



ANNO SECUNDO

GEORGI VI REGIS.

A.D. 1938.

No. 2420.

An Act to provide for the licensing of business agents and for other purposes.

[Assented to 15th December, 1938.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Business Agents Act, 1938," and shall come into force on a day to be fixed by proclamation.

Short title and commencement.

2. In this Act unless the context otherwise provides or some other meaning is clearly intended—

Interpretation.
Vic. 3897,
1930, s. 2.
N.S.W. 7,
1935, s. 2.

"business" means any hotel business, boarding-house business, storekeeper's business, manufacturing business, or any trading business whatsoever, and any share of or interest in any such business or in the goodwill of any such business but does not include any share in the capital of any incorporated company :

"business agent" means a person who carries on either as his sole business or as part of his business any of the following functions, namely :—

(a) selling, buying, exchanging, or otherwise dealing with or disposing of ; or

(b) negotiating for the sale, purchase, exchange, or other dealing with or disposition of,

any businesses, on behalf of other persons for or in consideration of any remuneration, whether monetary or otherwise.

“ business agent’s licence ” means a business agent’s licence for the time being in force under this Act :

“ licence ” means a business agent’s licence :

“ licensed auctioneer ” means a person holding a licence under the Auctioneers Act, 1934 :

“ licensed business agent ” means the holder of a business agent’s licence and includes a corporation by which or on behalf of which such a licence is held :

“ person ” includes company :

“ registered office ” means the office of a licensed business agent which is for the time being entered in the register of licences as the registered office of such business agent.

Application of Act to the Crown and public authorities.

Vic. 3897, 1930, s. 3 (1).
N.S.W. 7, 1935, s. 3 (1).

3. This Act shall not require—

- (a) any Minister of the Crown ; or
- (b) the Public Trustee or any employee in any Government Department ; or
- (c) any municipal or district council ; or
- (d) any public statutory authority specified by proclamation ; or
- (e) any officer or employee of the Crown, or of any such Minister, Department, council, or authority in the exercise of his functions as such officer or employee,

to hold a licence under this Act for the purpose only of performing or exercising any of the functions, powers or duties imposed by law on such person or body.

Exemption of trustees and auctioneers.

Vic. 3897, 1930, s. 3 (2).
N.S.W. 7, 1935, s. 3 (2).

4. This Act shall not require—

- (a) any executor, administrator, trustee, liquidator, official receiver, trustee or assignee of a bankrupt or an insolvent, committee of a lunatic, curator or receiver, to hold a licence for the purpose only of performing his functions, exercising his powers, or carrying out his duties as such ; or
- (b) any licensed auctioneer to hold a licence ; or

- (c) any barrister, solicitor, proctor or attorney for the time being entitled to practice, to hold a licence for the purpose only of doing anything which if this Act had not passed he might lawfully have done as a barrister, solicitor, proctor or attorney :
- (d) any wholesale merchant to hold a licence for the purpose only of acting as agent in connection with the sale of any retail business or businesses in which commodities supplied wholesale by the merchant are sold by retail.

5. The Governor may by proclamation exempt to the extent specified therein any class of persons from the operation of this Act or of any specified provisions thereof.

Power to exempt.
Vic. 3897,
1930, s. 3 (4).
N.S.W. 7,
1935, s. 3 (4).

6. Nothing in this Act shall relieve any person from the obligation to take out a licence for the performance of any function, the exercise of any power, or the carrying out of any duty, for which a licence would have been required if this Act had not been passed, and to pay the fees payable in respect of any such licence.

Act not to affect obligation to take out licence.
Vic. 3897,
1930, s. 3 (5).
N.S.W. 7,
1935, s. 3 (5).

Duty to Obtain Licence.

7. (1) Subject to this Act, after the expiration of three months after the coming into operation of this Act no person shall for, or in expectation of any remuneration whatsoever, whether monetary or otherwise—

No person to act as a business agent without a licence.
Vic. 3899,
1930, s. 4.
N.S.W. 7,
1935, s. 3 (5).

- (a) on behalf of any other person sell, buy, exchange, or otherwise deal with or dispose of any business :
- (b) on behalf of any other person negotiate for the sale, purchase, exchange, or other dealing with or disposition of any business,

unless he is the holder of a business agent's licence.

(2) No person shall hold himself out as being a business agent, or as willing to act as a business agent or to perform any of the functions of a business agent unless he is the holder of a business agent's licence.

(3) If any person contravenes this section he shall be guilty of an offence and liable to a fine of not less than five pounds and not more than two hundred pounds, or to imprisonment for not more than twelve months.

Unlicensed
business agent
not to recover
fee.

Vic. 3879,
1930, s. 19.
N.S.W. 7,
1935, s. 38.

8. No person shall be entitled to bring any proceedings in any court to recover any commission, fee, gain or reward for any work or service done or performed by him as a business agent unless he was the holder of a business agent's licence at the time of doing or performing such work or service.

Applications for Licences.

Applications.

S.A. 1723,
1925, s. 5.
Vic. 3897,
1930, s. 6.
N.S.W. 7,
1935, s. 7.

9. (1) Every application for a licence shall be made to the local court of full jurisdiction nearest by the most convenient route to the sole or principal place of business of the applicant, and shall be instituted by a notice of application filed in the court.

(2) Every applicant shall, at the time of filing the notice of application, file in the court a fidelity bond complying with this Act, or a certificate issued by the Treasurer certifying that the applicant has deposited security as required by this Act.

(3) Every application shall be instituted by filing in the court a notice in the prescribed form and, subject to this Act, shall be made and proceeded with, and dealt with, in accordance with the practice and procedure prescribed by regulation.

Advertisement
of applications.

10. (1) As early as reasonably practicable after filing his notice of application, an applicant shall publish an advertisement in the prescribed form of his intended application for a licence, in some newspaper to be approved for the purpose by the clerk of the local court in which the notice of the application is filed; and the application for the licence shall not be heard before the expiry of one month after the publication of such advertisement.

(2) The clerk of the local court in which a notice of application is filed shall forthwith after the filing thereof send particulars of the application to the Commissioner of Police.

Objections.

S.A. 1723, 1925,
s. 9 (2), (3).

11. (1) Within twenty-one days after the publication of the advertisement of the intended application, pursuant to the last preceding section, any person may file in the local court in which the application is filed, a notice in the prescribed form of his objection to the application and of the grounds of the objection.

(2) No such objection shall be considered except so far as the grounds thereof affect the character or financial position of the applicant, or the character of any person employed by the applicant in his business as a business agent, or, in the case of an application by a company, the financial position of the company, or the character of the directors or of the general manager or of any other persons employed by the company in its business as a business agent.

12. Every application for a licence and any objections thereto shall be heard by a special magistrate exercising jurisdiction in the local court in which the application is duly filed.

Hearing of application.
S.A. 1723,
1925, s. 10.

13. (1) Subject to subsection (3) of this section, before granting an application for a licence, the local court shall be satisfied that the character and financial position of the applicant are such that he is, in the opinion of the court, having regard to the interests of the public, a fit and proper person to carry on business as a business agent.

Evidence as to character and financial position.
S.A. 1723,
1925, s. 11.

(2) Where the application for a licence is made by a company the court shall be satisfied that the financial position of the company, and the character of the directors and general manager thereof are such that, having regard to the interests of the public, the company is a fit and proper company to carry on business as a business agent.

(3) Where an applicant holds a licence under this Act, or a land agent's licence, at the time when the notice of his application is filed, or has previously held such a licence, and no notice of objection to the grant of the licence has been filed, the court may, in its discretion, grant the application for a licence without taking evidence.

(4) Where the character of any person is in issue the court may, if it thinks fit, receive in addition to any other relevant evidence, evidence as to—

(a) any previous convictions of that person :

(b) any previous conduct of that person, whether in connection with the work of a business agent or otherwise.

(5) Nothing in this section shall restrict the power of the court to require the production of any evidence which it thinks relevant to any application.

14. If the court is satisfied that the provisions of this Act have been complied with and that it is just and expedient to grant the applicant a licence, it shall grant the application and on payment of the prescribed fee issue a licence to the applicant.

Grant of licence.
S.A. 1723,
1925, s. 10.

15. (1) On the hearing of any application for a licence the court shall, if any objection to the application has been filed, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant and to adjudge that such costs be paid.

Costs.
Vic. 8897,
1931, s. 9.
S.A. 1723,
1925, s. 13.

(2) The court may itself fix the amount of such costs, or may order them to be ascertained by the taxing officer of the court.

Duration of
licence.

16. Every licence shall take effect from the date specified therein, and unless sooner cancelled or otherwise made void in accordance with this Act, shall continue in force until the thirtieth day of June next after the date on which it takes effect.

Duplicate
licence.

17. Where satisfactory proof is given of the loss or destruction of a licence the clerk of the court which granted the licence may, on payment of the prescribed fee, issue a duplicate licence.

Fees.

18. (1) The following fees shall be payable under this Act—

(a) For a business agent's licence issued to a person other than a licensed land agent or licensed landbroker:
Three pounds :

(b) For a business agent's licence issued to a person who is a licensed land agent or a licensed landbroker:
One pound :

(c) For a duplicate licence : Two shillings and sixpence.

Provided that where a licence is issued between the thirty-first day of December and the thirtieth day of June, the fees (other than the fee for a duplicate licence) shall be at half the rates set out in this subsection.

(2) No licence shall be issued and no transfer of a licence shall be granted until the prescribed fee has been paid.

*Fidelity Bonds and Security.*Provisions as
to bonds.

Via. 3897,
1931, s. 6 (2)

(c).
N.S.W. 7,
1935, s. 7 (11).
S.A. 1723,
1925, s. 6.

19. (1) No application for a business agent's licence shall be entertained unless the applicant has—

(a) deposited securities as required by section 21, and filed in the local court a certificate that he has done so ; or

(b) filed in the local court a fidelity bond to His Majesty given by an insurance company or some other surety approved by the Attorney-General in the sum of five hundred pounds.

In this section "insurance company" means any company which, or person who, has complied with the provisions of the Insurance Act, 1932, of the Commonwealth, with respect to deposits.

(2) Every such bond shall be in the prescribed form and contain such terms and conditions as are prescribed for ensuring—

- (a) that the business agent shall duly account for, apply, pay, transfer and deliver up any sum of money or any property which comes into his possession or control or for which he is chargeable or accountable as a business agent ; and
- (b) that the business agent shall perform and execute the duties required of him as business agent so as not to cause loss to be suffered by any person by reason of any wrongful act or omission as a business agent ;
- (c) the fulfilment of any other obligations or conditions of the bond.

(3) The sum of five hundred pounds named in a fidelity bond under this section shall be deemed not to be a penalty, but shall be liquidated damages, and shall be recoverable in full as a debt due by the surety or sureties to His Majesty unless the surety or sureties prove performance of every condition upon which the bond is defeasible.

(4) Every sum so recovered shall be paid into the general revenue, and shall, without further appropriation than this Act, be applied by the Treasurer—

- (a) in payment of any costs and expenses incurred in connection with the recovery of such sum and in giving public notices ;
- (b) in compensating to the extent and in the manner which the Treasurer deems equitable, any persons who in the opinion of the Treasurer have suffered loss by reason of any breach of any condition of the bond ; and
- (c) in refunding to the surety any balance left after payment of such compensation.

(5) If at any time during the currency of any business agent's licence the bond filed by the holder of that licence under this Act ceases to be of full force and effect, the holder of the licence shall, until a bond of full force and effect is filed by him, be deemed to be unlicensed.

Business Agents Act, 1938.

(6) If an applicant for a business agent's licence is also the holder of a land agent's licence under the Land Agents Act, 1925-1936, and he has, pursuant to section 6 of that Act, filed a fidelity bond as provided by that section, he may, in lieu of filing a fidelity bond as provided by this section, file in the local court a statement signed by the surety that it has been agreed that the fidelity bond, in addition to containing the terms and conditions required by the Land Agents Act, 1925-1936, shall be deemed to be amended so as to contain the terms and conditions required by this section. If the local court is satisfied that the fidelity bond as deemed to be amended contains the terms and conditions required by this section the application shall be entertained. If a business agent's licence is issued pursuant to the application, the fidelity bond shall for the purposes of this Act be deemed to be a fidelity bond filed pursuant to this section, and the provisions of this section shall apply to the payment of any amount recovered on the fidelity bond equally with the provisions of section 6 of the Land Agents Act, 1925-1936.

(7) Upon the termination of any licence or bond or upon receiving notice of the intended termination of any licence or bond, the Treasurer may publish in such newspapers as he thinks fit notices notifying the fact of such termination or intended termination and calling for claims from persons who have or may have claims against the business agent in his capacity as a business agent and fixing a period within which such claims shall be filed with the Treasurer.

(8) The Treasurer shall not allow any claim unless it was filed with him or notified to him before the expiration of such period.

(9) Before deciding whether any person shall be compensated under this section the Treasurer shall give to the surety an opportunity of being heard on all claims received by him.

Fidelity bond
may enure so
as to apply
to renewals
of licence.
S.A. 1723,
1925, s. 7.

20. (1) A fidelity bond given under this Act may, if it is so provided therein, enure not only during the term of the licence in respect of which it is originally given, but during the term of any subsequent licence of the same kind issued to the same person.

(2) If a fidelity bond provides that it is to enure in respect of any subsequent licence, it shall be lawful for the surety or sureties, by notice in writing addressed to the clerk of the local court in which the bond is filed, at any time to determine his or their liability under the bond in respect of any act or default that may be done or made after the thirtieth day of June next

following the date of such notice, and in any such case the court shall not issue any further licence to the person who filed the bond until he has filed another bond or securities complying with this Act.

21. (1) Nothing in this Act shall prevent any surety from terminating any bond in accordance with any contract between the surety and the business agent named in the bond : Provided that no such termination shall be effective unless the surety has given to the clerk of the local court in which the bond is filed, at least one month's notice of his intention to terminate the bond.

Termination
of bond.

(2) The termination of a bond shall not relieve or discharge the surety from any liability under the bond which accrued before the termination of a bond.

22. (1) Any person who is required by this Act to file a fidelity bond in a local court may in lieu of filing such a bond deposit with the Treasurer securities issued by the State or Commonwealth the face value of which is six hundred pounds. Upon receipt of any such securities the Treasurer shall issue to the person depositing them a certificate certifying the fact of deposit, and such certificate shall be filed in the local court in lieu of the fidelity bond.

Deposit of
Government
securities in
lieu of fidelity
bond.
1723, 1925,
s. 7a.

(2) All such securities shall be transferred to the Treasurer and shall be held by him as security for the performance of the same conditions as would have been required to be included in the fidelity bond in lieu of which the securities are deposited, and upon the breach of any such condition the Treasurer shall sell such securities and apply the proceeds thereof in the following order of priority :—

- (a) in payment of the costs of selling the securities and of giving public notices ;
- (b) in compensating to the extent and in the manner which the Treasurer deems equitable, any persons who in the opinion of the Treasurer have suffered loss by reason of any breach of any such condition ; and
- (c) in refunding to the person depositing such securities or his successor in title or his nominee any balance left after payment of such costs and compensation.

(3) While the securities are held by the Treasurer the person depositing them shall be entitled to the interest accruing thereon.

(4) If the Treasurer is satisfied that the person who deposited any securities under this Act—

(a) has ceased to carry on business as a business agent for at least six months and has not broken any condition for the performance of which the securities were held as security ; or

(b) has deposited a fidelity bond in substitution for such securities,

the Treasurer shall, on application duly made, retransfer the securities to that person or his successor in title or his nominee.

(5) So long as the Treasurer holds securities as required by this section on behalf of any person, that person shall be deemed to have complied with the requirements of this Act as to the deposit of a fidelity bond.

(6) If an applicant for a business agent's licence is also the holder of a land agent's licence under the Land Agent's Act, 1925-1936, and he has, pursuant to section 7a of that Act, deposited securities with the Treasurer as provided by that section he may, in lieu of depositing securities as provided by this section, file in the local court a statement that the deposited securities are, in addition to being deposited for the purposes of the Land Agents Act, 1925-1936, deposited for the purposes of this section. In such case, the said deposit shall be deemed to be a sufficient compliance with this section and, if a business agent's licence is issued pursuant to the application, the securities shall, for the purposes of this Act, be deemed to be securities deposited pursuant to this section, and the provisions of this section shall apply to the payment of any proceeds of the sale of the securities equally with the provisions of section 7a of the Land Agents Act, 1925-1936.

Inspection of
fidelity bond.
Vic. 3897,
1930, s. 30.
N.S.W. 7,
1935, s. 27.

23. Any person may, on payment of a fee of two shillings and sixpence to the clerk of the local court in which the fidelity bond of any business agent is lodged, inspect the bond and take a copy thereof.

Cancellation of Licences.

Cancellation
of licences.
S.A. 1723,
1925, s. 27.

24. (1) Subject as hereinafter mentioned the Attorney-General or any other person may apply to the local court of full jurisdiction nearest by the most convenient route to the registered office of the holder of any licence for an order directing either the first or both of the following things, namely :—

(a) that the licence be cancelled :

(b) that the holder of the licence be disqualified either temporarily or permanently, or until the fulfilment of any condition imposed by the court, from holding a licence.

(2) An order under this section may be made upon any of the following grounds, namely :—

- (a) that the licence was improperly obtained contrary to the provisions of this Act ; or
- (b) that the holder of the licence has at any time been convicted of any offence against this Act or any offence involving dishonesty ; or
- (c) that the holder of the licence is not a fit and proper person to continue any longer to be licensed ; or
- (d) that the holder of the licence has been guilty of such conduct as renders him unfit to continue any longer to be licensed ; or
- (e) where the licence was held by a company, that any of the directors of the company or the manager thereof has been convicted since the licence was granted of any offence involving dishonesty or has been guilty of any conduct which in the court's opinion would justify it in making an order against the company under this section ; or
- (f) that the holder of the licence has employed in his business any person who by reason of his character or conduct was unfit to be employed in that business ; or
- (g) upon any other grounds which the court deems sufficient.

(3) Every application under this section shall be made, and notice thereof shall be served on the holder of the licence, in accordance with the regulations.

(4) Upon being satisfied of the existence of any of the grounds aforesaid the court may make any order authorised by this section and any order as to costs which it thinks just.

(5) If the holder of a licence or any director or manager of a company by which a licence is held, has been convicted by any court of an offence against this Act or any offence involving dishonesty such court may, of its own motion, make any such order as mentioned in subsection (1) or subsection (2) of this section.

(6) Where the holder of a licence is a party to an action in the Supreme Court or in a local court of full jurisdiction and such court is satisfied, on the evidence before it in such action, that a proper case exists for making any such order as mentioned in subsection (1) or subsection (2) of this section, such court may, of its own motion make any such order as aforesaid.

The Register of Licences.

Register of
licences.
S.A. 1723,
1925, s. 16.

25. The Attorney-General shall keep a register of licences in which shall be recorded in relation to every person holding a licence under this Act—

- (a) the name of such person :
- (b) the amount of the fees paid in respect of his licence :
- (c) the date of the issue of the licence :
- (d) the address of the registered office of such person :
- (e) the address of every place of business of such person :
- (f) such other particulars as may be prescribed.

Clerks of
local courts to
forward
particulars of
licences, etc.

26. (1) The clerk of every local court and the proper officer of any other court making an order under this Act shall forward to the Attorney-General particulars of every licence issued, renewed, suspended or cancelled under this Act.

(2) The Attorney-General shall—

- (a) make in the register from time to time all such alterations and additions as are necessary to keep the register in accordance with facts :
- (b) remove from the register the name of every deceased holder of a licence and of every person who has ceased to be licensed.

(3) In the exercise and performance of his powers and duties under this section the Attorney-General shall act on such evidence as in each case appears to him sufficient.

List of business
agents and
evidence.
S.A. 1723,
1925, s. 18.

27. (1) The Attorney-General shall, in each year publish in the *Gazette* a list (herein referred to as the main list) of the names and the addresses of the registered offices of all persons holding licences on a date to be therein specified, together with such of the relevant particulars appearing in the register as the Attorney-General thinks fit. Supplementary lists may be published in like manner as the Attorney-General may from time to time direct.

(2) A certificate under the hand of the Secretary to the Attorney-General that any person was or was not the holder of a licence on any date mentioned in the certificate, or as to any other matter or fact recorded in the register of licences shall, in all judicial proceedings, be *prima facie* evidence of the fact or facts therein certified to.

(3) The Secretary to the Attorney-General shall, upon the request in writing of any person and payment of the prescribed fee, issue a certificate stating any such matters as are referred to in subsection (2) of this section.

(4) An apparently genuine document purporting to be a certificate under the hand of the Secretary to the Attorney-General and to certify any of the matters mentioned in subsection (2) of this section shall be taken to be such a certificate without proof of the signature of the said Secretary.

Duties of Holders of Licences.

28. (1) Every licensed business agent shall have a registered office within the State to which all communications and notices may be addressed and shall give notice in writing of the situation of that registered office, and of any change therein to the Attorney-General who shall record the same in the register of licences.

Registered office.
Vic. 3897, 1930, s. 13.
N.S.W., 7, 1935, s. 15.

(2) Any person who fails to comply with any requirement of this section shall be guilty of an offence.

29. (1) Every licensed business agent shall paint or affix and keep painted or affixed on every place where he carries on business as a business agent and on his registered office, so as to be easily read from outside such place or office, his name and, if such business is not carried on in his own name the name under which he or the firm in which he is a partner is registered or deemed to be registered under the Registration of Business Names Act, 1928.

Duty to display notice on places of business.
Vic. 3897, 1930, s. 22.
N.S.W., 7, 1935, s. 16.

(2) Any person who fails to comply with any requirement of this section shall be guilty of an offence.

30. Any business agent who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business without specifying therein his name and his place of business shall be guilty of an offence.

Publication of name and place of business in advertisements.

31. (1) Every business agent who, in the course of his business as a business agent, receives either personally or by any servant or agent, any moneys on behalf of any person in respect of any transaction or who holds any moneys so received as a stakeholder or in trust pending completion of any transaction—

Application of trust moneys.
N.S.W., 7, 1935, s. 17.
Vic. 3897, 1930, s. 24.

- (a) shall as soon as practicable after receiving such moneys pay them into a bank to a trust account in the name of the business agent ; and
- (b) shall not withdraw such moneys therefrom save for the purpose of paying them to the person or persons entitled thereto.

All such moneys shall be kept and accounted for separately from the moneys of the business agent.

(2) Any business agent who commits any contravention of, or fails to comply with any provision of subsection (1) of this section shall be guilty of an offence and liable to a penalty of not less than ten pounds and not more than one hundred pounds.

(3) Moneys so paid into any such trust account shall not be attached or taken in execution under the order or process of any court, except for the purpose of paying them to the persons entitled thereto or satisfying any judgment or order which directs such payments to be made.

(4) Notwithstanding anything in this Act a bank shall not be under any obligation to see to the application by the said agent of any moneys drawn out of such trust account.

Business agent
to furnish
account to
principal.

32. (1) When a business agent has received, either personally or by any servant or agent, any money for or on behalf of any person for whom he has acted as a business agent, he shall forthwith on the demand of the person for whom he has acted as agent, or, if no such demand is made, then within twenty-eight days after the receipt of the money render to the person on whose behalf he has received the money an account in writing, setting forth particulars of all such money, and as to the application thereof.

(2) If any business agent fails to comply with any requirement of this section he shall be guilty of an offence.

Power to
inspect
documents
relating to
trust accounts,
etc.

Vic. 3897,
1930, s. 26.
N.S.W. 7,
1935, s. 19.

33. (1) Any person authorised by the Attorney-General in writing may, during business hours—

(a) inspect any books, accounts, documents or writings in the custody or control of any licensed business agent or of any servant or agent of a licensed business agent which relate to any moneys received by the business agent, servant or agent in the course of the business of the business agent for or on behalf of any other person, or to any trust account in any bank in the name of the business agent or which may, in the Attorney-General's opinion, contain information showing whether or not the business agent has any partners; and

(b) take notes, copies or extracts thereof or therefrom.

(2) Any person who—

(a) wilfully delays or obstructs any person so authorised in the exercise of his powers under this section; or

(b) being a business agent or the servant or agent of a business agent without reasonable excuse refuses to produce any such books, accounts, documents or writings,

shall be guilty of an offence.

(3) Any person so authorised may communicate to any client of the business agent a report of the result of such inspection if and so far as it directly concerns such client.

34. (1) A licensed business agent shall not knowingly employ in any way whatever in connection with his business any person—

Persons not to be employed by licensed business agents.

Vic. 3897, 1930, s. 28. N.S.W. 7, 1935, s. 25.

- (a) who is for the time being disqualified by an order of a court made under this Act from holding a business agent's licence or disqualified by an order of a court made under section 27 of the Land Agents Act, 1925-1936, from holding any licence under that Act; or
- (b) whose application for a business agent's licence or for a land agent's licence or registration as a land salesman under the Land Agents Act, 1925-1936, has been refused on the ground of dishonesty or other misconduct, unless such an application has been subsequently granted; or
- (c) who has broken any condition of a fidelity bond or any securities filed or deposited by him as a licensed business agent under this Act or as a licensed land agent under the Land Agents Act, 1925-1936, unless a local court on the application of such person permits such employment; or
- (d) who is a known or reputed thief or cheat.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a licensed business agent.

(3) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence.

Procedure and Miscellaneous.

35. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

Civil remedy not affected by proceedings for an offence.

Vic. 3897, 1930, s. 33. N.S.W. 7, 1925, s. 29.

36. A company shall be liable for any offence against this Act as if it were a private person and shall be subject to the same fines as if it were a private person; and, where a company is guilty of any such offence, any director, manager, secretary or officer of such company, who is knowingly a party to the commission of the offence shall be also guilty of an offence, and be liable to the fine or imprisonment, or both, provided by this Act, in the case of such an offence.

Liability of company.

Vic. 3897, 1930, s. 34. N.S.W. 7, 1935, s. 30.

Furnishing
incorrect
particulars in
application.
Vic. 3897,
1930, s. 43.
N.S.W. 7,
1935, s. 39.

37. Any person who, in any application made pursuant to this Act wilfully or negligently makes any statement which is not correct shall be guilty of an offence.

Offences
against Act
and penalties.

38. (1) Every person who commits any contravention of or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

(2) Proceedings for offences against this Act shall be disposed of summarily.

(3) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable to a fine of not more than one hundred pounds and, in the case of a continuing offence, to a further fine of not more than five pounds for each day on which the offence is continued.

Contracts
relating to
the sale of
businesses.
Cr. 1807, 1927,
s. 10.

39. (1) Any contract for the sale of any business shall be voidable at the option of the purchaser at any time within six months from the making thereof, unless—

(a) the contract is in writing ; and

(b) the contract contains the following particulars, namely—

(i.) the name, address and description of the vendor ; and

(ii.) the name, address and description of the purchaser ; and

(iii.) the name, address and description of some person to whom all moneys falling due under the contract may be paid ; and

(c) the contract, if the consideration therein mentioned is two hundred pounds or more, or if it is one of a number of contracts forming substantially one transaction in which the total consideration is two hundred pounds or more, is executed by the purchaser in the presence of two witnesses, neither of whom shall be the vendor, the vendor's agent, or any person employed by the vendor's agent.

(2) A purchaser shall not be deemed to have elected to affirm a contract which is voidable under this section by reason of any payments of money made by the purchaser pursuant to the contract within the period of six months aforesaid.

Appointments
of agents for
sale of
businesses to
be in writing.
Vic. 3897,
1930, ss. 19, 32.
N.S.W. 7,
1935,
ss. 28, 38.

40. (1) No person shall be entitled to bring any proceedings in any court to recover any commission, fee, gain or reward for any work or service done or performed by him as a business agent unless his appointment to act as a business agent is in writing signed either before or after such transaction by the

person to be charged with such commission, fee, gain or reward, or by some person on his behalf lawfully authorised to sign such appointment.

(2) Notwithstanding anything in any Act, no action shall be brought upon any contract for the sale of any business or any share of or interest in any business, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing was, by writing signed by the party to be so charged, authorised to sign.

41. The Governor may make any regulations necessary or convenient for carrying this Act into effect, and securing the due observance thereof, and without limiting the generality of the foregoing provision, for— Regulations.

- (a) prescribing the procedure on applications and other proceedings under this Act :
- (b) the licensing, regulation and control of any specified class or classes of servants or agents of business agents and for requiring such servants or agents to file or deposit as prescribed fidelity bonds or other securities as security for the performance of such duties and obligations as are prescribed :
- (c) prescribing any matters connected with or incidental to the matters mentioned in paragraph (b) of this section :
 - (c1) for requiring licensed business agents acting on behalf of other persons in respect of the sale, exchange, or other dealing with or disposal of any business, to account to those persons for the proceeds of such sale, exchange, dealing or disposal :
 - (c2) for regulating the commission and other amounts recoverable by licensed business agents on or in respect of the sale, exchange, or other dealing with or disposal of businesses ; for prescribing methods whereby such commission and other amounts payable in respect of any such transaction may be referred for taxation by any officer prescribed for the purpose and for giving effect to decisions of such officer :
- (d) prescribing penalties recoverable summarily and not exceeding twenty pounds for breach of any regulations.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. DUGAN, Governor.