of dispute.

But any dealer proceeded against may give evidence in proof that such certificate is incorrect; and thereupon the Justices before whom any such proceedings are taken may, if they think fit, appoint some person skilled in testing petroleum or other inflammable oils to examine the samples to which such certificate relates, and to declare whether such certificate is correct or incorrect.

26. Any expenses incurred in testing any such petroleum or oil in pursuance of the last foregoing section shall, if such dealer be convicted of keeping, sending, conveying, selling, or exposing for sale petroleum in contravention of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly. Expenses of analysis.

In any other event such expenses shall be paid by the local authority out of any funds for the time being in their hands: Provided that the amount to be paid to the analyst for any test made under this Act shall be not less than five nor more than twenty shillings, as the Justices shall decide.

27. Any dealer in petroleum or other inflammable oil who refuses to show to any officer authorized by the local authority every or any place or all or any of the receptacles in which petroleum or inflammable oil in his possession is kept, or to furnish him with such light and assistance as he may require for examining the same, or to give to such officer samples of such petroleum or oil on payment of the value of such samples, or who wilfully obstructs the local authority or any officer of the local authority in the execution of this Act, shall incur a penalty not exceeding twenty pounds. Penalty for refusing information or obstructing officer.

(6.) SEARCH FOR PETROLEUM AND SPECIALLY-DANGEROUS GOODS.

28. Where any Justice of the Peace is satisfied, by information on oath, that there is reasonable ground to believe that any petroleum or any specially-dangerous goods is or are being kept, sent, conveyed, or exposed for sale, in contravention of this Act, at any place, whether a building or not, or in any Search for petroleum, &c.

ship or vessel of any kind, or in any vehicle, such Justice shall grant a warrant by virtue whereof any person named in such warrant may enter the place, ship, vessel, or vehicle named in such warrant, and every part thereof, and examine the same and search for petroleum and specially-dangerous goods therein.

If any petroleum or specially-dangerous goods be found therein which is or are kept, sent, conveyed, or exposed for sale in contravention of this Act, the person named in the warrant or his assistants may seize and remove such petroleum and specially-dangerous goods, and also any barrel, receptacle, or vessel containing the same, and detain such petroleum or specially-dangerous goods, barrels, receptacles, or vessels, until two or more Justices have determined whether the same are or not forfeited.

Penalty for refusing admittance to officer.

29. Any person who, by himself, or by any one in his employ, or acting by his direction or with his consent, refuses or fails to show or admit into any place occupied by or under the control of such person any person demanding to enter in pursuance of the powers hereinbefore contained, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, shall be liable to pay a penalty not exceeding twenty pounds, and to forfeit all petroleum or specially-dangerous goods, and every barrel, receptacle, or vessel containing the same which is or are found in his possession or under his control.

(7.) GENERAL PROVISIONS.

Power of Justices to declare petroleum or specially-dangerous goods forfeited.

30. Any two or more Justices are hereby empowered to hear and determine whether any petroleum or specially-dangerous goods conveyed, carried, sent, deposited, kept, or exposed for sale in contravention of this Act, shall or shall not be forfeited: Provided that the proceedings for any such forfeiture shall be commenced within twenty-eight days after the seizure.

Officer not liable in respect of any seizure.

No person seizing anything in pursuance of the powers hereinbefore contained shall be liable to any action or suit for detaining the same, or for any loss or damage incurred in respect of anything seized, otherwise than by any wilful act or neglect while the same is so detained.

Penalties, how recoverable.

31. The penalties imposed by the eighth section of this Act shall be recoverable only upon indictment or information, and not in a summary way.

All other penalties shall be recoverable in a summary way before any two or more Justices of the Peace.

Rewards to informers.

32. One moiety of every penalty shall be paid to the local authority within the limits of whose jurisdiction the offence was committed in respect of which such penalty has been adjudged, and the other moiety to the informer.

Legal rights as to nuisances not barred.

33. Nothing in this Act contained shall be deemed to exempt any person from any liability or penalty to which he would otherwise be subject in respect of a nuisance.

Reservation of previous powers as to inflammable substances.

34. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority or Harbour Board by any other Act of the General Assembly, and every local authority and Harbour Board may exercise such other powers in the same manner as if this Act had not been passed.

Disposal of forfeited goods.

35. Where any specially-dangerous goods or any petroleum are or is forfeited under the provisions of this Act the same shall be sold and disposed of in like manner as goods forfeited under the laws relating to the Customs are sold and disposed of; and the proceeds of such sale shall be disposed of in such manner as the Commissioner of Trade and Customs may direct.

36. Nothing in this Act contained shall be construed in any way to annul or derogate from any of the provisions of "The Shipping and Seamen's Act, 1877," or "The Harbours Act, 1878," or of any regulation made thereunder respectively; but so that nothing in the said provisions shall be deemed to authorize that any person be sued or prosecuted twice for the same matter.

Shipping and Seamen's Act and Harbours Act not to be affected by this Act.

37. Where any unrepealed Act of the General Assembly refers to any Act hereby repealed, such unrepealed Act shall be deemed to refer to this Act.

Reference to repealed Acts to apply to this Act.

38. "The Dangerous Goods Act, 1869," and "The Dangerous Goods Act Amendment Act, 1878," are hereby repealed.

Repeal.

SCHEDULE.

Schedule.

DIRECTIONS FOR APPLYING THE FLASHING TEST TO SAMPLES OF PETROLEUM OIL.

THE vessel which is to hold the oil shall be of thin sheet-iron; it shall be two inches deep and two inches wide at the opening, tapering slightly towards the bottom; it shall have a flat rim with a raised edge one quarter of an inch high round the top; it shall be supported by this rim in a tin vessel four inches and a half deep and four and a half inches in diameter; it shall also have a thin wire stretched across the opening, which wire shall be so fixed to the edge of the vessel that it shall be a quarter of an inch above the surface of the flat rim. The thermometer to be used shall have a round bulb about half an inch in diameter, and is to be graduated upon the scale of Fahrenheit, every ten degrees occupying not less than half an inch upon the scale.

The inner vessel shall be filled with the petroleum to be tested, but care must be taken that the liquid does not cover the flat rim.

The outer vessel shall be filled with cold or nearly cold water, a small flame shall be applied to the bottom of the outer vessel, and the thermometer shall be inserted into the oil so that the bulb shall be immersed about one and a half inches beneath the surface.

A screen of pasteboard or wood shall be placed round the apparatus, and shall be of such dimensions as to surround it about two-thirds and to reach several inches above the level of the vessels.

When heat has been applied to the water until the thermometer has risen to about ninety degrees Fahrenheit, a very small flame shall be quickly passed across the surface of the oil on a level with the wire.

If no pale-blue flicker or flash is produced the application of the flame is to be repeated for every rise of two or three degrees in the thermometer.

When the flashing-point has been noted the test shall be repeated with a fresh sample of the oil, using cold or nearly cold water as before, withdrawing the source of heat from the outer vessel when the temperature approaches that noted in the first experiment, and applying the flame-test at every rise of two degrees in the thermometer.