

**NORTH WEST  
NOORDWES**

**EXTRAORDINARY  
PROVINCIAL GAZETTE**

**BUITENGEWONE  
PROVINSIALE KOERANT**

**Vol. 252**

**28 AUGUST  
AUGUSTUS 2009**

**No. 6681**

---

**CONTENTS • INHOUD**

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
<b>GENERAL NOTICE</b>		
267 North West Liquor Bill, 2008 .....	3	6681

---

---

# GENERAL NOTICE

---

## NOTICE 267 OF 2009

### NORTH-WEST PROVINCIAL LEGISLATURE

#### NORTH WEST LIQUOR

#### BILL, 2008

**To provide for the control , regulation and licensing of the retail sale and the micro-manufacturing of liquor in the North West Province; and to provide for incidental matters thereto.**

**BE IT ENACTED** by the Provincial Legislature of the North West, as follows:–

#### CHAPTER 1

#### INTERPRETATION

1. Definitions
2. Objects of the Act
3. Application of the Act
4. Exemptions

#### CHAPTER 2

#### NORTH WEST LIQUOR AUTHORITY

5. Establishment of the North West Liquor Authority
6. Constitution of the North West Liquor Authority
7. Exemption from liability
8. Disqualification from appointment as member or employee of Liquor Authority
9. Term of office of members of the Liquor Authority
10. Powers and functions of Liquor Authority
11. Removal of membership of Liquor Authority
12. Vacancies in the Liquor Authority
13. Co-opting of persons
14. Delegations
15. Confidentiality
16. Meetings and decisions of Liquor Authority
17. Minutes
18. Notices and summonses
19. Committees to assist the Liquor Authority
20. Expert and other assistance

21. Disclosure and non-disclosure of financial or other interests by members of Liquor Authority
22. Proceedings of the Liquor Authority not invalid in certain circumstances
23. Service of process
24. Powers of the Responsible Member
25. Taking over administration of the Liquor Authority
26. Appeals Tribunal

### **CHAPTER 3**

#### **ADMINISTRATION, REMUNERATION AND FINANCIAL MANAGEMENT**

27. Staff of Liquor Authority
28. Disclosure and non-disclosure/conflict of interest
29. Remuneration and allowance of members of Liquor Authority and coopted persons
30. Involvement in liquor trade by member or staff of North West Liquor Authority

### **CHAPTER 4**

#### **FUNDING AND ACCOUNTABILITY OF THE LIQUOR AUTHORITY**

31. Funding and accounting responsibility
32. Audit and annual report
33. Revenue accruing to Provincial Revenue Fund or Liquor Authority or municipality
34. Establishment of fund

### **CHAPTER 5**

#### **LICENSING PROCEDURES**

35. Compulsory licensing
36. Categories of licenses
37. Criteria for granting license
38. Disqualification of applicants
39. Application procedure for liquor license
40. Notice of application
41. Applications lying for inspection at the liquor authority
42. Responses to representations
43. Investigations and police report
44. Forwarding of documents

45. Consideration of applications
46. Conditional granting of license
47. Education and training
48. Issuing of license and effects
49. Duplicate licenses
50. Death or incapacity of applicant
51. Temporary and special event liquor licenses

## **CHAPTER 6 CONDITIONS FOR LICENSES**

52. standard license conditions
53. Deliveries
54. Financial interest and letting of licensed premises
55. Management
56. Alteration to and extension of licensed premises
57. Nature of business
58. Children
59. Employers and employees
60. Storing of liquor
61. Place of sale of liquor
62. Trading hours
63. Quantity of liquor sold and keeping records
64. Prohibited substances

## **CHAPTER 7 VALIDITY AND RENEWAL OF LICENSES**

65. Validity of license
66. Effects of suspension of a license
67. Automatic renewal of licenses
68. Application for renewal of licenses

## **CHAPTER 8 ALIENATION, TRANSFER AND REMOVAL OF LICENSES**

69. Alienation and transfer of licenses
70. Removal of licenses
71. Abandonment of premises on death or incapacity of licensee

72. Register of licenses and applications to be kept

#### **CHAPTER 9**

#### **DISPUTE RESOLUTIONS, APPEALS AND REVIEW**

73. Disputes and settlement  
74. Appeals and reviews against decisions of the Liquor Authority

#### **CHAPTER 10**

#### **COMPLIANCE**

75. Compliance notices  
76. Closing licensed premises  
77. Interim Orders

#### **CHAPTER 11**

#### **LAW ENFORCEMENT**

78. Designation and functions of designated liquor Inspectors and inspectors  
79. Powers of designated liquor officers and inspectors  
80. Exercise of powers to enter and search or inspect premises  
81. General offences  
82. Offences regarding information  
83. Offences regarding meetings of Liquor Authority and Appeal Tribunal  
84. Offences regarding designated liquor officers and inspectors  
85. Offences regarding motor vehicles  
86. Offence regarding service stations  
87. Failure to comply with order of Liquor Authority  
88. Vicarious responsibility  
89. Evidence  
90. Notices  
91. Penalties and forfeiture

#### **CHAPTER 12**

#### **REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE**

92. Regulations  
93. Transitional provisions  
94. Repeal provision  
95. Short title and commencement

**CHAPTER 1**  
**INTERPRETATION**

**1. Definitions**

(1) In this Act unless the context indicates otherwise—

**"application"** includes an application for a conditional grant of the application;

**"authority"** means the North West Liquor Authority established in terms of section 4

**"beer"** means the drink manufactured by the fermentation of a mash of malt, with or without cereals, flavoured with hops, or ale, stout or any other drink manufactured as or sold under the name of beer, ale or stout, if it contains more than one per cent by volume of alcohol, but does not include sorghum beer;

**"caterer's license"** means a license that, subject to this Act and the conditions of the license, authorises the licensee to sell liquor at a function, occasion or event held on any premises, or part of premises, on which the licensee provides catering services, but only for consumption on those premises

**"catering services"** means services for the preparation and supply of food for consumption at functions, occasions and events;

**"Chairperson"** where occurring otherwise than in relation to the Authority means Chairperson of the Liquor Tribunal;

**"club"** means an association or organisation consisting of members dedicated to a particular activity or pursuing similar interests, which is subject to a set of rules or a constitution to which all members subscribe;

**"condition"**, in relation to a license, includes a provision operating otherwise than as a condition.

**"conditional application"** means an application that may only be granted conditionally;

**"consent of municipality"**, in relation to licensed premises or proposed licensed premises means:

(a) consent by the municipality in whose area the premises is, or will be situated, or

(b) if consent to the carrying out of development on the land concerned is required from a person or body other than the municipality that person or body.

**"controlling interest"** means any interest acquired or held, enabling the holder thereof to exercise, directly or indirectly, any control, as determined in accordance with section 12(2) of the Competition Act, 1998 (Act No. 89 of 1998), over the activities of the business or undertaking;

**"control"** has corresponding meaning;

**"convenience store"** means a store located on the site of a service station selling petrol, diesel or other petroleum products to the public, whose main business is the sale of a limited number and variety of fast moving consumer goods;

**"days"** for the purposes of calculation of time periods in this Act, means business days and excludes weekends and public holidays;

**"department"** means the Department responsible for Liquor matters in the Province;

**"distribute"** means to offer liquor or methylated spirits for sale, or sell it, to a licensed person;

**"distributor"** means a person licensed as such in terms of the Liquor Act, 2003 (Act No. 59 of 2003);

**"family member"** means a person's spouse, life partner, child, parent, brother or sister, whether or not the relationship results from birth, marriage or adoption;

**"financial interest"** in relation to any business or undertaking, means any interest which enables the holder thereof to share in the fortunes or the turnover of the business or undertaking, including the ownership of the shares of a company, the membership shares in a co-operative, the member's interest of a close corporation, the beneficiaries of a trust, or an interest in a partnership;

**"gaming premises"** means any premises on which gambling, as defined in the North West Gambling Act, 2001 (Act No. 2 of 2001), takes place under the authority of a license issued in terms of that Act;

**"hotel"** means premises, wherein or whereon the business of supplying lodging and meals for a reward is or is intended to be conducted, and includes a motel, inn, bed and breakfast, caravan and camping park, farmhouse, guest-house and a lodge;

**"license"** means a license referred to in section 32 or deemed to be such a license in terms of section 93;

**"licensed premises"** means premises or part of premises on which liquor may be micro-manufactured, sold, consumed or stored in terms of a license authorised under this Act;

**"license holder"** means any person to whom a license has been issued in terms of section 48 or transferred in terms of section 88 or who is deemed to be a license holder in terms of section 93;

**"liquor"** means –

(a) a liquor product as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989);

(b) beer or traditional African beer; or

(c) any other substance or drink declared to be liquor under the Liquor Act, 2003 (Act No. 59 of 2003), but does not include methylated spirit;

**"Liquor Act"** means the Liquor Act, 2003 (Act No. 59 of 2003);

**"member of the executive council"** means the Member of the Executive Council responsible for liquor matters in the North West Province;

**"methylated spirit"** means –

(a) a spirit denatured in accordance with any law on the denaturation or methylation of spirits; or

(b) any other denatured spirit, including–

(i) a medicated spirit; or

(ii) a denatured spirit declared to be a methylated spirit in terms of the Liquor Act, 2003 (Act No. 59 of 2003);

**"micro-manufacture"** means to produce liquor at or below the prescribed threshold volume determined in terms of section 4 (10) of the Liquor Act, 2003 (Act No. 59 of 2003);

**"micro-manufacturer"** means a person registered as such under this Act to manufacture liquor at or below the threshold volume prescribed in terms of the Liquor Act, 2003 (Act No. 59 of 2003) and micro-manufacturer has a corresponding meaning;

**"minor"** means any person under the age of 18 years;

**"off-consumption license"** means a license that, subject to this Act and the conditions of the license, authorises the licensee to sell liquor on the licensed premises, but only for consumption away from the premises and **"off-consumption"** has a corresponding meaning;

**"on-consumption license"** means a license that, subject to this Act and the conditions of the license, authorises the licensee to sell liquor on the licensed premises, but only for consumption on those premises and **"on-consumption"** has a corresponding meaning;

**"premises"** includes land, a vehicle which is mainly used for the conveyance of tourists, vessel, or aircraft and a railway train and, in relation to a conditional application, includes premises proposed to be erected and premises as proposed to be altered or added;

**"prescribe"** means prescribed by regulations in terms of this Act;

**"province"** means the North West Province

**"refreshments"** does not include liquor;

**"regulation"** or **"regulations"** means a regulation or regulations made under this Act;

**"responsible adult"**, in relation to a minor, means a person described as being a responsible adult for the purposes of this Act, whether the description is given:

(a) by reference to the relationship between the person and the minor, or

(b) in some other manner.

**"restaurant"** means premises in which meals are regularly supplied on sale to the public for consumption on the premises and where the sale of liquor for consumption on the premises is incidental thereto;



**"retail sale"** means the sale of liquor for the purposes of consumption;

**"retail seller"** means a person who is registered or licensed in terms of this Act to sell liquor, or make liquor available for sale, for the purposes of consumption;

**"sell"** includes exchange or keep, offer for sale, display, deliver, supply or dispose of for sale, or authorise, direct or allow a retail sale, and **"sale"** has corresponding meaning;

**"record"** includes any book, account, document, paper or other source of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means;

**"restricted area"** means—

(a) 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 a room or place;

(b) a room or place which the Liquor Authority has ordered to be demarcated as an area in which persons under the age of eighteen (18) years are not allowed to be; and

(c) premises, not being a retail food store, licensed only for the sale of liquor for consumption off the licensed premises.

**"restricted trading day"** means Good Friday, Christmas Day and any day declared by the Member of the Executive Council, by notice published in the Provincial Gazette, to be a restricted trading day for the purposes of this Act;

**"special event"** means an event organised at a specified place for a specified duration;

**"supply"** with regard to any retail sale of liquor or methylated spirits, means to place a person in possession or control of that liquor or methylated spirits, respectively;

**"tavern"** means any premises or part of premises where liquor is sold on the licensed premises, but only for consumption otherwise than on those premises; and where food, other than food prepared on the premises, may be provided incidentally thereto;

**"trading hours"**, in relation to licensed premises, means the times at which, subject to this Act and the conditions of the license, the sale of liquor on the premises pursuant to the license is authorised;

**"traditional African beer"** means a fermented liquid -

(a) made by-

(i) the fermentation of malt, unmalted grain or meal of the cereals sorghum, maize, finger millet or pearl millet, with no more than five per cent sugar by weight relative to the combined weight of all the malt, grain or cereal ingredients; or

(ii) combining traditional African beer powder with water;

(b) with no addition of ethyl alcohol;

(c) with an alcohol content not exceeding 3,5 per cent by volume;

(d) in a state of fermentation, or of which the fermentation has not been arrested; and

(e) not containing or flavoured with hops or any product derived from hops; or

(d) has the meaning determined in terms of the Customs and Exercise Act, 1964 (Act No. 91 of 1964), if any;

**"traditional African beer powder"** means a dry product -

(a) comprising-

(i) not more than three parts by mass of milled sorghum or maize malt; and

(ii) not less than seven parts by mass of milled precooked maize or sorghum unmalted grain or meal; and

(b) which-

(i) does not contain any sugar derived from any source;

(ii) does not contain, and is not flavoured with, hops or products derived from hops; and

(iii) may contain active dry yeast added as a processing aid; or

(c) has the meaning determined in terms of the Customs and Exercise Act, 1964 (Act No. 91 of 1964), if any;

**"wine"** means wine as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989).

**"this Act"** includes any regulations or notice made or issued in terms of this Act.

- 2. Objects of Act.- (1)** The objects of this Act are to regulate the micro-manufacturing and the retail sale of liquor and traditional African beer in a manner which will—
- (a) promote sustainable economic growth;
  - (b) transform the liquor industry to meet the socio economic realities of the province; and
  - (c) provide for public participation in consideration of applications for registration.
- (2) to promote the development of a responsible and sustainable liquor industry in a manner that facilitates- -
- (a) the entry of new participants into the industry;
  - (b) diversity of ownership in the industry; and
  - (c) an ethos of social responsibility in the industry.
- 3. Application of the Act.— (1)** The Act shall 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;
  - (b) an administrator of a deceased or insolvent estate, in the administration of that estate;
  - (c) a sheriff or deputy sheriff or any other officer acting in terms of an order of a court, judge or magistrate, in the performance of his or her functions as such;
  - (d) the commander of an aircraft of an air service licensed in terms of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), to provide a scheduled air transport service, with regard to the sale of liquor to a passenger on Liquor Authority that aircraft while on a flight of not less than 100 kilometres from one airport in the Republic to another;
  - (e) 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;
  - (f) a person manufacturing or selling medicine as defined in the Medicines and Related Substances Act, 1965 (Act 101 of 1965);
  - (g) the convener of a bona fide wine-tasting function, with regard to the sale of wine in quantities of less than 200 milliliters to be consumed at that function to persons of or above the age of eighteen (18) years.
- 4. Exemptions.—(1)** The Liquor Authority may, on application and if circumstances so warrant, declare that this Act, excluding such provisions as it may determine, shall not apply to the sale, by a person named in the declaration, of liquor—
- (a) on premises occupied, controlled or maintained by a department of State or statutory institution, to employees of the department or institution concerned and their bona fide guests, for consumption on those premises;
- (2) The Liquor Authority may, on application and upon the payment of the prescribed fee and if circumstances so warrant, declare that this Act, excluding such provisions as it may determine, does not apply to the sale, by a person named in the declaration of liquor if that person is a collector of wine and that liquor consist of his or her collection of wine or any part thereof—
- (a) a collector of liquor;
  - (b) a person manufacturing or selling spirituous or distilled perfumery or medicated spirits, which perfumery or spirit is not methylated spirit; and
  - (c) the manufacturer of sweets containing more than two per cent by mass of alcohol and manufactured in the Republic, with regard to the sale of those sweets to the holder of a licence or an exempted person.
- (3) The Liquor Authority may at any time after the issue of a declaration under subsection (2), by notice delivered or tendered to the person named in the declaration concerned—
- (a) impose such conditions or further conditions as may be set out in the notice, to which the declaration shall be subject;
  - (b) revoke or amend any condition imposed under this section; or
  - (c) revoke or amend the declaration.

## CHAPTER 2

## NORTH WEST LIQUOR AUTHORITY AND APPEAL TRIBUNAL

- 5. Establishment of North West Liquor Authority.—** (1) There is hereby established the North West Liquor Authority, which—
- (a) has jurisdiction throughout the Province;
  - (b) is a juristic person;
  - (c) must exercise its functions in accordance with this Act;
  - (d) must be impartial and must perform its functions without fear, favour, or prejudice.
- (2) The Liquor Authority shall—
- (a) manage and control the affairs of the Liquor Authority as contemplated in the Public Finance Management Act, 1999 (Act No. 29 of 1999) or any other law;
  - (b) in respect of the exercise and performance of its powers and functions be accountable to the Member of the Executive Council.
- 6. Constitution of North West Liquor Authority.—** (1) The Liquor Authority shall consist of eight members who shall be fit and proper persons, appointed by the Member of the Executive Council Responsible for liquor in the province on a part-time basis of whom—
- (a) one shall be practicing attorneys or advocates with experience as such of not less than five years;
  - (b) one shall be an accountant and auditor registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), with experience in public practice as defined in section 1 of that Act of not less than five years;
  - (c) one shall be appointed by reason of his or her knowledge and experience in the field of welfare or of community or socio-economic development;
  - (d) one shall be appointed by reason of his or her knowledge and experience in town planning and active involvement in local government;
  - (e) one shall be appointed by virtue of his or her knowledge and active involvement in the tourism industry;
  - (f) one member is designated by Member of Executive Council Responsible for liquor regulation. Provided that the designated member may serve the Liquor Authority until substituted by the Responsible Member;
  - (g) one member shall be appointed on the basis of having either proven business acumen, a knowledge or experience in the liquor industry and not actively involved therein nor having a financial interest, whether direct or indirect or who are otherwise suitable for appointment as members of the Liquor Authority; and
  - (h) one member is from the civil society.
- 2) In addition the Chief Executive Officer of the Liquor Authority shall *ex officio* be a member of the Liquor Authority but shall not be entitled to vote.
- (3) A member of the Liquor Authority other than a member referred to in paragraph (f) of subsection (5) shall not be—
- (a) appointed until the Member of the Executive Council has invited interested parties by notice in the *Provincial Gazette* and an advertisement in the local news paper to nominate within 21 days of the publication of such notice candidates for consideration,
  - (b) any person who desires to object to the appointment of any person to the Liquor Authority, may not later than 14 days before the date on which the appointment

of the members of the Liquor Authority is intended to be made, lodge with the Member of the Executive Council Responsible for liquor regulation in writing an objection stating the ground or grounds which according to such a person disqualifies the person to be appointed, from being appointed as a member of the Liquor Authority;

- (c) A final list of all nominees shall be published in the *Provincial Gazette* and the local newspaper.
  - (d) Member of the Executive Council shall appoint one member of the Liquor Authority as the Chairperson, and another member as the Deputy Chairperson.
  - (e) If the Chairperson is absent or is for any reason unable to act as Chairperson, the Deputy Chairperson shall perform the functions of the Chairperson.
  - (f) A member of the Liquor Authority shall before assuming office, make and subscribe an oath or solemn affirmation in the form determined by the Member of the Executive Council.
- (4) The Member of the Executive Council must—
- (a) Appoint the members of the Liquor Authority in accordance with the prescribed procedures, which must provide for public participation;
- (5) Before being appointed a member of the Liquor Authority, the candidate must submit an affidavit to the Member of the Executive Council in which such candidate declares that he or she—
- (a) is eligible for such appointment; and
  - (b) is not disqualified from such appointment.
- (6) The Member of the Executive Council may, at any time call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Liquor Authority, or to undertake or cause to be undertaken any investigation or enquiry in that regard.
- 7. Exemption from liability.**— A member of staff of the Liquor Authority may not be liable in his or her personal capacity for anything done by him or her in good faith in the course of exercising the functions or exercising the powers of the Liquor Authority in terms of this Act.
- 8. Disqualification from appointment as member or employee of Liquor Authority.**— (1) a person is disqualified from being appointed, continuing or acting as member of the Liquor Authority if such person—
- (a) is not a citizen of the Republic and not resident in the Province;
  - (b) is an unrehabilitated insolvent or anyone who is subject to any legal disability;
  - (c) is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or disordered;
  - (d) is anyone who has in the preceding (10) years, whether in the Republic or elsewhere, been convicted of theft, fraud, forgery or uttering of a forged document, perjury, an offence under this Act or the Corruption Act, 1992), (ACT No.94 of 1992) the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) or any offence of which dishonesty is an element;
  - (e) has at any time been removed from an office of trust on account of misconduct or dishonesty;
  - (f) has any direct or indirect financial interest or controlling or any other interest in any liquor business;
  - (g) is a minor ;
  - (h) is a family member, spouse, partner or associate, holds office or is employed by, any person, company, organisation or other body, whether corporate or unincorporated, which has an interest contemplated paragraph (f);
  - (i) is an office-bearer of any party, movement, organisation or body of a partisan political nature or public servant;
  - (k) is at the relevant time, or during the preceding 12 months was, a member of parliament, any provincial Legislature or local authority, or any council, Commission or House of Traditional leaders established in terms of the

Constitution of South Africa, 1996 or is in the full-time employment of an organ of State, other than the Liquor Authority;

(l) failed to disclose an interest in terms of section 21 or attended or participated in the proceedings of the Liquor Authority while having an interest contemplated in section 21;

(m) is not a natural person;

(n) is listed in the register of excluded persons held by the National Liquor Authority.

**9. Term of office of the members of the Liquor Authority .—** (1) A member of the Liquor Authority—

(a) shall hold office for a period of three years from the date of appointment,

(b) shall be eligible for re-appointment upon expiry of the initial term of office, and

(c) may at any time upon at least three months' written notice tendered to the Member of the Executive Council resign from office.

(2) The Member of the Executive Council may terminate the term of office of a member if the Member of the Executive Council is of the opinion that it is in the public interest or in the interest of the proper administration of this Act to do so.

(3) A member may be eligible for reappointment after the expiry of his or her initial term unless he or she—

(a) was removed from office by the Member of the Executive Council in terms of section 1; or

(b) has become disqualified in terms of section 8 to serve as a member;

(4) Notwithstanding the provisions of sub-section (3), the Member of the Executive Council may before the term of office of any member expires extend the term of office of a member until a new Liquor Authority has been appointed, but the period of that extension may not exceed one year.

**10. Powers and functions of the Liquor Authority.—** (1) The Liquor Authority has the following powers and functions—

(a) to administer liquor regulation in the Province,

(b) to receive applications for liquor licences and exemptions in terms of this Act;

(c) to grant and issue, renew, amend, refuse, suspend, transfer or revoke licenses in a prescribed manner under this Act;

(d) to impose conditions on licenses in a prescribed manner any time or take such other steps as it may think fit and proper;

(e) to rescind the suspension of the license subject to such conditions as it may in its discretion impose; or

(f) to appoint and dismiss staff and do all things incidental thereto;

(g) make and enforce rules and determine procedures for the conduct of its meetings;

(h) delegate any of its powers in accordance with section 14;

(i) appoint committees of the Liquor Authority;

(j) advise the Member of the Executive Council or furnish a report or recommendations to the Member of the Executive Council on any matter referred to the Liquor Authority by the Member of the Executive Council for consideration and arising from the application of this Act relating to the control of liquor industry in the Province;

(k) determine fees and charges in respect of investigation, enquiries and any other function performed by the Liquor Authority;

(l) open and maintain bank accounts;

(m) enter into agreements with or obtain the assistance from any department or organ of state, including the South African Police Service, to conduct or assist it in conducting its investigations;

(n) obtain information from licensees and other persons and agencies; and

(o) receive, expend and generally administer funds.

(2) The Liquor Authority, in consultation with the Members of the Executive Council Responsible for Economic Development and Tourism and Finance in the Province—

(a) must determine remuneration packages for the Liquor Authority, the Appeal Tribunal and employees, excluding those members of staff who have been seconded.

(3) The Liquor Authority must, upon the recommendation of the Chief Executive Officer, determine a code of conduct, applicable to all members and staff of the Liquor Authority and Appeal Tribunal to ensure—

(a) compliance with applicable laws;

(b) the effective, efficient and economical use of the Liquor Authority's funds and resources;

(c) the promotion and maintenance of a high standard of ethics;

(d) the prevention of conflict of interest;

(e) the protection of confidential information held by the Liquor Authority and the Appeal Tribunal; and

(f) professional, honest, impartial, fair, ethical and equitable service.

(4) Advise the Member of the Executive Council on the development of a social responsibility programme in respect of alcohol consumption and the implementation thereof:

(5) conducting an ongoing study of and investigation into —

(i) the retail liquor trade and micro-manufacturing of liquor throughout the Province and elsewhere in order to ascertain whether there are any deficiencies in this Act and to discover any abuses or violations of the procedures contained in this Act; and

(ii) reducing the socio-economic and other costs associated with the abuse of liquor.

(6) The Authority shall exercise and perform its powers and functions with due regard to section 104, read with sections 125 and 230 of the Constitution, the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996), the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the provisions of all National Legislation and all National policies, guidelines and directives pertaining to the liquor industry, with specific reference to policies, guidelines and directives pertaining to the transformation of the liquor industry.

**11. Removal and resignation of membership of Liquor Authority.—** (1) The Member of the Executive Council may remove a member from office prior to the expiry of that member's term of office—

(a) on account of misconduct; or incapacity to perform the duties of his or her office, or

(b) by reason of his or her absence from three consecutive meetings of the Authority and without good cause shown and without leave of the Chairperson of each such absence;

(c) if the member failed to disclose an interest in terms of section 21 or attended or participated in the proceedings of the Liquor Authority while having interest contemplated in section 21; and

(d) if there is good reason for doing so after due enquiry.

(2) A member may resign from the Liquor Authority by giving the Member of the Executive Council—

(a) one month written notice; or

(b) less than one month written notice, with the approval of the Member of the Executive Council: Provided that the resignation is effective as of the date stated in the written resignation notice or such other date as is agreed upon between the Liquor Authority and the member concerned;

(3) The Member of the Executive Council may, after taking the steps required by subsection (4), remove a member of the Liquor Authority, if that member has—

- (a) become disqualified in terms of section 8;
  - (b) failed to disclose an interest in terms of section 21 or attended or participated in the proceedings of the Liquor Authority while having interest contemplated in section 21(1) (a) or (b); or
  - (d) neglected to properly perform the functions of his or her office.
- (4) Before removing a person from office in terms of subsection (3), the Member of the Executive Council must afford the person an opportunity to be heard.
- (5) Upon the expiry of an appointed member's first term of office, the member may be re-appointed to a further term, subject to section 9(4).
- (6) A person may not be appointed to serve for more than two terms as a member of the Liquor Authority.

**12. Vacancies in the Liquor Authority.** — (1) there shall be a vacancy in the Liquor Authority if a member—

- (a) becomes subject to a disqualification contemplated in section 8;
- (b) Dies;
- (c) has at any time upon one months' written notice tendered his or her resignation to the Member of the Executive Council; and
- (d) has been removed from office in terms of section 11.

(2) A vacancy in the Liquor Authority shall be filled by the appointment of another member by the Member of the Executive Council, in terms of this Act as soon as may be reasonably practicable after occurrence of such vacancy, and any member so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

**13. Co-opting of persons.**— (1) If the Chairperson is of the opinion that a particular person is able to assist the Liquor Authority in the consideration of a particular matter by the Liquor Authority, he or she may co-opt that person for that purpose.

- (2) A person so co-opted shall not be entitled to vote at any meeting of the Liquor Authority.
- (3) The remuneration and allowances payable in terms of section 22, if any, and the terms and conditions of a person or persons co-opted shall be contained in a written agreement entered into for that purpose between the Liquor Authority and the person or persons co-opted.
- (4) The Liquor Authority may consult any person, agency organisation or institution with regard to any matter if it deems it necessary for the proper performance of its functions and exercise of its powers.

**14. Delegations.**— (1) The Liquor Authority may delegate any power or function the Chief Executive Officer and Liquor Authority to exercise or perform on its behalf.

- (2) Any delegation referred to in subsection (1) may be made subject to such terms, conditions and restrictions as the Liquor Authority may determine.
- (3) The Chief Executive Officer may, with approval of the Liquor Authority, sub-delegate any of the delegated powers and functions to the staff of the Liquor Authority.
- (4) A delegation under this section shall not prevent the exercise or performance of the power and function concerned by the Liquor Authority or the Chief Executive Officer;
- (5) The Liquor Authority may amend or withdrawn a delegation.
- (6) The Liquor Authority may not delegate any power or function referred to in section 10(1)(g), (h) and (k).

**15. Confidentiality.**— (1) A member or employee of the Liquor Authority, including any co-opted person or consultant employed by the Liquor Authority, may not disclose any information that has come to that person's knowledge by reason of his or her appointment to, co-option on or employment by the Liquor Authority and which relates to the business or affairs of the Liquor Authority, an applicant for a license or a licensee, save as set out in this section and section 36(2)(b) and (c).

- (2) The above prohibition against disclosure does not apply in respect of—
  - (a) disclosures to a court in relation to legal proceedings before it;
  - (b) disclosures in accordance with an order of a court;
  - (c) disclosures regarding liquor regulation in general which do not refer to the business or affairs of any particular applicant for a license or licensee;

- (d) disclosure of information to the Commissioner of the South African Revenue Service;
- (e) disclosure to the Member of the Executive Council; and
- (f) disclosure to any person who requires it for the performance of his or her functions under this Act

**16. Meetings and decisions of Liquor Authority.** — (1) Member of the Executive Council or his or her authorised delegate or representative must convene the first meeting of the Liquor Authority to—

- (a) consider any matter as may be prescribed by this Act.
- (2) The Liquor Authority may meet at such times and places in the Province as the Chairperson may from time to time determine for the expeditious conduct of its business.
- (3) The Chairperson may at any time on notice convene a special meeting of the Liquor Authority upon a written request signed by at least three members of the Liquor Authority at a time and place determined by the Chairperson to be held at a time and place determined by the Chairperson;
- (4) A decision in terms of this Act relating to the granting, amendment, renewal, transfer, suspension or revocation of a license shall be taken at a special meeting.
- (5) The quorum for a meeting of the Liquor Authority shall be half the number of members plus one.
- (6) If the Chairperson of the Liquor Authority is not available to perform his or her functions or the office of Chairperson is vacant, the Deputy Chairperson must, during the unavailability of the Chairperson or until the Chairperson is appointed, act as Chairperson and perform all the functions assigned to the Chairperson by this Act
- (7) If both the Chairperson and Deputy Chairperson are absent from any meeting of the Liquor Authority, the members present shall from among themselves elect a person to preside at such meeting.
- (8) Subject to the provisions of subsection 5, decision of the Liquor Authority shall be taken by resolution agreed to by the majority of members present at any meeting of the Liquor Authority and, in the event of an equality of votes regarding any matter, the Chairperson shall have a casting vote in addition to his or her deliberative vote: Provided that in the event of equality of votes in relation to the proposed granting, amendment, renewal, transfer, suspension or revocation of a license or registration, or removal of a licensed business to new premises, it shall be deemed that no decision has been taken by the Liquor Authority and the matter shall be brought *de novo* before the Liquor Authority.
- (9) The Chairperson may, if he or she is satisfied that any person contemplated in subsection 17 (1) or (4) whose presence is required at the meeting, has been duly notified or summonsed to be present at the meeting but is not present at the meeting, direct that the meeting be held in the absence of that person.
- (10) a meeting may be adjourned for such time, to such venue and for such reasons as the Chairperson may deem necessary..
- (11) The Chairperson in consultation with the Liquor Authority may determine procedure at meetings of the Liquor Authority, after due consideration of the principles of openness and transparency.

**17. Minutes of the Liquor Authority.**— (1) Minutes of every meeting must be taken and retained at the offices of the Liquor Authority.

- (2) Any person may obtain copies of the minutes contemplated in subsection (1) or of any part thereof against payment of the prescribed fees.
- (3) 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 Liquor Authority may not be made public, in which event such record or portion thereof may not be perused or copied by any person without the prior consent of the Chairperson.



**18. Notices and summonses.**- (1) The Chairperson may cause any person who is or may be affected by or is concerned in the consideration of a particular matter by the Liquor Authority, to be notified in the prescribed manner to be present at any meeting, with notice to him or her of the date, time and place of the meeting at which his or her presence is required and the relevant matter to be considered.

(2) A person who has received a notice in terms of subsection (1), shall personally appear before the Liquor Authority on the date and at the time and place set out in the notice and may be represented by a person of his or her choice.

(3) The Chairperson may cause the Liquor Inspector who has submitted a report contemplated in this Act to be notified of the meeting at which the report will be considered.

(4) The Chairperson may cause any person to be summonsed in the prescribed manner to be present at any meeting to—

(a) give evidence; or

(b) produce any document or any other thing which is in his or her possession or custody or under his or her control and which in the opinion of the Chairperson relates or may relate to a matter to be considered, with notice to him or her of the date, time and place of the meeting at which his or her presence is required.

(5) Any person present at a meeting, whether or not he or she has been notified or summonsed in terms of subsections (1) or (4) or any provision of this Act to be present at the meeting, may -

(a) be called upon by the Chairperson to give evidence; or

(b) be ordered by the Chairperson to produce to the Liquor Authority any document or any other thing, which is in his or her possession or custody or under his or her control, and be questioned by the Liquor Authority.

(6) The Liquor Authority may inspect, and retain for such period as is reasonable in its discretion, any document or any other thing produced to it.

(7) If the Liquor Authority thinks it necessary, the Chairperson may require of any person called upon in terms of subsection (4) (a) to give evidence or ordered in terms of subsection (5) (b) to produce to the Liquor Authority any document or any other thing, that he or she gives evidence under oath or after the making of an affirmation.

(8) The Chairperson or a person designated by him or her for this purpose shall administer the oath or affirmation.

(9) A person appearing before the Liquor Authority to give evidence or to produce any document or any other thing shall be entitled to any privilege to which a person appearing in criminal proceedings before the High Court is entitled.

(10) The Liquor Authority may, in considering any application, of its own accord take cognisance of any matter which in its opinion may be a ground for an objection to the granting of the application.

(11) The Chairperson must inform the applicant concerned of the matter contemplated in subsection (10) and if the applicant so requests, must postpone the consideration of the application for the period determined the Chairperson to afford the applicant the opportunity to state his or her case in connection with the matter.

**19. Committees of the Liquor Authority.**— (1) The Liquor Authority may from time to time and on such terms as it may determine appoint—

(a) committees to exercise the powers and perform the function delegated to such committees by the Liquor Authority;

(b) A committee must consist of at least three persons;

(c) The Liquor Authority shall designate a Chairperson of the committee

(2) Except in so far as the Liquor Authority may direct otherwise, the committees appointed shall not have the power to set aside or amend any decision of the Liquor Authority.

(3) Any act performed or decision taken by the committee shall be of force and effect except in so far as is set aside or amended by the Liquor Authority at its next meeting.

(4) A committee shall exercise its powers and perform its functions subject to the provisions of this act and such directives of the Liquor Authority as are not in conflict with the Act.

**20. Expert and other assistance.**— (1) The Liquor Authority may appoint such experts or other persons as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties.

(2) The terms, conditions, remuneration and allowance applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered shall be determined by the Liquor Authority with the concurrence of the Member of the Executive Council, and be contained in a written agreement entered into for that purpose between the Liquor Authority and the expert or person concerned.

(3) Upon having performed the work or completed the service pursuant to an agreement contemplated in subsection (2) the expert or other person concerned shall submit a report in regard thereto for consideration by the Liquor Authority.

(3) The experts or other persons appointed under subsection (1) will not be entitled to vote on any decision taken by the Liquor Authority.

**21. Disclosure and declaration of financial or other interests by members of Liquor Authority.**— (1) A member of the Liquor Authority shall not vote or in any manner participate in the proceedings at any meeting of the Liquor Authority nor be present at the venue where such meeting is held, if in relation to any matter before the Liquor Authority—

(a) a member or his or her family member, or business associate is a director, member or partner, or has controlling interest or any financial interest in the business of the applicant or any person who made representation in relation to the application of the license, or

(b) a member has any interest which precludes him or her from performing his or her functions as member of the Liquor Authority in a fair, unbiased and proper manner.

(2) If at any stage during the course of any proceedings before the Liquor Authority it appears that a member has or may have any interests contemplated in subsection (1)—

(a) that member shall 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 reasons of a conflict of interest; and

(b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the proceedings in question.

(c) If any member of the Liquor Authority fails to disclose any interest contemplated in subsection (1) or if, having such interest, he or she attends or in any manner whatsoever contributes to the proceedings at the meeting or hearing concerned, the relevant proceedings shall be *null and void*: Provided that no decision in terms of this Act relating to the granting, amendment, renewal of license or registration, or the removal of a licensed business to new premises, shall be invalid if such decision is ratified by a subsequent decision of the Liquor Authority properly taken under this Act.

(d) A decision taken by the Liquor Authority or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of the member of the Liquor Authority or, vacancy in the Liquor Authority or, the fact that any person not entitled to sit as a member of the Liquor Authority sat as such at the time when a decision was taken: Provided that such decision was taken by a majority of the members of the Liquor Authority present at the time and entitled to sit and, the members at the time constituted a quorum.

**22. Proceedings of the Liquor Authority not invalid in certain circumstances.**— Subject to the provisions of section 20, a decision taken by the Liquor Authority or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of the member of the Liquor Authority or, a vacancy in the Liquor

Authority or, the fact that any person not entitled to sit as a member of the Liquor Authority sat as such at the time when such decision was taken: Provided that such decision was taken by a majority of the members of the Liquor Authority present at the time and entitled so to sit and, the said members at the time constituted a *quorum*

**23. Service of process**—(1) In any legal proceedings instituted against the Liquor Authority service on the Chairperson of any process or any document where proceedings are instituted, shall be sufficient service on the Liquor Authority;

(2) In any legal proceed instituted against the Liquor Authority and the North West Provincial Government, service on the Chairperson and at the Office of the State Attorney respectively, of any process or any document where proceedings are instituted, shall be sufficient service on the Liquor Authority and the North West Provincial Government.

**24. Powers of the Responsible Member**—(1) Where the Responsible Member or the Executive Council is satisfied that a failure to comply with provisions of this Act has occurred —

(a) on the part of the Chairperson of the Liquor Authority or any other member of the Liquor Authority or on the part of any person employed by the Liquor Authority or acting on its behalf,

(c) The Responsible Member may, by written notice to the Liquor Authority inform it accordingly and direct the Liquor Authority to take all the necessary steps or cause the same to be taken, so as to make good such failure within a reasonable time, which shall be specified in such notice, and, where applicable, to ensure future compliance with such provisions.

(2) At the request of the Liquor Authority, the Responsible Member may—

(a) extend the period for complying with a notice; or

(b) revise the terms of the notice.

(3) The Liquor Authority and the Chief Executive Officer must ensure that any notice issued in accordance with subsection (1) is complied with.

(4) If the Liquor Authority does not comply with the notice issued in terms of subsection (1), the Responsible Member may —

(a) order an investigation into the management and administration of the Liquor Authority; or

(b) take any other steps necessary to ensure that the Liquor Authority performs its functions or manages its finances in accordance with this Act; or

(c) if the Chief Executive Officer has unreasonably failed to institute disciplinary proceedings for misconduct against any employee of the Liquor Authority, the responsible member may direct the Liquor Authority to institute disciplinary proceedings against that employee.

**25. Taking over administration of the Liquor Authority.**—(1) The Responsible Member, after consultation with the Executive Council, by notice in the *Provincial Gazette*, may appoint an administrator to perform the functions and exercise the powers of the Liquor Authority, either in whole or in part, excluding the granting and revocation of licenses, if the Responsible Member is of the opinion that —

(a) the Liquor Authority has failed to perform its functions, exercise its powers or comply with its strategic plan;

(b) there is mismanagement of its finances; or

(c) there is for any other reason, good cause to do so.

(2) In that notice the Responsible Member—

(a) must determine the powers and duties of the administrator appointed in terms of subsection (1);

(b) for the purpose of ensuring the effective functioning of the Liquor Authority, may suspend or replace one or more members of the Liquor Authority;

(c) may suspend the functioning of the Liquor Authority either in total or in part; and

(d) after consulting the Executive Council, may deal with the assets of the Liquor Authority as he or her opinion considers appropriate, in accordance with the requirements of the Public Finance Management Act, 199 (Act No. 1 of 1999), as amended.

3) If a notice is published in terms of subsection (1), the Responsible Member may—

(a) amend its resolutions;

- (b) re-instate any of the Liquor Authority's members; and
  - (c) withdraw or amend any provision of the notice contemplated in subsection (2) on such conditions as the Responsible Member considers appropriate.
- (d) The Responsible Member may recover from the funds of the Liquor Authority the costs of appointing an administrator to take over the administration of the Liquor Authority.

**26. Appeal Tribunal.**— (1) The Responsible Member must, for such term as he or she may determine, appoint a person with legal qualifications equivalent to those required for admission as a magistrate, an attorney, or an advocate of the High Court of South Africa, and with experience in the administration of justice, to act as an Appeal Tribunal to adjudicate upon appeals against or applications for the review of the decisions of the Liquor Authority in terms of this Act.

(2) The Responsible Member of the Executive Council must—

- (a) prescribe the procedure to be followed by the Appeal Tribunal; and
- (b) determine reasonable remuneration of the Appeal Tribunal, in consultation with Responsible Member of the Executive Council for Finance.

### CHAPTER 3 ADMINISTRATION, REMUNERATION AND FINANCIAL MANAGEMENT

**27. Staff of the Liquor Authority.**—(1) The Liquor Authority—

(a) in consultation with the Member of the Executive Council, must appoint a suitably qualified and experienced person as Chief Executive Officer who—

(i) is subject to the direction and control of the Liquor Authority, is responsible for all financial and administrative responsibilities pertaining to the functions of the Liquor Authority and the Appeal Tribunal; and

(ii) is accountable to the Liquor Authority.

(b) Must appoint such other staff as may be necessary to enable the Liquor Authority and the Appeal Tribunal to perform its duties; or

(c) may consist of employees placed at the disposal of the Liquor Authority in accordance with section 15 (3)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

(d) must appoint a secretary of the Liquor Authority who will be responsible for—

- (i) the preparation of agendas;
- (ii) the recording of proceedings;
- (iii) the keeping of minutes of the Liquor Authority;
- (iv) issuing of licenses after approval by the Liquor Authority;
- (v) keep and maintain in due and proper order, a register in respect of all decisions of the Liquor Authority in respect of applications received and licensed issued;
- (vi) such other duties as the Liquor Authority or the Appeal Tribunal may determine.

(e) may appoint such other staff as may be necessary to enable the Liquor Authority and the Appeal Tribunal to perform its functions.

(2) The Chief Executive Officer and each member of staff of the Liquor Authority and Appeal Tribunal must not—

- (a) engage in any activity that may undermine the integrity of the Liquor Authority;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Liquor Authority; or
- (d) divulge any information to any third party, except as required as part of that person's official functions within the Liquor Authority.

(3) A member of staff of the Liquor Authority shall before assuming his or her duties as such, make and subscribe an oath or solemn affirmation in the prescribed form before the Chairperson of the Liquor Authority.

(4) No person shall be admitted to the staff of the Liquor Authority as contemplated in this section if such person or family member of such person has a controlling interest or any financial interest or any interest in any liquor activity.

(5) The Liquor Authority must, in consultation with the Member of the Executive Council, determine remuneration, allowances, benefits, and other terms and conditions of employment of a person appointed in terms of subsection (1).

(6) The Chief Executive Officer, may resign on one month written notice addressed to the Liquor Authority.

(7) The Liquor Authority—

(a) must remove the Chief Executive Officer from office if he/she becomes subject to any of the disqualifications referred to in section 8(b) to (m); and

(b) other than as provided in paragraph (a), may remove the Chief Executive Officer and staff from office for:—

(i) serious misconduct;

(ii) permanent incapacity; or

(iii) engaging in any activity that may undermine the integrity of the Liquor Authority or Appeal Tribunal; or

(iv) incompetence.

**28. Disclosure and non-disclosure/conflict of interest.**— (1) A member of staff of the Liquor Authority must, on appointment, submit to the Liquor Authority a written statement in which it is declared whether or not that member has any direct or indirect interest, financially or otherwise, which—

(a) may constitute a conflict of interest in respect of his or her functions as a member of staff of the Liquor Authority; or

(b) could reasonably be expected to compromise the Liquor Authority in the performance of its functions.

(2) If any member of staff of the Liquor Authority acquires an interest referred to in subsection (1), he or she must immediately in writing declare that fact to the Liquor Authority.

(3) A member of staff of the Liquor Authority may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Liquor Authority in which that member has an interest referred to in subsection (1).

(4) A member of staff of the Liquor Authority may not use his or her position or privileges, or confidential information obtained as a member of staff of the Liquor Authority, for personal gain or to improperly benefit another person.

(5) A member of staff of the Liquor Authority who fails or refuses to comply with subsection (1), (2), (3) or (4) is subject to disciplinary measures in terms of applicable employment and labour law, and the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(6) The Liquor Authority must keep a register of the interests of members of staff disclosed in terms of subsection (1) and must update that register from time to time.

**29. Remuneration and allowances of members of Liquor Authority and co-opted persons.**—(1) Members of the Liquor Authority or co-opted persons or consultants respectively in terms of section 11 who are not in full-time service of the State may, in respect of their services, be paid such remuneration and allowance out of the funds of the Liquor Authority as the Member of Executive Council in concurrence with the Member of the Executive Council responsible for Finance may determine.

(2) In the application of subsection (1), the Member of the Executive Council may determine that any remuneration or allowances contemplated in that subsection shall be the remuneration or allowances determined from time to time by or under any law in respect of any person or category of persons.

**30. Involvement in liquor trade by member of staff of the Liquor Authority.**— (1) A member or staff of the Liquor Authority shall not—

- (a) participate in any liquor trade in the Province except in the performance of his or her duties in terms of this Act; or
  - (b) solicit or accept employment from the holder of, or applicant for, a license under this Act within one year after the termination of his or her term of office or service, as the case may be: Provided that a member of the staff of the Liquor Authority may solicit and accept such employment with the prior written approval of the Liquor Authority.
- (2) A member or a staff of the Liquor Authority, or any family member of such member, shall not accept any donation, reward or other benefit from or on behalf of an applicant for or the holder of a license, and no person shall give or offer such donation, reward or benefit to such member, staff or family member.
- (3) A person who contravenes a provision of subsection (1) or (2) shall be guilty of an offence

#### CHAPTER 4

#### FUNDING AND ACCOUNTING RESPONSIBILITY OF THE LIQUOR AUTHORITY

**31. Funding and accounting responsibility**—(1) The funds of the Liquor Authority consist of—

- (a) money appropriated by the Provincial Legislature for that purpose;
- (b) any amounts payable to the Liquor Authority in terms of this Act, and
- (c) other money lawfully paid to and for the benefit of the Liquor Authority.

(2) The Liquor Authority shall, within the period and in the manner contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended in each year submit a budget for the following year to the Responsible Member of the Executive Council for approval.

(3) The Liquor Authority may in any financial year make requests for additional funds to the Responsible Member of the Executive Council for inclusion in the adjustments estimates in accordance with the applicable legislation.

(4) Subject to compliance with all applicable national legislations, any revenue of the Liquor Authority which exceeds the Liquor Authority's total budget for a particular financial year by more than ten per cent (10%) shall be paid into the Provincial Revenue Fund: Provided that all surplus revenue received by the Liquor Authority in terms of subsection (1)(a) shall, within six months of the end of the financial year concerned, be deposited into the Provincial Revenue Fund.

**32. Audit and Annual Report**—(1) The Auditor-General must audit the financial statements of the Liquor Authority.

(2) The Liquor Authority must submit an Annual Report covering its activities during a financial year to the Member of the Executive Council for tabling in the Provincial Legislature within five months after the end of every financial year.

(3) The report must—

- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;
- (b) state the extent of achievements or failures of measurable objectives as set out in the business plan for the financial year concerned and the reasons for the non-achievement;
- (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; and
- (d) include a statement of the measures taken to address the social and other costs associated with the abuse of liquor as well as the number of licenses granted during the previous twelve (12) months.

- 33. Revenue accruing to Provincial Revenue Fund, Liquor Authority or municipalities.—** (1) The fees, penalties, fines and proceeds from the sale of forfeited items referred to in sections 10(1)(b)(v), 9(2), 67(1), 67(16), 86(2)(b), and 92(4) must be paid into the Provincial Revenue Fund, except the percentage of each renewal fee referred to in section 27(3).  
 (2) The fees referred to in sections 6(2), 38(1)(e), 40, 48, 49, 68(9) and 88(2) must be paid to the Liquor Authority.  
 (3) The fees referred to in sections 38(5)(a)(i) and (b)(i) must be paid to the municipality concerned.  
 (4) No amount contemplated by this section is refundable.

**34. Establishment of the fund.—** (1) The Liquor Authority must establish a fund for the purpose of—

- (a) combating the negative social consequences of the abuse of liquor;
- (b) educating persons engaged in the sale and supply of liquor; and
- (c) educating the general public in the responsible sale, supply and consumption of liquor.

(2) The Liquor Authority must, after consultation with the Responsible Member of the Executive Council, provide for the terms of reference for and administer the fund referred to in subsection (1).

(3) (1) The funds of the Liquor Authority shall consist of—

- (a) money appropriated by the Provincial Legislature for that purpose;
- (b) any amounts payable to the Liquor Authority in terms of this Act, and
- (c) other money lawfully paid to and for the benefit of the Liquor Authority.

(4) The Liquor Authority must, in consultation with the Responsible Member of the Executive Council and the Responsible Member of the Executive Council for Finance in the Province—

- (a) open an account for the fund in the name of the Liquor Authority with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); and
- (b) deposit therein all money allocated in terms of subsection (3).

## CHAPTER 5 LICENSING PROCEDURE

**35. Compulsory licensing.—** (1) A person may not sell or micro-manufacture liquor or traditional African beer—

- (a) except under the authority and in accordance with the conditions of a license issued to that person in terms of this Act and the National Liquor Act No. 4 of 2003; and
- (b) unless that person keeps such license and the related conditions conspicuously in the licensed premises as may be prescribed in terms of this Act.

(2) A license authorising the retail sale or micro-manufacturing of liquor or traditional African beer shall be issued by the Liquor Authority in accordance with prescribed procedures.

(3) A license must prescribe the-

- (a) Kind of license;
- (b) conditions imposed by the Liquor Authority;
- (c) period of validity of such license;
- (d) trading hours; and
- (e) the form and content of such license.

**36. Categories of licenses.—** (1) The Liquor Authority may grant the following licenses—

- (a) a license for the micro-manufacture and sale of liquor for consumption both on and off the premises where the liquor is sold; or
- (b) a license for the sale of liquor for consumption on the premises where the liquor is sold; or
- (c) a license for the sale of liquor for consumption off the premises where the liquor

- is sold;
- (d) a license for the sale of liquor for consumption on the premises upon which liquor is sold at special events;
- (e) a temporary liquor license for the sale of liquor for consumption on the premises upon which liquor is sold; or
- (f) a license for the micro-manufacture and sale of traditional African beer for consumption both on and off the premises where such tradition African beer is sold

**37. Criteria for granting licenses.**—(1) The Liquor Authority may not grant a license, unless it is satisfied on a balance of probabilities that—

- (a) the granting thereof is in the public interest;
- (b) the applicant is of good character, and not disqualified from holding a license in terms of section 38;
- (c) the premises on which the sale or consumption of liquor will take place is or will upon completion be suitable for use by the applicant for the purposes of the license;
- (d) the applicant will have the right to occupy the proposed licensed premises;
- (e) the granting of the application does not prejudice—
  - (i) the residents of a residential area;
  - (ii) the resident of an institution for the aged or frail;
  - (iii) the learners of an educational institution who are under the age of eighteen (18) years;
  - (iv) the patients of an institution for drug or alcohol related dependencies; or
  - (v) the congregants of a religious institution located in the vicinity of the proposed licensed premises; and
  - (vi) in an event a lease agreement between the applicant and the land lord is less than three (3) years the applicant is the land lord. Notwithstanding this provision, the Liquor Authority may grant the lessee a license only if the lease agreement is for a period of five (5) years or more.

**38. Disqualification of applicants.**— (1) The Liquor Authority may not grant, issue, an application, a transfer or removal certificate or authorise a renewal of a license—

- (a) if the applicant—
  - (i) was within sixty (60) months prior to the lodgement of the application, sentenced to imprisonment without the option of a fine; or
  - (ii) was, within sixty (60) months prior to the lodgement of the application, declared unfit to hold a registration certificate by the National Liquor Authority or a licence by a Provincial Liquor Authority;
  - (iii) is an unrehabilitated insolvent; or
  - (iv) is a minor upon the date of consideration of the application; or
  - (v) is 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; or
  - (vi) is the spouse or life partner of a person described in sub-paragraphs (i), (ii) or (iii);
  - (vii) is mentally ill as defined in the Mental Health Care Act, 2002 (Act 17 of 2002);
  - (viii) is disqualified by a court from holding a license while the disqualification remains in force;
  - (x) has a license forfeited until after the expiration of five years after the date of such forfeiture;
  - (xi) has before or after the commencement of this Act, been convicted of an offence under any law of selling or manufacturing liquor or traditional African beer and has subsequently but after the commencement of this Act and within five years of such previous conviction been convicted under any law of



similar offence; or

(xii) has made a material misrepresentation, omission or misstatement in the application for approval; or

(xiii) was in the Republic or elsewhere in the preceding past 10 years sentenced to imprisonment without the option of a fine, unless the competent authority considering the application concerned is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold the license or certificate or unless the sentence has been set aside by a competent court or the person has received a grant of amnesty or a free pardon; or

(xiv) is addicted to the use of any drug having a narcotic effect or the excessive use of intoxicating liquor.

(b) Where application relates to premises of which any member of the South African Police Services is the owner or lessee or which any such member has any interest;

(2). No company, close corporation, co-operative, association, partnership or trust shall be licensed or remain licensed if a person who is in terms of subsection (1) disqualified from being licensed -

(a) as a controlling interest in that company, close corporation, co-operative, association or trust;

(b) is a partner in such partnership;

(c) is the main beneficiary under such trust, as the case may be.

(3) A licensed person who is or becomes disqualified as contemplated in this section, shall forthwith inform the Liquor Authority, in writing, of such disqualification within thirty (30) days after such disqualification.

(4) A sentence or conviction contemplated in subsections (a)(i); (x) or (xii) shall not include a sentence or conviction which was set aside on appeal or review or in respect of which a free pardon has been granted.

(5) The issue or transfer of a license to an applicant disqualified in terms of this Act from holding the license shall be null and void and the premises in respect of which the license was issued or transferred to the applicant may be closed for the sale of liquor by order of magistrate court.

(6) failure to comply with sub-section (3) is an offence.

(7) The Liquor Authority shall not grant, issue an application or a certificate of transfer or removal in case of a premise situated within a radius of five hundred (50) metres in the vicinity of a place of worship, any educational institution, similar licensed premises, public transport facility, or such further distance as the Liquor Authority may determine or prescribe from time to time.

**39. Application procedure.**—(1) An application for or relating to a licence for any purpose under this Act must—

(a) be made to the Liquor Authority; and

(b) on a prescribed form; and

(c) accompanied by a zoning certificate; and

(d) where necessary, a copy of a planning application submitted to the local *municipality* in terms of applicable planning legislation; and

(e) other information that may be required by the Liquor Authority to enable it to determine whether or not the applicant meets the criteria for the granting of a license;

(f) in case of premises situated in a tribal area, a tribal resolution that supports the application; and

(f) the non-refundable prescribed fee which must be paid in the prescribed manner.

(2) No application for a license will be accepted or advertised during the period of 1 December and 15 January of the following year.

(3) By submitting an application for a license, the applicant consents that the Liquor Authority or any member or authorised employee of the Liquor Authority may—

(a) conduct a hearing, investigation or enquiry pertaining to the integrity, character, reputation, prior conduct, habits, associations, financial standing and ability, criminal record, competence, experience and suitability of—

- (i) the applicant or if the license has been granted, the licensee;
- (ii) any director or shareholder, member, trustee or beneficiary, or person holding a membership share, where the applicant is a company, close corporation, trust or co-operative; and
- (iii) any person directly or indirectly involved in the affairs of any applicant or the licensee;

(b) disclose any document or information submitted as part of or together with an application to any person in connection with such hearing, investigation or enquiry; and

(c) obtain from and disclose to any law enforcement or regulatory agency or body information of and concerning the applicant for purposes of any hearing, investigation or enquiry.

(4) The Liquor Authority must, within sixty (60) days after receipt of an application, screen the application to ensure compliance with subsection (1).

(5) Should the Liquor Authority determine that the application is incomplete or defective, it must, within the prescribed period from the date of 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 thirty (30) days from the date of the notice.

(6) The Liquor Authority must, within the prescribed period after finding that an application complies with subsection (1)—

(a) where subsection (1)(c) applies, forward the application to the municipality to—

- (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application;
- (ii) obtain comment on the application from the ward councillor and various parties who may be affected by the application; and
- (iii) allow for the consideration of the planning application in relation to the application for a liquor license.

(b) where subsection (1)(c) does not apply, forward the application to the municipality to—

- (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application, and
- (ii) obtain comment of the ward councillor.

(7) The Liquor Authority may cancel an approved application, if it discovered prior to the issuing of the licence certificate concerned, that the approval was based on false information provided to the Liquor Authority

**40. Notice of application.— (1)** The applicant must, in the prescribed form, publish notices, in at least two of the official languages of the Province of which one is an indigenous spoken in the area in—

(a) the *Provincial Gazette*, and

(b) any community newspaper circulating in the area in which the premises to such application are situated, and where there is no such community newspaper, in at least one other newspaper circulating in the area where the premises concerned are situated.

(2) The applicant must display a notice as prescribed, in the two official languages of the Province in a prominent place at the proposed licensed premises so that it is visible to passers-by.

(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) The applicant must, within the prescribed period from the date of lodgement of an application, serve notice of the application on the following—

(a) the designated Liquor officer in whose area of jurisdiction the proposed licensed premises are located, who must, within the prescribed period, give notice to-

- (i) neighbouring residents or such persons who in his or her judgement may be affected;
- (ii) the community policing forum, and
- (iii) Traditional Leadership in whose area of jurisdiction the proposed licensed premises are located.

(b) the municipality in whose area of jurisdiction the proposed licensed premises are located, which must, within the prescribed time, give notice of the application to the ward councilor designated for the ward in which the premises are located.

(5) Notwithstanding subsection (1), where an applicant has to comply with section 39(1)(c), the notification done in terms of the applicable planning legislation is deemed to be in compliance with the notification requirements in terms of this section: Provided that the Liquor Authority may require such additional notification as it may deem appropriate.

**41. Application lying for inspection.—** (1) The Liquor Authority must, within the prescribed period of finding that an application complies with section 39(1), enable the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application and any documents lodged in connection therewith, at the offices of the Liquor Authority before the date upon which the application is considered by the Liquor Authority.

**42. Written representations.—** (1) A person who has an interest in the granting or refusal of an application may, within the prescribed period, make written representations to the Liquor Authority for or against the granting or refusal of that application.

(2) A copy of the representations must be lodged with the Liquor Authority, the municipality and Tribal Authority where such application is in the tribal area.

(3) A copy of the representations must be served by the person making the representations, on the applicant or his or her representative and the designated liquor officer.

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

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

(a) his or her full name and address;

(b) his or her identity number or, if a company or close corporation, its registration number;

(6) The applicant shall, within a period of seven (7) days of receipt of the written representation, lodge his or her written response, if any, lodged in terms of sub-section (2) by submitting a copy thereof to Liquor Authority, municipality and the Tribal Authority and the persons who lodged the representations.

(7) The identity of a person who made the representations in relation to an application shall not be divulged to any other person.

**43. Investigations and police report.—**(1) The Liquor Authority may, subject to any other law, gather such information as it deems necessary from any source or person regarding the suitability of the applicant to hold such a license under this Act.

(2) The Liquor Authority must, after receipt of an application for a license, request the South African Police Service for a report from a police officer of or above the rank of inspector covering—

(a) particulars of any convictions recorded against the applicant, any director in a case of a company, any member in the case of a close corporation any person who will be involved in the business and in respect of whom the Liquor Authority deems it necessary to obtain a police report, and

(b) such matters as may be prescribed.

(3) For the purposes of a report contemplated in subsection (2) the member of the South African Police Services may require the applicant or person concerned to furnish such information and particulars including any finger-print or palm-print as that member may consider necessary.

(4) A report contemplated in this section shall be furnished to the Liquor Authority within the prescribed period of the date of the request..

**44. Forwarding of documents.—** (1) The municipality must—

(a) forward to the Liquor Authority its decision in respect of a planning application referred to in section 39(1)(c)

- (b) within the prescribed period, forward to the Liquor Authority the following documents—
- (i) information regarding the extent of the public participation process that was followed in respect of that application;
  - (ii) the comments of the ward councillor;
  - (iii) the comments of the municipality, if any, on the application for a liquor license; and
  - (iv) any other document or article lodged with the municipality in connection with the application for a liquor license.
- (2) The South African Police Services must forward the reported as contemplated in section 43
- (3) forwarding of documents must be done within the prescribed period.
- 45. Consideration of applications.**—(1) If an applicant fails to comply adequately with the notice referred to in section 39(5) within the period stipulated, the Liquor Authority may—
- (a) decline to consider the application;
  - (b) postpone the consideration of the application pending compliance within a specified period; or
  - (c) refuse the application.
- (2) The Liquor Authority may, when considering applications, take cognisance of the following—
- (a) the application and any report lodged in response thereto;
  - (b) representations in support of or against the application, any response to representations against applications and any other document or article lodged in relation to the application;
  - (c) the premises are or shall on completion, be suitable for the purposes for which they will be used under the license;
  - (d) the applicant is of good character and otherwise fit to be the holder of the license;
  - (e) the granting of the license is in the public interest;
  - (f) the possibility that the granting of such a license will not bring into existence or aggravate any dominant or over concentrated market share or any restrictive practice, acquisition or monopoly situation in the Province as envisaged in the Competition Act, 1998 (Act No. 89 of 1998) in the liquor industry;
  - (g) the granting of such license will not result in the establishment of an unduly large liquor industry in the Province, having regard to the number of the inhabitants of the Province, their financial means and the number of licenses already granted in terms of this Act or any other law;
  - (h) the premises, accommodation, equipment and facilities in respect of which the license is to be issued are, or will be, if the applicant is licensed, in compliance with this Act;
  - (I) the extent to which the proposed licensing will materially restrict or promote—
    - (i) new entrants to the liquor industry;
    - (ii) job creation within the liquor industry; and
    - (ii) efficiency of operation of the existing liquor licensed business;
  - (j) any matter which, in the opinion of the Liquor Authority, should be taken into consideration;
- (3) Where an application for a license has been refused by the Liquor Authority, no new application may be made in respect of the same premises within a period of one (1) year from the date of refusal.
- (4) If an application, a document accompanying it, written 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 Liquor Authority may condone the defect or failure if there has been substantial compliance with this Act and if such condoning is not likely to prejudice any person.
- 46. Conditional granting of license.**— (1) The Liquor Authority may conditionally grant a license, excluding a temporary liquor license, in respect of premises not yet erected, or premises

requiring any structural alteration, addition or reconstruction to be effected so as to make such premises suitable for the purposes for which they will be used under the license, direct that the license may not be issued until the applicant complies with the conditions it has imposed relating to the completion of the premises.

(2) A license granted by the Liquor Authority in terms of subsection (1) may not be issued until the applicant complies with the prescribed conditions imposed at the time of granting.

(3) The Liquor Authority must stipulate a period within which the applicant must comply with the conditions referred to in subsection (2) when granting a license conditionally.

(4) The Liquor Authority may at any time, upon application by the applicant amend or withdraw the conditions;

(5) The period determined under subsection (3), shall not be longer than twenty four (24) months.

(6) The Liquor Authority may at any time on good cause shown, upon application by the applicant—

(a) extend the period stipulated; or

(b) approve an amended plan in respect of the premises.

(7) If the applicant fails to comply with the conditions referred to in subsection (2) within the period referred to in subsection (3) or extended in terms of section (6), the granting of the license lapses and the license is deemed not to have been granted.

(8) When the applicant complies with the conditions imposed, the Liquor Authority must issue the license as prescribed.

**47. Education and training.**— The Liquor Authority may conditionally grant a license and direct that the license may not be issued until the applicant or an employee or employees of the applicant have undergone such training and education as the Liquor Authority requires.

**48. Issuing of license certificate.**— (1) The Liquor Authority must, within the prescribed period after granting application, in terms of section 39, notify the applicant in writing that the application has been granted.

(2) The applicant must pay the prescribed fee within thirty (30) days of the issuing of the notice contemplated in subsection (1).

(3) The Liquor Authority must within the prescribed period after the payment of the prescribed fee referred to in subsection (2), and subject to sections 42 and 43, issue a license certificate to the applicant in the prescribed form, setting out the conditions of the license as imposed.

(4) A license certificate 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.

(5) If the applicant fails to pay the fee referred to in subsection (2), the granting of the application will lapse, subject to subsection (6).

(6) The applicant may, within a period of sixty (60) days after the expiry of the period referred to in subsection (2), apply in writing to the Liquor Authority for condonation of the failure to pay the prescribed fee referred to in subsection (2) and the Liquor Authority may condone the failure and allow the late payment of the said fee by a date to be determined by the Liquor Authority, subject to the payment of a penalty of 100 % of that fee.

**49. Duplicate licenses certificate.**—(1) The Liquor Authority may at any time after the issue of a license certificate under section 48, issue a duplicate license certificate to the licensee on payment of the prescribed fee and on proof of the destruction or loss of the original license.

(2) A license certificate issued under subsection (1), shall be subject to the same conditions set out in the original license certificate.

**50. Death or incapacity of applicant.**— For the purposes of this section the expression 'an administrator of an estate' includes—

(a) an executor of a deceased estate;

(b) a liquidator or trustee of an insolvent estate; and

(c) a curator.

(2) When a licensee dies, becomes insolvent, or is placed under curatorship, the administrator of the estate shall, as soon as he or she is appointed, inform the GLA of his or her appointment as such;

(3) The administrator may, for the purposes of administering the estate, continue to conduct the licensed activities in the name of the estate.

(4) Any person may apply in the prescribed manner and form to the Tribunal for the appointment of a person to conduct the licensed activities of the licensee, pending the appointment of an administrator contemplated in subsection (2).

(5) Before granting an application made in terms of subsection (3), the Tribunal must be satisfied that —

(a) every person with a financial interest in the matter has been given reasonable notice of the application; or

(b) an administrator has not been appointed; and

(c) There are reasonable grounds to believe that an administrator will be appointed.

(6) A person appointed in terms of subsection (3) may, for the purpose of administering the estate, continue to conduct the licensed activities in the name of the estate, until an administrator has been appointed

**51. Temporary and special event liquor license certificate.**— (1) The Liquor Authority may upon application referred to in section 36(b) or (d), and upon the payment of the prescribed fee, grant a temporary liquor license certificate for the use by the applicant only: Provided that in the case of section 36(d) and (e) the special or temporary liquor license certificate is limited to the sale and consumption of liquor on the premises where liquor is sold.

(2) The Liquor Authority may not grant a temporary liquor license under subsection (1) for a period longer than fourteen (14) consecutive days and for more than a total of thirty (30) days per year beginning on 1 January.

(3) A temporary liquor license must be made subject to the prescribed conditions and such other conditions and restrictions as may be imposed by the Liquor Authority.

(4) A temporary liquor license may be granted only to the license-holder of an on-consumption license

(5) The Liquor Authority may upon application by—

(a) an educational institution;

(b) a welfare or cultural organisation;

(c) the organiser of an exhibition;

(d) the secretary, manager or chief steward of a *bona fide* race or sports meeting or similar event; or

(e) the organiser of an artistic performance, in the prescribed manner and upon the payment of the prescribed fee, grant a special event liquor license for the sale of liquor for consumption on the premises on which liquor is sold at a special event.

(6) An application for a special event liquor license must be made at least fourteen (14) days prior to the date of the special event.

(7) A special event liquor license may not be granted for a period exceeding the duration of the special event concerned.

(8) A special event liquor license is subject to the conditions referred to in section 52, where applicable, and such other conditions and restrictions as the Liquor Authority may impose.

#### CHAPTER 5 CONDITIONS FOR LICENSES

**52. Standard license conditions.**— (1) It must be a condition of every license for the consumption of liquor—

(a) on the premises where the liquor is sold, that all liquor sold must be consumed on the licensed premises only and that no liquor sold may be removed from the licensed premises.

- (b) off the licensed premises that no container containing liquor may be opened and no liquor may be consumed on the licensed premises except for tasting purposes as approved by the Liquor Authority.
- (2) The licensee of premises upon which the business of a retail food store is carried on, may not sell liquor other than table wine.
- (3) A retail food store as referred to in subsection (2) must sell its liquor from a prescribed designated area, which must be locked in such a manner as to render it inaccessible to the public at all times when liquor may not be sold.
- (4) The Liquor Authority may at any time after the issue of a license under section 46, upon application by the licensee or any other interested party, by a notice delivered or tendered to the licensee concerned—
  - (a) declare the license to be subject to such conditions or further conditions set out in the notice as the Liquor Authority may in its discretion impose; or
  - (b) suspend, revoke or amend any condition or declaration imposed or made by Liquor Authority;
- (5) A contravention of or failure to comply with the conditions set out in subsection (1), (2) (3) or (4) is an offence;
- (6) There is established a Liquor Traders Association in the Province to be known as the North West Liquor Traders Association;
- (7) (a) All other Associations active in the liquor trade must affiliate to the Liquor Traders Association;
- (b) All licensees and applicants for licensees who are not members of Associations referred to in paragraph (a) must be members of the North West Liquor Traders Association.
- (c) The Member of the Executive Council may prescribe a Minimum Standard Constitution for the Liquor Trade Association.

**53. Delivery of liquor.**—(1) It must be a condition of every license issued for the consumption of liquor off the licensed premises that—

- (a) liquor may not be delivered from any vehicle unless the liquor was ordered from the licensed premises before the dispatch of the liquor and an invoice was issued in the prescribed manner, 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);
  - (c) a legible carbonised copy of the invoice described in paragraph (a) must be retained in the delivery vehicle from the time of dispatch to the time of delivery of the liquor, when it must be handed to the person accepting delivery; and
  - (d) Where the amount of liquor being purchased is above the prescribed threshold, the purchaser must produce his or her identity document and proof of residential address.
- (2) Failure by the licensee to comply with a condition contemplated in subsection (1) is an offence.

(3) Accepting delivery of liquor purchased from a supplier unaccompanied by an invoice describing the name, address and license number of the supplier as well as the nature, quantity and purchase price of the liquor supplied, is an offence.

**54. Financial interests and letting of licensed premises.**—(1) A licensee may not, without the prior written consent of the Liquor Authority, transfer a financial interest of more than 5% in the licensed business to any other person.

(2) A licensee who wishes to transfer a financial interest of more than 5% in the licensed business to any other person must apply in the prescribed manner, subject to the payment of a prescribed fee to the Liquor Authority for permission to do so.

(3) The Liquor Authority may not grant consent in terms of subsection (2) if the person to whom the financial interest is intended to be transferred—

- (a) is disqualified in terms of section 38 from holding a license; or

- (b) is not of good character; or  
 (c) whose clearance certificate from the South African Police Services has not been obtained
- (4) The Liquor Authority must, in the manner prescribed, notify the designated liquor officer of the application, and request a written report regarding the qualification, nationality, race and fitness of a person to whom the financial interest is intended to be transferred.
- (5) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (4), and may include therein any other matter which the designated liquor officer may deem relevant to the application or as may be requested by the Liquor Authority.
- (6) The Liquor Authority must, within the prescribed period, either refuse or grant the application.
- (7) A licensee must not let the license to another person or allow another person to carry on business in terms of the license: Provided that a licensee in respect of license which includes the right to micro-manufacture may apply to the Liquor Authority to let the licensed premises concerned or part thereof to another person for the purposes of micro-manufacturing by lodging with the Liquor Authority application in the prescribed manner and form, and against payment of the prescribed fee.
- (8) The Liquor Authority may not grant an application for letting as contemplated in subsection 7 unless it is satisfied that the person to whom the licensed premises or part thereof is intended to be let—
- (a) is not disqualified from holding a license in terms of section 38;  
 (b) is of good character; or  
 (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.
- (9) A contravention of or failure to comply with subsection (1) or (7) is an offence.
- 55. Management —.** (1) The Liquor Authority must, unless the applicant is a natural person, when granting a license, approve the appointment of a natural person nominated by the applicant, who is resident in the Province, as manager of the licensed business.
- (2) A licensee who is not a natural person may at any time, and in the prescribed manner, nominate a natural person resident in the Province to be the manager of the licensed business, in which event the Liquor Authority may approve such person's appointment as manager.
- (3) The designated liquor officer must, within the prescribed period, furnish a report on the suitability of the nominated person.
- (4) The Liquor Authority may not approve the appointment as manager of a person who is—
- (a) is disqualified from holding a license in terms of section 38;  
 (b) is not of good character; or  
 (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.
- (5) The Liquor Authority may in certain circumstances direct that the proposed manager to undergo such training as the Liquor Authority may specify as a pre-condition for the approval of such appointment.
- (6) A manager whose appointment has been approved 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 approval of the appointment of a manager in terms of this section does not release the licensee from any duty, obligation or liability imposed upon the licensee by this Act or in terms of the conditions of the license or any law.
- (8) The approval of the appointment of a manager in terms of subsection (1) or (2) remains valid until the appointment of a new manager.
- (9) If a person, whose appointment as a manager has been approved in terms of subsection (1) or (2), 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 approval of the appointment of a manager in his or her place.

(10) If a licensee fails to comply with subsection (9), his or her license certificate may be suspended in terms of section 9(1)(b)(iii).

**56. Alteration of licensed premises or nature of premises.**—(1) Except with the prior written consent of the local municipality and Liquor Authority granted upon application in the prescribed manner and payment of a prescribed fee, a licensee must not—

(a) carry out any structural alteration, addition, reconstruction or extension of or to the licensed premises;

(2) Except with the prior written consent of the Liquor Authority granted upon application in the prescribed manner, a licensee must not—

(a) materially change the nature of the business in respect of which a license was granted from that described in the application considered by the Liquor Authority when granting the license; or (b) conduct business under the license on premises on which any other business, including a business to which any other license relates, or any trade or occupation is carried on or pursued.

(3) Two or more premises under the same roof are deemed to be one for the purposes of subsection (1)(c), if those premises are not completely separated from each other by a wall or walls in which there is no door, window or other aperture, unless the Liquor Authority, at any time when the matter may in its opinion rightly be raised, determines otherwise in a particular case.

(4) A consent in terms of subsection (1)(a) must not be issued until the applicant, within the prescribed period, submits proof to the satisfaction of the Liquor Authority that the applicant has the right to alter the premises concerned for the purpose as contemplated in the application.

(5) A contravention of or failure to comply with sections is an offence.

**57. Nature of business.**— (1) Notwithstanding any law to the contrary the holder of—

(a) an on consumption license may also sell or supply newspapers, light refreshments and smoker's requisites on the licensed premises, or conduct such other business as the Liquor Authority, on application, when granting the license concerned may, approve subject to such conditions as the Liquor Authority may deem fit; and

(b) liquor store license, which is an off-consumption may also sell or supply mineral waters, other drinks, tobacco, cigars, cigarettes, matches, cooler bags and such other articles as the Liquor Authority may authorise.

**58. Liquor prohibited to certain persons.**—(1) A person must not—

(a) sell liquor to a person under the age of eighteen (18) years.

(b) give or supply liquor to a person under the age of eighteen (18) years; or

(c) allow such a person in his or her care or under his or her supervision to consume liquor, except where it is given for the purposes of worship associated with the celebration of a religious celebration; or

(d) allow unduly intoxicated or disorderly person.

(2) A licensee or person in control of the premises, agent or employee of a licensee may not allow a person under the age of eighteen (18) years to—

(a) Consume liquor on the licensed premises; or

(b) be in possession of liquor; or

(c) enter or access a restricted area unless accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian; or

(d) be on the licensed premises after 5p.m.

(3) A person must not send, or cause or permit to be sent, to a liquor licensed premises a person under the age of eighteen (18) years with a view a person of eighteen (18) years being supplied with liquor.

(4) Subsection 2(c) does not apply if the person under the age of eighteen (18) years is accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian.

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

(6) ) A person in control of the premises may require—

- (a) a person under the age of eighteen (18) years; or
- (b) an unduly intoxicated or disorderly person—
  - (i) to leave the premises;
  - (ii) if the person refuses the person may use reasonable force to remove the person;
  - (iii) and a person removed must not resist the person in control of the premises to remove him or her.

(6) A contravention of this section is an offence.

**59. Employers and employees—**(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 a person is—

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

(2) An employer must not—

- (a) supply liquor to a person as an inducement to secure his or her employment;
- (b) supply liquor to an employee instead of wages;
- (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 in lieu of a debt in respect of the sale or supply of liquor.

(3) A contravention of or failure to comply with subsection (1) or (2) is an offence..

**60. Storing of liquor—**(1) A licensee must store liquor on the licensed premises or in such other or additional place within the area where the license is issued as may be approved by the Liquor Authority when granting a license or on application, at any time thereafter.

(2) A licensee may not sell, supply or allow the consumption of liquor in or from such other or additional place of storage.

(3) Any contravention of or failure to comply with subsection (1) or (2) is an offence.

**61. Place of sale—**(1) A licensee may not sell or supply 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 on the licensed premises.

(3) Any contravention of or failure to comply with subsection (1) is an offence.

**62. Trading hours—**(1) Subject to prescribed requirements, terms and conditions and any other law, the Liquor Authority may when issuing a license under this Act, restrict the days and hours during which a licensed person may sell liquor in terms of such a licence

(2) A licensee who sells or supplies, or allows the consumption of liquor on or off the licensed premises at a time when the sale of liquor is not permitted by the license, is guilty of an offence.

**63. Quantity of liquor sold and keeping of records—**(1) A licensee must keep, in the prescribed manner, a record of all liquor sold for consumption off the licensed premises.

(2) A person, other than a licensee, may purchase, and a licensee may not sell to one person, in a single day for consumption off the licensed premises, more liquor than a quantity, which the Member of the Executive Council may prescribe, without the prior written consent of the Liquor Authority.

(3) A person who is not licensed or authorised to sell liquor may not at any time 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) A contravention of or failure to comply with section is an offence.

**64. Prohibited substances—.** (1) A person shall not sell or supply any substance under the name of any liquor, if that substance is not liquor as defined in this Act.

(2) A person shall not micro-manufacture, have in his or her possession, custody or control or consume or sell or supply as liquor any concoction manufactured by the fermentation of any substance or liquor product, the consumption of which may be harmful to any person's health or well being and which is specified as such by the Minister by notice in the *Government Gazette* or which is specified as such in terms of subsection (4), by the Member of the Executive council, by notice in the *Provincial Gazette*.

(3) A person shall not micro-manufacture, have in his or her possession, custody or control or consume or sell or supply to any person any drink manufactured by the distillation of any liquor or concoction referred to in subsections (1) and (2).

(4) The Member of the Executive Council may by notice in the *Provincial Gazette* specify, any concoction manufactured by the fermentation of any substance or any drink manufactured by the distillation of any liquor or a liquor product, the consumption of which may be harmful to any person's health or wellbeing.

(5) A contravention of or failure to comply with sub-sections (1), (2) and (3) is an offence.

## CHAPTER 6 VALIDITY OF LICENSES

**65. Validity of licenses—.** (1) A license is valid from the date of payment of the prescribed fees.

(2) A license lapses—

- (a) on the date on which the licensee abandons it in writing;
- (b) within two (2) months after the lapse of the renewal period in respect of which the applicable prescribed fees under subsection 1 are not paid, or
- (c) on the date otherwise determined by the Liquor Authority when it revokes the license; or
- (d) where the license has already acquired validity, on the date on which a court sets aside the decision to grant or issue the license; or
- (e) on the date on which it is converted into another license under this Act.

(3) A license which has lapsed, and the rights, privileges, obligations and liabilities which were attached thereto immediately before the date on which it lapsed, shall be restored from on the date on which—

- (a) where the license has lapsed under the circumstances contemplated in subsection (2)(b), the fees so contemplated—
  - (i) plus a penalty of 50% are paid within one (1) month after the lapse of the renewal period; or
  - (ii) plus a penalty of 100% paid within two (2) months after the lapse of the renewal period.
- (b) where the license has lapsed under the circumstances contemplated in subsection (2)(c), the decision by the Liquor Authority to revoke that license is set aside by the Appeal Tribunal; or
- (c) where the license has lapsed under the circumstances contemplated in subsection (2)(d), the decision by the Appeal Tribunal to set aside the decision to grant or issue that license is set aside by court.

(4) The Liquor Authority may, upon receipt of a report that the licensee has abandoned the licensed premises, suspend the license in the prescribed manner with immediate effect.

(5) The suspension of a license in terms of subsection (4) lapses upon the receipt by the Liquor Authority of proof that the licensed premises have not been abandoned by the licensee or are again in use by the same licensee.

(6) If any fees so prescribed are not paid in respect of an applicable license before the expiration of the period so prescribed, that license shall not acquire validity and the application for the license shall be deemed not to have been granted.

(7) The holder of a license which has lapsed or has been suspended may, within a period of 30 days after the date on which it has lapsed or the suspension thereof has commenced, through a licensed auctioneer sell by public auction, held on the licensed premises concerned or the premises of that auctioneer, any liquor which was on those premises on that date.

(8) The fact that a license has lapsed or has been suspended or has again become valid shall not entitle the person who was or is the holder thereof, as the case may be, to a refund of any prescribed fees, or any part thereof, already paid in connection with the license concerned;

(9) a temporary or special or occasional liquor license shall lapse immediately after the expiration of the time for which it was granted.

**66. Effect of suspension of a license .— (1)** A license which has been suspended in terms of any provision of this Act—

(a) remain valid while the suspension thereof is in force, except that the licensee may not sell liquor in terms thereof during the period of suspension;

(b) subject to the rights, privileges, obligations and liabilities attached thereto immediately before the date on which the suspension commenced, again become valid—

(i) where the license has been suspended for a determined period—

(aa) after the expiration of that period;

(bb) as from the date on which the Liquor Authority rescinds the suspension in terms of this Act; or

(cc) as from the date on which the decision by Liquor Authority under section 9(1) (v) to suspend the license, is set aside by the Appeal Tribunal; or

(ii) where the license has been suspended for an indefinite time, as from the applicable date contemplated in subparagraph (i) (bb) or (cc).

**67. Automatic renewal of licenses— (1)** Every license shall be renewed annually within twelve (12) months from date of issue by payment of an annual prescribed fee

(2) The Liquor Authority must issue an annual renewal notice, in the prescribed form and period, in respect of which the prescribed renewal fees should be paid.

(3) The licensee is not absolved from his, her or its obligations to pay the prescribed renewal fee timeously if the notice was not sent to or received.

(4) Notwithstanding the provisions of section 75(6), a licensee who has failed to pay the prescribed renewal fee on or before the last day in respect of which the renewal fee should have been paid, may, within thirty (30) days after the expiration of the period so prescribed, apply in writing to the Liquor Authority for condonation of such failure, and the Liquor Authority may condone the failure and allow the late payment of the prescribed renewal fee by a date to be determined by the Liquor Authority, subject to the payment of the renewal fee plus a penalty of 150%.

(5) If the Liquor Authority has in terms of subsection (4) granted condonation and the prescribed renewal fee and penalty have been paid, the license is deemed to have been renewed

(6) If the licensee fails to pay the prescribed renewal fee and penalty imposed in terms of subsection (4), the license will be deemed to have lapsed immediately on the last day upon which the prescribed renewal fee should have been paid.

**68. Applications for renewal of licenses— (1)** If a licensee has since the date of issue of the license or, if the license has been renewed, since the last renewal of the license—

(a) become disqualified in terms of section 34 to hold a license;

(b) declared unfit to hold a liquor license by the Liquor Authority;

(c) failed to comply with a compliance notice issued in terms of this Act; or

(d) been the subject of a report in terms of section 79(7)(c) or (d); or

(e) been the subject of a complaint received by a municipality, the license is not capable of automatic renewal in terms of section 65, but may be renewed upon application by the licensee in the prescribed manner and upon payment of the prescribed fee and penalty imposed.

(2) The Liquor Authority must, before two (2) months of the year in which a renewal notice should be issued, serve a notice upon a licensee referred to in subsection (1)—

- (a) calling upon the licensee to make application in the prescribed form for the renewal of the license.
- (3) If the licensee fails to comply with the notice contemplated in subsection (2), the license will lapse subject to section 65(6).
- (4) If the licensee complies with the notice, the license remains valid until the Liquor Authority has completed its consideration of the application for renewal.
- (5) When considering an application for renewal, the Liquor Authority has the same duties and powers which it has when considering an application for a new license, including the right to refuse the application or to grant it, subject to such conditions as it may deem appropriate.
- (6) If the Liquor Authority grants an application for the renewal of the license, the license is deemed to have been renewed in terms of section 65(1).
- (7) If the Liquor Authority refuses an application for the renewal of a license, the license lapses immediately or upon such date as shall be determined by the Liquor Authority.

## CHAPTER 7

### ALIENATION, TRANSFER AND REMOVAL OF LICENSES

- 69. Alienation and transfer of licenses.**— (1) A licensee who alienates the licensed business must, within thirty (30) days from the date of alienation, notify the Liquor Authority in writing and in the prescribed manner of the date and nature of alienation.
- (2) Failure to notify the Liquor Authority of such alienation is an offence.
  - (3) A person who has purchased a licensed business must apply to the Liquor Authority for consent to operate and conduct the licensed business pending the transfer of the license to such person.
  - (4) An application in terms of subsection (3) must be made by lodgement thereof in the prescribed form and upon payment of the prescribed fee.
  - (5) The Liquor Authority 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 months from the date on which consent was granted.
  - (6) The Liquor Authority may at any time revoke or upon application in a prescribed manner and form by the purchaser, extend a consent granted in terms of subsection (5).
  - (7) A person to whom consent in terms of subsection (5) has been granted, may operate and conduct the licensed business in terms of the license, for his or her own account, and has the same rights and is subject to the same duties as the licensee.
  - (8) The granting of consent in terms of subsection (5) does not relieve the licensee from any of his, her or its duties and obligations in respect of the license.
  - (9) A licensee may apply for the transfer of the license to another person by lodging with the Liquor Authority an application, in the prescribed manner and form, and upon payment of the prescribed fee.
  - (10) The application shall be accompanied by a certificate of clearance on the prospective licensee issued by South African Police Service and such other details as may be prescribed.
  - (11) The Liquor Authority must, in the prescribed manner, notify the designated liquor officer of the application, and request from the designated liquor officer a report—
    - (a) regarding the qualification and fitness of the proposed licensee to hold the license;
    - (b) if the possibility exists that the granting of the application may cause a harmful monopolistic condition to arise or be aggravated in the liquor trade or a branch thereof; and
    - (c) any other information as the Liquor Authority deems necessary to consider relevant to the application.
  - (12) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (10).
  - (13) The Liquor Authority –
    - (a) must, within the prescribed period, either refuse the application or grant it.
    - (b) may not grant an application for transfer unless it is satisfied that the proposed licensee—

- (i) is not disqualified from holding a license in terms of section 34;
  - (ii) is of good character; and
  - (iii) 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.
- (c) may, when granting an application for transfer, direct that the prospective licensee, or one or more employees of such a person, must undergo such education and training as the Liquor Authority may direct.
- (d) must notify the proposed licensee, within the prescribed period after the Liquor Authority has granted an application for transfer of a license, in writing that the application has been granted.
- (14) The prospective licensee must pay the prescribed fee within thirty (30) days of the issuing of the notice contemplated in subsection (13)(d).
- (15) The Liquor Authority must, within the prescribed period after the payment of the prescribed fee referred to in subsection (9), and subject to sections 46 to 49 and 55(1) and (2), issue a certificate of transfer to the prospective licensee in the prescribed form, setting out the conditions of the license imposed by the Liquor Authority.
- (16) If the prospective licensee fails to pay the fee referred to in subsection (14), the granting of the application will lapse, subject to subsection (16).
- (17) Notwithstanding the provisions of section 16, the prospective licensee may, within a period of thirty (30) days after the expiry of the period referred to in subsection (14), apply in writing to the Liquor Authority for condonation of the failure to pay the prescribed fee referred to in subsection (14) and the Liquor Authority may condone the failure and allow the late payment of the said fee by a date to be determined by the Liquor Authority, subject to the payment of a penalty of 100 % of that fee.
- (18) If the prospective licensee dies, becomes insolvent or is declared incapable of handling his or her own affairs by a court, or being a company, trust, co-operative or close corporation, is liquidated before the date upon which the application for transfer is considered, the executor, trustee, curator or liquidator, as the case may be, may exercise all the powers and rights which such person, company, trust, co-operative or close corporation would have had save for such death, insolvency, declaration or liquidation.
- (19) The Liquor Authority may, in its discretion, grant an application for transfer in favour of an executor, trustee, curator or liquidator or to such other person as the Liquor Authority may deem appropriate.
- 70. Removal of licenses—** (1) A temporary liquor license or special event liquor license is not removable from the licensed premises concerned to other premises.
- (2) A licensee, excluding the holder of a temporary liquor license and special event liquor license, may at any time apply in a prescribed manner and upon payment of a prescribed fee for the removal, whether permanently or temporarily, of the license from the licensed premises to any other premises within the same district as the licensed premises.
- (3) The Liquor Authority must, in the prescribed manner, notify the designated liquor officers in whose area of jurisdiction the license:
- (a) is currently located, and
  - (b) will be removed, of the application and request a report, as prescribed.
- (4) The Liquor Authority must consider each application for the removal of a license within the prescribed period and may—
- (a) refuse the application; or
  - (b) grant the application.
- (5) The Liquor Authority must –
- (a) within the prescribed period after the Liquor Authority has granted an application for the removal of a license, but subject to subsection (10), notify the applicant in writing that the application has been granted.
  - (b) The Liquor Authority must, subject to the payment of the prescribed fee within sixty

(60) days of the issuing of the notice contemplated in subsection (5), issue a certificate of removal to the licensee in the prescribed form.

(6) If the licensee fails to pay the fee referred to in subsection (6), the granting of the application will lapse, subject to subsection (8).

(7) The licensee may, within a period of thirty (30) days after the expiry of the period referred to in subsection (6), apply in writing to the Liquor Authority for condonation of the failure to pay the prescribed fee referred to in subsection (5)(b) and the Liquor Authority may condone the failure and allow the late payment of the said fee by a date to be determined by the Liquor Authority, subject to the payment of a penalty of 100 % of that fee.

(8) A certificate of removal is subject to such conditions set out in the certificate as the Liquor Authority may impose.

(9) The Liquor Authority may at any time after the issue of a certificate of removal, by a notice delivered or tendered to the licensee concerned, revoke or amend any condition imposed by the Liquor Authority under subsection (8).

(10) The effect of the issuing of a certificate of removal will be that the licensee may either permanently or for the period determined by the Liquor Authority, and mentioned in the certificate, conduct the business to which the license relates, on the premises, the plan of which has been approved by the local municipality and Liquor Authority, but which premises may not for the purposes of the license in respect of which the application concerned was made, include such place or places thereon as the liquor Authority in its discretion specifically excluded there from.

(11) Where a certificate of removal permits the removal of a license for a determined period, the Liquor Authority may at any time before the expiration of that period, on application by the licensee concerned—

(a) extend that period; or

(b) revoke the certificate.

(12) If an application for the removal of a license is granted by the Liquor Authority in respect of premises not yet erected, or premises requiring any structural alteration, addition or reconstruction to be effected so as to make them suitable for the purposes for which they will be used under the license, the Liquor Authority must, in the notice contemplated in subsection (5), order the licensee to comply with such conditions or requirements, referred to in the notice, with regard to those premises and within such period as may be determined.

(13) The Liquor Authority may at any time after the issue of such a notice, on application by the applicant concerned—

(a) revoke or amend any condition or requirement determined under subsection (12);

(b) extend the period determined under subsection (12);

(c) extend the period so determined and extended under paragraph (b) in respect of premises not yet erected at the time of the issue of the notice, if the Liquor Authority is satisfied that a substantial part of the premises has since been erected; or

(d) approve an amended plan in respect of the premises.

(14) The period determined under subsection (12) or the period so determined and extended under subsection (13)(b), as the case may be, must not be longer than twenty-four (24) months, and the period extended or further extended under subsection (14)(c), as the case may be, may not be longer than a further twelve (12) months.

(15) When the Liquor Authority is satisfied that the premises in respect of which a notice has been issued under subsection (12), have been completed in accordance with the plan thereof approved by the Liquor Authority, as the case may be, the conditions and requirements determined by the Liquor Authority have been complied with and the premises are suitable for the purposes for which they will be used under the license concerned, the Liquor Authority must issue the certificate of removal in accordance with subsection (6).

(16) If the certificate of removal is not issued before the expiration of the period determined under subsection (12) or extended under subsection (13)(b) or further extended under

subsection (13)(c), as the case may be, the notice concerned lapses and the application for the removal of the license is deemed not to have been granted.

**71. Abandonment of premises and death or incapacity of licensee—** (1) The Liquor Authority may, if satisfied that—

- (a) a licensed business has been abandoned by the licensee; or
- (b) the licensee is a person described in subsection (3), and an executor, administrator, trustee, curator or liquidator has not been appointed, appoint a person to hold the license and conduct the licensed business until the appointment of an executor, administrator, trustee, curator or liquidator, or in the case of an abandoned business, a manager.

(2) A person appointed in terms of subsection (1)(b) is deemed to be the licensee.

(3) If a licensee dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs by a court, or being a company, trust, co-operative or close corporation, is liquidated—

- (a) the license vests in the executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator, as the case may be, from the date of appointment.

(4) The executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator may—

- (a) 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, such declaration or its liquidation; and
- (c) make application for the transfer of the license in terms of section 69 and is for purposes of such application deemed to be the licensee.

**72. Register of licences and applications to be kept—** (1) The Liquor Authority must keep a register of licences and applications, in a prescribed format.

(2) The register must contain the following—

- (a) particulars of licensees and licenses issued;
- (b) addresses of licensed premises and trading hours that apply to licences;
- (c) particulars of applications to be advertised that have not been decided.
- (d) cancelled licenses;
- (e) deregistered licenses; and
- (f) conditions attached to licenses.

(3) The register must be available for inspection by—

- (a) a Liquor inspector or a police officer while performing duty under this Act, free of charge; and
- (b) any other person, on payment of the prescribed fee.

(4) The Liquor Authority may publish information in the register in a way the Liquor Authority considers appropriate, including, for example, by the internet or other telecommunication.

## CHAPTER 8

### DISPUTE RESOLUTIONS, APPEALS AND REVIEW

**73. Disputes and settlement.**—(1) Any decision made by the Liquor Authority under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision is issued in writing or the date specified in such notice or communication.

(2) Any person who has made an application, an objection or representations in terms of this Act and who feels aggrieved by a decision made by the Liquor Authority in connection with that application, objection or representations may lodge an appeal—

- (a) to the Appeal Tribunal contemplated in this Chapter in respect of those matters and decisions of the Liquor Authority that the Appeal Tribunal is authorised by this Act to



consider and decide upon; and

(b) in person before the Appeal Tribunal or may be represented thereat by an attorney, an advocate or a registered liquor consultant

**74. Appeals and reviews against decisions of the Liquor Authority.** —(1) Any person who may institute judicial proceedings in respect of any decision by the Liquor Authority may, before or as an alternative to instituting such proceedings, lodge an appeal, in the manner prescribed against the decision of the Liquor Authority to the Appeal Tribunal.

(2) Make an application for a review of the proceedings to the Appeal Tribunal—

(a) that the Chairperson of the Liquor Authority who made a decision—

(i) was not authorised to do so by the empowering provision;

(ii) acted under a delegation of power which was not authorised by the empowering provision; or

(iii) was biased or reasonably suspected of bias;

(b) a mandatory and material procedure or condition prescribed by this Act was not complied with;

(c) the action was procedurally unfair;

(d) the action was materially influenced by an error of law;

(e) the action was taken—

(i) for a reason not authorised by this Act;

(ii) for an ulterior purpose or motive;

(iii) because irrelevant considerations were taken into account or relevant considerations were not considered;

(iv) because of the unauthorised or unwarranted dictates of another person or body;

(v) in bad faith; or

(vi) arbitrarily or capriciously;

(f) the action itself—

(i) contravenes a law or is not authorised by this Act; or

(ii) is not rationally connected to—

(aa) the purpose for which it was taken;

(bb) the purpose of this Act;

(cc) the information before the Liquor Authority; or

(dd) the reasons given for it by the Chairperson of the Liquor Authority;

(g) the action concerned consists of a failure to take a decision;

(h) the exercise of the power or the performance of the function authorised by this Act, in pursuance of which the decision was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or

(I) the action is otherwise unconstitutional or unlawful.

(3) If the Appeal Tribunal, after considering the review or appeal, is satisfied—

(a) in the case of a review –

(i) that any of the grounds for review referred to in subsection (2) has been proved; and

(ii) that the applicant has been substantially prejudiced by the decision; or

(b) in the case of an appeal, that the Liquor Authority has misdirected itself in the making of the decision concerned, it may set aside that decision and may, in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the Liquor Authority consider the matter afresh in respect of which the decision was made.

(4) Whenever an appeal has been considered in terms of this section any period within which any person may institute any other judicial proceedings in connection with such decision, shall commence on the date on which the Chairperson of the Liquor Authority in writing advises the person concerned of the final decision of the appeal or review.

(5) 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 other action as it deems fair and just in the circumstances.

## CHAPTER 9 COMPLIANCE

**75. Compliance notices.**— (1) An inspector may issue and serve a compliance notice upon a licensee or any person in control of licensed premises, calling upon such person to comply with the provisions of this Act or a condition of a license.

(2) A compliance notice must stipulate—

- (a) the provisions of this Act or the conditions of the license which must be complied with;
- (b) the act or omission constituting non-compliance;
- (c) the measures which must be taken to comply;
- (d) the date by which compliance must be completed;
- (e) the possible consequences of non-compliance; and
- (f) submit a carbonized copy to the Liquor Authority .

(3) A designated liquor officer may, in the absence of an inspector or where an inspector is not readily available, issue and serve a notice referred to in subsection (1) and must notify the Liquor Authority of the issuing or service of that notice on or before the prescribed date.

(4) The inspector or designated liquor officer, after consultation with the Liquor Authority, may, at the request of the person served with a compliance notice, extend the period for compliance, upon written submission and on good cause shown.

(5) The compliance notice remains in force until the date of compliance or any extension thereof, or the issue by the inspector or designated liquor officer, as the case may be, of a certificate of compliance, whichever is the earliest.

(6) If the person served with a compliance notice has complied therewith, the inspector or designated liquor officer must issue a certificate of compliance.

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

(8) An inspector or designated liquor officer, receiving a statement in terms of subsection (7) must, within the prescribed period, submit the compliance notice, the statement in terms of subsection (7) and any other document which he or she deems relevant, to the Liquor Authority which should decide whether or not the act or omission referred to subsection (2)(b) justified the issuing of the compliance notice.

(9) The Liquor Authority may, if it decides that the issuing of the compliance notice was unjustified, set it aside or, if it finds it to be justified, order that the compliance notice be complied with by the date by which compliance must be completed as contemplated in subsection (2)(d) or by such later date as the Liquor Authority may determine.

(10) The Liquor Authority may delegate the function referred to in subsection (9) to an employee of the Liquor Authority.

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

(12) Proof of non-compliance with the compliance notice, constitutes *prima facie* proof of the commission of an offence or a transgression of the license conditions stipulated in the compliance notice.

**76. Closing of licensed premises.**— (1) An inspector, a designated liquor officer, or any police officer of or above the rank of inspector may, if a public disturbance, disorder or public violence is occurring or threatening upon licensed premises, order the licensee or any person in control of licensed premises, to close the premises concerned for a period not longer than the remainder of the trading hours for that day.

(2) The licensee or any person in control of licensed premises, must, on receipt of an order given under subsection (1), forthwith comply therewith, and, if he or she fails to do so, the person who

has given the order may take such steps and use or cause to be used such force as the circumstances require to close the premises.

(3) Any order given under subsection (1), may at any time be revoked—

(a) by the Liquor Authority;

(b) where such an order was given by a police officer, by a police officer of more senior rank.

**77. Interim orders—** (1) The Liquor Authority may grant an interim order suspending a license upon application by an inspector or a designated liquor officer if there is an imminent threat to the health, well being or safety of the public.

(2) An application in terms of subsection (1) may not be granted unless—

(a) it is supported by an 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 at least forty-eight (48) hours prior to the lodgment of the application; and

(c) it appears from the application that the matter is one of urgency.

(3) An order granted in terms of subsection (1) must be served upon the licensee in the manner ordered by the Liquor Authority 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 Liquor Authority to show cause why the order should not be made final.

(5) The licensee may, prior to the date stipulated in subsection (4), lodge with the Liquor Authority a notice to oppose the matter and must thereafter lodge affidavits in which he or she or it 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).

(6) A licensee may at any time prior to the date stipulated in terms of subsection (4) apply to the Liquor Authority 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 Liquor Authority may order the return date to be brought forward to an earlier date.

(8) Upon the date of the hearing of the application the Liquor Authority may discharge the interim order or confirm it, subject to such amendments as it may deem appropriate.

## **CHAPTER 10 LAW ENFORCEMENT**

### **78. Designation and functions of designated liquor officers and inspectors.—**

(1) The North West Provincial Commissioner of the South African Police Service may, in respect of each police station, designate any police officer of or above the rank of Inspector to perform the functions of a designated liquor officer in terms of this Act.

(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 in terms of this Act and is deemed to have been appointed in terms of subsection (1).

(3) The North West Provincial Commissioner of the South African Police Service may at any time terminate an appointment made or deemed to have been made in terms of subsection (1).

(4) The Liquor Authority may appoint any person in the employ of the Liquor Authority as an inspector for the purpose of this Act.

(5) The Commissioner must, when designating a liquor officer in terms of subsection (1), and the Liquor Authority must, when appointing an inspector in terms of subsection (4), issue a certificate of appointment or designation signed by the Commissioner or the Chief Executive Officer on behalf of the Liquor Authority, as the case may be.

(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—

- (a) in respect of every application made in terms of this Act, report to the Liquor Authority 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 Liquor Authority, report on or furnish such information in connection with a matter as the Liquor Authority may require;
- (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 license, a compliance notice or the provisions of this Act;
- (d) report the fact that a licensee has become disqualified or unfit to hold a license to the Chief Executive Officer;
- (e) if he or she is of the opinion that the licensed premises have been abandoned or 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.

**79. Powers of designated liquor officers and inspectors.**— (1) Subject to section 3, a designated liquor officer or an inspector may in the performance of his or her functions—

- (a) at all reasonable times enter—
  - (i) any licensed premises;
  - (ii) any premises in respect of which an application in terms of this Act has been made; and
  - (iii) any premises or vehicle on which he or she on reasonable grounds suspects that liquor is being stored or sold contrary to the provisions of this Act, and make such investigation, enquiries 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 stipulated by the designated liquor officer or inspector, produce to him or her any license, record or other document which is in possession, custody or control of that person or any other person on his or her behalf;
- (c) inspect any document referred to in paragraph (b), make copies thereof or extracts there from, and request from the person contemplated in the said paragraph an explanation of any part thereof;
- (d) seize and remove anything 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 license;
- (e) question the licensee or his or her employees, an applicant, or any person who is upon licensed premises if he or she suspects that the employee, applicant 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) order that any licensee 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 or inspector may reasonably request.

(3) Any person who is questioned by a designated liquor officer or inspector in terms of this Act must first be informed of his or her constitutional rights before any questioning commences and any answer thereafter by that person must be truthful and to the best of his or her ability.

(4) An answer or explanation given to a designated liquor officer or an inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to—

- (a) the administration or taking of an oath or affirmation;
- (b) the making of false statements; or
- (c) the failure to answer a lawful question fully and satisfactorily.

**80. Exercise of powers to enter and search or inspect premises**— (1) A designated liquor officer or an inspector may exercise a power referred to in section 79 relating to the entry, search

or inspection of premises, if authorised by a warrant issued by a magistrate in accordance with subsection (3).

(2) An inspector may, in exercising and performing any power or function as contemplated in subsection (1), be accompanied by a peace officer, member of the South African Police, Metro Police, South African National Defence Force or any other person reasonably required to assist in conducting the inspection, or all of them.

(3) A magistrate may issue a warrant to enter and inspect any premises, if, on the basis of information provided in writing and under oath or affirmation, the magistrate has reason to believe that—

- (a) this Act is not being complied with; and
- (b) the entry and inspection are necessary, in the public interest, to obtain information—
  - (i) that is related to the alleged failure to comply with this Act; and
  - (ii) that cannot be obtained without entering those premises.

(4) A designated liquor officer or an inspector may exercise the powers referred to in subsection (1) without a warrant—

- (a) with the consent of the owner or the person in control of the premises concerned;
- (b) if there is an outstanding compliance notice issued in terms of section 75, for the purposes of determining whether the notice has been complied with; or
- (c) if the designated liquor officer or inspector on reasonable grounds believes that—
  - (i) a warrant will be issued in terms of subsection (3) if he or she applies for it; and
  - (ii) the delay in obtaining the warrant would defeat the objects of the search or inspection.

(5) When entering premises in terms of this section, the designated liquor officer or inspector 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.

(6) A designated liquor officer or inspector 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.

(7) Anything seized in terms of this section must be retained and preserved until a court has made an order regarding the disposal thereof.

(8) 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 court or is summoned to appear at a meeting of the Liquor Authority within thirty (30) days from the date of the seizure, the article seized must be returned to the person from whom it was seized.

**81. General offences.—(1) A person who—**

- (a) is drunk and disorderly in or on any premises on which liquor is sold; or
- (b) is drunk, intoxicated, violent or disorderly on any premises, whether licensed or not, on which liquor may by virtue of this Act be sold or in any place to which the public has access;
- (c) sells or supplies liquor to a drunk person or, being a licensee or a person in charge of licensed premises, allows a drunk and disorderly person to remain upon those premises;
- (d) 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;
- (e) 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;
- (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;

- (g) being a licensee:
  - (i) permits the licensed premises to be used as a brothel or frequented by prostitutes;
  - (ii) allows a supplier of unlawful drugs to remain on the licensed premises;
  - (iii) allows the sale, use or possession of drugs upon the premises in contravention of any law dealing with such sale, use or possession; or
  - (iv) receives or holds any document or movable property as security or in pledge for the payment of a debt relating to the sale of liquor, is guilty of an offence.
- (h) introduce, possess or consume any liquor on a sports ground, or any part thereof, to which the public has or is granted access, except on any licensed premises situated on the sports ground concerned;
- (i) falsely represent himself or herself or any other person to belong or not to belong to a category of persons in order to persuade the licensee, or his or her agent or employee, to sell or supply liquor to him or her or that other person which may by virtue of this Act not be sold or supplied to a person who does not belong or belongs to that category;
- (j) supply liquor to a person in his or her employ as wages or remuneration or as a supplement therefore;
- (k) sells or supplies any illegal or counterfeit liquor;
- (l) sells liquor to pregnant women; or
- (m) contravenes any provision of this Act

**82. Offences regarding information.—(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;
- (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
- (c) in response to a question by a designated liquor officer, an inspector, a peace officer, a municipal official or the Liquor Authority 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, is guilty of an offence.

**83. Offences regarding meetings of Liquor Authority and Appeal Tribunal.— (1)** A person who—

- (a) having been duly notified to appear before the Liquor Authority, fails to do so either in person or represented by any other person, attorney or advocate;
- (b) appears before the Liquor Authority, 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 without good reason;
- (d) having been called upon by the Liquor Authority to give evidence or to produce a document, refuses or fails to do so;
- (e) had the oath or affirmation administered to him or her and refuses or fails to take the oath or to affirm;
- (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 Liquor Authority; or
- (h) refuses to leave the meeting when ordered to do so by the Chairperson, is guilty of an offence.

(2) A person who was duly notified to appear before the Liquor Authority must—

- (a) notify the Chairperson in writing five working days before the date of the

appearance if he or she is unable to appear on such date; and

(b) include the reasons for his or her failure to appear on such date.

(3) A contravention of or failure to comply with subsection (2) is an offence.

(4) The provisions of subsections (1) and (2) apply, with the necessary changes, to meetings of the Appeal Tribunal.

**84. Offences regarding designated liquor officers and inspectors—**(1) A person who—

(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;

(d) when questioned by a designated liquor officer or inspector, knowingly gives a false or misleading answer; or

(e) fails to comply with a reasonable request from a designated liquor officer or inspector in terms of section 82, is guilty of an offence.

**85. Offences regarding motor vehicles.—**(1) A person who—

(a) consumes liquor in a motor vehicle driven or parked 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

(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.

**86 Offence regarding service stations.—**(1) 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.

(2) Subsection (1) does not apply to premises already licensed.

(3) Except in exceptional circumstances, the Liquor Authority may not grant a license in respect of premises as contemplated in subsection (1).

(4) A contravention of or failure to comply with subsection (1) is an offence.

**87. Failure to comply with order of Liquor Authority.—**(1) Failure by a licensee to comply with an order of the Liquor Authority in connection with the license or licensed premises concerned is an offence.

(2) If a person fails to comply with an order of the Liquor Authority, the Liquor Authority may, after proper enquiry—

(a) suspend the license 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

(d) cancel the license.

**88. Vicarious responsibility.—**(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, the licensee is deemed to have done or omitted to do that act, except where—

(a) the licensee neither connived at, permitted or allowed the act or omission;

(b) the licensee took such steps as he or she was reasonably able to take in order to prevent the act or omission; and

(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) Notwithstanding that a licensee is liable for an act or omission of another person in terms of subsection (1) such other person is also liable 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).

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

(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 in a manner to induce a reasonable conclusion that liquor is for sale there;

(c) had on his or her premises or under his or her control more liquor than the maximum volume referred to in section 62 without the prior consent required by that section; or

(d) bought or procured more liquor than the maximum volume referred to in section 61 without the prior consent required by that section, it is *prima facie* proof of the sale of liquor.

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

(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, it is *prima facie* proof 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;

(b) there 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 contain liquor, it is *prima facie* proof that all the containers contain liquor;

(c) there is produced as evidence a document which purports to be a copy of a license, it is on its mere production *prima facie* proof of the license 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;

(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 *prima facie* proof of the contents of the statement or certificate; or

(e) evidence is produced that a licensee, manager, staff or agent who is accused of a contravention of section 59, failed to obtain from a person under the age of eighteen (18) years either—

(i) his or her valid identity document;

(ii) his or her valid drivers' license; or

(iii) his or her valid passport, 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.

**90. Notices.**—(1) The Member of the Executive Council may, subject to section 41 prescribe—

(a) the content of public notices which must be displayed; and

(b) the manner in which such notices must be displayed, on licensed premises.

(2) Failure to display a notice referred to in subsection (1) is an offence.

**91. Penalties and forfeiture.**— (1) A person who is charged with an offence referred to in—

(a) sections 35(3), 58, 59, 81(g) (ii),(iii) is liable on conviction to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine or such period of imprisonment;

(b) section 52(5), 53(2), 54(9), 56(5), 62(2), 62, 81(e), 81(f), 81(i) or 87(4) is liable on conviction to a fine not exceeding R500 000,00 or to imprisonment for a period not exceeding two-and-a-half years or to both such fine or such period of imprisonment;

(c) section 53(3), 60(3), 63(4), 69(2), 75(11), 81(b), 81(c) or 86(1) is liable on conviction



- to a fine not exceeding R100 000,00 or to imprisonment for a period not exceeding six months or to both such fine or such period of imprisonment; or  
*(d)* section 58(4), 81(a), 81(d), 82, 83(1), 83(3), 84 or 90(2) is liable on conviction to a fine not exceeding R50 000,00 or to imprisonment for a period not exceeding three months or to both such fine or such period of imprisonment.
- (2) A court that has convicted a person of an offence referred to in subsection (1), must, in respect of an offence referred to in paragraph (a) of that subsection and may, in respect of an offence referred to in paragraphs (b), (c) or (d) of that subsection, in addition to imposing a penalty, order the forfeiture to the State of any item seized in terms of the Criminal Procedure Act.
- (3) Upon payment by a person of an admission of guilt fine in terms of section 56 of the Criminal Procedure Act, the court—
- (a)* must, where the payment relates to a charge of a contravention of section 58(1) to (4), 59(1), 59(2), 81(h) or 81(i) of this Act, order that any item which was seized in terms of this Act or the Criminal Procedure Act be forfeited to the State; or
- (b)* may, where the payment relates to a charge of a contravention of section 52(4) to (6), 53(1), 54(1), 54(7), 55(9), 58(4), 58(4), 60(1), 60(2), 60(1), 62, 63(1) to (3), 69(1), 75, 80, 82, 83(1) to (2), 84, 85(1), 86(1), 87(1) or 90 (1) and (2) of this Act, order that any item which was seized in terms of this Act or the Criminal Procedure Act be forfeited to the State, whereupon section 35 of the Criminal Procedure Act applies, with the necessary changes, to anything forfeited in terms of this section.
- (4) Any liquor that is forfeited to the State in terms of this section must be disposed of in the prescribed manner.

## CHAPTER 11

### REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE

**92. Regulations.**— (1) The Member of the Executive Council must make regulations regarding matters that must be prescribed in terms of this Act, and may make regulations regarding—

- (a)* any matter that may be prescribed in terms of this Act;
- (b)* the retail sale and micro-manufacture of methylated spirits;
- (c)* the determination of the percentage of each renewal fee which must be allocated to the fund in terms of section 34(3);
- (d)* the disposal of liquor forfeited to the State in terms of section 93(2); or
- (e)* any matter which the Minister considers necessary or expedient to make in order to

achieve the objects of this Act.

(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 Member of the Executive Council responsible for Finance for the Province.

**93. Transitional provisions.**— (1) The Liquor Authority instituted for the Province by section 5 of the Liquor Act, 1989 (Act 27 of 1989), continues to exist and function under the name North West Liquor Authority, in accordance with the provisions of this Act.

(2) Any license of the kind listed hereunder which was in force immediately before the date of commencement of this Act is deemed to be a license for the sale of liquor for consumption on the licensed premises—

- (a)* hotel liquor license;
- (b)* restaurant liquor license;
- (c)* wine-house license;
- (d)* sorghum beer license for on-consumption;
- (e)* theatre liquor license;
- (f)* club liquor license; and
- (g)* special liquor license for on-consumption.

(3) A license of the kind listed hereunder which was in force immediately before the date of commencement of this Act is deemed to be a license for the sale of liquor for consumption off the licensed premises—

- (a) liquor store license;
- (b) grocer's wine license;
- (c) sorghum beer license for off consumption;
- (d) wine farmer's license;
- (e) special liquor license for off-consumption which does not include the right to micro-manufacture liquor; and
- (f) wholesale liquor license (public), approved under the Liquor Act, 1977 (Act 87 of 1977).

(4) A license listed hereunder which was in force immediately before the date of commencement of this Act and in respect of which the volume of liquor manufactured in the preceding twelve (12) months did not exceed the threshold limit prescribed in terms of section 4(10) of the Liquor Act, is deemed to be a license for the micro-manufacture and sale of liquor for consumption off the licensed premises—

- (a) wholesale liquor license;
- (b) producer's license;
- (c) brewer's license;
- (d) sorghum beer brewer's license; and
- (e) special liquor license for off-consumption, which includes the right to micro-manufacture liquor.

(5) A license listed hereunder, which gives the holder thereof the right to sell liquor for consumption off the licensed premises, has been converted in terms of the Liquor Act, and which was in force immediately before the date of commencement of this Act may on application by the licensee be converted to a license for the sale of liquor for consumption off the licensed premises—

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

(6) 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, is deemed to be conditions set out in writing in terms of section 42 of this Act.

(7) Notwithstanding the repeal of any law by this Act, any application made prior to the commencement of this Act must be considered and disposed of in accordance with the provisions of the law in terms of which it was lodged.

(8) The provisions of subsections (2) and (3) also apply to licenses granted in terms of the provisions of the Liquor Act, 1989, as amended, subsequent to the date of commencement of this Act.

(9) Unless determined otherwise by the Liquor Authority upon application, a license 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 twelve months from the date of commencement of this Act.

(10) Any license issued prior to the commencement of this Act for premises on which liquor may be sold for consumption either on or off the licensed premises which authorises trading beyond the trading hours stated in section 60(2) is after twelve (12) months from the date of commencement of this Act subject to section 61.

(11) 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.

(12) Any condition imposed upon a license 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.

(13) A licensee of premises licensed before the commencement of this Act and referred to in section 49(5) and (6) must within eighteen (18) months from the date of commencement of this Act comply with the conditions referred to in said subsections.

(14) The Liquor Authority may, upon application made within 12 months from the date of commencement of this Act, by any person who has been trading without a valid liquor license, before the commencement of this Act, apply to the Liquor Authority as prescribed by this Act.

**94. Repeal provision.**—The Liquor Act, 1989 (Act 27 of 1989) is repealed in so far as it applies in the Province.

**95. Short title and commencement.**— This Act is called the North West Liquor Act, 2008 and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

---