

PHARMACY AMENDMENT BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to remove pharmacies from the licensing provisions of the Industrial Efficiency Act 1936. There are provisions in the Bill imposing certain restrictions on companies establishing pharmacies, and imposing other restrictions in respect of the carrying on of more pharmacies than one and the carrying on of pharmacies in conjunction with other businesses. Apart from these provisions, no restrictions will be placed on any person in respect of the establishment or carrying on of a pharmacy. A separate provision, having no relationship to the remainder of the Bill, provides for the exemption of certain drugs from restrictions on sale. This is contained in *clause 18*.

Clause 3 provides that, except with the consent of the Pharmacy Authority, a company shall not establish or carry on a pharmacy. Pharmacies already established are not affected, and the clause does not apply to companies where 75 per cent of the share capital is owned by chemists.

Clause 4 provides that, except with the consent of the Pharmacy Authority, a person shall not establish or carry on more pharmacies than one. Pharmacies already established are not affected.

Clause 5 permits a mortgagee in possession of a pharmacy to carry on business in the pharmacy for a period of three months without the consent of the Pharmacy Authority and for a further period with that consent.

Clause 6 provides for the appointment of a Pharmacy Authority to consider applications for consent to establish and carry on pharmacies.

Clause 7 prescribes the functions of the Authority. These are to consider applications for consent to establish and carry on pharmacies where any such consent is required. A direction is given to the Authority to ensure, within the limits of its authority, and as far as is consistent with the provision to the public of a full, efficient, and economic service in respect of the supply of drugs and pharmaceutical goods, that pharmacies are carried on by independent chemists owning and operating their own pharmacies.

Clause 8 makes provisions with respect to applications to the Authority.

Clause 9 sets out matters to be taken into consideration by the Authority when considering applications.

Clause 10 prescribes details in respect of evidence and proceedings before the Authority.

Clause 11 provides that the Authority shall either grant or refuse an application. Where the Authority grants an application, it may impose such conditions, consistent with its functions, as it thinks fit.

Clause 12 provides for an appeal to the Supreme Court against any decision of the Authority.

Clause 13 prohibits the proprietor of a pharmacy or a wholesale dealer in drugs from having an interest in any pharmacy (other than a pharmacy of which he is lawfully the proprietor) so as to affect the ownership, management, or control of the pharmacy. Interests in existence at the commencement of the Act will not be affected.

Clause 14 prohibits a person from indicating that a pharmacy is conducted in conjunction with or as part of any other business in the building in which the pharmacy is situated.

Clause 15 provides for penalties for offences against the proposed Act.

Clause 16 extends the powers to make regulations contained in the principal Act so as to authorize the making of regulations requiring the registration of pharmacies and to provide for the obtaining of information required by the Minister.

Clause 17 revokes the regulations and orders made under the Industrial Efficiency Act 1936 in respect of pharmacies.

Clause 18: It is an offence under section 32 of the principal Act for any one, except a registered chemist or an employee in a pharmacy or a specially authorized person, to sell drugs, except those listed in the First Schedule to the Act. *Subclauses (1) and (2)* of this clause amend the First Schedule by adding to the list of exemptions certain remedies in common use—namely, all forms of magnesia; compound tablets of aspirin, phenacetin, and caffeine; and compound tablets of aspirin, phenacetin, caffeine, and quinine. *Subclause (2)* also adds to the list certain travel sickness remedies, if sold in packages containing not more than two tablets and accompanied by directions for use, and if sold at aerodromes, railway stations, bus stations, or wharves, or in aircraft or ships. *Subclauses (3) and (4)* relate to the existing general exemption of proprietary medicines. At present the Minister of Industries and Commerce may exclude any proprietary medicine from the general exemption. The effect of these subclauses is that in future the Minister of Health will exercise that power.

Hon. Mr Marshall

PHARMACY AMENDMENT

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Pharmacy Act 1939.

Title.

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

1. This Act may be cited as the Pharmacy Amendment Act 1954, and shall be read together with and deemed part of the Pharmacy Act 1939 (hereinafter referred to as the principal Act). Short Title.
1939, No. 33
- 10 2. In this Act, unless the context otherwise requires,— Interpretation.
- “Company” includes any body corporate registered under the provisions of any Act:
- “Pharmacy Authority” means the Pharmacy Authority constituted under this Act.

Restriction on companies establishing pharmacies.

3. (1) Except as otherwise provided by this Act, no company shall, except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority, establish or carry on business in a pharmacy: 5

Provided that nothing in this section shall apply to a company of which at least seventy-five per cent of the share capital is owned by a chemist or by chemists:

Provided also that any company which at the commencement of this Act is lawfully carrying on business in a pharmacy may, subject to the provisions of the principal Act, continue to carry on business in that pharmacy. 10

(2) For the purposes of this section, the term "chemist" shall be deemed to include the personal representative of a deceased chemist. 15

Restriction on persons carrying on business in more pharmacies than one.

4. Except as otherwise provided by this Act, no person, either alone or in partnership, shall, except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority, establish or carry on business in more pharmacies than one: 20

Provided that any person who, either alone or in partnership, is, at the commencement of this Act, lawfully carrying on business in more pharmacies than one may, subject to the provisions of the principal Act, continue to carry on business in those pharmacies: 25

Provided also that nothing in this section shall apply to the carrying on of business in a pharmacy by any person in the capacity of personal representative of a deceased chemist. 30

Mortgagee in possession may carry on pharmacy for limited period.

5. (1) Notwithstanding the provisions of sections three and four of this Act, a mortgagee in possession of a pharmacy may, subject to the provisions of the principal Act, carry on business in that pharmacy: 35

Provided that no mortgagee in possession shall, except with the consent of the Pharmacy Authority and in conformity with conditions prescribed by the Authority, carry on business as aforesaid for a longer period than three months. 35

(2) For the purposes of this section the expression "mortgagee in possession" shall have the same meaning as in the Property Law Act 1952. 40

6. (1) For the purposes of this Act the Minister may from time to time appoint a suitable person to be the Pharmacy Authority.

Pharmacy Authority.

5 (2) The person appointed to be the Pharmacy Authority shall be a barrister or solicitor of not less than seven years' standing of the Supreme Court, whether or not he holds or has held any judicial office.

10 (3) Any person appointed under this section to be the Pharmacy Authority may hold that office concurrently with any other office held by him.

7. (1) The functions of the Pharmacy Authority shall be to consider applications under this Act in respect of any matter where the consent of the Authority is required under this Act.

Functions of Authority.

15 (2) In the exercise of its functions the Pharmacy Authority shall have regard to the public interest and the interests of the pharmaceutical profession, and for those purposes shall ensure, as far as its authority under this Act extends, and as far as is consistent with the provision
20 to the public of a full, efficient, and economic service in respect of the supply of drugs and pharmaceutical goods, that pharmacies are carried on by independent chemists owning and conducting their own businesses.

25 8. (1) Every application for the consent of the Pharmacy Authority under this Act shall be forwarded to the Minister.

Applications for consent of Pharmacy Authority.

30 (2) On receiving an application under this section, the Minister shall cause the application to be transmitted to the Pharmacy Authority, which shall give notice to the applicant, and to all such other persons as in its opinion will be materially affected by its decision, of the date when and the place where the application will be considered.

35 9. In considering any application by any person for its consent to the establishment or the carrying on of a pharmacy, the Pharmacy Authority shall have regard to—

Matters to be considered in respect of applications.

40 (a) The extent to which the service proposed to be rendered by the applicant is necessary or desirable in the public interest:

- (b) The pharmaceutical services already provided in the locality:
- (c) Any evidence or representations received by it in respect of the application:
- (d) Such other matters as, having regard to its functions under this Act, the Authority thinks proper. 5

Evidence and proceedings before Authority.

10. (1) The Pharmacy Authority may receive as evidence any statement, document, information, or matter which may in its opinion assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a Court of law. 10

See Reprint of Statutes, Vol. III, p. 106

(2) Subject to the provisions of subsection *one* of this section, the Evidence Act 1908 shall apply to the Authority, and to all proceedings before the Authority, in the same manner as if the Authority were a Court within the meaning of that Act. 15

See Reprint of Statutes, Vol. III, p. 106

(3) The Pharmacy Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly. 20

(4) Every consideration of an application to the Pharmacy Authority under this Act shall take place at such place and at such times as it deems convenient having regard to the nature of the matters to be decided, and any such consideration may be adjourned from time to time and from place to place. 25

(5) Except as otherwise provided by this Act, the Pharmacy Authority shall determine its own procedure. 30

Decision of Pharmacy Authority.

11. (1) The Pharmacy Authority shall either grant or refuse any application for its consent made under this Act. 30

(2) In granting any such application, the Pharmacy Authority may prescribe such conditions as it thinks fit for the purpose of carrying out its functions under this Act. 35

(3) Where the Pharmacy Authority grants any such application, it shall give notice thereof to each proprietor of a pharmacy in the locality to which the application relates. 40

12. (1) Proceedings before the Pharmacy Authority shall not be held bad for want of form.

Appeals from
decisions of
Pharmacy
Authority.

5 (2) Except on the ground of lack of jurisdiction and, except as otherwise provided by this section, no proceeding or decision of the Pharmacy Authority shall be liable to be challenged, reviewed, quashed, or called in question in any Court:

Provided that any decision of the Authority under this Act may be appealed against under this section.

10 (3) The appeal shall be to the Supreme Court and the appellant shall, within one month after the date of the decision being appealed against give notice of appeal to the Pharmacy Authority, and shall also give security, to be approved by the Registrar of the Supreme Court,
15 for the costs of the appeal.

(4) Every appeal to the Supreme Court under this section shall be in the form of a case agreed upon by the Pharmacy Authority and the appellant, or, if they cannot agree, the Court shall hear the appeal without
20 a case stated, and in any case may receive evidence either orally or by affidavit or by both those means.

(5) The following persons and no others may appeal as aforesaid, namely:

25 (a) The person in respect of whose application the decision of the Pharmacy Authority was given:

(b) Any other person affected by the decision who is the proprietor of a pharmacy in the locality to which the application relates.

30 (6) After hearing such evidence as it thinks fit the Supreme Court shall give its decision in the form of an order, and cause the order to be certified in writing by the Registrar of the Court to the Pharmacy Authority, and the Pharmacy Authority shall be bound to follow that decision, and shall reverse, modify, or confirm its
35 own decision accordingly.

(7) Any decision of the Supreme Court under this section shall, for the purposes of section sixty-six of the Judicature Act 1908, be deemed to be an order of that Court.

See Reprint
of Statutes,
Vol. II, p. 80

40 (8) The Supreme Court shall make such order as to payment of costs on any appeal under this section as it thinks fit.

45 (9) The procedure on any appeal to the Supreme Court under this section shall be in accordance with the practice and procedure of the Court.

Certain persons
not to have
interest in
pharmacy.

13. The proprietor of a pharmacy or a wholesale dealer in drugs shall not have or acquire, whether in his own name or in the name of any nominee or by means of any device or arrangement whatsoever, any direct or indirect estate or interest in a business carried on in a pharmacy (other than a pharmacy of which he is lawfully the proprietor) whether by way of shares in a company, or by way of charge, loan, guarantee, indemnity, or otherwise, so as to affect the ownership, management, or control of the business carried on in that pharmacy: 5 10

Provided that nothing in this section shall apply to any estate or interest in existence at the commencement of this Act.

Proprietor of
pharmacy not
to carry on
business in
pharmacy in
conjunction
with other
business in
same building.

14. (1) No person shall use or cause or permit to be used any sign, advertisement, or other device which is intended to cause or may reasonably cause any person to believe that the business carried on in any pharmacy is carried on in conjunction with or as part of any other business carried on in the building in which the pharmacy is situated. 15 20

(2) The proprietor of a pharmacy shall not provide or permit any public means of access between the pharmacy and any other premises.

Offences.

15. (1) Any person who fails to comply with or does any act in contravention of any of the provisions of this Act, or any condition or obligation to which any power or authority granted under this Act is subject, commits an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds and, if the offence is a continuing one, to a further fine not exceeding five pounds for every day during which the offence continues. 25 30

(2) Where a company commits an offence against this Act, 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. 35

Extending
power to make
regulations.

16. Section forty-four of the principal Act is hereby amended by adding to subsection two the following paragraphs: 40

“(1) Providing for the registration of pharmacies:

“(m) Requiring the provision of information or particulars which may be required by the Minister.”

17. (1) The regulations referred to in Part I of the Schedule to this Act are hereby revoked. Revocations.

(2) The notices given under section fourteen of the Industrial Efficiency Act 1936, referred to in Part II of the Schedule to this Act, are hereby revoked to the extent specified in that Part. 1936, No. 40

10 (3) All money belonging to the Pharmacy Industry Account established pursuant to the Industrial Efficiency Act 1936 under the Industrial Efficiency (Pharmacy) Regulations 1938 shall be disbursed for the benefit of the pharmaceutical profession in such manner as the Minister from time to time directs. Serial Number
1938/183

18. (1) The First Schedule to the principal Act is hereby amended by omitting from Part I the words “Magnesia (all forms except milk of magnesia)”, and substituting the words “Magnesia (all forms)”. Exemption of
certain drugs
from
restrictions
on sale.

20 (2) The said First Schedule is hereby further amended by adding to Part II the following words:

“Compound tablets of acetylsalicylic acid, phenacetin, and caffeine.

25 “Compound tablets of acetylsalicylic acid, phenacetin, caffeine, and quinine.

30 “Tablets of dimenhydrinate, tablets of promethazine chlorotheophyllinate, and such other remedies for travel sickness as may from time to time be specified by the Minister by notice in the *Gazette*, if sold—

“(a) In a sealed container containing not more than two tablets and labelled with or accompanied by printed directions for use for the prevention or alleviation of travel sickness; and

35 “(b) At an aerodrome, railway station, bus station, or wharf, or in an aircraft or a ship.”

(3) Part II of the said First Schedule is hereby further amended by omitting from the paragraph relating to proprietary medicines the words “the Minister of Industries and Commerce”, and substituting the words “the Minister”.

40 (4) Section thirty-two of the principal Act is hereby amended by omitting from subsection two the words “(other than proprietary medicines)”.

SCHEDULE

Section 17 (1)

PART I

REGULATIONS REVOKED

Title	Serial Number
The Industrial Efficiency (Pharmacy) Regulations 1938	1938/183
The Industrial Efficiency (Pharmacy) Regulations 1938, Amendment No. 2	1941/226
The Industrial Efficiency (Pharmacy) Regulations 1938, Amendment No. 3	1947/170
The Industrial Efficiency (Pharmacy) Regulations 1938, Amendment No. 4	1949/107
The Industrial Efficiency (Pharmacy) Regulations 1938, Amendment No. 5	1951/274

Section 17 (2)

PART II

NOTICES REVOKED

Title or Subject Matter	Serial Number
The Industry Licensing (Various Industries) Notice: So much of this notice as relates to the business of a pharmaceutical chemist carried on in any shop or place of business	1937/222
The Industry Licensing (Pharmacy) Amendment Notice 1941	1941/221