



ANALYSIS

Title	3. Conditions implied in licences
1. Short Title	4. Undue influence on retailers
2. Limitation in respect of application for retailer's licence	5. Rights of appeal
	6. Provision as to appeals

1958, No. 36

An Act to amend the Motor Spirits Distribution Act 1953

[25 September 1958]

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

1. Short Title—This Act may be cited as the Motor Spirits Distribution Amendment Act 1958, and shall be read together with and deemed part of the Motor Spirits Distribution Act 1953 (hereinafter referred to as the principal Act).

2. Limitation in respect of application for retailer's licence—The principal Act is hereby amended by inserting, after section fourteen, the following section:

“14A. Where an application for a retailer's licence has been refused by the Authority, no further application for a licence to carry on the business of a retailer on the same or substantially the same site as that on which it was proposed to carry on the business to which the refused application related shall be made within twelve months after the date of the refusal without the permission in writing of the Authority.”

3. Conditions implied in licences—The principal Act is hereby amended by repealing section eighteen, and substituting the following section:

“18. (1) Subject to the provisions of this section, in every retailer’s licence, including any retailer’s licence continued in force by subsection one of section twelve of this Act, there shall be implied, unless in any particular case the Licensing Authority decides otherwise, the following conditions:

“(a) That the licensee shall not be the holder of a wholesaler’s licence:

“(b) That the licensee shall not cause or permit a wholesaler or the nominee of a wholesaler to have or acquire, whether in his own name or in the name of any other person or by means of any device or arrangement whatsoever, any direct or indirect estate or interest in any business to which the retailer’s licence applies, or in any other business carried on by the licensee, or in any other property, whether real or personal, owned by the licensee or by a company controlled by the licensee:

“Provided that nothing in the conditions prescribed by this paragraph shall apply with respect to any lubrication equipment, or to any pump used for dispensing petroleum products, or to any storage tank, or to any equipment associated therewith, installed by a wholesaler:

“(c) That the licensee shall have motor spirits regularly available for sale in accordance with the terms and conditions of his licence during his normal hours of business, unless prevented by circumstances not reasonably able to be foreseen or beyond the control of the licensee:

“(d) That the licensee shall comply in all respects with any enactment relating to the sale of motor spirits:

“(e) That the licensee shall pay all fees payable under this Act in respect of his licence.

“(2) Subject to the provisions of this section, in every wholesaler’s licence, including any wholesaler’s licence continued in force by subsection two of section twelve of this Act, there shall be implied, unless in any particular case the Licensing Authority decides otherwise, the following conditions:

“(a) That the licensee shall not be the holder of a retailer’s licence:

“(b) That the licensee or his nominee shall not have or acquire, whether in his own name or in the name of any other person, or by means of any device or arrangement whatsoever, any direct or indirect estate or interest—

“(i) In any business of whatsoever nature carried on by a retailer, whether or not it is a business for which a retailer’s licence is required under this Act and whether or not the business is carried on alone or in partnership, or by a partner in any such partnership, or by a company under the direct or indirect control of a retailer or his partner, or by a substantial shareholder of a company which is a retailer, or by a company under the direct or indirect control of a substantial shareholder of a company which is a retailer; or

“(ii) In any land on which is situated any such business as aforesaid carried on by any such person as aforesaid; or

“(iii) In any real or personal property or asset not referred to in subparagraph (i) or subparagraph (ii) of this paragraph owned by a retailer, whether alone or in partnership, or by a partner in any such partnership, or by a company under the direct or indirect control of a retailer or his partner, or by a substantial shareholder of a company which is a retailer, or by a company under the direct or indirect control of a substantial shareholder of a company which is a retailer:

“Provided that nothing in the conditions prescribed by this paragraph shall apply with respect to any lubrication equipment, or to any pump used for dispensing petroleum products, or to any storage tank, or to any equipment associated therewith, installed by a wholesaler:

“(c) That the licensee shall not install any pump or change the site of any pump on the premises of a retailer except in accordance with the terms and conditions of a licence under this Act held by the retailer:

“(d) That the licensee shall comply in all respects with any enactment relating to the sale of motor spirits.

“(3) Nothing in this section shall apply to any retailer’s licence which does not authorise the holder to sell motor spirits through pumps or to the retail sale of motor spirits in accordance with any such licence.

“(4) Nothing in any conditions prescribed in paragraph (b) of subsection one, or in paragraph (b) of subsection two of this section shall apply with respect to:

“(a) Any estate or interest in existence on the fourteenth day of March, nineteen hundred and fifty-two; or

“(b) Any variation of any such estate or interest in existence as aforesaid taking place before the tenth day of March, nineteen hundred and fifty-five; or

“(c) Any new estate or interest created before the tenth day of March, nineteen hundred and fifty-five, pursuant to a contract or commitment in existence on the fourteenth day of March, nineteen hundred and fifty-two; or

“(d) Any estate or interest lawfully created or acquired before the commencement of this section.

“(5) Where the nominee of a wholesaler does any act which, if done by the wholesaler, would be in contravention of any terms and conditions implied in the wholesaler’s licence under this section, the nominee commits an offence, and shall be liable to the same penalty to which the wholesaler is liable under section eleven of this Act, and if the nominee is a company, every director or other person acting in the management of the company shall, in addition to any penalty to which the company may be liable, be liable on summary conviction to a fine not exceeding ten pounds for every day during which the offence continues.

“(6) For the purposes of this section—

“(a) The expression ‘estate or interest’ includes ownership, whether complete or partial, and any mortgage, charge, loan, guarantee, agreement for sale and purchase of real property or an interest in real property, lien, option, indemnity, licence, tenancy, right to possession or to ownership and, where the business, land, or asset concerned is owned by a company, also includes any share, stock, debenture, or debenture stock issued or given by the company or any right, title, or claim to any such share, stock, debenture, or debenture stock:

“(b) The term ‘nominee’, when used in relation to a wholesaler, means a person acting as agent or trustee or subject to the direction, whether generally or specifically, of the wholesaler or a nominee of the wholesaler; and includes any company directly or indirectly controlled by the wholesaler and any company which directly or indirectly controls or is interested in, beneficially or otherwise, not less than twenty-five per cent of the shares or of any class of the shares in the capital of the wholesaler, and any company which is entitled to not less than twenty-five per cent of the net profits of the wholesaler; and also includes any company directly or indirectly controlled by any such company and any person subject to the direction, whether generally or specifically, of any such company:

“(c) The term ‘substantial shareholder’ means the owner of not less than twenty-five per cent in number or value of any class of shares, stock, debentures, or debenture stock issued or given by a company, whether held in his own name or on his behalf.”

4. Undue influence on retailers—(1) The principal Act is hereby amended by inserting, after section eighteen, the following section:

“18A. (1) No person, whether or not he is the holder of a wholesaler’s licence, shall, without the consent of the authority, give, or offer or agree to give, to the holder of a retailer’s licence or to any person employed by any such retailer in the business to which the licence relates any reward for the reason or upon the express or implied condition that the retailer—

“(a) Purchases motor spirits exclusively or principally from any particular wholesaler or wholesalers:

“(b) Does not purchase motor spirits from any particular wholesaler or wholesalers:

“(c) Restricts his purchase of motor spirits from any particular wholesaler or wholesalers.

“(2) Any person who accepts or obtains any reward where the giving of the reward constitutes a breach of subsection one of this section, commits an offence against this section and, if he is the holder of a retailer’s licence, he shall be deemed to have committed a breach of the conditions of that licence.

“(3) Any person who commits an offence against this section shall be liable on summary conviction to a fine not exceeding two hundred pounds.

“(4) For the purposes of this section the term ‘reward’ includes any reward, rebate, refund, concession, allowance, or valuable consideration, whether direct or indirect.”

(2) Subsection three of section nine of the principal Act is hereby amended by repealing paragraph (a).

5. Rights of appeal—Section thirty-one of the principal Act is hereby amended by inserting, after subsection two, the following subsection:

“(2A) Notwithstanding the provisions of subsection two of this section, there shall be no appeal to the Supreme Court under this section against a decision of the Appeal Authority reversing a decision of the Licensing Authority to grant, under section sixteen of this Act, an application for a new licence.”

6. Provision as to appeals—Subsection two of section thirty-three of the principal Act is hereby amended by repealing subparagraph (iii) of paragraph (d).
