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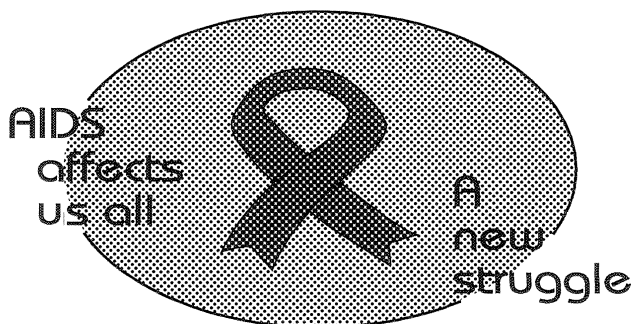
**BUITENGEWONE
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GENERAL NOTICE

NOTICE 594 OF 2012

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NORTH WEST PROVINCIAL LIQUOR POLICY

1. Introduction

- 1.1 According to Schedule 5 Part A of the Constitution of the Republic of South Africa, 1996, Liquor Licensing is an exclusive legislative competence belonging to provinces. Notwithstanding, the North West Government is a member of the National Liquor Policy Council established under the National Liquor Act, 2003 and whose objectives are aimed to:
- a) ensure that liquor legislation and practices in the Republic are harmonized,
 - b) facilitate effective enforcement of liquor laws by various enforcement authorities;
 - c) consistency in the application of liquor laws throughout the Republic; and
 - d) reduce socio-economic and other costs of alcohol abuse by reducing access to and the availability of liquor.
- 1.2 Policies and Acts are required to control and administer the sale and distribution of liquor and the term 'liquor license' encompasses not only the grant or refusal of the permission concerned, but also the power to impose conditions pertinent to that permission, as well as the collection of revenue that might arise from or be attached to its grant.
- 1.3 The liquor legislation currently in force within the Province is the Liquor Act 27 of 1989, the administration of which has been assigned to the provincial government in 1994 although the National Parliament has repealed the same Act in 2003 after promulgating the national Liquor Act No 59 of 2003.

- 1.4 Despite the 2003 Act repealed by the National Parliament, the Liquor Legislation 27 of 1989 has remained in force in the Province as if it was promulgated by the North West Provincial Legislature and the status quo has remained the same. , save to save to indicate that there is a directive from the National Liquor Policy Council for the Provinces to have a Provincial Liquor Act aligned to the national Liquor Act, 2003 by 2014.
- 1.5 This policy therefore forms part of a solid foundation to address the inadequacies of the past by swinging the pendulum in order to strike the right balance between the benefits consumers have enjoyed from the liberalization of the sale and supply of liquor and the harms associated with the abuse of alcohol.
- 1.6 New legislation seeking to address the object of the policy will be promulgated to streamline the regulation of the liquor industry within the Province and its associated socio-economic effects.
- 1.7 Given the fact that the Republic of South Africa has during its infant stages of democracy inherited the old regime liquor legislation which then became applicable throughout the country, much more is still to be done to examine and evaluate the state of the liquor industry although the reality is that there are severe constraints on what can be done about alcohol related problems since every law has to pass the test of public acceptability.
- 1.8 This document therefore seeks to generally prescribe policy imperatives to be considered in the newly proposed Provincial Liquor Bill and has also readily integrated issues as contained in the draft national Liquor Norms and Standards intended to be nationally adopted towards the harmonization of liquor control and administration in the country as reflected under 1.1.

2. Problem Statements

- 2.1 The misuse of alcohol does not result in one simple problem, but a whole set of problems, some of which affect the health and wellbeing of the individual drinkers, some of which impact on those with whom the drinker comes into contact, and some of which impact on the community at large through violence, child abuse, road accidents, crime and the associated economic costs. Drinkers and non-drinkers, moderate drinkers and heavy drinkers – will all have a stake in reducing alcohol related harm.
- 2.2 The existence of illegal outlets including the contravention of liquor trading governing laws and regulations, still poses a problem in both urban and rural areas.
- 2.3 Many of the licensed premises are generally located within residential areas and in close proximity to places of worship, schools and other public amenities as a result of which under-age persons have easy access to liquor. Noise and entertainment and the activities within these premises interfere with the activities at schools and are also a nuisance to residents living in their vicinity.
- 2.4 Liquor administration and control is not consistently applied throughout the Republic and this poses a problem and hence the need for uniformed national norms and standards.

3. Purpose of the North West Provincial Liquor Policy

- 3.1 To establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse in so far as that can be achieved by legislative means,

- 3.2 To promote participation by communities and Local Government in the establishment of liquor outlets,
- 3.3 To empower the Provincial Government to monitor and evaluate trends and developments in the liquor industry,
- 3.4 To promote and facilitate public education programmes on the harmful effects of abuse of liquor,
- 3.5 To promote and facilitate social responsibility programmes,
- 3.6 To promote and facilitate the establishment and maintenance of support structures for the rehabilitation of individuals and communities affected by alcohol abuse,
- 3.7 To promote and facilitate further research on the nature and extent of socio-economic effects of alcohol abuse,
- 3.8 To promote and facilitate interaction between government departments, civil society and the affected stakeholders in the liquor industry.
- 3.9 To determine types of retail liquor licenses with a view and discourage "drinking holes" and to transform the retail liquor environment into well balanced entertainment places.

4. Towards a New Framework for Regulating Liquor in the Province

4.1 Powers of the Liquor Licensing Authority

The Liquor Licensing Authority will have powers to:

- a) Consider and decide on whether the applicant is suitable and whether the physical site meets local planning requirements. The provincial government, local government and traditional authorities should form partnership for the promulgation of by-laws on town planning for these requirements to be met.
- b) Grant or refuse licenses,
- c) Renew such licenses,
- d) Suspend or cancel licenses,
- e) Consider reports on opposed applications by the police, a licensing inspector, a health official or objection by any person having interest in the matter.
- f) Issue binding statements, recommendations and guidance to the Provincial Government.
- g) Consult any person or anybody which may assist the licensing authority to achieve the object of the legislation.
- h) Analyze the use and abuse of licenses and report annually to the Member of the Executive Council responsible for economic development in accordance with a set criteria.
- i) Report publicly, in consultation with the Member of the Executive Council responsible for economic development, on any specific liquor licensing topic other than one relating to an individual hearing or appeal.

4.2 Issuing of Licenses

- 4.2.1 Intention to apply for a liquor license should be published in the local newspaper and should be communicated to affected persons within one (1) km of the proposed premises at least thirty (30) days prior to lodging an application for a license.
- 4.2.2 All applications for a liquor license should be made with all the necessary documentation.
- 4.2.3 Applications for liquor licenses should be dealt with expeditiously and decisions thereon shall be issued within a reasonable time, which reasonable

time shall not exceed a period of 90 days. This is provided that no objections have been made with regard to such applications and that the application is made with the necessary documentation in place.

- 4.2.4 Licenses or registrations will be issued to properly zoned areas; All Liquor outlets should be in properly zoned areas for their respective type of business in line with Municipal By- Laws or through the approval of the Tribal Authority.
- 4.2.5 Communities within a one kilometer (1km) radius of the proposed premises should be consulted during the consideration of the license or registration;
- 4.2.6 Liquor premises in rural areas should be located at least one kilometer (1km) away from schools, places of worship; recreation facilities, rehabilitation or treatment centers and public institutions.
- 4.2.7 Liquor premises in urban areas should be located at least 500m away from schools, places of worship; recreation facilities, rehabilitation or treatment centers and public institutions.
- 4.2.8 The radius in urban areas can be increased, taking into consideration the size of the area.
- 4.2.9 The Liquor Authority should work closely with SARS, SAPS and Municipalities when renewing or granting liquor licenses. Municipalities and Tribal Authorities should adhere to the proposed zoning and radius provisions.

4.3 Categories of Liquor Licenses

- 4.3.1 Licenses for the micro manufacturing and selling of liquor including traditional African beer (both industrial brew and home brew), will fall under the following as will be broadly outlined in the Provincial Liquor Bill, viz.:

- a) On-consumption licenses,
- b) Off-consumption licenses, and
- c) Special events permit.

4.3.2 A review will also be made for the abolishment of certain types of liquor licenses such as School Liquor Licenses in line with the National Liquor Policy Council adopted National Norms and Standards for liquor operations.

4.4 License Fees

4.4.1 Currently the Provincial Government is responsible for a larger percentage of funding liquor licensing administration and enforcement. The Provincial Government intends to set fair and reasonable fees through an annual plan process. However, license fees for each type of license will form part of the regulations to the proposed Liquor Bill.

4.4.2 The fees will be standardized for each type of license issued.

4.5 License Renewals and Compliance Monitoring

4.5.1 New liquor licenses, other than special licenses, will last for one year after issue. To continue trading, an application for renewal must be made within that period of time or three months before expiry.

4.5.2 After the initial year, licenses can be renewed for a term of three years subject to compliance with the conditions of the license.

4.5.3 During the subsistence of the license, regular monitoring will be conducted to ensure compliance with the conditions of licensing.

- 4.5.6 In the event that the license holder does not comply with the requirements of the license conditions as stated in paragraph 4.5.3 above, the licensing authority shall summon the license holder to come and make representations why the license should not be withdrawn.
- 4.5.7 At the expiry of each term for renewal, the licensee must apply for a renewal and advertise the application in terms of the provisions of paragraph 4.5.9 below.
- 4.5.8 The process for consideration of a renewal for license is similar to that of the application for an original license including the process for opposed renewals. If there is no objection and there is no compliance, the Licensing Authority should issue the renewal.
- 4.5.9 In considering an application for the renewal of the license, the Licensing Authority shall have regard to the following matters:
- (a) the suitability of the licensee,
 - (b) the conditions attached to the license,
 - (c) the manner in which the licensee has conducted the sale and supply of liquor pursuant to the issuing of the license, and
 - (d) any matters dealt with in any report on the renewal by the police, a licensing inspector or a health official.

4.6 Notification Requirements

- 4.6.1 License applicants must give public notice of the application. As it may be expensive for applicants to place public advertisement especially in rural areas and other communities where facilities such as local councils and community halls can be used as places of public notification, alternative methods of notifying the public should be considered during consultation with various stakeholders on the policy.

4.6.2 Another means of making license applications more accessible to the public in a cost-effective way and to reduce compliance costs for applicants would be to require notices to be written in a language commonly used in that area and to be of a particular colour and size and be attached in a conspicuous place on or adjacent to the site of the relevant premises unless it is impracticable to do so.

4.7 Licenses Conditions

4.7.1 A license permits the licensee to sell alcohol in accordance with the conditions of the license.

4.7.2 The proposed Bill will prescribe both mandatory license conditions (e.g. that it is a condition of every on-consumption license that the licensee must have a reasonable range of non-alcoholic drinks available for consumption on the premises) and discretionary conditions that the Liquor Authority may impose. For on-consumption licenses, these conditions may relate to the following matters:

- (a) The days on which and the hours which liquor may be sold in line with the National Liquor Policy Council adopted National Norms and Standards for liquor operations,
- (b) The provision of food for consumption on the premises, including drinking water.
- (c) Any other matter aimed at promoting the responsible consumption of liquor,
- (d) The steps to be taken by the licensee to ensure that the provisions of the legislation relating to minors and intoxicated persons are observed, and
- (e) The designation of the whole or any parts of the premises as a restricted area or supervised area.

- 4.7.3 There is merit in allowing the Licensing Authority to impose any reasonable condition (without employing greater discretion which may give rise to greater variances between license conditions in different areas) on the license it considers appropriate for the purpose of giving effect to the object of the Act.
- 4.7.4 It will be a condition of off-consumption licenses such as bottle stores that no liquor is sold on Sundays, and any other public holidays, including Good Friday, Easter Sunday, Christmas Day and the New Year's Day unless the purchases and consumption is on licensed on-consumption premises. The prohibited days will begin the previous day at the official closing hours of such businesses.
- 4.7.5 The operating hours of all licensed premises, both on- and off-consumption will be in accordance with the regulated hours as stipulated by the Act governing the liquor trade in the Province.

4.8 Liquor shall not be supplied for free

- 4.8.1 Liquor shall at all times be sold at a price. No person should induce students or minors to buy liquor by offering discounts on liquor products specifically designed for students or minors from any licensed premises.
- 4.8.2 Liquor shall not be used as an incentive, or payment in lieu of services rendered.

4.9 The Last Point of Sale Rule

- 4.9.1 All liquor license holders have a responsibility to trade responsibly and to adhere to their license conditions and all laws of the Republic. Licensees also have a responsibility to assist government in reducing the socio-economic costs of alcohol abuse.

4.10 Provision of Free Drinking Water

Free drinking water should be made easily available at all on-consumption liquor outlets.

4.11 Provision of Ablution Facilities for Patrons

All on-consumption outlets should provide clean and well maintained ablution facilities for each gender at no additional cost to the patrons.

5. Retail Licensed Premises

- 5.1 Liquor Premises should have safety and evacuation measures;
- 5.2 No premises shall be licensed as liquor premises unless it can be demonstrated that basic safety and evacuation measures have been put in place including emergency exits; fire extinguishers and any other safety methods as prescribed by relevant legislation and/ or By-laws;
- 5.3 Existence of safety and evacuation measures shall also form part of the conditions for the granting or renewal of liquor licenses;
- 5.4 A liquor premise also includes premises to which a special liquor license has been issued and shall remain so for the duration of the special license;
- 5.5 Liquor premises should be weapon free. A safe should be made available at all on-consumption liquor premises in case persons in possession of guns or sharp objects are allowed to enter premises.

5.6 Designated Smoking Areas

On-consumption liquor premises should have designated smoking areas.

5.7 Noise; Nuisance and Pollution

- 5.7.1 The licensee should take all reasonable steps to ensure that noise from the liquor premises should remain within the walls of such liquor premises at all times.
- 5.7.2 Liquor premises and surrounding areas should be kept clean at all times and the licensee remains liable and responsible for all land pollution and littering within and outside the liquor premises.
- 5.7.3 There should be no loitering by patrons outside the on-consumption liquor premises and all sales and consumption of liquor should be confined to the liquor premises.

6. Record Keeping

- 6.1 An off-consumption bottle store license holder must keep a record for all sales of twenty five (25) litres or more to any unlicensed person. This must be in a written or electronic form; and must contain the following information:
- a) full names, and address of the purchaser;
 - b) the kind and quantity of the liquor supplied;
 - c) the purchase prices paid and reasons for such purchase.
- 6.2 An on-consumption license holder should not sell liquor for take away or consumption off the licensed premises.
- 6.3 Failure to observe the mandatory licensing conditions should lead to the suspension or termination of the liquor license.

7. Promotions and Sponsorship of Educational Events

Ideally no person should sponsor or offer sponsorship in the form of liquor for educational, entertainment or any other activities within institutions of higher learning. Furthermore, no person shall run directly or indirectly, promotions or marketing campaigns for any liquor products within institutions of higher learning or any of its structures.

8. Education and Capacity Building

- 8.1 The Provincial Government should ensure that effective structures are put in place for purposes of intensifying educational campaigns throughout the country.
- 8.2 Liquor license holders and other people dispensing liquor should be trained on a regular basis on the Statutes, Regulations and Norms and Standards.
- 8.3 Educational campaigns should be intensified provincially on all issues relating alcohol abuse. Educational campaigns should also be directed at promoting an ethos of social responsibility within the liquor industry and an emphasis on the community's role in fighting and preventing alcohol abuse.

9. Register of Liquor Traders' Associations

- 9.1 The Provincial Liquor Authority should keep a register of all liquor traders' associations operating within their respective jurisdictions.
- 9.2 Liquor traders' associations should be regulated by the applicable liquor legislation and should serve as education and information hubs for licensees subscribed to their constitutions.

- 9.3 Liquor associations should also assist in ensuring and encouraging compliance with relevant liquor laws and eradicating illegal liquor trading.

10 Curbing the Number of Liquor Licenses

It will be the responsibility of the Member of the Executive Council responsible for the control and administration of liquor trading and administration to put a cap on the maximum number of licenses that can be issued per province and this should take into consideration concentration of liquor outlets within the North West Province. This position shall be reviewed every five (5) years after an impact assessment has been done.

11 Minimum Drinking and Purchasing Age

- 11.1 Both the Liquor Acts, 2003 and 1989 prohibits sale of liquor to persons under the age of eighteen (18) years but there is a strong view that this age limit must be increased to twenty one (21) years and that such persons must not be allowed in liquor premises. Ideally it would be an offence for a person under the age of twenty one (21) years to consume liquor.
- 11.2 An increase in the purchase age from the current 18 years to 21 years will make the supply of alcohol to younger teenagers more difficult and therefore may reduce (but not eliminate) consumption in the underage teenage group. Any exemption for a person below the age of 21 years to purchase liquor must be conferred by a court of law.
- 11.3 It should also be an offence for a person to purchase or acquire any liquor on or from any licensed premises with the intention of supplying it to any person who is under the minimum purchase age.

- 11.4 It should be an offence for a licensee to permit entrance to the licensed premises of pupils wearing school uniforms irrespective of whether they have passed the minimum purchase age.

12 Sale or Supply of Liquor to a Visibly Pregnant Woman

- 12.1 The licensee, manager or any person in charge of the premises must not sell or supply liquor to a visibly pregnant woman in any on-consumption liquor outlets.
- 12.2 Where the licensee suspects that a patron might be pregnant, such patron should be informed of the dangers of consuming alcohol whilst pregnant.
- 12.3 The local clinic and social services should offer assistance should there be a dispute. Local clinics and social services must also be empowered to educate pregnant women of the dangers of consuming liquor whilst pregnant.

13. Consultation

- 13.1 Where a general policy is to be established, it is important that we come up with consultation programme so that all those concerned should be given the opportunity to give inputs prior to the Liquor Bill being finalized.
- 13.2 The draft policy should be distributed widely within the industry and some other public notification be employed.
- 13.3 Provide an opportunity for submissions to be lodged and scheduled dates for hearing those submitters who wish to be heard in support of their submissions be lined-up.

14. Policy as a Basis for the Liquor Bill to Be Considered In Determining License Application

- 14.1 The policy is the basis for the liquor legislation and once the legislation has been promulgated, the policy will form part of the guidance used in assessing applications.
- 14.2 Each application will be processed on merit and therefore the policy should not be looked upon as a set of rigid rules. Likewise the decision and conditions for considered applications should not be purely considered as precedents for subsequent applications.
- 14.3 The responsible Department must also put in place mechanism that will assist citizens to apply and participate successfully in the liquor industry. There is an observation that ordinary citizens are made to rely much on the legal practitioners or consultants in order to gain entry.
- 14.4 There must also be systems in place that will handle appeals against what may be considered to be irregular or unfair decisions taken against applicants or licensed liquor traders. The tendency currently is to refer citizens to the courts of law through lawyers, which can be very expensive.

15 The Adoption of the Provincial Draft Liquor Policy

The formal adoption of this draft Provincial Liquor Policy by the Provincial Executive Council shall subsequently create an opportunity for the development of the Provincial Liquor Bill which should come into operation before the end of 2014.

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