



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SAKWAZULU-NATALI

Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI

*(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
(Irejistiwee njengephephandaba eposihhovisi)*

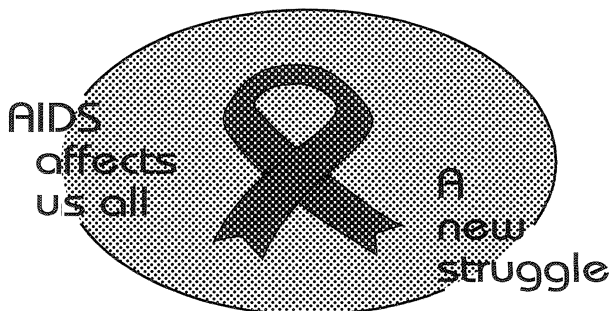
Vol. 7

PIETERMARITZBURG,

6 MAY 2013
6 MEI 2013
6 KUNHLABA 2013

No. 942

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GENERAL NOTICE—ALGEMENE KENNISGEWING—ISAZISO SIKAWONKE-WONKE

No. 39

6 May 2013

**KWAZULU-NATAL LIQUOR LICENSING AMENDMENT BILL,
2013**

Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature

Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Liquor Licensing Amendment Bill, 2013 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Economic Development and Tourism Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

Attention: Mr DN Dimba
The Secretary
KwaZulu-Natal Legislature
Private Bag X 9112
PIETERMARITZBURG
3200

Email: dimbad@kznlegislature.gov.za

so as to reach him not later than 15 days from the date of publication.

N NAIDOO
Secretary to the KwaZulu-Natal Legislature

KWAZULU-NATAL
LIQUOR LICENSING AMENDMENT BILL, 2013

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments
_____ Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the KwaZulu-Natal Liquor Licensing Act, 2010, so as to substitute the definition of "sports ground"; to provide for the micro-manufacturing and retail sale of methylated spirits; to further regulate the conversion of licences or approvals; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

Amendment of section 1 of Act 6 of 2010

1. Section 1 of the KwaZulu-Natal Liquor Licensing Act, 2010 (Act No. 6 of 2010), hereinafter referred to as the principal Act, is hereby amended by the substitution for the definition of "sports ground" of the following definition:

“**sports ground**” means a place where sports meetings, games or recreational activities are held; Provided that such place is not situated within the premises of any religious or learning institution;”.

Amendment of section 2 of Act 6 of 2010

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) to provide for the regulation of the micro-manufacturing and the retail sale of liquor and methylated spirits;”.

Insertion of section 60A in Act 6 of 2010

3. The following section is hereby inserted after section 60 of the principal Act:

Methylated spirits

60A. The provisions of Part 4 of this Chapter apply with the necessary changes to the micro-manufacturing of methylated spirits.”.

Amendment of section 76 of Act 6 of 2010

4. Section 76 of the principal Act is hereby amended by –

(a) the substitution for the section heading of the following section heading:

“Prohibition on sale [or] and supply of liquor or methylated spirits to certain persons”; and

(b) the addition after subsection (3) of the following subsection:

“(4) The provisions of this section apply with the necessary changes to the sale or supply of methylated spirits to certain persons.”

Amendment of section 95 of Act 6 of 2010

5. Section 95 of the principal Act is hereby amended by the addition after subsection (1) of the following subsection:

“(1A) The provisions of subsection (1) do not apply to convenience stores licensed to sell liquor before the coming into operation of this Act.”

Amendment of section 99 of Act 6 of 2010

6. Section 99 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The responsible Member of the Executive Council **[may] must make regulations regarding –**

(a) the payment and amount of any fees payable in terms of this Act in respect of –

(i) any application made in terms of this Act;

(ii) the issue of a licence or permit; and

(iii) the annual fee payable by a licensed person in respect of each licence issued;

(b) the form of licences, permits, consents, approvals, certificates, determinations, notices, including compliance notices and other documents referred to in this Act;

(c) the manner and form in which, and the days on which, if applicable, any application in terms of this Act may or must be made and lodged;

- (d) the manner and form of service, delivery or despatch of any notice or other document required to be served, delivered or despatched in terms of this Act;
- (e) the manner and form of publication of any notice or other document required to be published in terms of this Act;
- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
- (g) the content and form of an inspection report or other report or recommendation to be made or given in terms of this Act;
- (h) the manner and form in which an objection hearing or a hearing in respect of a compliance notice in terms of section 89 must be conducted;
- (i) time periods, or the **[extention]** extension of time periods, to be prescribed in terms of this Act;
- (j) the details of premises in respect of which licensing is sought that must be included in an application for a licence;
- (k) the manner and form in which an application for appeal or review to the responsible Member of the Executive Council must be made;
- (l) the manner in which proceedings and meetings must be conducted by the responsible Member of the Executive Council;
- (m) the tariff of witness fees payable on appeal or review proceedings;
- (n) the form of a certificate issued to an inspector;
- (o) the manner and form in which a complaint must be submitted to the Liquor Authority;
- (p) the procedure to be followed for the cancellation of a licence or permit on conviction of an offence in terms of section 98;
- (q) the manner and form in which an application for temporary amnesty must be made;
- (r) the manner and form in which an application for payment of annual fees as contemplated in section 64 must be made;
- (s) the retail, sale and micro-manufacturing of methylated spirits;
- (t) the quantities of methylated spirits which may be sold on any occasion to any person and the receptacles in which methylated spirits may be sold;
- (u) the prohibition or restriction of the purchase or possession of methylated spirits, including the granting of permits for the purchase or possession thereof;
- (v) the trading hours for outlets engaged in the retail and sale of methylated spirits;

~~[(s)](w)~~ any matter which must or may be prescribed in terms of this Act; and
~~[(t)](x)~~ in general, any matter in respect of which the responsible Member of the Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act, the generality of this paragraph not being limited by the preceding paragraphs.”.

Amendment of section 101 of Act 6 of 2010

7. Section 101 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection:

“(6) Notwithstanding the provisions of section 39, the responsible Member of the Executive Council must –

(a) in accordance with the transitional provisions of the Liquor Act; and

(b) by notice in the *Gazette*.

provide for the conversion of any licence or approval, not set out in the first column of Schedule 2 to this Act, but in force on the day before the date of commencement of the KwaZulu-Natal Liquor Licensing Amendment Act, 2013, to any licence or approval in the category set out in the second column of Schedule 2 to this Act.”.

Short title

8. This Act is called the KwaZulu-Natal Liquor Licensing Amendment Act, 2013.

**MEMORANDUM
ON THE OBJECTS
OF THE KWAZULU-NATAL LIQUOR LICENSING AMENDMENT BILL, 2013**

1. GENERAL BACKGROUND

The purpose of the Bill is to amend the KwaZulu-Natal Liquor Licensing Act, 2010 (Act No. 6 of 2010), to address –

- (a) the potential challenges facing the KwaZulu-Natal Liquor Authority in converting licences in terms of section 101 of the KwaZulu-Natal Liquor Licensing Act, 2010; and
- (b) the concern that the definition of "sports ground" does not include sports grounds situated within the premises of any religious or learning institutions and thus making the sale of liquor within a 500 metre radius from any religious or learning institutions lawful.

Furthermore and pursuant to a request made in December 2011 by the responsible Member of the Executive Council to consult with the Minister of Trade and Industry on the implementation of the KwaZulu-Natal Liquor Licensing Act, 2010, and the repeal of the Liquor Act, 1989 (Act No. 27 of 1989), which consultation is prescribed by item 2(2) of Schedule 1 to the Liquor Act, 1989 in KwaZulu-Natal, a concern around the exclusion of provisions relating to the regulation of the micro-manufacture, retail, sale and on-consumption of methylated spirits in the KwaZulu-Natal Liquor Licensing Act, 2010, was raised by the Honorable Minister of Trade and Industry and this necessitated the need by the Province to regulate on methylated spirits in order to allow the KwaZulu-Natal Liquor Licensing Act, 2010, to be in line with the National Liquor Act, 2003 (Act No. 59 of 2003).

A further concern raised by the National Department of Trade and Industry was that section 99 of the KwaZulu-Natal Liquor Licensing Act, 2010, only makes regulating a discretionary power of the responsible Member of the Executive Council and ideally such provision needs to be peremptory in order to compel the Province to regulate on matters provided for in section 99.

A need to protect the rights of the licensees of convenience stores which are not adequately protected in the interim, pending conversions in terms of section 101 of the KwaZulu-Natal Liquor Licensing Act, 2010, was also identified.

The conclusion is, therefore, that the KwaZulu-Natal Liquor Licensing Act, 2010, does not

regulate the micro-manufacture, retail, sale and on-consumption of methylated spirits and is thus not in line with the National Liquor Act, 2003. The KwaZulu-Natal Liquor Licensing Act, 2010, therefore needs to be amended accordingly to be in line with the National Liquor Act, 2003.

2. CLAUSE BY CLAUSE EXPLANATION

In summary, the Bill provides as follows –

Clause 1:

Clause 1 redefines the definition of "sports ground" to exclude sports grounds situated within the premises of or near any religious or learning institutions.

Clause 2:

Clause 2 provides for the inclusion of the micro-manufacture, retail, sale and on-consumption of methylated spirits as one of the objects of the Act.

Clause 3:

Clause 3 regulates the application process for the licensing of the micro-manufacture, retail, sale and on-consumption of methylated spirits.

Clause 4:

Clause 4 provides for the prohibition of the sale and supply of methylated spirits to certain persons.

Clause 5:

Clause 5 provides for an interim protection of the rights of liquor licensees of convenience stores pending the conversion process contemplated in article 101 of the Act.

Clause 6:

Clause 6 makes the responsibility to regulate peremptory or obligatory rather than discretionary. It further seeks to provide for the regulation of the micro-manufacture, retail, sale and on-consumption of methylated spirits.

Clause 7:

Clause 7 empowers the responsible Member of the Executive Council to provide an enabling framework or procedure for the conversion of any licence or approval, not set out in the first column of Schedule 2 to the Act, but in force on the day before the date of commencement of the Act, to any licence or approval in the category set out in the second column of Schedule 2 to the Act.

Clause 8:

Clause 8 provides for the short title of the Act.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

No undue organisational and personnel implications are foreseen.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

No undue financial implications are foreseen.

5. DEPARTMENTS / BODIES / PERSONS CONSULTED

This Bill has been drafted in consultation with –

5.1 the National Department of Justice – State Law Advisory Services;

5.2 the National Department of Trade and Industry;

5.3 the KwaZulu-Natal Liquor Authority;

5.4 the Office of the Premier – State Law Advisory Services; and

5.5 the Provincial Treasury / the Provincial Department of Finance.

6. CONSTITUTIONAL IMPLICATIONS

Constitutional implications are addressed through the amendment sought.

7. CONTACT PERSON

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Position: Senior Manager: Legal Services
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No. 39

6 Mei 2013

KWAZULU-NATAL WYSINGSWETSONTWERP OP DRANKLISENSIËRING, 2013

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennisgewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die Kwazulu-Natal Wysingswetsontwerp op Dranklisensiëring, 2013 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portfoliokomitee oor Ekonomiese Ontwikkeling en Toerisme orweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om vertoë oor die vermelde wetsontwerp in te dien, welke vertoë gerig moet word aan:

Aandag: Mnr DN Dimba
Die Sekretaris
KwaZulu-Natal Legislature
Privaatsak X 9112
PIETERMARITZBURG
3200

Email: dimbad@kznlegislature.gov.za

vertoë moet hom nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL
WYSIGINGSWETSONTWERP OP DRANKLISENSIËRING, 2013**

ALGEMENE VERDUIDELIKENDE NOTAS

[] Woorde wat in vetdruk en vierkantige hakies is, dui uitlatings van bestaande wetsbepalings aan
_____ Woorde onderstreep deur 'n soliede lyn dui invoegings tot bestaande wetsbepalings aan

WETSONTWERP

Om die KwaZulu-Natal Wet op Dranklisensiering, 2010, te wysig om sodoende die omskrywing van "sportterrein" te vervang; om voorsiening te maak vir die mikrovervaardiging en kleinhandelverkope van brandspiritus; om die omskakeling van lisensies of goedkeurings verder te reguleer; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD BEPAAL deur die Provinsiale Wetgewer van die Provinsie van KwaZulu-Natal soos volg:-

Wysiging van artikel 1 van Wet 6 van 2010

1. Artikel 1 van die KwaZulu-Natal Wet op Dranklisensiering, 2010 (Wet No. 6 van 2010), hierna verwys na as die Hoofwet, word hiermee gewysig deur die vervanging van die omskrywing van "sportterrein" deur die volgende omskrywing:

“**"sportterrein"** 'n plek waar sportbyeenkomste, wedstryde of ontspanningsfasiliteite gehou word: Met dien verstande dat sodanige plek nie geleë is binne die perseel van enige godsdienstige of opvoedkundige instelling nie;”.

Wysiging van artikel 2 van Wet 6 van 2010

2. Artikel 2 van die Hoofwet word hiermee gewysig deur die vervanging van paragraaf (a) van subartikel (1) deur die volgende paragraaf:

“(a) om voorsiening te maak vir die regulering van die mikrovervaardiging en die kleinhandelverkope van drank en brandspiritus;”.

Invoeging van artikel 60A in Wet 6 van 2010

3. Die volgende artikel word hiermee ingevoeg na artikel 60 van die Hoofwet:

“**Brandspiritus**

60A. Die bepalings van Deel 4 van hierdie Hoofstuk is van toepassing met die nodige veranderinge aan die mikrovervaardiging van brandspiritus.”.

Wysiging van artikel 76 van Wet 6 van 2010

4. Artikel 76 van die Hoofwet word hiermee gewysig deur –

(a) die vervanging van die opskrif van die artikel deur die volgende opskrif van die artikel:

“Verbod op verkoop [of] en verskaffing van drank of brandspiritus aan sekere persone”; en

(b) die invoeging na subartikel (3) van die volgende subartikel:

“(4) Die bepalings van hierdie artikel is van toepassing, met die nodige veranderinge, op die verkoop of verskaffing van brandspiritus aan sekere persone.”.

Wysiging van artikel 95 van Wet 6 van 2010

5. Artikel 95 van die Hoofwet word hiermee gewysig deur die invoeging na subartikel (1) van die volgende subartikel:

“(1A) Die bepalings van subartikel (1) is nie van toepassing op geriefswinkels wat gelisensieer is om drank te verkoop voor die inwerkingtreding van hierdie Wet nie.”.

Wysiging van artikel 99 van Wet 6 van 2010

6. Artikel 99 van die Hoofwet word hiermee gewysig deur die vervanging van subartikel (1) deur die volgende subartikel:

“(1) Die verantwoordelike Lid van die Uitvoerende Raad [**kan**] moet regulasies uitvaardig rakende –

(a) die betaling en bedrag van enige fooie betaalbaar ingevolge hierdie Wet met betrekking tot –

(i) enige aansoek gedoen ingevolge hierdie Wet;

(ii) die uitreiking van 'n lisensie of permit; en

(iii) die jaargeld betaalbaar deur 'n lisensiehouer met betrekking tot elke lisensie uitgereik;

- (b) die formaat van lisensies, permitte, toestemming, goedkeurings, sertifikate, bepalinge, kennisgewings, insluitend nakomingskennisgewings en ander dokumente vermeld in hierdie Wet;
- (c) die wyse en formaat, asook die dae waarop, indien van toepassing, enige aansoek ingevolge hierdie Wet gedoen en ingedien kan of moet word;
- (d) die wyse en formaat van diens, aflewering of afsending van enige kennisgewing of ander dokument wat ingevolge hierdie Wet beteken, afgelewer of afgesend moet word;
- (e) die wyse en formaat van publikasie van enige kennisgewing of ander dokument wat ingevolge hierdie Wet gepubliseer moet word;
- (f) die formaat, inhoud en grootte, waar van toepassing, van enige kennisgewing, kommunikasie of ander dokument wat ingevolge hierdie Wet uitgereik, afgelewer, beteken, gegee of gepubliseer moet word;
- (g) die inhoud en formaat van 'n inspeksieverslag of ander verslag of aanbeveling wat ingevolge hierdie Wet gemaak of gegee moet word;
- (h) die wyse en formaat waarin 'n beswaarverhoor of 'n verhoor met betrekking tot 'n nakomingskennisgewing ingevolge artikel 89 uitgevoer moet word;
- (i) tydperke, of die verlenging van tydperke, wat ingevolge hierdie Wet voorgeskryf moet word;
- (j) die besonderhede van 'n perseel met betrekking waartoe lisensiëring vereis word wat ingesluit moet wees in 'n aansoek om 'n lisensie;
- (k) die wyse en formaat waarop 'n aansoek om appèl of hersiening aan die verantwoordelike Lid van die Uitvoerende Raad uitgevoer moet word;
- (l) die wyse waarop verrigtinge en vergaderings deur die verantwoordelike Lid van die Uitvoerende Raad uitgevoer moet word;
- (m) die tarief van getuiefooi betaalbaar by appèl- of hersieningsverrigtinge;
- (n) die formaat van 'n sertifikaat uitgereik aan 'n inspekteur;
- (o) die wyse en formaat waarop 'n klagte aan die Drankowerheid voorgelê moet word;
- (p) die prosedure wat gevolg moet word vir die kansellering van 'n lisensie of permit by skuldigbevinding aan 'n misdryf ingevolge artikel 98;
- (q) die wyse en formaat waarop 'n aansoek om tydelike amnestie gedoen moet word;
- (r) die wyse en formaat waarop 'n aansoek om betaling van jaargelde soos bedoel in artikel 64 gedoen moet word;
- (s) die kleinhandel, verkoop en mikrovervaardiging van brandspiritus;

(t) die hoeveelhede brandspiritus wat verkoop mag word by enige geleentheid aan enige persoon en die houers waarin brandspiritus verkoop mag word;

(u) die verbod of beperking op die koop of besit van brandspiritus, ingesluit die toestaan van permitte vir die aankoop of besit daarvan;

(v) die handelsure vir verkooppunte betrokke by die kleinhandel en verkoop van brandspiritus;

[(s)](w) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of mag wees; en

[(t)](x) in die algemeen, enige aangeleentheid met betrekking waartoe die verantwoordelike Lid van die Uitvoerende Raad dit nodig of wenslik ag om regulasies uit te vaardig ten einde die oogmerke van hierdie Wet te bereik, met die algemeenheid van hierdie paragraaf nie beperk deur die voorafgaande paragrawe nie.”.

Wysiging van artikel 101 van Wet 6 van 2010

7. Artikel 101 van die Hoofwet word hiermee gewysig deur die invoeging na subartikel (5) van die volgende subartikel:

“(6) Nieteenstaande die bepalings van artikel 39 kan die verantwoordelike Lid van die Uitvoerende Raad –

(a) in ooreenstemming met die oorgangsbepalings van die Drankwet; en

(b) deur kennisgewing in die *Koerant*,

voorsiening maak vir die omskakeling van enige lisensie of goedkeuring, nie uiteengesit in die eerste kolom van Bylae 2 tot hierdie Wet nie, maar van krag op die dag voor die datum van inwerkingtreding van die KwaZulu-Natal Wysigingswetsontwerp op Dranklisensiëring, 2013, na enige lisensie of goedkeuring in die kategorie soos uiteengesit in die tweede kolom van Bylae 2 tot hierdie Wet.”.

Korttitel

8. Hierdie Wet word die KwaZulu-Natal Wysigingswet op Dranklisensiëring, 2013 genoem.

MEMORANDUM
OOOR DIE OOGMERKE VAN DIE
KWAZULU-NATAL WYSIGINGSWETSONTWERP OP DRANKLISENSIËRING, 2013

1. ALGEMENE AGTERGROND

Die doel van die Wetsontwerp is om die KwaZulu-Natal Wet op Dranklisensiëring, 2010 (Wet No. 6 van 2010), te wysig ten einde –

(a) die potensiele uitdagings vir die KwaZulu-Natal Drankowerheid met die omskakeling van lisensies ingevolge artikel 101 van die KwaZulu-Natal Wet op Dranklisensiëring, 2010 (Wet No. 6 van 2010); en

(b) die kommer dat die omskrywing van "sportterrein" wel sportterreine insluit wat geleë is binne die perseel van enige godsdienstige of opvoedkundige inrigtings en sodoende die verkoop van drank binne 'n radius van 500 meter vanaf enige godsdienstige of opvoedkundige inrigting wetlik maak,

aan te spreek.

Vervolgens en ooreenkomstig 'n versoek gerig deur die verantwoordelike Lid van die Uitvoerende Raad in Desember 2011 om oorleg te pleeg met die Minister van Handel en Nywerheid betreffende die implementering van die KwaZulu-Natal Wet op Dranklisensiëring, 2010, en die herroeping van die Drankwet, 1989 (Wet No. 27 van 1989), welke oorlegpleging voorgeskryf word deur item 2(2) van Bylae 1 tot die Drankwet, 1989, in KwaZulu-Natal, is kommer geopper deur die Agbare Minister van Handel en Nywerheid ten opsigte van die uitsluiting van bepalinge betreffende die regulering van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus in die KwaZulu-Natal Wet op Dranklisensiëring, 2010. Desnoods het dit die Provinsie genoodsaak om brandspiritus te reguleer ten einde dit moontlik te maak vir die KwaZulu-Natal Wet op Dranklisensiëring, 2010, om in ooreenstemming gebring te word met die Nasionale Drankwet, 2003 (Wet No. 59 van 2003)

'n Verdere kommerwekkende aangeleentheid geopper deur die Nasionale Departement van Handel en Nywerheid was dat artikel 99 van die KwaZulu-Natal Wet op Dranklisensiëring, 2010, regulering slegs 'n diskresionêre bevoegdheid van die verantwoordelike Lid van die Uitvoerende Raad maak en, ideal gesproke, moet sodanige bepaling beslissend wees ten einde die Provinsie te genoodsaak om aangeleenthede waarvoor voorsiening gemaak is in artikel 99 te reguleer.

'n Behoeft is ook geïdentifiseer om die regte te beskerm van die lisensiehouers van geriefswinkels wat nie genoegsaam beskerm word in die tussentydse, hangende omskakelings ingevolge artikel 101 van die KwaZulu-Natal Wet op Dranklisensiering, 2010, nie.

Die gevolgtrekking is dus dat die KwaZulu-Natal Wet op Dranklisensiering, 2010, nie die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus reguleer nie en is dus nie in ooreenstemming met die Nasionale Drankwet, 2003, nie. Die KwaZulu-Natal Wet op Dranklisensiering, 2010, moet aldus gewysig word om in ooreenstemming gebring te word met die Nasionale Drankwet, 2003.

2. KLOUSULE VIR KLOUSULE VERDUIDELIKING

Ter opsomming, maak die Wysigingswetsontwerp voorsiening soos volg –

KLOUSULE 1:

Klousule 1 herdefinieer die omskrywing van "sportterrein" ten einde sportterreine geleë binne die terreine van or naby enige godsdienstige of opvoedkundige inrigtings uit te sluit.

KLOUSULE 2:

Klousule 2 maak voorsiening vir die insluiting van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus as een van die oogmerke van die Wet.

KLOUSULE 3:

Klousule 3 reguleer die aansoekproses vir die lisensiering van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus.

KLOUSULE 4:

Klousule 4 maak voorsiening vir die verbod op die die verkope en verskaffing van brandspiritus aan sekere persone.

KLOUSULE 5:

Klousule 5 maak voorsiening vir tussentydse beskerming van die regte van drankgelisensieerders van geriefswinkels, hangende die omskakelingsproses bedoel in artikel 101 van die Wet.

KLOUSULE 6:

Klousule 6 maak die verantwoordelikheid om te reguleer verpligtend of beslissend eerder as diskresionêr. Verder beoog dit om voorsiening te maak vir die regulering van die mikrovervaardiging, kleinhandel, verkope en binneverbruik van brandspiritus.

KLOUSULE 7:

Klousule 7 bemagtig die verantwoordelike Lid van die Uitvoerende Raad om 'n magtigingsraamwerk of prosedure vir die omskakeling van enige lisensie of goedkeuring, nie uiteengesit in die eerste kolom van Bylae 2 tot die Wet nie, maar van krag op die dag voor die aanvangsdatum van die Wet, na enige lisensie of goedkeuring in die kategorie soos uiteengesit in die tweede kolom van Bylae 2 tot die Wet.

KLOUSULE 8:

Klousule 8 maak voorsiening vir die korttitel van die Wet.

3. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING

Geen buitensporige organisatoriese en personeelimplikasies word voorsien nie.

4. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING

Geen buitensporige implikasies word voorsien nie.

5. DEPARTEMENTE / LIGGAME / PERSONE GERAADPLEEG

Hierdie Wetsontwerp is opgestel in oorleg met –

- 5.1 die Nasionale Departement van Justisie – Staatsregsadviesdienste;
- 5.2 die Nasionale Departement van Handel en Nywerheid;
- 5.3 die KwaZulu-Natal Drankowerheid;

5.4 die Kantoor van die Premier – Staatsregsadviesdienste; en

5.5 die Provinsiale Tesourie / die Provinsiale Departement van Finansies.

6. GRONDWETLIKE IMPLIKASIES

Grondwetlike implikasies word aangespreek deur die beoogde wysiging.

7. KONTAKPERSOON

Naam: Advokaat SS Nkatha
Posisie: Senior Bestuurder: Regsdienste
Telefoon: (033) 264 2710
Faks: 086 6751 060
Sel: 082 4050 594 / 082 8875 167
E-pos: NkathaS@kznded.gov.za

No. 39

6 kuNhlaba 2013

UMTHETHOSIVIVINYO WOKUCHIBIYELA UMTHETHO WAMALAYISENSI OTSHWALA WAKWAZULU-NATALI, 2013

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo WokuChibiyela uMthetho wamaLayisensi oTshwala WaKwaZulu-Natali, 2013, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi Lezokuthuthukiswa Komnotho Nezokuvakasha. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Mnu. DN Dimba
UNobhala
ISishayamthetho saKwaZulu-Natali
Isikhwama Seposi X 9112
Pietermaritzburg
3200

Email: dimbad@kznlegislature.gov.za

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso

N. NAIDOO
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSIVIVINYO WOKUCHIBIYELA UMTHETHO WAMALAYISENSI OTSHWALA
WAKWAZULU-NATALI, 2013**

IZINCAZELO EZEJAYELEKILE:

[] Amagama abhalwe ngokugqamile kubakaki abayizikwele asho okususiwe emthethweni okhona
_____ Amagama adwetshelwe ngomugqa ohlangene asho okufakiwe emthethweni okhona

UMTHETHOSIVIVINYO

Wokuchibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 (uMthetho No. 6 ka 2010), ngokuthi kushintshwe incazelo “yenkundla yezemidlalo”; wokuhlinzekela ukuphiswa nokudayiswa kwezipirithi ezine-ethanol eziwumthamo omncane; wokuhlinzekela ukuguqulwa kwamalayisensi noma kwezimvume; kanye nokuhlinzekela okunye okuphathelene nalokho.

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

Ukuchitshiyelwa kwesigaba 1 soMthetho 6 ka 2010

1. Isigaba 1 soMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 (uMthetho No. 6 ka 2010), ngemuva kwalokhu ozobizwa ngoMthetho omkhulu, ngalokhu siyachitshiyelwa ngokufakwa kwale ncazelo elandelayo esikhundleni sencazelo “yenkundla yezemidlalo”:

“**inkundla yezemidlalo**” kushiwo indawo lapho kubanjwa khona imihlangano yezemidlalo, imidlalo noma ezoungcebeleka: Kuncike ekutheni leyo ndawo ayikho esikhungweni sezenkolo noma sezemfundo”.

Ukuchitshiyelwa kwesigaba 2 soMthetho 6 ka 2010

2. Isigaba 2 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokufakwa kwale ndima elandelayo esikhundleni sendima (a) yesigatshana (1):

“(a) ukuhlinzekela ukulawulwa kokuphiswa kotshwala obuwumthamo omncane nokudayiswa kotshwala nezipirithi ezine-ethanol”.

Ukufakwa kwesigaba 60A soMthetho 6 ka 2010

3. Ngalokhu kufakwa lesi sigaba esilandelayo ngemuva kwesigaba 60 soMthetho omkhulu:

Izipirithi ezine-ethanol

60A. Izinhlizeko zeNgxenywe 4 yalesi Sahluko zisebenza nezinguquko ezifanele uma kuphiswa izipirithi ezine-ethanol eziwumthamo omncane.

Ukuchitshiyelwa kwesigaba 76 soMthetho 6 ka 2010

4. Isigaba 76 soMthetho omkhulu ngalokhu siyachitshiyelwa –

(a) ngokufakwa kwalesi sihloko esikhulu esilandelayo esikhundleni sesihloko esikhulu:

“Ukwenqatshelwa kokudayiswa [noma] kanye nokuhlinzekwa kotshwala noma kwezipirithi ezine-ethanol kubantu abathile”; kanye

(b) nangokwengezwa kwalesi sigatshana ngemuva kwesigatshana (3):

“(4) Izinhlizeko zalesi sigatshana zisebenza nezinguquko ezidingekayo uma kudayiswa noma kuhlinzekwa izipirithi ezine-ethanol kubantu abathile.”

Ukuchitshiyelwa kwesigaba 95 soMthetho 6 ka 2010

5. Isigaba 95 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokwengezwa kwalesi sigatshana esilandelayo ngaphambi kwesigatshana (1):

“(1A) Izinhlizeko zesigatshana (1) azisebenzi ezitolo ezincane ezathola amalayisensi okudayisa utshwala ngaphambi kokuqala kokusebenza kwalo Mthetho.”

Ukuchitshiyelwa kwesigaba 99 soMthetho 6 ka 2010

6. Isigaba 99 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokufakwa kwalesi sigatshana esilandelayo esikhundleni sesigatshana (1):

“(1) ILungu loMkhandlu oPhethe [lingasungula] kumele lisungule imithethonqubo emayelana –

(a) nokukhokhwa kwezimali kanye nesamba semali ekhokhwayo ngokwalo Mthetho ephathelene –

(i) nesicelo esenziwe ngokwalo Mthetho;

(ii) nokukhishwa kwelayisensi noma kwemvume; kanye

(iii) nezimali ezikhokhwa minyaka yonke umnikazi welayisensi maqondana nelayisensi ngayinye ekhishiwe;

- (b) nezinhlolo zamalayisensi, zezimvume, zokugunyazwa, zezitifiketi, zezinqumo, zezaziso, kubandakanya nezaziso zokulandelwa komthetho neminye imibhalo okukhulunywe ngayo kulo Mthetho;
- (c) nendlela nohlobo, kanjalo nosuku okumele kwenziwe noma kufakwe ngalo isicelo ngokwalo Mthetho, uma kukhona;
- (d) nendlela yokuhanjiswa, yokuthunyelwa noma yokukhishwa kwanoma isiphi isaziso noma omunye umbhalo okudingeka uhanjise, uthunyelwe noma ukhishwe ngokwalo Mthetho;
- (e) nendlela yokushicilelwa kwanoma isiphi isaziso noma umbhalo okudingeka ushicilelwe ngokwalo Mthetho;
- (f) nohlobo, nokuqukethwe kanye nobungako banoma isiphi isaziso, incwadi noma omunye umbhalo okudingeka ukhishwe, uhanjise, uhlinzekwe noma ushicilelwe ngokwalo Mthetho, uma kunesidingo;
- (g) nohlobo nokuqukethwe umbiko wokuhlola neminye imibiko noma izincomo ezenziwe noma ezikhishwe ngokwalo Mthetho;
- (h) nendlela nohlobo okumele kuhlelwe ngayo izigcawu zokulalela iziphikiso noma ezinye izigcawu ezimayelana nokulandelwa kwesaziso esenziwe ngokwesigaba 89;
- (i) nezikhathi, noma nokwelulwa kwezikhathi, okumele kunqunywe ngokwalo Mthetho;
- (j) neminingwane yezakhiwo okuzobekwa kuzo ilayisensi okumele ifakwe esicelweni selayisensi;
- (k) nendlela okumele kufakwe ngayo isicelo sokukhalaza noma kubuyekezwe ngayo isicelo yiLungu loMkhandlu oPhethe;
- (l) nendlela okumele iLungu loMkhandlu oPhethe libize ngayo imihlangano noma izigcawu;
- (m) nezimali ezikhokhelwa ofakazi uma bebizelwe emacaleni;
- (n) nefomu lesitifiketi elikhishwa umhloli;
- (o) nendlela okumele kufakwe ngayo isicelo kuMaziphathe woTshwala;
- (p) nenqubo elandelwayo uma kwesulwa ilayisensi noma imvume ngenxa yokutholakala necala ngokwesigaba 98;
- (q) nendlela okumele kufakwe ngayo isicelo sokuthola ushwele wesikhashana;
- (r) nendlela okumele kufakwe ngayo isicelo sokukhokhwa kwezimali zaminyaka yonke njengoba kuhlangozwe esigabeni 64;

(s) nokuhweba, nokudayisa kanye nokukhiqizwa kwezpirithi ezine-ethanol eziwumthamo omncane;

(t) nomthamo wezpirithi ezine-ethanol ongadayiselwa noma imuphi umuntu noma inini nezindawo lapho kungadayiswa khona izipirithi ezine-ethanol;

(u) nokwenqatshelwa noma nokulawulwa kokudayiswa noma kokugcinwa kwezpirithi ezine-ethanol, kubandakanya ukukhishwa kwezimvume zokuzidayisa noma zokuzigcina;

(v) namahora okusebenza kwezitolo ezihweba nezidayisa izipirithi ezine-ethanol;

[(s)](w) nanoma iluphi udaba okumele lunqunywe noma olunganqunywa ngokwalo Mthetho; kanye

[(t)](x) nanoma iluphi olunye udaba iLungu loMkhandlu oPhethe elilubona lunesidingo noma lubalulekile ukwenza imithethonqubo ukuze kufezekiswe izinhloso zalo Mthetho, ukusebenza kwale ndima akugcini nje kuphela ngalezi zindima ezingenhla.”.

Ukuchitshiyelwa kwesigaba 101 soMthetho 6 ka 2010

7. Isigaba 101 soMthetho omkhulu ngalokhu siyachitshiyelwa ngokwengezwa kwalesi sigatshana esilandelayo ngemuva kwesigatshana (5):

“(6) Ngale kokulandela izinhlinzeko zesigaba 39, iLungu loMkhandlu oPhethe kumele –

(a) ngokulandela izinhlinzeko zesikhashana zoMthetho woTshwala;

(b) nangesaziso kwiGazethi.

lihlinzekele ukuguqulwa kwanoma iyiphi ilayisensi noma imvume, engekho ohlwini loHlelo 2 lwalo Mthetho, kodwa ebisebenza ngosuku olungaphambi kosuku lokuqala kokusebenza koMthetho wokuChibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2013, ibe inoma iyiphi ilayisensi noma imvume emikhakheni ebekwe ohlwini lwesibili loHlelo 2 lwalo Mthetho.”.

Isihloko esifingqiwe

8. Lo Mthetho ubizwa ngoMthetho wokuChibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2013.

IMEMORANDAMU
NGEZINHLOSO
ZOMTHETHOSIVIVINYO WOKUCHIBIYELA UMTHETHO WAMALAYISENSI OTSHWALA
WAKWAZULU-NATALI, 2013

1. ISENDLALELO

Inhloso yoMthethosivivinyo ukuchibiyela uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 (uMthetho No. 6 ka 2010), ukuze ubhekelele –

- (a) izinselelo ezingase zibhekane noMaziphathe woTshwala waKwaZulu-Natali uma kuguqulwa amalayisensi ngokwesigaba 101 soMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010; kanye
- (b) nombono wokuthi incazelo “yenkundla yezemidlalo” ayibandakanyi izinkundla zezemidlalo ezingaphakathi emagcekeni esikhungo sezenkolo noma sezemfundo okuholela ekutheni ukudayiswa kotshwala endaweni esebangeni elingamamitha angama-500 ukusuka kunoma isiphi isikhungo sezenkolo noma sezemfundo kube semthethweni.

Ngaphezu kwalokho nangemuva kokutholakala kwesicelo esenziwa yiLungu loMkhandlu oPhethe ngoZibandlela ka 2011 sokubonisana noNgqongqoshe wezoHwebo neziMboni mayelana nokuqaliswa koMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010, nokuchithwa koMthetho woTshwala, 1989 (uMthetho No. 27 ka 1989), lokho kubonisana okuhlinzekelwe uhlamvu 2(2) loHlelo 1 loMthetho woTshwala ka 1989 KwaZulu-Natali, uNgqongqoshe wezoHwebo neziMboni waba nokungagculiseki mayelana nokushiywa ngaphandle kwezinhlinzeko eziphathelene nokulawulwa kokukhiqizwa ngomthamo omncane, kokuhweba, kokudayisa nokusetshenziswa kwezipirithi ezine-ethanol lokhu kwaphoqa ukuthi isiFundazwe silawule ukusetshenziswa kwezipirithi ezine-ethanol ukuze uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 uhambisane noMthetho woTshwala kaZwelonke, 2003 (uMthetho No. 59 ka 2003).

Omunye umbono oqhamuke eMnyangweni wezoHwebo neziMboni kaZwelonke bekungukuthi isigaba 99 soMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010, senza ukuthi kube iLungu loMkhandlu oPhethe lilawule ngokubona kwalo kanti ngokwawo leyo nhlinzeko kumele ibe impoqo ukuze kuphoqe isiFundazwe ukuthi silawule okuhlinzekelwe esigabeni 99.

Kuphinde kwabonakala isidingo sokuba kuvikelwe amalungelo abanikazi bamalayisensi bezitolo ezincane abangavikelwe ngokwanele njengamanje, kusalindwe izinguquko ngokwesigaba 101 soMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010.

Kuphethwe ngokuthi-ke, uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010, awukulawuli ukukhiqizwa ngomthamo omncane, nokuhweba, nokudayiswa nokusetshenziswa kwezipirithi ezine-ethanol, ngakho-ke awuhambisani noMthetho woTshwala kaZwelonke, 2003. Ngakho-ke, uMthetho wamaLayisensi oTshwala waKwaZulu-Natali, 2010 udinga ukuchitshiyelwa ngendlela ukuze uhambisane noMthetho woTshwala kaZwelonke, 2003.

2. UKUCHAZWA KWESIGABA SOMTHETHO NGASINYE

Kafushane, uMthethosivivinyo uhlinzeka kanje -

Isigaba somthetho 1

Isigaba somthetho 1 sichaza kabusha incazelo “yenkundla yezemidlalo” ukuze singabandakanyi izinkundla zezemidlalo ezisemagcekeni noma eziseduze kwezikhungo zezenkolo noma zezemfundo.

Isigaba somthetho 2

Isigaba somthetho 2 sihlizekela ukukhiqizwa ngomthamo omncane, ukudayiswa, ukuhweba nokusetshenziswa kwezipirithi ezine-ethanol njengenye yezinhloso zoMthetho.

Isigaba somthetho 3

Isigaba somthetho 3 silawula uhlelo lokufakwa kwezicelo zamalayisensi okukhiqizwa ngomthamo omncane, okudayiswa, okuhweba nawokusetshenziswa kwezipirithi ezine-ethanol.

Isigaba somthetho 4

Isigaba somthetho 4 sihlizekela ukwenqatshelwa ukudayiselwa kwabantu abathile izipirithi ezine-ethanol.

Isigaba somthetho 5

Isigaba somthetho 5 sihlizekela ukuvikelwa kwesikhashana kwamalungelo abanikazi bamalayisensi otshwala bezitolo ezincane kusalindwe uguquko njengoba kuhlongozwe esigabeni 101 soMthetho.

Isigaba somthetho 6

Isigaba somthetho 6 senza ukuthi ijoka lokulawula lingabi ngokubona kweLungu loMkhandlu oPhethe kodwa libe yimpoqo. Siphinde sihlizekele ukulawulwa kokukhiqizwa ngomthamo omncane, kokudayiswa kokuhweba nokusetshenziswa kwezipirithi ezine-ethanol.

Isigaba somthetho 7

Isigaba somthetho 7 sinikeza iLungu loMkhandlu oPhethe amandla okuhlizeka ngohlaka noma ngenqubo yokushintsha ilayisensi noma imvume, engekho ohlwini lokuqala loHlelo 2 eMthethweni, kodwa esebenzayo ngosuku noma ngaphambi kosuku lokuqala kokusebenza koMthetho, ibe yinoma iyiphi ilayisensi noma imvume emkhakheni obekwe ohlwini lwesibili loHlelo 2 loMthetho.

Isigaba somthetho 8

Isigaba somthetho 8 sihlizekela isihloko esifingqiwe soMthethosivivinyo.

**IZINGQINAMBA KWEZOKUPHATHA NAKWEZABASEBENZI KUHULUMENI
WESIFUNDAZWE**

Akukho zingqinamba ezilindelekile mayelana nezokuphatha nezabasebenzi.

4. IZIMALI EZIZODINGEKA KUHULUMENI WESIFUNDAZWE

Akukho zimali okulindeleke ukuba zidingeke.

5. IMINYANGO/IMIGWAMANDA OKUBONISWENE NAYO

UMthethosivivinyo ubhalwe ngokubonisana –

- 5.1 noMnyango wezoBulungiswa kaZwelonke - uPhiko lokweLuleka uHulumeni ngezoMthetho;
- 5.2 noMnyango wezoHwebo neziMboni kaZwelonke;
- 5.3 noMaziphathe woTshwala waKwaZulu-Natali;
- 5.4 neHhovisi likaNdunankulu - uPhiko lokweLuleka uHulumeni ngezoMthetho; kanye
- 5.5 neHhovisi loMgcinimafa wesiFundazwe / noMnyango wezeziMali wesiFundazwe.

6. IZINGQINAMBA EZINGOKOMTHETHOSISEKELO

Izingqinamba ezingokoMthethosisekelo kubhekwane nazo ngalesi sichibiyelo esihlongozwayo.

7. OKUNGAXHUNYWANA NAYE

Igama: Ummeli wasemaJajini SS Nkatha
Isikhundla: Umphathi oPhikweni lokweLuleka ngezoMthetho
Ucingo: (033) 264 2710
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