

PROVINCE OF WESTERN CAPE

WESTERN CAPE LIQUOR BILL

(As introduced)

(MINISTER OF ENVIRONMENT, PLANNING AND ECONOMIC DEVELOPMENT)

[B 8—2005]

PROVINSIE WES-KAAP

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(Soos ingedien)

(MINISTER VAN OMGEWING, BEPLANNING EN EKONOMIESE ONTWIKKELING)

[B 8—2005]

BILL

To provide for the licensing for retail sale of liquor, micro-manufacture of liquor and manufacture of traditional African beer within the Western Cape Province; to establish the Western Cape Liquor Board and its committees; to establish liquor forums; to provide for the appointment of designated liquor officers and inspectors; to provide for the appointment of municipalities as agents of the Liquor Board and as competent licensing authorities.

WHEREAS the Western Cape Provincial Government (“the Government”) recognises that the liquor trade in the historically white towns, suburbs and central business districts and on farms has been regulated by means of a number of legislative systems adapted and reviewed over the years to meet the political, social and economic requirements of the government of the day;

AND WHEREAS a framework will be devised for the continued regulation of the established liquor trade, now in accordance with the Constitution of the Republic of South Africa, 1996, and national and provincial policies, and in doing so will seek to maintain a balance between the interests of the liquor industry and communities;

AND WHEREAS Government recognises the diverse nature of the liquor industry in the Province of the Western Cape (“the Province”) and values the importance of its diverse aspects as a contributor to the economy of the Province and South Africa;

AND WHEREAS Government seeks to reduce the social cost of liquor abuse to society in general;

AND WHEREAS Government seeks to involve the municipalities in the Province in the regulating of the liquor industry;

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

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CHAPTER 1
INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Appeal Tribunal**” means an Appeal Tribunal established in terms of section 14(1); 5
- “**Board**” means the Western Cape Liquor Board established in terms of section 2;
- “**Chairperson**” means the Chairperson of the Board appointed in terms of section 3(1)(a) or a person who temporarily acts as Chairperson in his or her absence; 10
- “**Chief Executive Officer**” means a person appointed in terms of section 16(1);
- “**community policing forum**” means a community policing forum established in terms of section 19 of the South African Police Services Act, 1995 (Act 68 of 1995);
- “**competent authority**” means the Board, or a municipality, authorised as a competent licensing authority in terms of section 18; 15
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**date of issue**” means the date upon which a licence or permit is first issued;
- “**Deputy Chairperson**” means a person appointed in terms of section 3(1)(b);
- “**designated liquor officer**” means a person appointed as such in terms of section 60(1); 20
- “**drugs**” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance as defined in the Drug and Drug Trafficking Act, 1992 (Act 140 of 1992);
- “**family member**” means a person’s spouse, child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption; 25
- “**financial interest**” means the ownership of the shares of a company, the member’s interest of a close corporation, an interest in a partnership and in respect of a business or undertaking any interest which enables the holder thereof to share in the fortunes, including the turn-over of such business or undertaking; 30
- “**inspector**” means a person appointed as such in terms of section 60(4);
- “**issue**”, with regard to a licence, includes the delivery or dispatch of the licence to the person to whom it has been granted or to his or her agent;
- “**licence**” means a licence referred to in section 21;
- “**licensee**” means the person to whom a licence has been issued in terms of section 35 or transferred in terms of section 54; 35
- “**licensed business**” means the business that may be conducted upon the licensed premises as authorised by the Board;
- “**licensed premises**” means the premises upon which liquor may be micro-manufactured, sold, consumed or stored in terms of this Act; 40
- “**liquor**” means any liquid or substance containing more than 1% of alcohol by volume or mass, including traditional African beer and table wine, but excluding methylated spirits and medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 of 1965) and products which are not intended for human consumption; 45
- “**Liquor Act**” means the national Liquor Act, 2003 (Act 59 of 2003);
- “**liquor forum**” means a liquor forum established in terms of section 18(2)(d);
- “**manager**” means a person appointed in terms of section 40(1);
- “**manufacture**” means to produce or bottle liquor with the intention of selling it;
- “**manufacturer**” means a person registered as such in terms of the Liquor Act; 50
- “**member**” means a member of the Board;
- “**micro-manufacture**” means to manufacture liquor at or below the prescribed threshold volume in terms of section 4 of the Liquor Act and micro-manufacturer has a corresponding meaning;
- “**Minister**” means the provincial Minister responsible for economic affairs in the Province; 55

“**motor vehicle**” means a vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer or an agricultural or other implement designed or adapted to be drawn by such vehicle;
 “**municipality**” means a municipality as established by the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and appointed in terms of section 18 of this Act; 5
 “**permit**” means the document issued by a municipality in respect of a special event in terms of section 49(1) or in respect of the sale of traditional African beer in terms of section 50 of this Act;
 “**premises**” means a place, land, building, part of a building, vessel, aircraft or vehicle; 10
 “**prescribe**” means to prescribe by regulation in terms of this Act;
 “**Province**” means the Province of the Western Cape;
 “**provincial government**” means the government of the Western Cape;
 “**registered person**” means a person registered as a manufacturer or distributor in terms of the Liquor Act; 15
 “**retail food store**” means a business retailing mainly in groceries and foodstuffs;
 “**sell**” includes supply, exchange, offer for sale, display for the purpose of sale or authorise, direct or allow a sale, supply, exchange, offer or display;
 “**special event**” means a fundraising event in aid of an educational or welfare organisation, any exhibition, sports meeting, public function, cultural gathering, or artistic performance; 20
 “**supply**” means, with regard to liquor, to place a person in possession or control thereof;
 “**table wine**” means wine as defined in section 1 of the Liquor Products Act, 1989 (Act 60 of 1989); 25
 “**traditional African beer**” means a fermented liquid as defined in item 8 of Schedule 1 to the Liquor Act; and
 “**this Act**” means the Western Cape Liquor Act, 2005 and includes regulations promulgated in terms thereof. 30

CHAPTER 2 WESTERN CAPE LIQUOR BOARD AND APPEAL TRIBUNAL

Establishment of Western Cape Liquor Board

2. (1) The Liquor Board instituted for the Province in terms of section 5 of the Liquor Act, 1989 (Act 27 of 1989), as amended, continues to exist and function under the name Western Cape Liquor Board, in accordance with the provisions of this Act, as if it was established in terms of this Act. 35

(2) The Board is an independent juristic person, subject only to the Constitution and the provisions of law.

(3) The Board must exercise its functions according to the provisions of this Act, impartially and without fear, favour or prejudice. 40

Composition of Liquor Board

3. The Board must be appointed by the Minister and consists of—
- (a) one member with legal qualifications equivalent to those required for admission as an attorney or advocate of the High Court of South Africa and with experience in the administration of justice, and who is appointed by the Minister as Chairperson; 45
 - (b) not more than three (3) members with the qualifications stated in (a) appointed by the Minister as Deputy Chairpersons;
 - (c) a Chief Executive Officer appointed in terms of section 16(1); 50
 - (d) one member, having qualifications equal to those required for registration as a town and regional planner, appointed by the Minister after consultation with the Minister responsible for development planning in the Province;
 - (e) one member who is a police officer of the rank of Superintendent or above, appointed by the Minister after consultation with the provincial Commissioner of the South African Police Services and the Minister responsible for community safety in the Province; 55
 - (f) two members who are citizens of the Province; and

- (g) not more than six (6) additional members with specialised knowledge or qualifications appointed by the Minister, after consultation with the Chairperson, to serve as committee members.

Criteria for appointment

4. No person may be appointed to serve as a member of the Board who— 5
- (a) in the preceding ten (10) years has been convicted of an offence and sentenced to imprisonment without the option of a fine, unless the Minister is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office;
 - (b) in the preceding ten (10) years has been convicted of any offence in terms of the Liquor Act, 1989 (Act 27 of 1989), unless the Minister is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office; 10
 - (c) is an unrehabilitated insolvent;
 - (d) is less than twenty-one (21) years of age; 15
 - (e) has a direct interest in the liquor trade; or
 - (f) is the family member of a person with a direct interest in the liquor trade, unless the Minister is of the opinion that the interest of the family member in the liquor trade does not imply that the person is unsuitable to hold office.

Term of office 20

5. (1) Except for the Chief Executive Officer, members are appointed for a term of not more than five (5) years and are eligible for reappointment, for not more than one (1) more term, at the expiry of their term of office.

(2) A vacancy on the Board may be filled by the appointment of another member by the Minister. 25

Termination of membership

6. The Minister may terminate the membership of a member if that member—
- (a) has been absent from at least three (3) consecutive meetings of the Board without good cause shown;
 - (b) becomes disqualified in terms of section 24; 30
 - (c) submits his or her resignation to the Minister; or
 - (d) is no longer resident in the Province.

Powers and functions of Liquor Board

7. (1) The Board may consider any of the following matters: 35
- (a) applications made in terms of this Act;
 - (b) representations in favour of or against the granting of applications;
 - (c) reports submitted to it by liquor officers, inspectors, liquor forums or municipal officials;
 - (d) complaints lodged with the Board regarding the conduct of a licensed business; 40
 - (e) representations by a licensee or other interested person regarding the rescission of the suspension of the licence or the removal or amendment of any conditions imposed upon a licence;
 - (f) appeals against decisions by municipalities to grant or refuse permits;
 - (g) any other matter referred to the Board by the Chief Executive Officer or which the Board may or must consider in terms of this Act; or 45
 - (h) any other matter that the Minister delegates to the Board.
- (2) Except in respect of (a), (b), (e), (f) and (h), the Chairperson has a discretion to decline to convene a meeting of the Board if in his or her opinion such a meeting is not warranted by the information placed before him or her. 50
- (3) The Board may, after consideration by it of any matter contemplated in—

- (a) (1)(a) and (b), refuse or grant the application subject to such conditions as it may deem appropriate;
 - (b) (1)(c), (d) or (g)—
 - (i) dismiss the complaint;
 - (ii) withdraw the licence; 5
 - (iii) suspend the licence as a punitive or corrective measure;
 - (iv) impose such conditions upon the licence as it deems appropriate;
 - (v) order the licensee to pay such fine as it may deem appropriate; or
 - (vi) take such other action as it may deem appropriate,
 - (c) (1)(e), dismiss the representations or rescind the suspension or conditions imposed; or 10
 - (d) (1)(f), grant or dismiss the appeal.
- (4) The Board may at any time upon application by the licensee suspend, withdraw or amend any condition imposed by the Board.
- (5) The members may co-opt to the Board, in respect of any matter, any person who they deem able to assist the Board in considering the matter under consideration. A person so co-opted does not have the right to vote. 15

Meetings and decisions of the Board

8. (1) The Chairperson must determine the time and place for the holding of meetings and may adjourn and reconvene meetings at such times and places as he or she may decide. 20
- (2) The quorum of the Board is constituted by three (3) members, including the Chairperson or Deputy Chairperson or both.
- (3) A Deputy Chairperson must preside over meetings when the Chairperson is absent or unable to preside. 25
- (4) If the Chairperson and Deputy Chairpersons are absent, the Minister must appoint another member as acting Chairperson.
- (5) The decision of the majority of the members present and voting, constitutes a decision of the Board and in the event of an equality of votes on any matter the Chairperson has a casting vote. 30

Recusal of a member with conflicting interest

9. (1) A member of the Board may not vote, attend or in any manner participate in the proceedings at any meeting or hearing of the Board if, in relation to any matter before the Board—
- (a) he or she or his or her family member, partner or business associate is a director, member or partner of, or has a financial interest or other interests in, the business of the applicant for a licence, certification, or any other right or privilege to be granted by the Board; or 35
 - (b) he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. 40
- (2) If at any stage during the course of any proceedings before the Board it appears that a member has or may have any interest contemplated in subsection (1)—
- (a) that member must forthwith and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest; and 45
 - (b) such disclosure and the decision taken by the remaining members regarding such determination, must be recorded in the minutes of the proceedings in question. 50

Funding and financial management of the Board

10. (1) The funds of the Board consists of—
- (a) money appropriated by the provincial government; and
 - (b) money accruing to the Board from any other source approved by the Minister after consultation with the Minister responsible for finance in the Province, including fees accruing in terms of this Act. 55

- (2) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.
- (3) The Chief Executive Officer must ensure that the Board's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 5
- (4) The Board must, in each financial year at such time as the Minister determines, submit for approval—
- (a) a business plan for the Board, containing measurable objectives; and
 - (b) a statement of the Board's projected income and expenditure, in respect of the following financial year. 10
- (5) In any financial year the Board may submit to the Minister for approval supplementary statements of the Board's projected income and expenditure for that financial year.
- (6) The Board may not enter into any financial commitment beyond its approved budget and its accumulated reserves. 15

Audit and Annual reports

- 11.** (1) The Auditor-General must audit the financial statements of the Board.
- (2) The Board must submit a report on its activities during the previous financial year to the Minister for tabling in the Provincial Parliament within three months after the end of that financial year. 20
- (3) The report must—
- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;
 - (b) state the measurable objectives as set out in its business plan referred to in section 10(4)(a) during the financial year concerned; and 25
 - (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

Proceedings of the Liquor Board 30

- 12.** (1) The Chairperson must, subject to the provisions of this Act and the regulations hereto, determine the procedure to be followed at meetings.
- (2) The Chairperson must notify, in the prescribed manner, any person who may be affected by or has an interest in the consideration of a particular matter to be present at the meeting. 35
- (3) A person who has been notified must appear personally at the place and time stipulated in the notice or be represented thereat by an attorney or advocate appearing on his or her behalf.
- (4) The Chairperson may cause any person to be present at a meeting of the Board to give evidence or produce a document or anything which is in his or her possession or custody or under his or her control. 40
- (5) If the Chairperson is satisfied that a person has been duly notified to appear at a meeting of the Board but is not present thereat then the Chairperson may direct that the meeting proceed in the absence of that person.
- (6) The Chairperson may order any person present at a meeting of the Board to give evidence or to produce a document or anything which is in his or her possession or custody or under his or her control, and to be questioned by the Board. 45
- (7) The Board may inspect and retain for such period as it deems fit any document or article produced to it.
- (8) A person giving evidence at a meeting of the Board must do so under oath or affirmation. 50
- (9) In considering a matter the Board may, of its own accord, take notice of any fact or circumstance which in its opinion may influence the decision of the Board. If any party requests a postponement to enable it to prepare argument with regard to the matter, the Chairperson may postpone the matter for this purpose. 55

(10) All meetings of the Board are accessible to the public except that the Chairperson may direct that any person whose presence at the meeting is not desirable may not attend or must leave the meeting.

(11) The deliberations and voting of the Board are not accessible to the public.

Committees of the Board 5

13. (1) The Chairperson may from the additional members referred to in section 3(g), appoint one or more committees and delegate to the committees such functions of the Board as he or she deems necessary.

(2) Each committee must consist of not less than three (3) Board members, one of whom must be the Chairperson or a Deputy Chairperson. 10

(3) In appointing members of a committee, the Chairperson must have due regard to the knowledge, expertise and experience required by the matter to be considered.

(4) The committees of the Board are governed by the same rules of procedure as those pertaining to the Board.

(5) A committee may refer a matter to the Board for decision. 15

(6) A decision made by a committee is deemed to be a decision of the Board.

The Appeal Tribunal

14. (1) The Minister must, for such term as the Minister may determine, appoint a retired Judge of the High Court of South Africa, a retired senior Magistrate of a Regional Court or a senior legal practitioner to act as an Appeal Tribunal to adjudicate upon appeals against or applications for the review of the decisions of the Board in terms of this Act. 20

(2) The Minister must prescribe the procedure to be followed by the Appeal Tribunal.

(3) A decision of the Appeal Tribunal is final and not subject to further appeal.

(4) If a person, having been duly notified to be present at a meeting of the Appeal Tribunal, fails to attend such meeting or absents himself or herself there from without the consent of the Appeal Tribunal, the meeting may be continued in the absence of such person or the Appeal Tribunal may take such action as it deems fair and just in the circumstances. 25

CHAPTER 3

REMUNERATION AND ADMINISTRATION OF BOARD AND TRIBUNAL 30

Remuneration of Members, Appeal Tribunal and administrative staff

15. Members of the Board and the Appeal Tribunal may receive such remuneration as determined by the Minister after consultation with the Minister responsible for finance.

Administration of Liquor Board and Appeal Tribunal 35

16. (1) The Minister must appoint a Chief Executive Officer who will be responsible for the functioning of the administration of the Board and the Appeal Tribunal.

(2) The Chief Executive Officer is accountable to the Board.

(3) The Chief Executive Officer must, subject to subsection (4), employ members of staff of the Board to do the administrative, secretarial and other work incidental to the performance of the functions of the Board and the Appeals Tribunal. 40

(4) The Board in consultation with the Minister and the Minister responsible for finance in the Province—

(a) must determine a human resources policy for the Board and its staff; and

(b) must determine the remuneration and conditions of service of its staff. 45

- (5) The Board must, after consultation with the Chief Executive Officer, determine a code of conduct, applicable to all members of staff of the Board and justifiable for purposes of disciplinary proceedings, to ensure—
- (a) compliance with applicable law;
 - (b) the effective, efficient and economical use of the Board's funds and resources; 5
 - (c) the promotion and maintenance of a high standard of ethics;
 - (d) the prevention of conflicts of interest;
 - (e) the protection of confidential information held by the Board; and
 - (f) professional, honest, impartial, fair, ethical and equitable service.
- (6) The Board may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 10
- (7) The Chief Executive Officer may, after consultation with the Minister, establish and administer a fund for the purpose of combating the negative social consequences of the abuse of liquor and educating persons engaged in the sale and supply of liquor and the general public in the responsible sale, supply and consumption of liquor. 15
- (8) The Chief Executive Officer has the power to engage in such financial transactions as may be required for the operation of a public entity including but not limited to the power to enter into partnerships with other government organs and to engage the services of contractors and service providers. 20
- (9) The Chief Executive Officer may acquire furniture and equipment for use by the Board and the administrative staff.
- (10) The Board may, with the consent of the Minister—
- (a) enter into lease agreements;
 - (b) encumber its movable assets; and 25
 - (c) enter into agreements for the provision of services relating to human resource management and financial management.
- (11) The Chief Executive Officer must promote the responsible sale, supply and consumption of liquor and combat the negative social consequences of liquor abuse and may take such action as he or she may deem fit. 30
- (12) The Chief Executive Officer may refer to a meeting of the Board, any matter to be considered in terms of section 7.
- (13) The Chief Executive Officer may appoint a secretary of the Board who will be responsible for—
- (a) the preparation of agendas; 35
 - (b) the recording of proceedings;
 - (c) the keeping of minutes of the Board and the Appeal Tribunal; and
 - (d) such other duties as the Chief Executive Officer may determine.
- (14) Minutes of proceedings of the Board and the Appeal Tribunal must be kept and retained at the offices of the Board and are available to any person for the purpose of perusing or copying subject to the payment of the prescribed fee and subject to the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000). 40
- (15) The Chairperson may, subject to the provisions of the Promotion of Access to Information Act, 2000 and on good cause shown, direct that a portion or the whole of a record of the proceedings of the Board may not be available for public access in which event such record or portion thereof may not be perused or copied by any person without the prior consent of the Chairperson and upon payment of the prescribed fee. 45

Revenue accruing to the Provincial Revenue Fund, the Liquor Board or municipalities

- 17.** (1) The fees, penalties and fines referred to in sections 7(3)(b)(v), 35, 52(2) and (4), 53(1), 54(1) and (8), and 69(2)(b) must be paid into the Provincial Revenue Fund. 50
- (2) The fees referred to in sections 16(14) and (15), 27(1) and (2), 49 and 50(4) and (7) must be paid to the Liquor Board or municipality, as the case may be.
- (3) No amount contemplated by this section is refundable.

CHAPTER 4
ROLES OF MUNICIPALITIES

Municipalities as agents of Board and as competent licensing authorities

18. (1) The Minister may, after consultation with the Minister responsible for local government in the Province, appoint municipalities in the Province to act as agents of the Board for the following purposes— 5

- (a) to accept the lodgement of applications made in terms of the provisions of this Act in respect of premises located within the municipal area;
- (b) to inform, as prescribed, interested parties of the applications;
- (c) to deal, as prescribed, with such applications; 10
- (d) to receive objections or reports lodged in respect of applications, representations in support of applications and any other documents which may be lodged with it;
- (e) to transmit, in the prescribed manner, applications together with all documents received in connection therewith to the Board; and 15
- (f) to receive and to transmit to the Board, with or without comment, complaints received from the public in respect of the conduct of licensed premises which merit consideration.

(2) The Minister may, after consultation with the Minister responsible for local government in the Province, appoint municipalities in the Province to act as competent licensing authorities for the following purposes— 20

- (a) to consider and grant or refuse permits for the sale of liquor at special events to take place within the municipal area;
- (b) to consider and grant or refuse permits for the retail sale of traditional African beer within the municipal area; 25
- (c) to determine, by by-law, the days upon which and the hours during which liquor may be sold in the municipal area in respect of each kind of licence;
- (d) to establish a liquor forum; and
- (e) to proclaim by notice such public areas of the municipality within which no person may possess liquor or into which liquor may not be brought except for delivery to licensed premises. 30

(3) The Minister may, for good cause, at any time after consultation with the Minister responsible for local government in the Province, revoke an authority granted to a municipality in terms of subsections (1) and (2), wholly or in part.

Liquor forums 35

19. (1) Where a liquor forum has been established by a municipality in terms of section 18(2)(d), such forum must consist of the following—

- (a) an appropriate official from the municipality to act as Chairperson;
- (b) the designated liquor officer of the South African Police Services;
- (c) a representative of a local community police forum, if such a forum has been established and is functioning; 40
- (d) a representative of an organisation or organisations that are affiliated to a national liquor traders association or a regional association that is affiliated to a national association, including but not limited to the local chambers of commerce representing local licensed liquor traders; and 45
- (e) a representative of the local ratepayers and residents associations within the relevant municipal area and any other local community based interest group determined by the municipality.

(2) Where a liquor forum has been established, such forum may, upon the request of the municipality, act as mediator between the applicant and objectors to the application. 50

(3) The liquor forum may, within a prescribed period from the last day for the lodgement of objections or within such extended period as the Chairperson may on

application allow, lodge a report setting out the results achieved by such mediation and its recommendations for the granting or refusal of the application.

(4) Where, due to the mediation of the liquor forum, an agreement has been reached between the applicant and one or more objectors, the liquor forum must lodge the originals of such agreement with the Board within the period referred to in subsection (3). 5

(5) The Board must, when considering an application, take cognisance of such report, recommendation or agreement, but is not bound to give effect thereto.

CHAPTER 5 LICENSING 10

Licences and permits

20. (1) A person may not micro-manufacture or sell liquor unless authorised to do so in terms of a licence or permit issued in terms of this Act.

(2) A person who is authorised to micro-manufacture or sell liquor must do so in accordance with the conditions of such licence or permit. 15

(3) A person who, without being exempted in terms of section 71(2), micro-manufactures or sells liquor in contravention of subsections (1) and (2) is guilty of an offence.

Categories of licences

21. The Board may grant the following licences— 20

- (a) a licence for the micro-manufacture and sale of liquor for consumption both on and off the premises where the liquor is sold;
- (b) a licence for the sale and consumption of liquor upon the premises where the liquor is sold;
- (c) a licence for the sale of liquor for consumption elsewhere than upon the premises where the liquor is sold; 25
- (d) a licence for the sale of liquor for consumption both on and off the premises where the liquor is sold; and
- (e) a licence for the sale of liquor for consumption on or off the premises upon which the liquor is sold at special events. 30

Kinds of permits

22. A municipality, which has been appointed in terms of section 18 may grant the following permits—

- (a) a permit for the sale of traditional African beer for consumption both on and off the premises upon which such beer is sold; and 35
- (b) a permit for the sale of liquor for consumption on or off the premises upon which the liquor is sold at a special event.

Criteria for the granting of licences

23. (1) The Board may not grant a licence and a municipality may not grant a permit for the sale of traditional African beer, unless it is satisfied on a balance of probabilities that— 40

- (a) the granting thereof will be in the public interest;
- (b) the applicant is of good character, and not disqualified from holding a licence or permit in terms of section 24;
- (c) the premises upon which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence; 45
- (d) the granting of the application will not prejudice the residents of a residential area, the learners of a school or the congregants of a religious institution located in the vicinity of the proposed premises. 50

(2) The municipality may not grant a special events permit, unless it is satisfied on a balance of probabilities that—

- (a) the granting thereof will be in the public interest;

- (b) the premises upon which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence; and
- (c) the granting of the application will not prejudice the residents of a residential area, the learners of a school or the congregants of a religious institution located in the vicinity of the proposed premises. 5

Qualification of applicants

24. (1) A liquor licence or permit for the sale of traditional African beer may not be granted or transferred to an applicant who is disqualified from holding such licence or permit, and a licence or permit which is held by a person who has become disqualified may not be renewed. 10

(2) The following persons are disqualified from holding liquor licences—

- (a) a person who has, within sixty (60) months prior to the lodgement of the application, been sentenced to imprisonment without the option of paying a fine; 15
- (b) a person who has, within sixty (60) months prior to the lodgement of the application, been declared to be unfit to hold a registration by the National Liquor Authority or a licence by any provincial liquor board;
- (c) a person who is an unrehabilitated insolvent;
- (d) a person who is a minor upon the date of consideration of the application; 20
- (e) a person who was the holder of a licence which was cancelled in terms of the provisions of this Act or an Act regulating liquor licences in any other province within a period of twelve (12) months prior to the lodgement of the application; and
- (f) a person who is the spouse of a person described in (a), (b) and (e). 25

(3) If a person is disqualified in terms of subsection (2)(a) to (e), then any company or close corporation in which he or she has a shareholding or member's interest, any trust of which he or she is a trustee or beneficiary and any partnership of which he or she is a partner, is similarly disqualified.

(4) The Board may, on good cause shown, determine that a person who is disqualified in terms of subsection (2)(a) and (b) is deemed to be qualified for the purposes of a particular application or licence. 30

Licensing procedure

25. (1) A person may apply for a licence referred to in section 21 or for a permit in terms of section 22. 35

(2) An application for a licence must be made in the prescribed form and an application for a permit must be made in accordance with the by-laws of the municipality or failing such by-laws, the provisions of this Act and the regulations hereto.

(3) An application in terms of subsection (2) must be lodged with the municipality in which the premises upon which liquor will be sold are located. 40

(4) If the municipality in which such premises are located has not been appointed as an agent of the Board in terms of section 18(1), then the application in terms of subsection (2) must be lodged at the offices of the Board.

(5) If the municipality in which such premises will be located has not been appointed as a competent authority in terms of section 18(2), then an application for a permit in terms of subsection (2) and representations made in terms of section 28 below must be lodged at the offices of the Board. 45

(6) Proof of payment of the prescribed application fee must at the time of lodgement accompany an application in terms of subsection (2). 50

Notice of application

26. (1) An applicant for a licence must, in the prescribed form and on the date of lodgement, publish notices, in the three (3) official languages of the Province in the *Provincial Gazette* and at least one (1) newspaper circulating in the municipal area in which the licensed premises will be located. 55

(2) The applicant must display a notice, in the prescribed form and size and in the three (3) official languages of the Province in a prominent place at the proposed premises

so that it is visible to passers-by: Provided that the Board may condone the non-compliance with this provision on good cause shown.

(3) A notice in terms of subsection (2) must remain in place for the prescribed period from the date of lodgement of the application.

(4) If the premises are in a residential area, the applicant must, within the prescribed period from the date of lodgement of an application, serve notice of the application in the prescribed form on a member of the household over the age of sixteen (16) years of each of the households occupying residences on adjoining properties. 5

(5) The applicant must within the prescribed period provide proof to the municipality or the Board that the provisions of subsections (1), (2) and (4) have been complied with. 10

(6) The municipality or the Board, as the case may be, must, within the prescribed period from the date of lodgement of an application, serve notice of the application in the prescribed form on each of the following—

- (a) the designated liquor officer in whose area of jurisdiction the licensed premises will be located; 15
- (b) the community policing forum, if any, of the area in which the premises will be located;
- (c) the liquor forum, if any, established by the municipality in the area in which the licensed premises are located; and
- (d) any other person or institution which in its judgment may be affected by, or 20 have an interest in, the granting or refusal of the application.

Applications lying for inspection

27. (1) An application and any document lodged in connection therewith, must be open for inspection at the municipal offices from the date upon which such application or document is lodged until it is forwarded to the Board, and any person must be allowed 25 to inspect and copy same upon payment of the prescribed fee.

(2) Where an application is lodged with the Board the application and any documents lodged in connection therewith must be similarly open for inspection and copying, upon the payment of the prescribed fee, at the offices of the Board from the date of lodgement to the date upon which the application is considered by the Board. 30

Representations

28. (1) A person who has an interest in the granting or refusal of an application may, within the prescribed period, make representations for or against such granting or refusal of that application.

(2) A copy of the representations must be lodged with the municipality and must be served by the person who has an interest in the granting or refusal of the application, on the applicant or his or her representative and the designated liquor officer. 35

(3) Proof of such service must be lodged with the representations.

(4) A person making representations must set out the following—

- (a) his or her full name and address; 40
- (b) his or her identity number or if a company or close corporation its registration number;
- (c) if applicable, the name and address of his or her representative;
- (d) the nature of his or her interest in the grant or refusal of the application; and
- (e) comprehensive grounds for the objection or support. 45

(5) The applicant may lodge a response to representations against the application with the municipality within the prescribed period.

Forwarding of documents

29. The municipality must, within the prescribed period, forward to the Board the following— 50

- (a) the original application and all documents lodged therewith;

- (b) proof of compliance with section 26(1) and (2) relating to notification and publication of the application;
- (c) the report of the designated liquor officer;
- (d) the original representations made in relation to the application, if any;
- (e) reports and agreements, lodged by the liquor forum, if any; 5
- (f) proof of payment of the prescribed application fee; and
- (g) any other document or article lodged with it in connection with the application.

Consideration of applications

30. (1) The Board or any committee or staff member must, within a reasonable time from the date of receipt of the application, examine the application in order to determine whether it is technically correct and complies with the provisions of this Act and the regulations thereto. 10

(2) If the Board, committee or staff member referred to in subsection (1) determines that the application is incomplete or defective, it or he or she must, within a reasonable time from receipt of the application, issue a notice of incomplete or defective filing as prescribed, calling on the applicant to supplement or remedy the defect in the application within fourteen (14) days of date of request. 15

(3) If an applicant fails to comply adequately with the aforesaid notice within the time stipulated, the Board may— 20

- (a) decline to consider the application;
- (b) postpone the consideration of the application pending compliance with the notice; or
- (c) refuse the application.

(4) The Board may, when considering an application, take cognisance of the following— 25

- (a) the application and reports lodged in response thereto;
- (b) representations in support of or against the application, responses to representations against applications and any other document or article lodged in relation to the application; and
- (c) subject to section 12(9) any matter which, in the opinion of the Board, should be taken into consideration. 30

(5) If an application, a document accompanying it, representations or a report is defective in any respect or if any person fails to lodge any document or adhere to a reasonable time period or time limit, the Board may condone the defect or failure if there has been substantial compliance with this Act or the regulations and if such condonation is not likely to prejudice any person. 35

Suitability of premises

31. A licence or permit may not be issued unless the Board or municipality is satisfied that the applicant has the right to use the premises concerned for the purpose to be authorised by the licence or permit. 40

Incomplete premises

32. The Board may, when granting an application for a licence in respect of incomplete premises, direct that the licence may not be issued until the applicant complies, within a time period stipulated, with such conditions, relating to the completion of the premises, as the Board may deem fit to impose. 45

Education and training

33. The Board may, when granting a licence, direct that the licence may not be issued until the applicant or an employee or employees of the applicant have undergone such training and education as the Board may prescribe.

Conditional approval 50

34. (1) The Board may, when granting a licence in respect of sections 31, 32 and 33 direct in writing that the licence may not be issued until the applicant complies with such conditions as the Board may deem appropriate to impose.

- (2) The Board may at any time, upon application by the applicant— 55
- (a) amend or withdraw the conditions;

- (b) extend the time period stipulated; or
- (c) approve an amendment of the plan of the premises.

(3) If the applicant fails to comply with the aforesaid conditions within such period as the Board may determine from the date of the granting of the licence, then the granting of the licence will lapse and the licence will be deemed not to have been granted. 5

(4) When the applicant complies with the conditions stipulated by the Board, the Board must issue the licence as prescribed and subject to section 35.

Issuing of licences and permits

35. The Board or municipality, as the case may be, must, after granting an application, subject to sections 31, 32, 33, and 34 issue a licence or permit document to the applicant in the prescribed form setting out the conditions of the licence, subject to payment of the prescribed fee. 10

Death or incapacity of applicant

36. If an applicant for a licence or permit—

- (a) dies; 15
- (b) his or her estate is sequestrated;
- (c) is declared incapable of handling his or her own affairs by a competent court; or
- (d) being a company or close corporation, is liquidated,

prior to the date of consideration of the application then the executor, trustee, curator or liquidator appointed may exercise all the powers and rights which the applicant would have had save for such death, sequestration, declaration or liquidation. 20

CHAPTER 6 CONDITIONS FOR LICENCES

Standard licence conditions 25

37. (1) It must be a condition of every licence for the consumption of liquor upon the premises on which the liquor is sold that liquor must be consumed upon the licensed premises only and that no liquor sold may be removed from the licensed premises.

(2) It must be a condition of every licence for consumption of liquor off the licensed premises that no container containing liquor may be opened and no liquor may be consumed upon the licensed premises except for tasting purposes as approved by the Board. 30

(3) If premises are licensed for the consumption of liquor both on and off the licensed premises then subsections (1) and (2) do not apply to those premises.

(4) The licensee of premises upon which the business of a retail food store is carried on may not sell liquor other than table wine. 35

(5) Failure to comply with the conditions set out in subsections (1), (2) and (4) is an offence.

Deliveries

38. (1) It must be a condition of every licence issued for the consumption of liquor off the licensed premises that— 40

- (a) liquor may not be delivered from any vehicle unless the liquor was ordered from the licensed premises before the despatch of the liquor and an invoice was issued, the original of which was retained on the licensed premises;
- (b) liquor may be delivered only to the address shown on the invoice described in paragraph (a); and 45

- (c) a copy of the invoice described in paragraph (a) must be retained in the delivery vehicle from the time of despatch to the time of delivery of the liquor.
- (2) Accepting delivery of liquor purchased from a supplier unaccompanied by an invoice describing the name, address and licence number of the supplier as well as the nature, quantity and purchase price of the liquor supplied is an offence. 5

Financial Interests

- 39.** (1) A licensee may not, without the prior consent of the Board, transfer a financial interest in the licensed business to any other person.
- (2) The Board may not grant consent in terms of subsection (1) if the person to whom the financial interest is intended to be transferred, is disqualified in terms of section 24 from holding a licence or is not of good character. 10
- (3) A licence must be issued in the name of the person who operates, conducts and benefits from the operation of the licensed business and may not be issued in the name of a nominee or agent.
- (4) A licensee may not lease the licence to or allow any other person to carry on business in terms of the licence. 15
- (5) Failure to comply with subsections (1) and (4) is an offence.

Management

- 40.** (1) The Board must, unless the applicant is a natural person, when granting a licence, appoint as manager of the licensed business a natural person who is resident in the Province, and who is nominated by the applicant. 20
- (2) The licensee may at any time in the prescribed manner nominate a natural person resident in the Province to be the manager of the licensed business in which event the Board may appoint such person as manager.
- (3) The Board may request the designated liquor officer to furnish a report on the suitability of the nominated person. 25
- (4) The Board may not appoint as manager a person who is disqualified from holding a liquor licence in terms of section 24 or is not of good character.
- (5) The Board may as a precondition to such appointment direct that the proposed manager must undergo such training and education as the Board may specify. 30
- (6) A manager appointed in terms of this section is responsible for the management of the business and is subject to the same duties, obligations and liabilities as the licensee.
- (7) The appointment of a manager in terms of this section does not release the licensee from any duties, obligations or liabilities imposed upon it by this Act or the conditions of the licence. 35
- (8) The appointment of a manager in terms of this section remains valid until the appointment of a new manager.
- (9) If a person who has been appointed as a manager in terms of this section ceases to manage the licensed business or becomes disqualified from doing so, the licensee must, within thirty (30) days from such event, apply in terms of subsection (2) for the appointment of a manager in his or her place. 40
- (10) If a licensee fails to comply with subsection (9), his, her or its licence may be suspended in terms of section 59.

Alterations of licensed premises or nature of business

- 41.** (1) Except with the prior consent of the Board granted upon application in the prescribed manner, a licensee may not— 45
- (a) materially change the nature of the business in respect of which a licence was granted from that described in the application considered by the Board when granting the licence; or
- (b) carry out any structural alteration, addition, reconstruction or extension of or to the licensed premises. 50
- (2) Failure to comply with subsection (1) is an offence.

Children

42. (1) No person may sell liquor to a person under the age of eighteen (18) years.

(2) No person may give or supply liquor to a person under the age of eighteen (18) years or allow such a person in his or her care or under his or her supervision to consume liquor, except where it is given or supplied *bona fide* in negligible quantities and in the performance of a religious ceremony or service. 5

(3) A licensee may not allow a person under the age of eighteen (18) years to consume liquor on premises of which he or she is the licensee or which is under his or her control.

(4) A licensee may not allow a person under the age of eighteen (18) years to be in a part of licensed premises upon which such a person may not be in terms of this Act or in terms of a condition of the licence. 10

(5) A person under the age of eighteen (18) years may not obtain or consume liquor in contravention of this Act or mislead any person regarding his or her age in order to obtain or to consume liquor or to gain access to parts of licensed premises which such person may not enter. 15

(6) Failure to comply with subsections (1), (2), (3), (4) or (5) is an offence.

Employers and employees

43. (1) A person may not employ a person under the age of eighteen (18) years in connection with the sale or supply of liquor unless such person is—

- (a) of or above the age of sixteen (16) years; 20
- (b) is undergoing training in catering services; and
- (c) is apprenticed to the licensee.

(2) An employer may not—

- (a) supply liquor to a person as an inducement to secure his employment;
- (b) supply liquor to an employee instead of wages; 25
- (c) deduct from an employee's wages the cost of liquor supplied to the employee or any other person on his or her behalf; or
- (d) withhold payment of the wages of an employee pending the repayment of a debt in respect of the sale of liquor.

(3) A licensee, or a person on his or her behalf, may not receive or hold any document or movable property as security or in pledge for the payment of a debt relating to the sale of liquor. 30

(4) Failure to comply with subsections (1), (2) or (3) is an offence.

Access to licensed premises

44. (1) A licensee may not permit a person under the age of eighteen (18) years to— 35

- (a) be in a room or any place on licensed premises where liquor is sold over a counter, except when meals are being served to diners seated at tables in such room or place;
- (b) be in a room or place which the Board has demarcated as an area in which persons under the age of eighteen (18) years are not allowed to be; or 40
- (c) be on premises, not being a retail food store, licensed only for the sale of liquor for consumption off the licensed premises, unless such person is accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian.

(2) Failure to comply with subsection (1) is an offence. 45

Storing of liquor

45. (1) A licensee must store his or her liquor on the licensed premises or in such other or additional place within the Province as the Board may on application approve.

- (2) A licensee may not sell liquor in or from such other or additional place of storage.
 (3) Failure to comply with subsections (1) or (2) is an offence.

Place of sale

- 46.** (1) A licensee may not sell liquor from any place other than the licensed premises.
 (2) Notwithstanding the provisions of this section, a licensee may advertise the sale of liquor and solicit and receive orders for the purchase of liquor elsewhere than upon the licensed premises. 5
 (3) Failure to comply with subsection (1) is an offence.

Trading hours

- 47.** (1) Subject to such conditions as the Board may impose when granting a licence or after a meeting in terms of section 7, a licensee may sell liquor on such days and during such trading hours as the Board may determine for licensed businesses: Provided that the trading hours imposed by the Board may not exceed the hours determined by the municipality by by-law. 10
 (2) A municipality may by by-law determine different trading hours for licensed businesses selling liquor for consumption on the licensed premises and for those selling liquor for consumption elsewhere than upon the licensed premises, but may not prescribe different trading days and hours for individual licensed businesses: Provided that the trading hours determined by the municipality may not exceed the trading hours set out in subsections (3)(a) and (b). 15
 (3) (a) Subject to conditions imposed by the Board in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (2), then a licensee of a premises upon which liquor may be sold for consumption off the licensed premises may sell liquor on any day between 08:00 and 20:00. 20
 (b) Subject to conditions imposed by the Board in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (2), then a licensee of a premises upon which liquor may be sold for consumption on the licensed premises may sell liquor on any day between 08:00 of any day and 04:00 of the next day. 25
 (c) In the instance where the licensee has a licence for consumption of liquor both on and off the licensed premises the provisions of paragraphs (a) and (b) would apply with the necessary changes. 30
 (4) The holder of a permit may sell liquor on the days and during the hours stipulated in the permit.
 (5) Subject to section 76(9), a licensee who sells, supplies or allows the consumption of liquor on the licensed premises at a time when the sale of liquor is not permitted by the licence is guilty of an offence. 35

Quantity of liquor sold and keeping of records

- 48.** (1) A licensee must keep in the prescribed manner a record of all liquor sold for consumption elsewhere than upon the licensed premises. 40
 (2) No person, other than the licensee, may purchase and a licensee may not sell to one person in a single day for consumption elsewhere than upon the licensed premises, more liquor than a quantity which the Minister may prescribe, without the prior written consent of the designated liquor officer appointed for the area in which the licensed premises are located. 45
 (3) A person who is not licensed or permitted to sell liquor may not at any time purchase or have in his or her possession or under his or her control more liquor than the quantity prescribed in terms of subsection (2) except with the consent provided for in that subsection.
 (4) Failure to comply with subsections (1), (2) or (3) is an offence. 50

CHAPTER 7
PERMITS

Special events permits

49. (1) The holder of a licence for the sale of liquor at special events for consumption at the special event or elsewhere may not sell liquor at such an event unless he, she or it has been issued with a permit to do so by the municipality in which the premises upon which liquor will be sold is located or, where a municipality has not been appointed in terms of section 18(2), by the Board, and upon payment of the prescribed fee. 5

(2) The holder of a licence to sell liquor for consumption at special events must make application to the municipality in the prescribed manner for a permit to sell liquor at a specific special event. 10

(3) Such application must be made not less than fourteen (14) days prior to the date of the special event.

(4) The municipality may, after consideration of the application and any other document or matter which it regards as being relevant, refuse the application or grant it subject to such conditions as the municipality deems appropriate. 15

(5) The conditions referred to in subsection (4) must be set out in the permit document.

(6) An applicant whose application for a permit in terms of subsection (2) has been refused or who is dissatisfied with a condition imposed by the municipality may, in the prescribed manner, appeal to the Board against such refusal or the imposition of a condition. 20

(7) Failure by a licensee, being the holder of a special events licence, to obtain a special events permit issued by the municipality for a special event at which he, she or it sells liquor is an offence. 25

Traditional African beer permits

50. (1) Only the following persons may sell traditional African beer—

(a) the holder of a licence to micro-manufacture;

(b) the holder of a liquor licence; or

(c) the holder of a traditional African beer permit. 30

(2) A person who is not disqualified from holding a liquor licence may make application in the prescribed manner for a traditional African beer permit to the municipality in which the premises where the traditional African beer will be sold is located.

(3) A municipality to whom application is made may grant the application subject to such conditions as the municipality may regard necessary to impose or refuse it. 35

(4) If the application is granted then the municipality must, upon payment of such fee as it may prescribe, issue a permit to the applicant in the prescribed form.

(5) A person who feels aggrieved by a decision of the municipality in terms of this section may appeal against it to the Board in the prescribed manner. 40

(6) The holder of a permit may apply to the municipality for the renewal thereof within thirty (30) days prior to the anniversary of the date upon which the permit was issued.

(7) The municipality must, upon payment of such renewal fee as it may impose, renew the permit for a further year, unless the holder has become disqualified from holding same or the Board has declared the holder to be unfit to hold the permit. 45

(8) A person who feels aggrieved by the manner in which the sale of traditional African beer is conducted may lodge a complaint with the Board who must consider it in the same manner as a complaint in respect of a licence, and the Board has the same powers in respect of such permit as it has in respect of a licence. 50

CHAPTER 8
VALIDITY AND RENEWAL OF LICENCES AND PERMITS

Validity of licences and permits

- 51.** (1) A licence is valid from the date upon which it is issued.
- (2) A licence lapses on a date, which is twelve (12) months from the date of issue or twelve (12) months from the date of the last renewal thereof, whichever is the later, unless the licence is renewed automatically in terms of section 52 or by the Board in terms of section 53. 5
- (3) A permit issued in terms of section 22(b) in respect of a special event is valid only for the date or dates in respect of which such permit was issued and may not be renewed. 10
- (4) A permit issued in terms of section 22(a) in respect of the sale of traditional African beer is valid from the date of issue and lapses twelve (12) months from the date of issue, unless renewed by the municipality in terms of section 50(7).
- (5) The Chairperson may, upon receipt of a report that the licensed premises has been abandoned by the licensee, suspend the licence with immediate effect. 15
- (6) The suspension of the licence in terms of subsection (5) lapses upon the receipt by the Chairperson of proof that the licensed premises has not been abandoned by the licensee or is again in use by the same licensee.

Automatic renewal of licences

- 52.** (1) Except as provided for in section 53, the Board must issue a licence renewal notice in the prescribed form not later than eight (8) months after the date of issue or last renewal of a licence, to each holder of a licence, requesting the licensee to pay a prescribed licence fee by the renewal date which must be twelve (12) months from the date issued or last renewal of the licence, whichever is the later. 20
- (2) Upon payment by the licensee of the prescribed licence fee before or on the renewal date, the licence is automatically renewed for a period of twelve (12) months from the renewal date. 25
- (3) The licensee may not be absolved from his or her obligation to pay the prescribed licence fee timeously if the notice was not sent to or received by him or her.
- (4) A licensee who has failed to pay the prescribed licence fee timeously may, within sixty (60) days of the renewal date, apply to the Board in writing for condonation of such failure and the Board may condone the failure and allow the late payment of the prescribed fee by a date to be determined subject to such additional fees and penalties as the Board may prescribe. 30
- (5) Where the Board has in terms of subsection (4) granted condonation and the prescribed fee and additional fees and penalties have been paid the licence is deemed to have been renewed from the renewal date: Provided that if the licensee fails to pay the fees and penalties imposed in terms of this subsection by the determined date the licence lapses upon that date. 35

Applications for renewal of licences 40

- 53.** (1) If upon the expiration of eight (8) months from the date of issue or last renewal of a licence, whichever is the later, a licensee—
- (a) is disqualified from holding a licence in terms of section 24;
 - (b) has been declared unfit to hold a liquor licence by the Board; or
 - (c) has, within the previous eight (8) months failed to comply with a compliance notice issued in terms of this Act, 45
- then the licence is not capable of automatic renewal in terms of section 52, but may be renewed by the Board upon application by the licensee in the prescribed manner and upon payment of the prescribed fee.
- (2) The Board must, within nine (9) months from the date of issue or last renewal of the licence, serve a notice upon a licensee as described in subsection (1) informing the licensee that—

- (a) the licence will not be automatically renewed; and
 - (b) calling upon the licensee to make application in the prescribed form for the renewal of the licence by a date set by the Board, which date is not later than twelve (12) months from the date of issue or last renewal of the licence.
- (3) If the licensee fails to comply with the notice in subsection (2), then the licence will lapse twelve (12) months from the date of issue or last renewal thereof. 5
- (4) If the licensee complies with the notice then the licence remains valid until the Board has completed its consideration of the application for renewal.
- (5) When considering an application for renewal, the Board has the same duties and powers which it has when considering an application for a new licence, including the right to refuse the application or to grant it, subject to such conditions as it may deem fit. 10
- (6) If the Board grants an application for the renewal of the licence then the licence is deemed to have been renewed in terms of section 52(2).
- (7) If the Board refuses an application for the renewal of a licence then the licence lapses immediately or upon such date as the Board determines. 15

CHAPTER 9 TRANSFER OF LICENCES

Transfer of licences

- 54.** (1) A licensee may make application for the transfer of the licence to another person by lodging an application, in the prescribed manner and form, and upon payment of the prescribed fee, with the Board. 20
- (2) The Board must, as prescribed, notify the designated liquor officer of the application, and request from him or her a report regarding the qualification and fitness of the proposed licensee to hold the licence.
- (3) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (2), and may include in such report any other matter which the designated liquor officer may deem relevant to the application. 25
- (4) The Board must, within the prescribed period, either refuse the application or grant it.
- (5) The Board may not grant an application for transfer unless it is satisfied that the person to whom the licence will be transferred— 30
- (a) is not disqualified from holding a licence in terms of section 24;
 - (b) is of good character; and
 - (c) is or will be suitably educated and trained, or will have in his or her employ one or more employees who are or will be suitably educated and trained to manage the licensed business. 35
- (6) The Board may, when granting a transfer application, direct that the person to whom the licence is transferred, or one or more employees of such person, must undergo such education and training as the Board may direct.
- (7) Upon granting an application for transfer in terms of this section the Board must issue, upon payment of the prescribed fee, a certificate of transfer as prescribed. 40
- (8) If the person to whom the licence is to be transferred dies, becomes insolvent or is declared incapable of handling his or her own affairs by a competent court, or being a company or close corporation, is liquidated before the date upon which the application for transfer is considered, the executor, trustee, liquidator or curator, as the case may be, is deemed to be the applicant and has all rights which such person, company or close corporation would have had save for such death, insolvency, liquidation or declaration. 45
- (9) The Board may in its discretion grant an application for transfer in favour of an executor, trustee, liquidator or curator or to such other person as the Board may deem fit.
- (10) A licensee who alienates the licensed business must, within thirty (30) days from the date of alienation, notify the Board in writing and in the prescribed manner of the date of alienation. 50
- (11) Failure to notify the Board of such alienation is an offence.

(12) A person who has purchased a licensed business may make application to the Chairperson for consent to operate and conduct the licensed business pending the transfer of the licence to such person.

(13) An application in terms of subsection (12) must be made by the lodgement thereof in the prescribed form with the Chairperson. 5

(14) The Chairperson may grant consent authorising the purchaser of the business to conduct the business for his or her own account for a specified period, which period may not be more than six (6) months from the commencement date.

(15) The Chairperson may at any time withdraw a consent granted in terms of subsection (14). 10

(16) A consent granted in terms of subsection (14) is not subject to an appeal or review in terms of this Act.

(17) A person to whom a consent in terms of subsection (14) has been granted, is entitled to operate and conduct the licensed business in terms of the licence, for his or her own account, and has the same rights and is subject to the same duties as the licensee. 15

(18) The granting of consent in terms of subsection (14) does not relieve the licensee from any of his or her duties and obligations in respect of the licence.

Abandonment of premises and death or incapacity of licensee

55. (1) If a licensee dies, becomes insolvent or is declared incapable of handling his or her own affairs by a competent court, or being a company or close corporation is liquidated— 20

(a) the licence vests in the executor, trustee, liquidator or curator, as the case may be, from the date of appointment;

(b) the executor, trustee, liquidator or curator may conduct the licensed business in the same manner and subject to the same conditions as the licensee would have save for his or her death, insolvency, its liquidation or declaration; and 25

(c) the executor, trustee, liquidator or curator may make application for the transfer of the licence in terms of section 54 and is for purposes of such application deemed to be the licensee. 30

(2) The Board may, if satisfied that—

(a) a licensed business has been abandoned; or

(b) the licensee, being a person described in subsection (1), and where an executor, trustee, liquidator or curator has not been appointed,

appoint a person to hold a licence and conduct the licensed business until the appointment of an executor, trustee, liquidator or curator, or in the case of an abandoned business, a manager. 35

(3) A person so appointed is deemed to be the licensee.

(4) If the only director of a company or a member of a close corporation which is a licensee dies, becomes insolvent or is declared incapable of handling his or her own affairs by a competent court, or being a company or close corporation is liquidated then subsections (2) and (3), with the necessary changes applies to that licence until the appointment of a new director or member. 40

CHAPTER 10 APPEALS

45

Appeals to the Tribunal

56. (1) The Appeal Tribunal must consider any appeal against, or an application for the review of, a decision of the Board in terms of section 7(3).

(2) The Appeal Tribunal may confirm, amend or set aside a decision or order that is the subject matter of an appeal or review and substitute such decision or order as the circumstances require. 50

(3) An applicant or interested party who is aggrieved by a decision of the Board may, within the prescribed period after receiving reasons for a decision of the Board, lodge with the Board a notice of appeal or review as prescribed.

(4) The appeal or review must be heard as if it were an appeal from the judgment of 55

a magistrates court in a civil matter and any rule applicable to such civil appeal applies with the necessary changes as provided for herein.

(5) Except where the applicant or interested party has been exempted from the payment of security in terms of subsection (6), a person who is aggrieved by a decision of the Board must simultaneously with the lodgement of the notice of appeal or review in terms of subsection (3), pay an amount prescribed by regulation or reduced by the Appeal Tribunal as security for the anticipated costs of the Board or an opposing party. 5

(6) The Appeal Tribunal, may upon application by the applicant or the interested party who is aggrieved by the decision of the Board, reduce the amount of security or exempt the applicant or interested party from the payment of security. 10

(7) Money paid as security in terms of this section must be paid to the Chief Executive Officer who must deposit same in a separate banking account pending the outcome of the appeal or review when he or she makes payment thereof in accordance with the order of the Appeal Tribunal.

(8) The Appeal Tribunal may make such order as to the payment of the costs of the parties to the proceedings or of the Board as it may deem appropriate in the circumstances. 15

(9) An applicant or interested party who is aggrieved by the decision of the Board may appear in person before an Appeal Tribunal or may be represented thereat by an advocate or an attorney. 20

(10) A decision of the Appeal Tribunal regarding the merits of a matter is final and not subject to further appeal.

CHAPTER 11 COMPLIANCE

Compliance notices 25

57. (1) An inspector may issue and serve upon a licensee or any person in control of licensed premises a compliance notice in the prescribed form calling upon such person to comply with the provisions of this Act or a condition of a licence.

(2) A compliance notice must stipulate—

(a) the provisions of this Act or the conditions of the licence which must be complied with; 30

(b) the nature and extent of the non-compliance;

(c) the measures which must be taken to comply;

(d) the date by which compliance must be completed; and

(e) the possible consequences of non-compliance. 35

(3) A compliance notice remains in force until the date for compliance or any extension thereof, or the issue by the inspector of a certificate of compliance, whichever is the earlier.

(4) The inspector may, at the request of the person served with a compliance notice, extend the period for compliance, upon good cause shown, by issuing an amended compliance notice. 40

(5) If the person served with a compliance notice has complied therewith the inspector must issue a certificate of compliance.

(6) A person served with a compliance notice may lodge, in the prescribed manner, with the inspector a statement disputing the notice and stating the grounds upon which it is disputed. 45

(7) An inspector receiving a statement in terms of subsection (6) must, within the prescribed period submit the compliance notice, the statement in terms of subsection (6) and any other document which he or she deems relevant, to the Chief Executive Officer who must decide whether or not the complaint set out in the compliance notice is justified. 50

(8) The Chief Executive Officer may, if he or she decides that the compliance notice is unjustified, set it aside or if he or she finds it to be justified, order that the compliance notice be complied with by the compliance date or upon such later date as he or she may determine. 55

(9) The Chief Executive Officer may delegate the function referred to in subsection (8) to an official employed by the Board.

(10) Failure to comply with a compliance notice is an offence.

(11) Proof of non-compliance with a compliance notice, at a meeting of the Board, constitutes *prima facie* proof of the commission of the offences, or transgressions of the licence conditions stipulated in the compliance notice.

Interim orders

- 58.** (1) The Board may, in exceptional circumstances, and upon application by an inspector or a designated liquor officer, and where there is an imminent threat to the health, well being or safety of the public, grant an interim order suspending a licence or permit. 5
- (2) An application in terms of subsection (1) may not be granted unless— 10
- (a) it is supported by affidavit setting out the facts pertaining to the matter;
- (b) proof is submitted that the application and supporting affidavits have been served upon the licensee not less than forth-eight (48) hours prior to the lodgement of the application; and
- (c) it appears from the application that the matter is one of urgency. 15
- (3) An order granted in terms of subsection (1) must be served upon the licensee as directed by the Board and comes into effect upon the date and at the time of service thereof.
- (4) An order granted in terms of subsection (1) must stipulate a date upon which the licensee must appear before the Board to show cause why the order should not be made final. 20
- (5) The licensee may, prior to the date stipulated in subsection (4), lodge with the Board a notice of opposition and must thereafter lodge affidavits in which he or she sets out the grounds upon which the application is opposed and must simultaneously serve a copy of such notice and affidavits on the inspector or the designated liquor officer referred to in subsection (1). 25
- (6) A licensee may at any time prior to the date stipulated in terms of subsection (4) apply to the Chairperson to set the matter down for hearing upon an earlier date, and must simultaneously serve a copy of such application on the inspector or designated liquor officer referred to in subsection (1).
- (7) The Chairperson may order the return date to be brought forward to an earlier date. 30
- (8) Upon the date of the hearing of the application the Board may discharge the interim order or confirm it, subject to such amendments as it deems fit.

Suspension, cancellation and lapsing of licences

- 59.** (1) A licence which has been suspended in terms of any provision of this Act remains valid in all respects, except that the licensee may not sell liquor in terms thereof during the period of suspension. 35
- (2) A licence which has been cancelled by the Board is null and void from the date of cancellation, or such other date as the Board may determine.
- (3) A licence which has lapsed in terms of section 53 is null and void from the date upon which it lapses. 40
- (4) The licensee of a licence which has been suspended, cancelled or has lapsed, may within thirty (30) days of such suspension, cancellation or lapsing, sell by public auction conducted by a licensed auctioneer any liquor which was upon the licensed premises on the date upon which the suspension, cancellation or lapsing came into effect.
- (5) If a licensee requests the Board in writing to cancel his or her licence, then the licence lapses upon a date determined by the Board. 45

CHAPTER 12 LAW ENFORCEMENT

Designation and functions of designated liquor officers and inspectors

- 60.** (1) The Western Cape Provincial Commissioner of the South African Police Service may, in respect of each police station, designate a police officer of or above the rank of Inspector to perform the functions of a designated liquor officer in terms of this Act. 50

(2) A police officer who has in terms of section 139 of the Liquor Act, 1989 (Act 27 of 1989) been appointed as a designated police officer becomes a designated liquor officer and is deemed to have been appointed in terms of subsection (1).

(3) The Western Cape Provincial Commissioner of the South African Police Service may at any time terminate an appointment made in terms of this section. 5

(4) The Minister may appoint a person in the employ of the Provincial Government to be an inspector for purposes of this Act.

(5) The Commissioner must, when designating a liquor officer in terms of subsection (1), and the Minister must, when appointing an inspector in terms of subsection (4), issue a certificate of appointment or designation signed by the Commissioner or the Minister, as the case may be. 10

(6) A designated liquor officer or inspector must, when exercising his or her functions in terms of this Act, upon demand of any person affected by the performance of that function, provide proof of appointment as designated liquor officer or inspector.

(7) A designated liquor officer or an inspector must— 15

- (a) in respect of every application made in terms of this Act, report to the Board on such matters as may be prescribed or which should, in the opinion of the officer or inspector, be taken into account when considering the application;
- (b) at the request of the Board, report on or furnish such information in connection with a matter as the Board may require; 20
- (c) as soon as the fact comes to his or her notice, report to the Chief Executive Officer the failure by a licensee to comply with the conditions of his or her licence, a compliance notice or the provisions of this Act;
- (d) report the fact that a licensee has become disqualified or unfit to hold a licence to the Chief Executive Officer; 25
- (e) if he or she is of the opinion that the licensed premises have been abandoned, become unfit to be used for the purpose of the licensed business, report this fact to the Chief Executive Officer; and
- (f) if the licensee has been convicted of a criminal offence, report the nature and circumstances of the offence and conviction to the Chief Executive Officer. 30

Powers of designated liquor officers and inspectors

61. (1) A designated liquor officer or an inspector may in the performance of his or her functions—

- (a) at all reasonable times enter- 35
 - (i) any licensed premises;
 - (ii) any premises in respect of which an application in terms of this Act has been made;
 - (iii) any premises upon which liquor is sold in terms of a permit;
 - (iv) any premises upon which liquor is manufactured or from which liquor is distributed in terms of a registration under the provisions of the Liquor Act; and 40
 - (v) any premises upon which he or she suspects that liquor is being stored or sold contrary to the provisions of this Act or the Liquor Act, and may, after informing the person who is at that time in charge of the premises of the purpose of his or her visit and may make such investigation, 45 enquires or inspections as he or she may deem necessary,
- (b) at any time and place request from any person that he or she forthwith, or upon a date and time to be stipulated, produce to him or her any licence, permit, registration certificate, record or other document which is in the possession, custody or control of that person or any other person on his or her behalf; 50
- (c) inspect any document referred to in paragraph (1)(b), make copies thereof or extracts therefrom, and request from the person contemplated in the said paragraph an explanation of any part thereof;

- (d) seize such document if in his or her opinion it may constitute evidence of an offence in terms of this Act, or of a transgression of any condition of a licence;
 - (e) question the licensee or registered person or his or her employees, an applicant, or any person who is upon licensed or registered premises, if he or she suspects that the employee or person has in his or her possession or under his or her control any document which may be relevant to a matter which he or she is investigating; and
 - (f) request that any licensee or registered person or his or her employee appear before him or her at a time and place to be stated by him or her to answer questions regarding a matter which is under investigation.
- (2) Any person who is in charge of premises contemplated in subsection (1) must render such assistance as the designated liquor officer and inspector may reasonably request.

Powers of peace officers in general

- 62.** (1) A peace officer may enter and inspect any licensed premises or search any vehicle, vessel or person when authorised to do so by a warrant issued by a competent court, and a peace officer of or above the rank of inspector or its equivalent may, without a warrant, enter and inspect such premises or search such vehicle, vessel or person when invited to do so by the licensee or an employee in control of the premises, vessel or vehicle, when authorised to do so by any other law.
- (2) A peace officer may, when entering and inspecting licensed premises or searching any vessel, vehicle or person in terms of subsection (1) seize and remove anything—
- (a) which will be used as evidence of the contravention of the provisions of this Act or the conditions of a licence or permit; and
 - (b) which was or is being used in connection with the contravention of this Act or a condition of a licence or permit.
- (3) When entering premises in terms of this section the peace officer must—
- (a) identify himself or herself to the person in charge of the premises;
 - (b) exhibit to that person the warrant, if any;
 - (c) explain the authority in terms of which the inspection is being conducted; and
 - (d) conduct the inspection with the least possible inconvenience to the licensee or his or her customers and with the least possible disruption of the licensed business.
- (4) A peace officer must, when seizing anything in terms of this section, issue to the person from whom the article has been seized, a receipt describing the article or articles seized and explaining the reasons for the seizure.
- (5) Anything seized in terms of this section must be retained and preserved until the Board or a competent court has made an order regarding the disposal thereof.
- (6) Unless the licensee or a person in his or her employ for whom he or she is responsible in terms of this Act is charged with a criminal offence in a competent court or is summoned to appear at a meeting of the Board within thirty (30) days from the date of the seizure then the article seized must be returned to the person from whom it was seized.

General offences

- 63.** (1) A person who—
- (a) is not a licensee, the holder of a permit, an exempted person or a person registered in terms of the Liquor Act, and who sells or supplies liquor;
 - (b) fails to comply with a provision of this Act;
 - (c) is a registered manufacturer or distributor in terms of the Liquor Act and who is not also a licensee or permit holder in terms of this Act and sells or supplies liquor to a person who is neither a licensee nor permit holder in terms of this Act, nor a registered manufacturer or distributor in terms of the Liquor Act;
 - (d) is drunk in or on—

- (i) any premises on which liquor is sold; or
 - (ii) any place to which the public has access;
 - (e) sells or supplies liquor to a drunk person or being a licensee or a person in charge of licensed premises allows a drunk person to remain upon licensed premises; 5
 - (f) sells or supplies liquor in a container, which does not conform to the standards and specifications which the Minister has, by notice in the *Provincial Gazette*, prescribed;
 - (g) purchases liquor from any person knowing, or having reasonable grounds to suspect, that such person is not licensed or permitted to sell liquor in terms of this Act or in terms of the Liquor Act; 10
 - (h) sells liquor to a person, knowing or having reasonable grounds to suspect, that such person will resell the liquor otherwise than is permitted in terms of this Act or the Liquor Act;
 - (i) sells liquor from a vending machine or other device unless such device is at all times operated by and under the direct physical supervision of the licensee or an employee; 15
 - (j) being a licensee, permits the licensed premises to be used as a brothel or to be habitually frequented by prostitutes; or
 - (k) being a licensee, allows the sale, use or possession of drugs upon the premises in contravention of any law dealing with such sale, use or possession 20
- is guilty of an offence.

Offences regarding information

64. (1) A person who regarding an application, objection or representations—
- (a) submits or provides information which he or she knows to be false or misleading, or which he or she does not know to be true or submits a forged document or one which purports to be but is not a true copy of the original; 25
 - (b) replies to any objection or representations or complaint in a way he or she knows to be false or misleading, or which he or she does not know to be true; or 30
 - (c) in response to a question by a designated liquor officer, an inspector, a police officer, a municipal official or the Board submits or provides information which he or she knows to be false or misleading, or which he or she does not know to be true or submits a forged document or one which purports to be but is not a true copy of the original 35
- is guilty of an offence.
- (2) A person who fails to comply with a request from a designated police officer or inspector in terms of section 61 is guilty of an offence.

Offences regarding meetings of the Board and the Appeal Tribunal

65. (1) A person who— 40
- (a) having been duly notified to appear before the Board, fails to do so either in person or represented by an attorney or advocate;
 - (b) appears before the Board, but without the leave of the Chairperson absents himself or herself from the meeting before the conclusion thereof;
 - (c) having at a meeting been notified by the Chairperson to attend a meeting upon a date to which the meeting has been postponed, fails to be present thereat; 45
 - (d) having been called upon by the Chairperson to give evidence or to produce a document, refuses or fails to do so;
 - (e) has had the oath or affirmation administered to him or her and refuses or fails to take the oath or to affirm; 50
 - (f) having taken the oath or having affirmed, fails to reply to the best of his or her knowledge to questions put to him or her or gives false or misleading evidence knowing such evidence to be false or misleading;
 - (g) willfully disrupts the proceedings of the Board; or
 - (h) refuses to leave the meeting when ordered to do so by the Chairperson 55

is guilty of an offence.

(2) The provisions of subsections (1) of this section applies, with the necessary changes, to meetings of the Appeal Tribunal.

Offences regarding police officers and inspectors

- 66.** A person who— 5
- (a) misrepresents himself or herself as being a designated liquor officer or inspector;
 - (b) hinders a designated liquor officer or inspector in the execution of his or her duties;
 - (c) refuses or fails to obey a lawful instruction given by a designated liquor officer or inspector; or 10
 - (d) refuses, without lawful excuse, to reply to a question put to him or her by a designated liquor officer or inspector or knowingly gives a false or misleading answer
- is guilty of an offence. 15

Motor vehicles

- 67.** (1) A person who—
- (a) consumes liquor in a motor vehicle driven on a public road;
 - (b) allows the consumption of liquor in a motor vehicle of which he or she is the driver or which is under his or her control while it is being driven on a public road; or 20
 - (c) allows liquor contained in an open container to be in a motor vehicle while it is being driven on a public road,
- is guilty of an offence.
- (2) Subsection (1) does not apply to the consumption of liquor in a motor vehicle which is licensed for the sale and consumption of liquor. 25

Service stations

68. Except in respect of premises which have been licensed in terms of the Liquor Act, 1989 (Act 27 of 1989), or unless the competent authority determines otherwise in a particular case, no liquor may be sold, supplied or consumed on an erf upon which the business of a service station selling petrol, diesel and other petroleum products to the public is conducted. 30

Failure to comply with order of Board

- 69.** (1) Failure to comply with an order of the Board is an offence.
- (2) If a person fails to comply with an order of the Board, the Board may, after proper enquiry— 35
- (a) suspend the licence pending compliance with the order;
 - (b) impose a fine the payment of which may be suspended pending compliance with the order;
 - (c) refer the matter to the South African Police Service for the prosecution of the offender; or 40
 - (e) cancel the licence.

Vicarious responsibility

- 70.** (1) If the manager, agent or employee of a licensee does or omits to do anything, which, if it were done or omitted by the licensee, would be an offence in terms of this Act then the licensee is deemed to have done or omitted to do that act, except where the licensee— 45
- (a) neither connived at, permitted or allowed the act or omission;
 - (b) took such steps as he or she was reasonably able to take in order to prevent the act or omission; and 50
 - (c) the act or omission did not fall within the scope of the employment or authority of the manager, agent or employee.
- (2) The fact that a licensee has issued instructions prohibiting an act or omission is

not in itself sufficient to prove that he or she took the steps required by subsection (1)(b).

(3) When a licensee is liable for the acts or omissions of another person in terms of subsection (1) such other person is also liable therefore as if he or she was the licensee.

(4) A manager, agent or employee is not released from any other liability which he or she may have incurred apart from the liability shared with the licensee in terms of subsection (1). 5

Exemptions

71. (1) This Act does not apply to—

- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act 91 of 1964) when performing official duties; 10
- (b) a sheriff or his or her employee or any other officer acting in terms of an order of a competent court in the execution of his or her duties;
- (c) a person referred to in a notice under section 10 of the Liquor Products Act, 1989 (Act 60 of 1989) with regard to the sale of a sacramental beverage under such notice; 15
- (d) a person manufacturing or selling spirituous or distilled perfumery; and
- (e) a person manufacturing or selling medicine as defined in the Medicines and Related Substances Act, 1965 (Act 101 of 1965), as amended.

(2) The Board may, upon application by an interested person, declare that a person or place is exempted from the application of the provisions of section 20 of this Act. 20

(3) A declaration in terms of subsection (2) may be made subject to such conditions and restrictions as the Board may impose.

(4) The Board may at any time amend or withdraw the exemption in terms subsection (2).

(5) The Board must publish a notice, in the three (3) official languages of the Province, of the intended amendment or withdrawal of the exemption in a newspaper circulating in the area where the exempted premises is located, calling upon interested persons to provide reasons, within the time stipulated in the notice, why the exemption must not be amended or withdrawn. 25

(6) In addition to the measures taken in terms of subsection (5) the Board may take such additional measures as it deems appropriate to notify interested persons of its intention to amend or withdraw an exemption granted in terms of subsection (2). 30

Evidence

72. (1) If in any criminal proceedings or at a meeting of the Board evidence is adduced that a person who is not licensed or permitted to sell liquor in terms of this or any other Act— 35

- (a) had on or near his or her premises a sign or notice purporting that liquor is for sale there;
- (b) occupied premises fitted out with a bar counter in a manner to induce a reasonable conclusion that liquor is for sale there; 40
- (c) had on his or her premises or under his or her control more liquor than the maximum volume referred to in section 48 without the prior consent required by that section; or
- (d) bought or procured more liquor than the maximum volume referred to in section 48 without the prior consent required by that section, 45

it is *prima facie* proof of the sale of liquor.

(2) If in any criminal proceedings or at a meeting of the Board—

- (a) there is produced as evidence a sealed container containing a liquid, upon which container there is a label or other device indicating the alcohol content of the liquid, then it is proof, unless the contrary be proven, that the liquid contains the alcohol stated and, if the alcohol content stated is more than 1% of alcohol by volume, that the liquid is liquor; 50
- (b) is produced as evidence more than one container, each of which forms part of a stock or batch of liquor found at the same place at the same time and it is

- proven that one or more of such containers contains liquor then it is proof, unless the contrary be proven, that all the containers contain liquor;
- (c) there is produced as evidence a document which purports to be a copy of a licence or a permit it is on its mere production *prima facie* proof of the licence or permit and any condition or endorsement thereon or attached thereto is deemed to be a condition or endorsement imposed in terms of this Act; 5
- (d) there is produced as evidence a statement or certificate purporting to be signed by an analyst or chemist in the employ of the Government of the Republic, or in the employ of a University or of a medical research institute, who has made an analysis of a liquid or substance which is the object of the criminal proceedings or meeting, such statement or certificate is, unless the contrary be proven, proof of the contents of the statement or certificate; or 10
- (e) evidence is produced that a licensee who is accused of a contravention of section 42, failed to obtain from a person under the age of eighteen (18) years either— 15
- (i) his or her valid identity document;
- (ii) his or her valid drivers' licence bearing his or her photograph and a date of birth; or
- (iii) his or her valid passport bearing his or her photograph and a date of birth, such evidence is *prima facie* proof of the fact that the licensee had knowledge of the fact that such person was under the age of eighteen (18) years. 20

Health notices

73. (1) The Minister may, subject to section 41 of the Liquor Act, prescribe by notice in the *Provincial Gazette* the content of, and the manner in which public health notices must be displayed upon the licensed premises. 25
- (2) Failure to display a health notice in terms of this section is an offence.

Penalties

74. Any person who contravenes a provision of this Act is on conviction liable to—
- (a) a fine not exceeding R100 000;
- (b) imprisonment not exceeding five (5) years; or 30
- (c) both such fine and imprisonment.

CHAPTER 13

REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE

Regulations

75. (1) The Minister may make regulations regarding— 35
- (a) the standards with which containers and packaging in which liquor is sold must comply;
- (b) the form and the manner in which applications in terms of this Act must be made and lodged;
- (c) the form and the manner in which objections and representations in support of applications must be made and lodged; 40
- (d) the amount of fees to be paid in respect of applications made in terms of this Act;
- (e) the amount of fees to be paid in respect of the issue of a licence or permit;
- (f) the amount of fees to be paid in respect of the transfer of a licence; 45
- (g) the amount of fees to be paid in respect of the renewal of a licence;

- (h) the amount of fees to be paid in respect of the perusal and copying of documents in the possession of the Board or a municipality;
 - (i) the procedure to be followed by the Board or a municipality in respect of applications made in terms of this Act;
 - (j) the form of licences, permits, notices, consents, appointments, determinations, approvals, authorities and other documents referred to in this Act; 5
 - (k) the procedure to be followed by the Appeal Tribunal;
 - (l) appeals and reviews in terms of this Act;
 - (m) any matter which must or may in terms of this Act be prescribed;
 - (n) the manner in which a licensee of premises upon which liquor may be sold for consumption off the licensed premises must keep a record of liquor sold; 10
 - (o) the maximum volume of liquor referred to in section 48;
 - (p) the form and manner of service of a compliance notice, a statement of dispute and a compliance certificate in terms of section 57;
 - (q) the form, content and manner of display of public health notices in terms of section 73; and 15
 - (r) in general, any matter in respect of which the Minister deems it necessary or expedient to make regulations in order to achieve the object of this Act, the generality of this paragraph not being limited by the preceding paragraphs.
- (2) A regulation made in terms of this section in respect of fees or money to be paid must be made in consultation with the Minister responsible for finance for the Province. 20

Transitional provisions

76. Upon the date of commencement of this Act—

- (1) Any licence of the kind listed hereunder which was in force immediately before such date of commencement is deemed to be a licence for the sale of liquor for consumption upon the licensed premises— 25
- (a) hotel liquor licence;
 - (b) restaurant liquor licence;
 - (c) wine-house licence;
 - (d) sorghum beer licence for on-consumption; 30
 - (e) theatre liquor licence;
 - (f) club liquor licence; and
 - (g) special liquor licence for on-consumption.
- (2) Any licence of the kind listed hereunder which was in force immediately before such date of commencement is deemed to be a licence for the sale of liquor for consumption elsewhere than upon the licensed premises— 35
- (a) liquor store licence;
 - (b) grocer's wine licence;
 - (c) sorghum beer licence for off consumption;
 - (d) wine farmer's licence; and 40
 - (e) special liquor licence for off-consumption.
- (3) Any licence listed hereunder which was in force immediately before such date of commencement is deemed to be a licence for the micro-manufacture and sale of liquor for consumption elsewhere than upon the licensed premises— 45
- (a) wholesale liquor licence;
 - (b) producer's licence;
 - (c) brewer's licence; and
 - (d) sorghum beer brewer's licence,
- in terms of which liquor was manufactured in the preceding twelve (12) months, but the volume of liquor so manufactured not exceeding the threshold limit prescribed in terms of section 4(10) of the Liquor Act. 50
- (4) Any licence listed hereunder, which gives the holder thereof the right to sell liquor for consumption elsewhere than upon the licensed premises and that has been converted in terms of the Liquor Act, which was in force immediately before such date of commencement is deemed to be a licence for the sale of liquor for consumption elsewhere than upon the licensed premises— 55

- (a) wholesale liquor licence;
- (b) producer's licence;
- (c) brewer's licence; and
- (d) sorghum beer brewer's licence.

(5) A notice issued in terms of section 33 of the Liquor Act, 1989 (Act 27 of 1989) and in force immediately prior to the commencement of this Act must be deemed to be conditions set out in writing in terms of section 34 of this Act. 5

(6) Notwithstanding the repeal of any law as a consequence of the commencement of this Act, any application made prior to such commencement must be considered and disposed of in accordance with the provisions of the law in terms of which it was lodged. 10

(7) Subsequent to the date of commencement of this Act, the provisions of subsections (1), (2) and (3) of this section apply to licences granted in terms of the provisions of the Liquor Act, 1989.

(8) Unless determined otherwise by the Board upon application, a licence which has been issued in respect of premises located upon an erf upon which a service station selling petrol, diesel and other petroleum products is being carried on at the date of commencement of this Act, lapses five (5) years from the date of commencement of this Act. 15

(9) Licences issued prior to the commencement of this Act for premises upon which liquor may be sold for consumption either on or off the licensed premises which trades beyond the trading hours stated in section 47(3) will after twelve (12) months from the date of commencement of this Act be subject to section 47. 20

(10) Any consent, approval or privilege granted to a licensee in terms of the Liquor Act or any Act repealed thereby, which is not inconsistent with the provisions of this Act, is deemed to be a consent, approval or privilege granted in terms of this Act. 25

(11) Any condition imposed upon a licence in terms of the provisions of the Liquor Act or any Act repealed thereby, which is not inconsistent with the provisions of this Act, is deemed to be a condition imposed in terms of this Act.

(12) (a) The date of lapsing in terms of section 51(2) of any licence that was valid in terms of the provisions of the Liquor Act, 1989 upon date of commencement of this Act, will be the last day of December of the year in which this Act becomes operational and 31 December will be deemed the date of issue of such licence for the purposes of section 51(2). 30

(b) The annual renewal notice issued in terms of section 52(1) for a licence referred to in subsection (1) will be issued not later than 31 October of the year in which this Act becomes operational. 35

Repeal provisions

77. The provisions contained in the Liquor Act, 1989 (Act 27 of 1989) are repealed in so far they apply in the Province.

Short title

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78. This Act is called the Western Cape Liquor Act, 2005 and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

EXPLANATORY MEMORANDUM

(i) Introduction and reasons for the Bill

Schedule 5 Part A of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provides that liquor licensing is a functional area of exclusive provincial legislative competence. However, the Constitutional Court determined that circumstances in the liquor industry justify the promulgation of the national Liquor Act, 2003 (Act 59 of 2003) (“the national Liquor Act, 2003”). The national Liquor Act, 2003, imposes a three tier system on the liquor industry consisting of the manufacturing (including micro-manufacturing), distribution and retail of liquor and determines the regulation of the manufacturing (excluding micro-manufacturing) and distribution tiers of the industry, while the provincial legislatures retain exclusive competency to regulate the micro-manufacturing and retail tiers of the industry.

The national Liquor Act further repeals the Liquor Act, 1989 (Act 27 of 1989) (“the Liquor Act, 1989”) that had until its repeal regulated the industry. The national Liquor Act, 2003 has retained the functioning of the Liquor Act, 1989 as provincial liquor legislation, regulating the provincial tiers of the industry in the absence of provincial liquor legislation.

It has been generally accepted that it is necessary to regulate the liquor industry due to the potentially harmful nature of the product. Various regulatory measures have been imposed on the industry in the past in accordance with the social and political requirements of the government of the day. However, the retail liquor industry is largely unregulated due to historical reasons that resulted in the exclusion of historically disadvantaged persons from the formal liquor trade. This has led to a large number of unlicensed outlets that proliferate in residential areas that do not adhere to spatial planning and other regulatory requirements. Liquor is further associated with the occurrence of crime, both in the regulated and unregulated sector of the industry and measures provided in the past have met with diverse success.

It is necessary to provide regulatory measures within the provincial sphere of government in accordance with the provisions of the Constitution that reflect the requirements of a regulated liquor industry.

(ii) Social impact of the Bill

The Bill provides for the Western Cape Liquor Board as an independent statutory body in accordance with the provisions of the Public Finance Management Act, 1999 (Act 1 of 1999) with adequate resources to ensure the administration of a licensing system, the enforcement and monitoring of licensed establishments and mandatory training of sellers of liquor, as well as other educational measures to limit the negative impact of the liquor trade. The Bill further provides for increased public awareness and participation in the licensing process and measures to deal with complaints regarding licensed outlets. Provision is made for the participation of local government in the licensing process through the appointment of suitable municipalities as agents of the Liquor Board to assist with the licensing process. Municipalities may further be appointed as competent authorities in their own right to establish liquor forums that serve in advisory capacity and local dispute resolution bodies during the licensing process. Municipalities appointed as competent authorities determine trading days and hours within their jurisdiction, issue permits to traders in traditional African beer and for special events and may declare areas within their jurisdiction as being prohibited for the possession of liquor in public. Provision is further made for an Appeal Tribunal to consider reviews of and appeals against decisions of the Liquor Board. The enforcement and administration of the Liquor Bill is ensured by the continuance of the existing system of designated liquor officers appointed within the ranks of the South African Police Services in the Western Cape, with enhanced functions and powers.

Improved enforcement measures, offences and penalties have been included to better regulate the licensed industry and combat activities in contravention of the Bill.

The Bill also provides a reduced number of categories of licences. These include licences for consumption upon the premises, consumption elsewhere than on the premises, consumption on and off the premises, special events licences and permits and micro-manufacturers licences. The right of retail food stores to trade in table wine only is retained. Provision is made for standard licence conditions as well as the imposition of conditions to address specific requirements of each licensed entity. Assessment criteria for the consideration of applications by the Liquor Board are provided and include land use rights as requirement for the issuing of licenses.

Measures for the mandatory training of sellers of liquor will ensure that sellers act responsibly. Provision is made for the raising of public awareness of the dangers posed by the abuse of liquor by way of health notices and awareness campaigns. The Bill places an obligation on the officials of the Liquor Board to promote harm reduction measures.

(iii) **Financial implications of the Bill**

The Bill provides for the determination of application fees, annual licence fees and penalties by the Minister responsible for liquor licensing in the Western Cape. The current fees were last reviewed in 1992. The income generated through the licensing system will be due to the Provincial Revenue Fund. The public entity created by the Bill and its structures and functions will be funded by transfer funds made available annually by the responsible Minister after the entity has met the prescribed requirements of the Bill in accordance with the Public Finance Management Act, 1999. The future costs to be incurred will need to be provided for in provincial estimates of expenditure and in appropriation by the Provincial Legislature.

Provision will be made for funded mandates where other public entities are appointed in accordance with the requirements of the Constitution and applicable legislation after the necessary consultation has occurred. Mandatory training programmes will be accredited with the South African Qualifications Authority and the appropriate sectoral training authority.

(iv) **Clause-by-clause explanation**

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CHAPTER 1

INTERPRETATION

Clause 1. Definitions — This clause provides definitions of phrases and words contained in the text of the Bill.

CHAPTER 2

WESTERN CAPE LIQUOR BOARD AND APPEAL TRIBUNAL

Clause 2. Establishment of the Board — The continued existence of the Liquor Board established in the Liquor Act, No 27 of 1989 is provided for.

Clause 3. Composition of the Board — The number of members of the Board, their qualifications and positions within the Board are determined in this clause.

Clause 4. Criteria for appointment — This clause provides for disqualification criteria for appointment of Liquor Board members relating to conviction of criminal offences, legal status, age, interest in the liquor industry of the member or of a family member.

- Clause 5. Term of office — The term of office of Liquor Board members is five years with eligibility of appointment for a further five years.
- Clause 6. Termination of membership — Membership of the Board may be terminated by the Minister on certain grounds.
- Clause 7. Powers and functions of the Board — This clause provides that the Board may consider applications in terms of the Bill, representations regarding applications, reports by officials, complaints regarding licensed establishments, amendment of conditions of licences, appeals against municipal permit decisions, or any matter referred to the Board delegated by the Minister. It further provides for the granting, with conditions or the refusal of applications and powers of suspension, withdrawal, imposition of penalties and conditions regarding the reports and complaints and the adjudication of appeals. It allows the Board to suspend, withdraw or amend any licence condition.
- Clause 8. Meetings and decisions of the Board — This clause relates to the quorum of the Board and determination of procedures during meetings.
- Clause 9. Recusal of members with conflicting interest — The grounds on which a Board member is recused and the process relating therefore is determined in this clause.
- Clause 10. Funding of the Board — This clause provides for the funding of the Board and the processes required to obtain funding and ensure accountability.
- Clause 11. Audit and Annual reports — Annual auditing and reports are required from the Board in terms of this clause.
- Clause 12. Proceedings of the Board — This clause provides for the determination by the Chairperson of proceedings, the attendance at meetings and procedure of obtaining information.
- Clause 13. Committees of the Board — The appointment of Liquor Board committees, their procedure and functions are provided for.
- Clause 14. Appeal Tribunal — An Appeal Tribunal is established and its membership is determined.

CHAPTER 3

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- Clause 15. Remuneration of members of Liquor Board and Appeal Tribunal — Determination of remuneration by the responsible Minister is provided for.
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- Clause 17. Revenue accruing to the Provincial Revenue Fund, the Liquor Board or municipalities — The revenue generated by the licensing system is allocated by this clause.

CHAPTER 4**ROLES OF MUNICIPALITIES**

- Clause 18. Municipalities as agents of the Board and as competent licensing authorities — This clause provides for the appointment of municipalities as agents of the Liquor Board and describes the functions as agents and of municipalities as competent authorities and the powers as competent authorities.
- Clause 19. Liquor forums — This clause provides for the establishment and composition of the liquor forums by duly appointed competent municipalities.

CHAPTER 5**LICENSING**

- Clause 20. Licences and permits — The requirement of holding a liquor licence or permit to micro — manufacture or sell liquor and the creation of an offence for failing to obtain a licence or permit is provided for in this clause.
- Clause 21. Categories of licences — This clause provides for five categories of liquor licences.
- Clause 22. Kinds of permits — This clause provides for two kinds of permits.
- Clause 23. Criteria for the granting of licences — This clause provides for the criteria to be considered in the consideration of licences and permits.
- Clause 24. Disqualification of applicants — The disqualification grounds for applicants for licences and permits are provided for in this clause.
- Clause 25. Licensing procedure — This clause prescribes where liquor licence and permit applications are to be lodged.
- Clause 26. Notice of application — The required public notices and advertisements as well as the persons to whom notice of applications for licences are to be given by the applicants and by the municipalities or the Liquor Board are provided for.
- Clause 27. Applications lying for inspection — This clause regulates the inspection procedure for licence applications.
- Clause 28. Representations — Provision is made for the lodgement of representations regarding licence applications by interested persons and the required procedure relating thereto.
- Clause 29. Forwarding of documents — The forwarding of licence applications and related documents by the municipality to the Board is provided for.
- Clause 30. Consideration of applications — This clause provides for the consideration of applications by the Liquor Board and procedure relating thereto.
- Clause 31. Suitability of premises — This clause prevents the issuing of licences where the applicants do not have the right to use the premises for the authorised purpose.
- Clause 32. Incomplete premises — This clause prevents the issuing of licences until the premises has been completed.

- Clause 33. Education and training — This clause provides for the mandatory training of applicants or their employees by the Board.
- Clause 34. Conditional approval — This clause provides for the imposition of suspensive conditions by the Board for the issuing of licences.
- Clause 35. Issuing of licences and permits — This clause provides for the issuing of licences and permits upon approval of applications.
- Clause 36. Death or incapacity of applicant — This clause provides for the continuance of the application upon death or incapacity of the applicant prior to the final consideration of the application.

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- Clause 37. Standard licence conditions — This clause requires that liquor may only be sold for consumption on or off the licensed premises in accordance with the applicable licence category and provides for the right of retail food stores to sell table wine for consumption off the licensed premises.
- Clause 38. Deliveries — The requirements for the delivery of liquor is prescribed in this clause.
- Clause 39. Financial interest — This clause ensures that only the licensee may trade in liquor on the licensed premises in terms of the licence and changes in the financial interest in the licensed business require the approval of the Liquor Board.
- Clause 40. Management — This clause prescribes the procedure and requirements to ensure satisfactory management of licensed premises by natural persons that meet prescribed criteria.
- Clause 41. Alterations of licensed premises — Alterations to the licensed premises or the nature of the business require Liquor Board approval.
- Clause 42. Children — This clause regulates the sale or supply of liquor to persons under the age of eighteen years old.
- Clause 43. Employers and employees — The relationship between employer and employee regarding the supply of liquor to the employee is regulated in this clause.
- Clause 44. Access to licensed premises — This clause regulates the access of persons under the age of eighteen years to licensed premises.
- Clause 45. Storing of liquor — This clause regulates the storage of liquor by licensees.
- Clause 46. Place of sale — This clause prescribes the place of sale of liquor by licensees.
- Clause 47. Trading hours — This clause allows for the determination of liquor trading hours and days by by-law by duly appointed municipalities within minimum norms prescribed in the clause and for the limitation of trading hours and days of specific licensed premises by the Liquor Board.

- Clause 48. Quantity of liquor and keeping of records — This clause prescribes the records of sale of liquor to be kept by a licensee, allows for the determination of a maximum quantity of liquor that may be sold to a person by a licensee in a single day and prohibits the possession of more liquor than the prescribed quantity by an unlicensed person.

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- Clause 49. Special events permits — The procedure regarding applications for special events permits is prescribed in this clause.
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CHAPTER 8

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- Clause 51. Validity of licences and permits — The period of validity of licences and permits is provided for in this clause.
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- Clause 54. Transfer of licences — Procedure for the transfer of licences to new licensees are provided for as well as interim appointment of the prospective holders as managers of the premises during the application process.
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- Clause 56. Appeals to the Tribunal — The procedure for appeals and reviews to the Appeal Tribunal are provided for.

CHAPTER 11**COMPLIANCE**

- Clause 57. Compliance notices — This clause provides for the issuing of compliance notices to licensees by liquor licence inspectors and the process in regards thereto.
- Clause 58. Interim orders — This clause allows for procedure for the Liquor Board to provide interim orders to ensure regulatory compliance by licensees where justified complaints have been received pending consideration by the Board of final measures.
- Clause 59. Suspension, cancellation and lapsing of licences — This clause provides for the termination of licences.

CHAPTER 12**LAW ENFORCEMENT**

- Clause 60. Designation and functions of designated liquor officers and inspectors — This clause provides for the appointment of designated liquor officers in the South African Police Services by the Provincial Police Commissioner and the appointment of liquor licence inspectors by the responsible Minister and their relationship with the Liquor Board.
- Clause 61. Powers of designated liquor officers and inspectors — This clause provides for the powers of the designated liquor officers and the inspectors regarding enforcement of legal provisions applicable to licensees.
- Clause 62. Powers of peace officers in general — The powers of peace officers regarding enforcement of legal provisions applicable to licensed premises are contained in this clause.
- Clause 63. Offences — This clause provides for general offences regarding the sale, supply or consumption of liquor not contained in other sections of the Bill.
- Clause 64. Offences regarding information — The offences created by this clause deal with the provision of information during applications in terms of the Bill and to law enforcement agents by licensees and their employees.
- Clause 65. Offences regarding meetings of the Board and Appeal Tribunal — The offences created by this clause relate to the orderly conduct of proceedings at the Liquor Board and at the Appeal Tribunal.
- Clause 66. Offences regarding police officers and inspectors — The offences created by this clause relate to obstruction of and interference in the execution of duties by law enforcement agents.
- Clause 67. Motor vehicles — This clause creates offences regarding the consumption of liquor in motor vehicles being driven on public roads.
- Clause 68. Service stations — This clause regulates the sale, supply or consumption of liquor on erven where service stations are located.
- Clause 69. Failure to comply with order of Board — This clause ensures the compliance with orders of the Liquor Board.

- Clause 70. Vicarious responsibility — This clause ensures that licensees remain responsible for the unlawful conduct of their employees on licensed premises.
- Clause 71. Exemptions — This clause provides for the list of categories of entities exempted from the Bill and allows for the determination of further exemptions by the Liquor Board and the procedure in connection herewith.
- Clause 72. Evidence — This clause establishes measures to simplify the submission of evidence before the Board and during legal proceedings.
- Clause 73. Health notices — This clause provides for the mandatory display of approved information regarding health aspects at points of sale or supply of liquor.
- Clause 74. Penalties — This clause determines appropriate penalties for offences created by the Bill.

CHAPTER 13

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- Clause 75. Regulations — This clause provides the responsible minister with the power to issue regulations relating to the Bill.
- Clause 76. Transitional provisions — This clause ensures continuity in the liquor industry from the provisions of the Liquor Act, 1989 (Act 27 of 1989).
- Clause 77. Repeal provisions — These provisions repeal the Liquor Act, 1989, (Act No 27 of 1989).
- Clause 78. Short title — This clause provides the short title of the Bill and for promulgation of the Bill.