

Tobacco-growing Industry Act 1935

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An Act to make Provision for the Regulation of the Tobacco-growing Industry, and for Matters incidental thereto.

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 Tobacco-growing Industry Act, 1935.

2 Interpretation.

In this Act, unless the context otherwise requires,—

“Board” means the Tobacco Board established under this Act:

“Grower” means a person who by himself or his agent grows tobacco:

“Manufacture” includes the processes of cutting, pressing, grinding, crushing, or rubbing any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco for smoking or any other purpose; and “to manufacture” has a corresponding meaning:

“Manufacturer” includes any person who by himself or his agent carries on any business or process of manufacturing, or in any way preparing for sale, tobacco in any shape for smoking or for any other purpose:

“Minister” means the Minister of Industries and Commerce:

“Purchase” includes every mode of acquisition, whether for valuable consideration or not, including acquisition by an agent for sale on consignment, but not including acquisition by way of security only; and “to purchase” has a corresponding meaning:

“Raw tobacco” means unmanufactured tobacco, or the leaves and stems of the tobacco-plant before they have passed through any process of manufacture:

“Sale” includes every mode of disposition, whether for valuable consideration or not, including disposition to an agent for sale on consignment, but not including disposition by way of security only; and “to sell” has a corresponding meaning.

3 Tobacco Board established.

- (1) There is hereby established a Board to be known as the Tobacco Board.
- (2) The Board shall consist of—

- (a) One person (herein referred to as the Government representative) to be appointed by the Governor-General, on the recommendation of the Minister, as the representative of the New Zealand Government:
- (b) Four persons (herein referred to as growers' representatives) to be appointed by the Governor-General, on the recommendation of the Minister, as representatives of growers:
- (c) Four persons (herein referred to as manufacturers' representatives) to be appointed by the Governor-General, on the recommendation of the Minister, as representatives of manufacturers.

4 Term of office of members of Board.

- (1) The person appointed as the Government representative under the last preceding section shall hold office during the pleasure of the Governor-General.
- (2) With respect to the first members of the Board appointed as growers' representatives or as manufacturers' representatives, the following provisions shall apply:—
 - (a) Two of the growers' representatives and two of the manufacturers' representatives shall retire on the thirty-first day of July in each of the years nineteen hundred and thirty-seven and nineteen hundred and thirty-eight:
 - (b) The Board shall determine by lot the members so to retire in the year nineteen hundred and thirty-seven.
- (3) Except as provided in the last preceding subsection, every member of the Board who is appointed as a growers' representative or as a manufacturers' representative shall hold office for a term of two years.

5 Extraordinary vacancies.

- (1) Notwithstanding anything to the contrary in the foregoing provisions of this Act, any member of the Board appointed as a growers' representative or as a manufacturers' representative may be at any time removed from office by the Governor-General for inefficiency, disability, insolvency, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Governor-General.
- (2) On the death, resignation, or removal from office of any member of the Board, the vacancy created thereby shall be filled by appointment in the manner in which the vacating member was appointed, and the member appointed in his stead shall hold office for the residue of the term of office of the vacating member.
- (3) Any member vacating office by effluxion of time or otherwise shall be eligible for reappointment.
- (4) The powers of the Board shall not be affected by any vacancy in the membership thereof.

6 Incorporation of Board.

The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.

7 Contracts of Board.

- (1) Any contract which, if made between private persons, must be by deed shall, if made by the Board, be in writing under the seal of the Board.
- (2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Board, be either under the seal of the Board or signed by two members of the Board on behalf of and by direction of the Board.
- (3) Any contract which, if made between private persons, may be made verbally without writing may be similarly made by or on behalf of the Board by any two members acting by direction of the Board, but no verbal contract shall be made involving the payment by the Board of a sum exceeding twenty pounds.

8 Appointment of deputy members.

- (1) In any case in which the Governor-General is satisfied that any member of the Board is, by reason of illness, absence, or other sufficient cause, incapacitated from performing the duties of his office, the Governor-General may appoint a deputy to act for that member during his incapacity, and any such deputy shall, while he acts as such, be deemed to be a member of the Board.
- (2) No such appointment of a deputy and no acts done by a deputy as such shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

9 Chairman of Board.

The Government representative shall be the Chairman of the Board.

10 Meetings of Board.

- (1) The first meeting of the Board shall be held on a day to be appointed in that behalf by the Minister.
- (2) Except as provided in the last preceding subsection, meetings of the Board shall be held at such times and places as the Board shall from time to time appoint.
- (3) The Chairman of the Board, or any three members thereof, may at any time call a special meeting of the Board.
- (4) At all meetings of the Board five members, of whom one shall be the Government representative or his deputy, shall form a quorum.
- (5) The Chairman shall preside at all meetings of the Board at which he is present.

- (6) In the event of the absence of the Chairman from any meeting of the Board his deputy shall be the Chairman of that meeting.
- (7) At any meeting of the Board the Chairman shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote. The decision of the Board on any matter shall be determined by a majority of the valid votes recorded thereon.

11 Officers of Board.

- (1) The Board may from time to time appoint such officers and servants as it deems necessary for the efficient exercise and performance of its functions and duties under this Act.
- (2) Any person in the service of the Crown may be appointed as an officer of the Board:

Provided that no such person shall accept such appointment and be entitled to retain his position as a servant of the Crown except—

- (a) In the case of a person subject to the Public Service Act, 1912, with the consent of the Public Service Commissioner; and
- (b) In any other case, with the consent of the Minister to whose control he is subject.

12 Tobacco not to be grown without license.

- (1) Subject to subsection two of this section, no tobacco shall be grown in New Zealand except in accordance with a license in force under this Act.
- (2) This section shall not apply with respect to the growing of any tobacco by any person on his own land if and so long as no tobacco grown by him is manufactured or intended to be manufactured (except by him for the use of himself and the members of his family residing with him, and not for sale to any other person), or is sold or intended to be sold to any other person.
- (3) If any tobacco is grown in contravention of this section, the grower of the tobacco, and every other person who aids, assists, or is concerned in the growing thereof, shall be liable on summary conviction to a fine of one hundred pounds and to a further fine of the value of the tobacco, and in the case of a continuing offence, to a further fine of ten pounds for every day during which the offence continues.

13 Grant of licenses.

- (1) On application made in the prescribed manner by any person, the Board may, subject to the provisions of this Act and of any regulations made thereunder, grant to the applicant a license authorizing him to grow tobacco.
- (2) There may be attached to any license granted under this section such conditions, whether relating to the quantity of tobacco that may be grown, or to the land on which the tobacco is to be grown, or to the area of land that is

to be used for growing the tobacco, or otherwise, as may be prescribed by regulations under this Act.

- (3) There shall be paid in respect of applications for licenses under this section and in respect of the granting thereof such fees (if any) as may be prescribed.
- (4) A license granted under this section shall, unless previously revoked under this Act, continue in force until the thirty-first day of July next following the day specified in the license as the day on which it takes effect.
- (5) Subject to the provisions of section sixteen of this Act, the Board may, on such grounds as in its discretion it deems sufficient, refuse to grant any license applied for under this section.

14 Raw tobacco not to be sold or purchased, or manufactured without purchase, except pursuant to a warrant.

- (1) Except in accordance with a warrant in force under this Act, no raw tobacco grown or to be grown in New Zealand shall (whether before or after it is grown) be sold by or on behalf of any person.
- (2) Except in accordance with a warrant in force under this Act, no raw tobacco grown or to be grown in New Zealand shall (whether before or after it is grown) be purchased by or on behalf of any person, and no raw tobacco grown in New Zealand shall be manufactured by or on behalf of any person who has not purchased it.
- (3) Nothing in the last preceding subsection shall apply with respect to the manufacture by any person of any tobacco grown by him on his own land for the use of himself and the members of his family residing with him, and not for sale to any other person.
- (4) If any tobacco is sold, purchased, or manufactured by or on behalf of any person in contravention of this section, that person, and every other person who aids, assists, or is concerned in the sale, purchase, or manufacture, as the case may be, shall be liable on summary conviction to a fine of one hundred pounds and to a further fine of the value of the tobacco.

15 Grant of warrants.

- (1) On application made in the prescribed manner by any person, the Board may, subject to the provisions of this Act and of any regulations made thereunder, grant to the applicant a warrant authorizing him to sell raw tobacco grown or to be grown in New Zealand, or to purchase any such tobacco, or to manufacture raw tobacco grown in New Zealand and not purchased by him.
- (2) There may be attached to any warrant granted under this section such conditions, whether relating to the quantity of tobacco that may be sold, purchased, or manufactured, as the case may be, or otherwise, as may be prescribed by regulations under this Act.

- (3) There shall be paid in respect of applications for warrants under this section, and in respect of the granting thereof, such fees (if any) as may be prescribed.
- (4) A warrant granted under this section shall, unless previously revoked under this Act, continue in force for such period as may be prescribed by regulations under this Act.
- (5) Subject to the next succeeding section, the Board may, on such grounds as in its discretion it deems sufficient, refuse to grant any warrant applied for under this section:

Provided that if any person satisfies the Board that he is a *bona fide* manufacturer, and that he has entered into a *bona fide* contract or arrangement with a grower for the growing of any tobacco by the grower for sale to the manufacturer, he shall be entitled to the grant of a warrant authorizing him to purchase that tobacco:

Provided also that any person shall be entitled to the grant of a warrant authorizing him to purchase any tobacco if the Board is satisfied that the tobacco is to be exported.

16 Provisions as to contracts to grow tobacco.

Where a grower satisfies the Board that he has entered into a *bona fide* contract or arrangement with any person for the growing by the grower before the thirty-first day of July in any year of any tobacco for sale to that person, the grower shall be entitled to the grant of a license authorizing him to grow that tobacco before that date and to the grant of a warrant authorizing him to sell that tobacco.

17 Information to be given to Board by manufacturers, growers, and other persons.

- (1) The Board may from time to time require any manufacturer to supply, in accordance with the following provisions of this section, information in respect of all or any of the following matters, namely:—
 - (a) The quantity of raw tobacco grown in New Zealand that has been used by the manufacturer for the purposes of his business in any period:
 - (b) The quantity of raw tobacco grown in New Zealand that is or has been owned by or held by or on behalf of the manufacturer for the purposes of his business at any time:
 - (c) The quantity of raw tobacco grown or to be grown in New Zealand that the manufacturer estimates he will use for the purposes of his business in any period, and the sources from which he proposes to obtain that tobacco:
 - (d) The names and addresses of all persons (if any) who have contracted to supply the manufacturer with any raw tobacco grown or to be grown in

New Zealand, the quantity of tobacco to be supplied by each person, and particulars of each contract.

- (2) The Board may from time to time require any grower to supply, in accordance with the following provisions of this section, information in respect of all or any of the following matters, namely:—
 - (a) The quantity of tobacco that has been grown or is to be grown by the grower in any period:
 - (b) The quantity of raw tobacco grown or to be grown by the grower that has been sold in any period:
 - (c) The quantity of raw tobacco grown by the grower that is held by him and unsold at any time:
 - (d) The price at which any raw tobacco grown or to be grown by the grower has been sold:
 - (e) The area of land on which tobacco has been grown or is to be grown by the grower in any period or is being grown by him at any time:
 - (f) The names and addresses of all persons (if any) to whom the grower has contracted to supply raw tobacco, the quantity of tobacco to be supplied to each person, and particulars of each contract.
- (3) The Board may from time to time, with the approval of the Minister, require any person (whether a grower or manufacturer or not) to supply, in accordance with the following provisions of this section, such further information as may be deemed necessary for the effective administration of this Act, but not including any information relating to formulae, methods, or processes used in manufacturing tobacco, or to the cost of manufacturing tobacco, or to any other matter incidental to the process of manufacturing tobacco.
- (4) All information required under this section shall be supplied to the Chairman of the Board. With respect to all information supplied under subsections one and two of this section, and to such of the information supplied under subsection three as the Minister directs, the Chairman shall not disclose details of the information supplied by any individual person, but he may lay before the Board returns showing the aggregate results of the information supplied, classified in such manner as the Chairman thinks fit.

18 Board may promote sales of raw tobacco.

The Board may endeavour to promote the sale or disposal in New Zealand or elsewhere of any raw tobacco grown or to be grown in New Zealand, and may from time to time recommend to the Government such action as the Board deems advisable in relation to the importation of raw or manufactured tobacco.

19 Levy on raw tobacco sold by growers.

- (1) There shall be paid to the Board by way of levy on raw tobacco, grown or to be grown in New Zealand, that is sold by or on behalf of the grower or

is manufactured by or on behalf of any manufacturer who has not purchased it such charges (if any) as may from time to time be fixed by the Board, not exceeding in any case a levy of one half-penny a pound.

- (2) Differential charges may be fixed pursuant to this section in respect of different classes of tobacco, and charges may be fixed in respect of specified classes of tobacco without any charges being fixed in respect of other tobacco. For the purposes of this section the Board may divide tobacco into such classes as it thinks fit.

20 Application of moneys received by Board.

All moneys received by the Board, whether by way of levy or otherwise, shall be paid by the Board into a separate account at a bank to be approved by the Minister of Finance, and shall be applied by the Board as follows:—

- (a) In payment of the expenses, commission, and other charges incurred by the Board or for which the Board may become liable in the exercise of its functions:
- (b) In payment of the salaries and wages of officers and servants of the Board:
- (c) In payment of travelling-allowances, fees, or other remuneration to members of the Board (not being persons permanently employed in the service of the Government):
- (d) In payment into a reserve fund from time to time, as the Board in its discretion determines, of such amounts as the Board may consider necessary to enable it to carry on its operations under this Act:
- (e) For such other purposes as may be prescribed.

21 Board not to borrow without consent of Minister of Finance.

- (1) The Board shall not borrow any money, or mortgage or charge any of its property or rights, except with the precedent consent in writing of the Minister of Finance.
- (2) For the purpose of enabling the Board to commence to exercise its functions without delay, the Minister of Finance may from time to time, upon such terms and conditions as he thinks fit, advance to the Board any moneys required for the payment of any preliminary or general expenses (including salaries) payable by the Board before it has sufficient revenue for the payment thereof.

22 Audit of Board's accounts.

The accounts of the Board shall be subject to audit in the same manner in all respects as if the moneys of the Board were public moneys within the meaning of the Public Revenues Act, 1926.

23 Members of Board not personally liable for its acts.

No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board.

24 Offences and penalties.

- (1) Every person commits an offence against this Act who—
 - (a) Obstructs or impedes, or attempts to obstruct or impede, the Board, or any officer, servant, or agent of the Board, in exercising any of the functions, powers, authorities, or duties vested in or conferred on the Board by this Act:
 - (b) Fails to comply with any condition attached to a license or warrant under this Act, or with any requirement of the Board under this Act:
 - (c) Fails to comply with any provision of this Act or of any regulations made under this Act.
- (2) Every person who commits an offence against this Act for which no penalty is provided except in this section shall be liable on summary conviction to a fine of one hundred pounds, and, in the case of a continuing offence, to a further fine of ten pounds for every day during which the offence continues.
- (3) The Court before which any person is convicted of an offence against this Act may, if the Court thinks fit, in addition to imposing any other penalty, revoke any license or warrant granted under this Act to the offender and for the time being in force, and that license or warrant shall thereupon cease to be in force.

25 Provision for transfer of powers of Board to Executive Commission of Agriculture.

Sections seven and eight of the Agriculture (Emergency Powers) Act, 1934, are hereby extended to apply with respect to the Board as if the Board and this Act had been referred to in subsection one of the said section seven.

26 Regulations.

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
 - (a) Prescribing forms of applications and of licenses and warrants, and such other forms as may be required for the purposes of this Act:
 - (b) Prescribing fees to be paid in respect of applications under this Act and in respect of the granting of licenses and warrants thereunder:
 - (c) Prescribing conditions upon which licenses and warrants may be issued, and conditions to be attached to licenses and warrants under this Act:
 - (d) Prescribing the methods to be adopted in the collection of the levies that may be imposed on tobacco under this Act:

- (e) Prescribing the maximum rates of travelling-allowances, fees, or other remuneration that may be paid under this Act to members or officers of the Board:
 - (f) Prescribing purposes for which the moneys of the Board may be expended:
 - (g) For any other purposes for which regulations are contemplated by or may be required to give effect to this Act.
- (2) All regulations made under the authority of this section shall be published in the *Gazette*, and shall be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session, and, if not, then within twenty-eight days after the commencement of the next ensuing session.

27 Tobacco Act not affected.

Nothing in this Act shall be construed to restrict the operation of the Tobacco Act, 1908.