

PROVINCE OF WESTERN CAPE

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OFFICE OF THE PREMIER
OF THE PROVINCE OF
WESTERN CAPE

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It is hereby notified that the Premier of the Province of Western Cape has assented to the following Act which is hereby published for general information:—

No. 4 of 2008: Western Cape Liquor Act, 2008.

AFRIKAANS AND IŠIXHOŠA VERSION WILL BE PUBLISHED ON A LATER DATE

(English text signed by the Premier)
(Assented to 25 November 2008)

WESTERN CAPE LIQUOR ACT

To provide for the licensing for the retail sale and the micro-manufacture of liquor in the Western Cape Province; and to provide for incidental matters.

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

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CHAPTER 1

INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Appeal Tribunal**” means an Appeal Tribunal established in terms of section 25(1); 5
- “**Board**” means the Western Cape Liquor Board established by section 2(1);
- “**Chairperson**” means the person designated as Chairperson of the Board in terms of section 3(6) or a person who temporarily acts as Chairperson in his or her absence in terms of section 3(7); 10
- “**Chief Executive Officer**” means the person appointed as Chief Executive Officer of the Board in terms of section 26(1)(a);
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**co-operative**” means a co-operative as defined in the Co-operatives Act, 2005 (Act 14 of 2005); 15
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act 51 of 1977);
- “**date of issue**”, in relation to a licence, means the date upon which the licence is first issued;
- “**Department**” means the department responsible for economic affairs in the Province; 20
- “**Deputy Chairperson**” means the person designated as Deputy Chairperson of the Board in terms of section 3(6);
- “**Deputy Presiding Officer**” means the person appointed as Deputy Presiding Officer of the Liquor Licensing Tribunal in terms of section 16(1)(b); 25
- “**designated liquor officer**” means a person designated as such in terms of section 73(1);
- “**drugs**” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance as defined in the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992); 30
- “**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; 35
- “**financial year**” means a year ending 31 March;
- “**impotable substance**” means any substance that is unsafe for human consumption; 40
- “**inspector**” means a person appointed as such in terms of section 73(4);
- “**issue**”, with regard to a licence, includes the delivery or dispatch of the licence to the person to whom it has been granted or to his or her agent;
- “**licence**” means a licence referred to in section 33, or deemed to be such a licence in terms of section 89; 45
- “**licensed business**” means the business that may be conducted on licensed premises as authorised by the Board;
- “**licensed premises**” means the premises upon which liquor may be micro-manufactured, sold, consumed or stored in terms of a licence under this Act;
- “**licensee**” means the person to whom a licence has been issued in terms of section 46 or transferred in terms of section 65 or who is deemed to be a licensee in terms of section 89; 50
- “**liquor**” means any liquid or substance containing more than 1% of alcohol by volume or mass, but excluding—
- (a) methylated spirits; 55
- (b) medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 of 1965); and
- (c) products which are not intended for human consumption;
- “**Liquor Act**” means the national Liquor Act, 2003 (Act 59 of 2003);

- “**Liquor Licensing Tribunal**” means the Western Cape Liquor Licensing Tribunal established by section 15(1);
- “**manager**” means a person whose appointment as manager is approved in terms of section 52(1);
- “**manufacture**” means to produce or bottle liquor with the intention of selling it; 5
- “**manufacturer**” means a person registered as such in terms of the Liquor Act;
- “**member**” means a member of the Board or the Liquor Licensing Tribunal, as the case may be;
- “**methylated spirits**” means—
- (a) a spirits denatured in accordance with any law on the denaturation or methylation of spirits; 10
- (b) any other denatured spirits, including—
- (i) a medicated spirits; or
- (ii) a denatured spirits declared to be a methylated spirits in terms of the Liquor Act; 15
- “**micro-manufacture**” means to manufacture liquor at or below the prescribed threshold volume in terms of section 4 of the Liquor Act and micro-manufacturer has a corresponding meaning;
- “**Minister**” means the provincial Minister responsible for economic affairs in the Province; 20
- “**motor vehicle**” means a vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer or an agricultural or other implement designed or adapted to be drawn by such vehicle;
- “**municipality**” means a municipality established under the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998); 25
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution;
- “**peace officer**” means any police officer and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334 (1) of the Criminal Procedure Act, any person who is a peace officer under that section; 30
- “**person**” includes—
- (a) any organ of state;
- (b) any company or close corporation incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporate; and 35
- (d) any trust;
- “**premises**” means a place, land, building, part of a building, vehicle which is mainly used for the conveyance of tourists, vessel, or aircraft;
- “**Presiding Officer**” means the person appointed as Presiding Officer of the Liquor Licensing Tribunal in terms of section 16(1)(a); 40
- “**prescribe**” means prescribe by regulation in terms of this Act;
- “**Province**” means the Province of the Western Cape;
- “**Provincial Cabinet**” means the Provincial Cabinet of the government of the Western Cape;
- “**public road**” has the meaning assigned to it in the National Road Traffic Act, 1996 (Act 93 of 1996); 45
- “**renewal fee**” means a fee payable annually in respect of a licence, excluding a temporary liquor licence, in order to ensure the continued validity of the licence;
- “**retail food store**” means a business retailing mainly in groceries and foodstuffs;
- “**sell**” includes supply, exchange, offer for sale, display for the purpose of sale or authorise, direct or allow a sale, supply, exchange, offer for sale or display for sale; 50
- “**special event**” means a fundraising event in aid of an educational or welfare organisation, any exhibition, sports meeting, cultural gathering, or artistic performance;
- “**standing committee**” means the committee of the Provincial Parliament 55 responsible for economic affairs;
- “**supply**”, in relation to liquor, means to place a person in possession or control thereof;
- “**table wine**” means wine as defined in section 1 of the Liquor Products Act, 1989 (Act 60 of 1989); 60
- “**this Act**” includes regulations made in terms of section 88.

CHAPTER 2

WESTERN CAPE LIQUOR BOARD

Establishment of Western Cape Liquor Board

2. (1) There is hereby established an independent juristic person, to be known as the Western Cape Liquor Board. 5

(2) The Board has the right and capacity to conduct and participate in legal proceedings and conduct all its business in its own name.

Composition of Board

3. (1) The Board consists of—

(a) six members who have appropriate knowledge of or experience in systems and processes for ensuring proper accountability, probity and openness in the conduct of the business of an organisation; and

(b) one member who has appropriate knowledge of or experience in dealing with the combating of the negative social consequences of the abuse of liquor, appointed on a part-time basis by the Minister in accordance with the prescribed procedure, after considering the recommendations of the standing committee. 15

(2) The prescribed procedure referred to in subsection (1) must provide for public participation in the nomination of candidates for appointment.

(3) The standing committee must make the recommendations referred to in subsection (1) after evaluating all candidates as to their suitability for appointment. 20

(4) The appointments to the Board must be made with race and gender sensitivity.

(5) The Minister must designate one of the members as Chairperson and another as Deputy Chairperson of the Board.

(6) The Deputy Chairperson acts as Chairperson of the Board when the Chairperson is absent or unable to act as Chairperson, and when both the Chairperson and Deputy Chairperson are absent or unable to act as Chairperson, the members present at the meeting must elect one of their number by majority vote to act as Chairperson at such meeting. 25

(7) Before being appointed a member of the Board, the candidate must submit an affidavit to the Minister in which such candidate declares that he or she— 30

(a) is eligible for such appointment; and

(b) is not disqualified from such appointment.

(8) The Provincial Cabinet or the Minister may, in consultation with the standing committee, at any time call for proof to its, or his or her satisfaction of the continued eligibility of any member or prospective member of the Board, or undertake or cause to be undertaken any investigation or enquiry in that regard. 35

(9) In addition to the members referred to in subsection (1), the Chief Executive Officer serves as an *ex officio* member of the Board, without any voting power.

Eligibility for appointment as member or employee of Board

4. In order to be eligible for appointment as a member or an employee of the Board, a person must— 40

(a) in the case of a member of the Board, have attained the age of twenty-five (25) years or, in the case of an employee of the Board, the age of eighteen (18) years;

(b) be a citizen of the Republic of South Africa and permanently resident in the Province; and 45

(c) not be disqualified under section 5.

Disqualification from appointment as member or employee of Board

5. (1) The following persons are disqualified from being appointed, continuing or acting as members or employees of the Board— 50

(a) anyone who has in the preceding ten (10) years been convicted of an offence in terms of this Act or any similar law;

(b) anyone who in the preceding ten (10) years, whether in the Republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged

- document, perjury or any offence under the Corruption Act, 1992 (Act 94 of 1992) or the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) or any offence of which dishonesty is an element;
- (c) an unrehabilitated insolvent or anyone who is subject to any legal disability;
- (d) anyone who has in the preceding ten (10) years been removed from any office of trust on account of misconduct or dishonesty; 5
- (e) any political office bearer; and
- (f) anyone who, whether personally or through his or her spouse, family member, partner or associate—
- (i) has or acquires a direct or an indirect financial interest in any liquor business or establishment; or 10
- (ii) has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member or an employee of the Board or in any licence issued under this Act.
- (2) For the purposes of this section, an indirect financial interest does not include an indirect interest held through any fund or investment if the person holding such interest has no control over the investment decisions made in respect of that fund or investment. 15

Period of office of members of Board

6. (1) A member of the Board holds office for such period, not exceeding four (4) years, as the Minister may determine at the time of that member's appointment. 20
- (2) The Minister may re-appoint a member of the Board in the prescribed manner for one other period, not exceeding four (4) years, as the Minister may determine at the time of that member's re-appointment, after considering the recommendations of the standing committee.

Termination of membership of Board 25

7. (1) A vacancy in the office of a member of the Board occurs when—
- (a) such member's written resignation is received by the Minister: Provided that the resignation is effective as of the date stated in the written resignation or such other date as is agreed upon between the Minister and the member concerned; 30
- (b) such member becomes disqualified from remaining a member of the Board;
- (c) such member is absent from two consecutive meetings of the Board without the prior written leave of the Chairperson, or where applicable, the Deputy Chairperson;
- (d) such member's term of office has expired; 35
- (e) such member's term of office is terminated by the Minister: Provided that the Minister may not terminate a member's term of office unless he or she considers this to be in the public interest or in the interest of the proper administration of this Act; and
- (f) such member is no longer resident in the Province. 40

Vacancies

8. In the event of a vacancy contemplated by section 7, the Minister must appoint a new member to the Board, in terms of sections 3, 4, 5 and 6.

Powers and functions of Board

9. The Board has the following powers and functions— 45
- (a) to administer liquor regulation in the Province;
- (b) to receive applications for liquor licences or exemptions in terms of this Act and to transmit the applications to the Liquor Licensing Tribunal;
- (c) to issue licences in those cases where the Liquor Licensing Tribunal has granted licences; 50
- (d) to acquire, hold, hire, let and alienate intellectual, movable and immovable property;
- (e) to open and maintain bank accounts;
- (f) to appoint and dismiss staff and do all things incidental thereto;
- (g) to conclude and perform contracts; 55

- (h) to make and enforce rules for the conduct of its meetings;
- (i) to receive, expend and generally administer funds;
- (j) to collect and administer in accordance with the provisions of this Act, fees and penalties imposed in terms of this Act;
- (k) to enter into agreements with or obtain the assistance of any department or organ of state, including the South African Police Service, to conduct or assist it in conducting its investigations; 5
- (l) to obtain information from licensees and other persons and agencies;
- (m) to conduct 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 10
 - (ii) reducing the socio-economic and other costs associated with the abuse of liquor; 15
- (n) to determine minimum internal control systems for the Board and for licensees, including accounting and reporting procedures and any other procedures or systems, whether computerised or not;
- (o) to determine fees and charges in respect of hearings, investigations, enquiries and any other function performed by the Board; 20
- (p) to establish field or branch offices;
- (q) to establish and administer funds for the proper administration of this Act;
- (r) to consult with any person or employ consultants regarding any matter relevant to the performance of its functions on such terms and conditions as the Board may determine; 25
- (s) to delegate any of its powers in accordance with section 10;
- (t) to appoint committees consisting of members of the Board;
- (u) generally to exercise the powers and perform the functions and duties specified in this Act or assigned to it by any other law; and
- (v) to advise the Minister on any matter which the Minister has referred to it. 30

Delegation

10. (1) The Board may delegate any power or function to the Chief Executive Officer 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 Board may determine. 35

(3) The Board will not be divested of any power delegated by it.

(4) A delegation in terms of this section may authorise the Chief Executive Officer to sub-delegate all or any of the delegated powers or functions.

(5) Any person aggrieved by a decision taken in terms of a delegated power or function referred to in subsection (1) has a right of appeal to the Board against such decision in the manner and within the time prescribed. 40

(6) The Board may amend or withdraw any delegation.

(7) The Board may not delegate any power or function referred to in section 9(h), (o), (p) and (s).

Co-opting of persons

45

11. (1) The Board may co-opt any person who is eligible as contemplated in section 4, and, in the opinion of the Board, is able to assist the Board or a committee of the Board in the consideration of a particular matter.

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board. 50

(3) The remuneration of any person co-opted in terms of this section will be determined by the Board.

Confidentiality

12. (1) No member or employee of the Board, including any co-opted person or consultant employed by the Board, may disclose any information that has come to that person's knowledge by reason of his or her appointment to, co-option on or employment 55

by the Board and which relates to the business or affairs of the Board, an applicant for a licence or a licensee, save as set out in this section and section 36(3)(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; 5
- (c) disclosures regarding liquor regulation in general which do not refer to the business or affairs of any particular applicant for a licence or licensee;
- (d) disclosure of information to the Commissioner of the South African Revenue Service;
- (e) disclosure to the Minister; and 10
- (f) disclosure to any person who requires it for the performance of his or her functions under this Act.

Meetings of Board

13. (1) (a) The Board must meet at least four times in every year in the manner and on such dates and at such times and places as the Chairperson may determine. 15

(b) The Chairperson of the Board may at any time convene a special meeting of the Board to be held at a time and place determined by him or her and must, upon a written request signed by at least three members of the Board, convene a special meeting of the Board to be held within two weeks after the date of receipt of such request, at a time and place determined by him or her. 20

(2) The Minister must prescribe the procedure to be followed at a meeting of the Board.

(3) The procedure at a meeting of the Board must, in so far as it has not been prescribed, be determined by the Chairperson.

(4) The quorum for a meeting of the Board is five members. 25

(5) Any meeting may be adjourned for such time, to such venue and for such reasons as the Chairperson may deem necessary.

(6) A decision of the Board is taken by a majority of the votes of the members present at its meetings, and in the event of an equality of votes on any matter, the Chairperson must cast the deciding vote. 30

(7) No decision of the Board is invalid merely by reason of a vacancy on the Board or the fact that any person who is not entitled to sit as a member of the Board sat as such a member when the decision was taken: Provided that the decision was taken by the required majority of the members of the Board then present and entitled to sit as members of the Board. 35

Minutes

14. (1) The proceedings of the Board must be recorded in such manner as the Chairperson may determine and must, in the event of a vote, reflect each member's vote.

(2) Minutes must be kept of meetings of the Board and must be retained at the offices of the Board. 40

CHAPTER 3

WESTERN CAPE LIQUOR LICENSING TRIBUNAL AND APPEAL TRIBUNAL

Establishment of Liquor Licensing Tribunal

15. (1) The Western Cape Liquor Licensing Tribunal is hereby established.

(2) The Liquor Licensing Tribunal must exercise its functions according to the provisions of this Act, impartially and without fear, favour or prejudice. 45

(3) The Board must maintain oversight over the administration of the Liquor Licensing Tribunal but may not revoke or alter any decision of the Tribunal taken in the exercise or performance of any of its powers or functions in terms of section 20.

Composition of Liquor Licensing Tribunal, and nomination and appointment of Liquor Licensing Tribunal members 50

16. (1) The Liquor Licensing Tribunal consists of—

- (a) one member with legal qualifications equivalent to those required for admission as an attorney, or an advocate of the High Court of South Africa,

and with experience in the administration of justice, appointed by the Board as Presiding Officer;

- (b) one member with the qualifications stated in paragraph (a) appointed by the Board as Deputy Presiding Officer;
- (c) one member representing organised local government, appointed by the Board after consultation with the Minister responsible for local government in the Province; 5
- (d) one member who is a police officer of the rank of Superintendent or above, appointed by the Board in consultation with the Provincial Commissioner of the South African Police Service and the Minister responsible for community safety in the Province; and 10
- (e) two citizens of the Republic, who are permanently resident in the Province, appointed by the Board.

(2) The members are appointed in accordance with the prescribed procedure, which must provide for public participation in the nomination of the candidates referred to in subsection (1)(a), (b) and (e). 15

(3) If the Presiding Officer is not available to perform his or her functions or the office of Presiding Officer is vacant, the Deputy Presiding Officer must, during the unavailability of the Presiding Officer or until a Presiding Officer is appointed, act as Presiding Officer and perform all the functions assigned to the Presiding Officer by this Act. 20

(4) Before being appointed a member of the Liquor Licensing Tribunal the candidate must submit an affidavit to the Board in which such candidate declares that he or she is not disqualified in terms of section 17.

(5) The Board, in consultation with the Minister, may at any time call for proof to its satisfaction of the continued eligibility of any member or prospective member of the Liquor Licensing Tribunal, or undertake or cause to be undertaken any investigation or enquiry in that regard. 25

Disqualification for appointment as member of Liquor Licensing Tribunal

17. The following persons are disqualified from being appointed, continuing or acting as members of the Liquor Licensing Tribunal— 30

- (a) anyone who has in the preceding ten (10) years been convicted of an offence and sentenced to imprisonment without the option of a fine, unless the Board is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office; 35
- (b) anyone who has in the preceding ten (10) years been convicted of any offence in terms of this Act, the Liquor Act or the Liquor Act, 1989 (Act 27 of 1989), unless the Board is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office;
- (c) an unrehabilitated insolvent or anyone who is subject to any legal disability; 40
- (d) anyone younger than twenty-five (25) years of age;
- (e) anyone who has a direct interest in the liquor trade;
- (f) anyone who is the family member, partner or business associate of a person with a direct interest in the liquor trade, unless the Board is of the opinion that the interest of the family member in the liquor trade does not imply that the person is unsuitable to hold office; 45
- (g) anyone who is disqualified in terms of section 35 to hold a liquor licence; or
- (h) who is not resident in the Province.

Period of office of members of Liquor Licensing Tribunal

18. (1) A member of the Liquor Licensing Tribunal holds office for such period, not exceeding five (5) years, as the Board may determine at the time of that member's appointment. 50

(2) The Board may re-appoint a member of the Liquor Licensing Tribunal in the prescribed manner for one other period, not exceeding five (5) years, as the Board may determine at the time of that member's re-appointment. 55

(3) The re-appointment of a member referred to in section 16(1)(c) and (d) may only be done after consultation with the Minister responsible for local government in the Province, or the Provincial Commissioner of the South African Police Service and the Minister responsible for community safety in the Province, respectively.

(4) A vacancy on the Liquor Licensing Tribunal must be filled by the appointment of another member by the Board.

Termination of membership of Liquor Licensing Tribunal

19. A vacancy in the office of a member of the Liquor Licensing Tribunal occurs when— 5

- (a) such member's written resignation is received by the Board: Provided that the resignation is effective as of the date stated in the written resignation or such other date as is agreed upon between the Board and the member concerned;
- (b) such member becomes disqualified from remaining a member of the Liquor Licensing Tribunal; 10
- (c) such member is absent from three consecutive meetings of the Liquor Licensing Tribunal without the prior written leave of the Presiding Officer, or where applicable, the Deputy Presiding Officer;
- (d) such member's term of office has expired;
- (e) such member's term of office is terminated by the Board: Provided that the Board may not terminate a member's term of office unless it considers this to be in the public interest or in the interest of the proper administration of this Act; and 15
- (f) such member is no longer resident in the Province.

Powers and functions of Liquor Licensing Tribunal 20

20. (1) The Liquor Licensing Tribunal may consider any of the following matters at its meetings—

- (a) any application for a licence referred to in section 33 or 48;
- (b) any application for the transfer of a licence in terms of section 65(9);
- (c) representations for or against the granting of applications; 25
- (d) any report submitted to it by a designated liquor officer, an inspector or a municipal official;
- (e) any complaint lodged with it regarding the conduct of a licensed business;
- (f) representations by a licensee or other interested person regarding the rescission of the suspension of a licence or the removal or amendment of any condition imposed upon a licence; or 30
- (g) any other matter referred to it by the Chief Executive Officer or which it may or must consider in terms of this Act.

(2) Except in respect of matters referred to in subsection (1)(a), (b), (c), (f) and (g), the Presiding Officer has a discretion to decline to convene a meeting of the Liquor Licensing Tribunal if in his or her opinion such a meeting is not warranted by the information placed before him or her. 35

(3) The Liquor Licensing Tribunal may, after consideration by it of any matter contemplated in—

- (a) subsection (1)(a), (b), or (c), refuse or grant the application subject to such conditions as it may deem appropriate; 40
- (b) subsection (1)(d) or (e)—
 - (i) dismiss the report or complaint, as the case may be;
 - (ii) revoke the licence concerned;
 - (iii) suspend the licence in the prescribed manner as a punitive or corrective measure; 45
 - (iv) impose such conditions upon the licence as it deems appropriate;
 - (v) order the licensee to pay such fine as it may deem appropriate, subject to the prescribed limit; or
 - (vi) take such other action as it may deem appropriate; 50
- (c) subsection (1)(f), dismiss the representations or rescind the suspension of the licence, or remove or amend the condition or conditions concerned; or
- (d) subsection (1)(g), consider the matter and take such action as it may deem appropriate. 50

(4) The Liquor Licensing Tribunal may at any time, upon application by a licensee, suspend, revoke or amend any condition imposed by it with regard to the licence concerned. 55

(5) The Liquor Licensing Tribunal may co-opt, in respect of any matter and for such period as it deems necessary, any person to serve on it whom it deems able to assist it in considering the matter concerned, subject to section 17.

(6) A person so co-opted does not have the right to vote.

(7) The remuneration of any person co-opted in terms of subsection (5) must be determined by the Board. 5

Meetings and decisions of Liquor Licensing Tribunal

21. (1) The Presiding Officer must determine the time and place for the holding of meetings of the Liquor Licensing Tribunal and may adjourn and reconvene meetings at such times and places as he or she may decide. 10

(2) A quorum for a meeting of the Liquor Licensing Tribunal is four members, including the Presiding Officer or the Deputy Presiding Officer or both.

(3) A decision of the Liquor Licensing Tribunal is taken by a majority of the votes of the members present at its meetings, and in the event of an equality of votes on any matter, the Presiding Officer must cast the deciding vote. 15

Recusal of member with conflicting interest

22. (1) A member of the Liquor Licensing Tribunal may not vote, attend or in any manner participate in the proceedings at any of its meetings or hearings and the Presiding Officer may not consider a matter if, in relation to that matter—

(a) he or she is a family member, partner or business associate of the applicant for a licence, certification, or any other right or privilege to be granted by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be; 20

(b) he or she or his or her family member, partner or business associate is a director, member or partner of, or has a financial or other interest in, the business of the applicant for a licence, certification, or any other right or privilege to be granted by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be; or 25

(c) he or she has any interest which precludes him or her from performing his or her functions as a member of the Liquor Licensing Tribunal in a fair, unbiased and proper manner. 30

(2) If at any stage it appears that a member or the Presiding Officer, as the case may be, has or may have any interest contemplated in subsection (1)—

(a) in relation to a matter to be considered by the Liquor Licensing Tribunal, that member must without delay and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest; and 35

(b) in relation to a matter to be considered by the Presiding Officer, he or she must without delay and fully disclose the nature of his or her interest to the Liquor Licensing Tribunal in which case it must consider the matter. 40

(3) The disclosure and the decision taken by the remaining members of the Liquor Licensing Tribunal, referred to in subsection (2)(a), must be recorded in the minutes of the proceedings in question.

Proceedings of Liquor Licensing Tribunal 45

23. (1) The Presiding Officer must, subject to the provisions of this Act, determine the procedure to be followed at meetings of the Liquor Licensing Tribunal.

(2) The Presiding Officer may notify, in the prescribed manner, any person who may be adversely affected in the consideration of a matter by the Liquor Licensing Tribunal, to be present at the meeting where the matter is to be considered. 50

(3) A person who has been notified in terms of subsection (2) may—

(a) attend the meeting, in person or be represented thereat by an attorney, advocate or any other person appearing on his or her behalf; or

(b) elect not to attend or be represented.

(4) If the Presiding Officer is satisfied that a person has been duly notified to appear at a meeting of the Liquor Licensing Tribunal but is not present thereat, the Presiding Officer may direct that the meeting proceed in the absence of that person or may take such other action as he or she deems fair and just in the circumstances. 55

- (5) The Presiding Officer may cause any person to be summonsed in the prescribed manner to be present at a meeting of the Liquor Licensing Tribunal to give evidence or produce a document or anything which is in his or her possession or custody or under his or her control.
- (6) The Presiding Officer may order any person present at a meeting of the Liquor Licensing Tribunal to give evidence or to produce a document or anything which is in his or her possession or custody or under his or her control, and to be questioned by the Liquor Licensing Tribunal. 5
- (7) The Liquor Licensing Tribunal may inspect, and retain for such period as is reasonably necessary, any document or article produced to it. 10
- (8) A person giving evidence at a meeting of the Liquor Licensing Tribunal must do so under oath or affirmation.
- (9) In considering a matter the Liquor Licensing Tribunal may, of its own accord, take notice of any relevant fact or circumstance, which in its opinion may influence the decision of the Liquor Licensing Tribunal. 15
- (10) If any party requests a postponement to enable it to prepare argument with regard to a matter, the Presiding Officer may postpone that matter for this purpose.
- (11) All meetings of the Liquor Licensing Tribunal are accessible to the public except that the Presiding Officer may, on reasonable grounds, direct that any person whose presence at the meeting is not desirable, may not attend or must leave the meeting. 20
- (12) The deliberations and voting of the Liquor Licensing Tribunal are not accessible to the public.
- (13) Failure to attend a meeting after having been summonsed in terms of subsection (5) is an offence.

Committees of Liquor Licensing Tribunal 25

24. (1) The Presiding Officer may appoint one or more committees consisting of him or herself or the Deputy Presiding Officer and any member or any person co-opted in terms of section 20(5).
- (2) A committee must consist of at least three persons.
- (3) The Liquor Licensing Tribunal may delegate to a committee the functions of the Liquor Licensing Tribunal set out in sections 64, 65 and 71. 30
- (4) The Liquor Licensing Tribunal may issue guidelines to a committee regarding the exercise of a power or the performance of a function it has delegated to the committee.
- (5) A committee must in the exercise of a delegated power or the performance of a delegated function, comply with the guidelines referred to in subsection (4). 35
- (6) In appointing members of a committee, the Presiding Officer must have due regard to the knowledge, expertise and experience required for the matter to be considered.
- (7) A committee of the Liquor Licensing Tribunal is governed by the same rules of procedure as those pertaining to the Liquor Licensing Tribunal.

Appeal Tribunal 40

25. (1) The Minister must, for such term as he or she may determine, appoint a person with legal qualifications equivalent to those required for admission as 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 Licensing Tribunal in terms of this Act. 45
- (2) The Minister must prescribe the procedure to be followed by the Appeal Tribunal.

CHAPTER 4

ADMINISTRATION, REMUNERATION AND FINANCIAL MANAGEMENT

Administration of Board, Liquor Licensing Tribunal and Appeal Tribunal

26. (1) The Board must appoint— 50
- (a) a suitably qualified and experienced person as Chief Executive Officer for the purpose of assisting the Board in the performance of all financial and administrative responsibilities of the Board, the Liquor Licensing Tribunal and the Appeal Tribunal, and who is in respect thereof accountable to the Board; 55

- (b) a secretary of the Liquor Licensing Tribunal, who will be responsible for—
- (i) the preparation of agendas;
 - (ii) the recording of proceedings;
 - (iii) the keeping of minutes of the Liquor Licensing Tribunal; and
 - (iv) such other duties as the Presiding Officer may determine; and
- (c) such other staff as may be necessary to enable the Board, the Liquor Licensing Tribunal and the Appeal Tribunal to perform their functions. 5
- (2) The staff of the Board, Liquor Licensing Tribunal and Appeal Tribunal must—
- (a) be appointed on such terms and conditions as the Board may determine and must be remunerated by the Board; and
 - (b) perform their functions and duties subject to the directions and control of the Board. 10
- (3) The Board, in consultation with the Minister and the Minister responsible for finance in the Province—
- (a) must determine a human resources policy for the Board, Liquor Licensing Tribunal, the Appeal Tribunal and its staff; and
 - (b) must determine the remuneration of its staff, excluding those members of staff who have been seconded in terms of subsection (5). 15
- (4) The Board must, upon the recommendation of the Chief Executive Officer, determine a code of conduct, applicable to all members of staff of the Board, Liquor Licensing Tribunal and the Appeal Tribunal to ensure— 20
- (a) compliance with applicable law;
 - (b) the effective, efficient and economical use of the Board's funds and resources;
 - (c) the promotion and maintenance of a high standard of ethics;
 - (d) the prevention of conflicts of interest; 25
 - (e) the protection of confidential information held by the Board, Liquor Licensing Tribunal and the Appeal Tribunal; and
 - (f) professional, honest, impartial, fair, ethical and equitable service.
- (5) The Board may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 30
- (6) The Chief Executive Officer may enter into such financial transactions as may be required for the operation of a public entity, including but not limited to, entering into partnerships with other organs of state and to engage the services of contractors and service providers. 35
- (7) The Chief Executive Officer may refer to a meeting of the Board or Liquor Licensing Tribunal, as the case may be, any matter which falls within the powers and functions of the Board in terms of section 9 or the Liquor Licensing Tribunal in terms of section 20.
- (8) Minutes of proceedings of the Board, Liquor Licensing Tribunal and the Appeal Tribunal must be kept and retained at the offices of the Board and are available to any person for the purpose of perusing or copying, subject to the payment of the prescribed fee and the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000). 40
- (9) The Presiding Officer 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 Licensing Tribunal 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 Presiding Officer. 45

Remuneration of Chief Executive Officer, members of Board, Liquor Licensing Tribunal and Appeal Tribunal 50

27. The Chief Executive Officer, members of the Board and Liquor Licensing Tribunal, and the person appointed to act as the Appeal Tribunal are entitled to receive reasonable remuneration as determined by the Minister, in consultation with the Minister responsible for finance in the Province. 55

Funding and financial management of Board

- 28.** (1) The funds of the Board consist of—
- (a) money appropriated by the Provincial Parliament;
 - (b) money accruing to the Board from any other source approved by the Minister, after consultation with the Minister responsible for finance in the Province, including fees accruing in terms of this Act; and
 - (c) other money lawfully paid to and for the benefit of the Board.
- (2) The Board must cause full and proper books of account and all the necessary records in relation thereto to be kept.
- (3) The Board must, at least six months before the start of its financial year or another period determined by the Minister, submit to the Minister for approval—
- (a) a budget of estimated revenue and expenditure for that financial year; and
 - (b) a business plan for the Board, containing measurable objectives,
- in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999).
- (4) The Board may in any financial year make requests for additional funds to the Minister for inclusion in the adjustment estimates in accordance with the applicable legislation.
- (5) The Board may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

Audit and annual reports

- 29.** (1) The Auditor-General must audit the financial statements of the Board.
- (2) The Board must submit a report on its activities during a financial year to the Minister for tabling in the Provincial Parliament within five months after the end of that 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 measurable objectives as set out in the business plan referred to in section 28(3)(b) during the financial year concerned;
 - (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 monitor and address the social and other costs associated with the abuse of liquor as well as the number of licences granted during the previous financial year.

Revenue accruing to Provincial Revenue Fund, Board or municipalities

- 30.** (1) The fees referred to in sections 46(2), 48(1) and (4), 63(2) and 65(16) must be paid into the Provincial Revenue Fund.
- (2) The following moneys accrue to the Board—
- (a) fines referred to in sections 20(3)(b)(v) and 82(2)(b);
 - (b) the penalty referred to in section 63(4); and
 - (c) fees referred to in sections 26(8), 36(1)(e), 38, 63(4), 64(1) and 65(9).
- (3) The fees referred to in sections 36(5)(a)(i) and (b)(i) accrue to the municipality concerned.
- (4) No amount contemplated by this section is refundable.

CHAPTER 5

ESTABLISHMENT OF SOCIAL AND EDUCATION FUND

Establishment of fund

- 31.** (1) The Chief Executive Officer 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 Chief Executive Officer must, after consultation with the Board and in consultation with the Minister, provide for the terms of reference for and administer the fund referred to in subsection (1).

(3) The budget of the fund must be included within the budget of the Board that must be submitted in accordance with the Public Finance Management Act, 1999. 5

(4) The Chief Executive Officer must, in consultation with the Board, the Minister and the Minister responsible for finance in the Province, open an account for the fund in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990).

CHAPTER 6 10

LICENSING

Licences

32. (1) A person may not micro-manufacture or sell liquor unless authorised to do so in terms of a licence issued in terms of this Act, the Liquor Act or the Liquor Act, 1989 (Act 27 of 1989). 15

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

(3) A person who, without being exempted in terms of section 84(1) or (2), micro-manufactures or sells liquor in contravention of subsection (1) or (2) is guilty of an offence. 20

Categories of licences

33. The Liquor Licensing Tribunal may grant the following licences—

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

Criteria for granting licences 35

34. The Liquor Licensing Tribunal may not grant a licence, 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 licence in terms of section 35; 40
- (c) the premises on which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence;
- (d) the applicant has the right to occupy the proposed licensed premises; and
- (e) the granting of the application does not prejudice— 45
 - (i) the residents of a residential area;
 - (ii) the residents 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 50
 - (v) the congregants of a religious institution located in the vicinity of the proposed licensed premises.

Disqualification of applicants

- 35.** (1) The following persons are disqualified from holding liquor licences—
- (a) anyone who has, within five (5) years prior to the lodgement of the application, been sentenced to imprisonment without the option of paying a fine; 5
 - (b) anyone who has, within five (5) years prior to the lodgement of the application, been declared to be unfit to hold a registration by the National Liquor Authority or a licence by any provincial liquor board or authority;
 - (c) anyone who is an unrehabilitated insolvent;
 - (d) anyone who is a minor upon the date of consideration of the application; 10
 - (e) anyone who was the holder of a licence which was cancelled in terms of the provisions of this Act, or an Act regulating liquor licences in any other province, within a period of twelve (12) months prior to the lodgement of the application;
 - (f) anyone who is the spouse or life partner of a person described in (a), (b) or (e) above; and 15
 - (g) anyone who is mentally ill as defined in the Mental Health Care Act, 2002 (Act 17 of 2002).
- (2) If a person is disqualified in terms of subsection (1)(a) to (e) or (g), any company, close corporation or co-operative in which he or she has a shareholding, member's interest or a membership share, any trust of which he or she is a trustee or beneficiary and any partnership of which he or she is a partner, is similarly disqualified. 20
- (3) The Liquor Licensing Tribunal may, in exceptional circumstances and on good cause shown, determine that a person who is disqualified in terms of subsection (1) or (2) is deemed to be qualified for the purposes of a particular application or licence. 25

Application procedure

- 36.** (1) An application for a licence of a category referred to in section 33 must be made to the Board by submitting on or before the prescribed date to the Board and the designated liquor officer in whose area of jurisdiction the proposed licensed premises are located— 30
- (a) the prescribed application form properly completed;
 - (b) a zoning certificate;
 - (c) where necessary, a copy of a planning application submitted to the municipality concerned in terms of applicable planning legislation;
 - (d) other information that may be required by the Liquor Licensing Tribunal to enable it to determine whether the applicant meets the criteria for the granting of a licence; and 35
 - (e) the prescribed fee which must be paid in the prescribed manner.
- (2) No application for a licence may be advertised during the period of 1 December and 15 January of the following year. 40
- (3) By submitting an application for a licence, the applicant consents that the Liquor Licensing Tribunal or any member or authorised employee of the Board may—
- (a) conduct any 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— 45
 - (i) the applicant or, if the licence 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, if the licence has been granted, the licensee; 50
 - (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 anywhere in the world information of and concerning the applicant for purposes of any hearing, investigation or enquiry. 55

Notice of application

37. (1) The Board must, in the prescribed form, publish notices, in the three official languages of the Province in the *Provincial Gazette* and in a community newspaper circulating in the area in which the proposed licensed premises are located, and where there is no such community newspaper, in at least one other newspaper circulating in the area where the premises concerned are located. 5

(2) The applicant must display a notice, as prescribed, in the three official languages of the Province in a prominent place at the proposed licensed premises so that it is visible to passers-by: Provided that the Liquor Licensing Tribunal may condone the non-compliance with this provision on good cause shown. 10

(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 designated liquor officer in whose area of jurisdiction the proposed licensed premises are located must, within the prescribed period from the date of lodgement of an application, serve a copy of the application in the prescribed manner on the municipality concerned in order for it to— 15

(a) where section 36(1) applies—

- (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application;
- (ii) obtain the comment of the ward councillor; 20
- (iii) comment on the application; and
- (iv) allow for the consideration of the planning application in relation to the application for a liquor licence.

(b) where section 36(1)(c) does not apply—

- (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application; 25
- (ii) obtain comment of the ward councillor; and
- (iii) comment on the application.

(5) The designated liquor officer in whose area of jurisdiction the proposed licensed premises are located must or the municipality may, within the prescribed time, give notice of the application to— 30

(a) neighbouring residents or such persons who in his, her or its judgement may be affected by, or have an interest in, the granting or refusal of the application; and

(b) the community policing forum, if any, of the area in which the premises are located. 35

(6) Notwithstanding subsection (1), where an applicant has to comply with section 36(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 Licensing Tribunal may require such additional notification as it may deem appropriate. 40

Applications lying for inspection at Board

38. The Board must, within the prescribed period after an application referred to in section 36 has been lodged with it, 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 Board until the date upon which the application is considered by the Liquor Licensing Tribunal. 45

Representations

39. (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 Licensing Tribunal for or against the granting or refusal of that application. 50

(2) The representations must be lodged with the Board and the designated liquor officer concerned.

(3) A copy of the representations must be served by the person making the representations, on the applicant or his or her representative. 55

(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;
 - (c) if applicable, the name and address of his or her representative; 5
 - (d) the nature of his or her interest in the granting or refusal of the application; and
 - (e) comprehensive grounds for the objection or support.
- (6) The applicant may lodge a response to representations against the application with the Board within the prescribed period.

Forwarding of documents 10

- 40.** (1) The municipality concerned must, within the prescribed period, forward to the Board the following—
- (a) its decision in respect of the planning application referred to in section 36(1)(c); and
 - (b) information regarding the extent of the public participation process that was followed in respect of that application. 15
- (2) The municipality concerned must, within the prescribed period, with regard to an application for a liquor licence, forward to the Board the following—
- (a) the comments, if any, of the ward councillor;
 - (b) its comments, if any, on the application for a liquor licence; and 20
 - (c) any other document or article lodged with it in connection with the application for a liquor licence.
- (3) The designated liquor officer concerned must, within the prescribed period, forward to the Board the following—
- (a) his or her report referred to in section 73(7)(a); and 25
 - (b) any other document or article lodged with it in connection with the application for a liquor licence.

Consideration of applications

- 41.** (1) The Liquor Licensing Tribunal may, when considering an application, take cognisance of the following— 30
- (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; and
 - (c) subject to section 23(9), any matter which, in the opinion of the Liquor Licensing Tribunal, should be taken into consideration. 35
- (2) If an application, a document accompanying it, representations or a report is defective in any respect or if any person fails to lodge any document or adhere to a reasonable time period or time limit, the Liquor Licensing Tribunal may condone the defect or failure if there has been substantial compliance with this Act and if such 40 condonation is not likely to prejudice any person.

Conditional granting of licence

- 42.** (1) The Liquor Licensing Tribunal may conditionally grant a licence.
- (2) A licence granted by the Liquor Licensing Tribunal in terms of subsection (1) may not be issued until the applicant complies with the conditions imposed at the time of 45 granting.
- (3) The Liquor Licensing Tribunal must, when conditionally granting a licence, stipulate a period within which the applicant must comply with the conditions referred to in subsection (2).
- (4) The Liquor Licensing Tribunal may at any time, upon application by the applicant 50 amend or withdraw the conditions.
- (5) The Presiding Officer may at any time, upon application by the applicant—
- (a) extend the time period stipulated; or
 - (b) approve an amendment of the plan of the premises.
- (6) If the applicant fails to comply with the conditions referred to in subsection (2) 55 within the period referred to in subsection (3) or extended in terms of section (5), the granting of the licence lapses and the licence is deemed not to have been granted.

(7) When the applicant complies with the conditions imposed by the Liquor Licensing Tribunal, the Board must issue the licence as prescribed, subject to section 46.

Right to use premises

43. The Liquor Licensing Tribunal may, when conditionally granting a licence, direct that the licence may not be issued unless it is satisfied that the applicant has the right to use the premises concerned for the purpose to be authorised in the licence. 5

Incomplete premises

44. The Liquor Licensing Tribunal may, when conditionally granting a licence 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 licence, direct that the licence may not be issued until the applicant complies with the conditions it has imposed relating to the completion of the premises. 10

Education and training

45. The Liquor Licensing Tribunal must, when conditionally granting a licence, direct that the licence may not be issued until the applicant or an employee or employees of the applicant have undergone such training and education as the Liquor Licensing Tribunal requires. 15

Issuing of licence

46. (1) The Board must, within the prescribed period after the Liquor Licensing Tribunal has granted an application made in terms of section 36, notify the— 20

- (a) applicant;
- (b) individual objectors;
- (c) organiser of a petition, where the objections were made by means of a petition;
- (d) municipality concerned; and
- (e) designated liquor officer concerned. 25

in writing of the decision of the Liquor Licensing Tribunal.

(2) Where the application has been granted, the applicant must pay the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (1), in as far as the notice applies to the granting of the application. 30

(3) The Board must within the prescribed period after the payment of the prescribed fee referred to in subsection (2), and subject to sections 42, 43, 44, and 45, issue a licence to the applicant in the prescribed form, setting out the conditions of the licence as imposed by the Liquor Licensing Tribunal.

(4) A licence must be issued in the name of the person who operates, conducts and benefits from the operation of the licensed business and may not be issued in the name of a nominee or agent. 35

(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 Chief Executive Officer for condonation of the failure to pay the prescribed fee referred to in subsection (2) and the Chief Executive Officer may condone the failure and allow the late payment of the said fee by a date to be determined by the Chief Executive Officer, subject to the payment of a penalty of 100 % of that fee. 45

Death or incapacity of applicant

47. If an applicant for a licence—

- (a) dies;
- (b) is sequestrated;
- (c) is declared incapable of handling his or her own affairs by a court; or
- (d) being a company, close corporation, trust or co-operative, is liquidated, 50

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

Temporary liquor licences and special event liquor licences

48. (1) The Presiding Officer may upon application by a licensee referred to in section 33(b) or (d), and upon the payment of the prescribed fee, grant a temporary liquor licence for the use by that licensee only: Provided that in the case of section 33(d), the temporary liquor licence is limited to the sale and consumption of liquor on the premises where the liquor is sold. 5

(2) The Presiding Officer may not grant a temporary liquor licence under subsection (1) to a particular person 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. 10

(3) A temporary liquor licence must be made subject to the prescribed conditions and such other conditions and restrictions as the Presiding Officer may impose.

(4) The Presiding Officer may upon application by— 15

(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 20

(e) the organiser of an artistic performance,

in the prescribed manner and upon the payment of the prescribed fee, grant a special event liquor licence for the sale of liquor for consumption on or off the premises on which liquor is sold at a special event.

(5) An application for a special event liquor licence must be made at least fourteen (14) days prior to the date of the special event. 25

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

(7) A special event liquor licence is subject to the conditions referred to in section 49, where applicable, and such other conditions and restrictions as the Liquor Licensing Tribunal may impose. 30

CHAPTER 7

CONDITIONS FOR LICENCES

Standard licence conditions

49. (1) It must be a condition of every licence for the consumption of liquor 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. 35

(2) It must be a condition of every licence for consumption of liquor off the licensed premises that no container containing liquor may be opened and no liquor may be consumed on the licensed premises except for tasting purposes as approved by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be. 40

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

(4) The licensee of premises upon which the business of a retail food store is carried on, may not sell liquor other than table wine. 45

(5) A retail food store as referred to in subsection (4) must sell its liquor from a designated area, which must be rendered inaccessible to the public at all times when liquor may not be sold.

(6) The Presiding Officer may at any time after the issue of a licence under section 46, upon application by the licensee or any other interested party, by a notice delivered or tendered to the licensee concerned— 50

(a) declare the licence to be subject to such conditions or further conditions set out in the notice as he or she may in his or her discretion impose; or

(b) suspend, revoke or amend any condition or declaration imposed or made by him or her or the Liquor Licensing Tribunal. 55

(7) A contravention of or failure to comply with the conditions set out in subsection (1), (2), (4) or (5) is an offence.

Deliveries

- 50.** (1) It must be a condition of every licence 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; 5
 - (b) liquor may be delivered only to the address shown on the invoice described in paragraph (a);
 - (c) a legible 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 10
 - (d) where the quantity of liquor being purchased is above the prescribed threshold, the purchaser must produce his or her identity document and proof of address, and provide contact details as prescribed. 15
- (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 licence number of the supplier as well as the nature, quantity and purchase price of the liquor supplied, is an offence. 20

Financial interests and letting of licensed premises

- 51.** (1) A licensee may not, without the prior written consent of the Presiding Officer, 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, to the Presiding Officer for permission to do so. 25
- (3) The Presiding Officer 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 35 from holding a licence; or
 - (b) is not of good character. 30
- (4) The Board must, in the manner prescribed, notify the designated liquor officer of the application, and request from him or her a report regarding the qualification 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. 35
- (6) The Presiding Officer must, within the prescribed period, either refuse the application or grant it.
- (7) A licensee may not let the licence to another person or allow another person to carry on business in terms of the licence: Provided that a licensee in respect of a licence which includes the right to micro-manufacture may apply to the Liquor Licensing Tribunal to let the licensed premises concerned or part thereof to another person for the purpose of micro-manufacturing by lodging with the Board an application in the prescribed manner and form, and against payment of the prescribed fee. 40
- (8) The Presiding Officer may not grant an application for letting unless he or she is satisfied that the person to whom the licensed premises or part thereof is intended to be let— 45
- (a) is not disqualified from holding a licence in terms of section 35;
 - (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. 50
- (9) A contravention of or failure to comply with subsection (1) or (7) is an offence.

Management

- 52.** (1) The Liquor Licensing Tribunal must, unless the applicant is a natural person, when granting a licence, approve the appointment of a natural person nominated by the applicant, and who is resident in the Province, as manager of the licensed business. 55

(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 Licensing Tribunal 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. 5

(4) The Liquor Licensing Tribunal may not approve the appointment as manager of a person who is disqualified from holding a liquor licence in terms of section 35 or who is not of good character.

(5) The Liquor Licensing Tribunal may direct that the proposed manager undergo such training and education as the Liquor Licensing Tribunal may specify as a precondition of the approval of such appointment. 10

(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. 15

(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 it by this Act or in terms of the conditions of the licence.

(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. 20

(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), its licence may be suspended in terms of section 20(3)(b)(iii). 25

Alteration of licensed premises or nature of business

53. (1) Except with the prior written consent of the Presiding Officer granted upon application in the prescribed manner, a licensee may not—

(a) carry out any structural alteration, addition, reconstruction or extension of or to the licensed premises; 30

(b) materially change the nature of the business in respect of which a licence was granted from that described in the application considered by the Liquor Licensing Tribunal when granting the licence; or

(c) conduct his, her or its business under the licence on premises on which any other business, including a business to which any other licence relates, or any trade or occupation is carried on or pursued. 35

(2) 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 Licensing Tribunal, at any time when the matter may in its opinion rightly be raised, determines otherwise in a particular case. 40

(3) 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 Presiding Officer that he or she has the right to alter the premises concerned for the purpose as contemplated in the application. 45

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

Children

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

(2) No person may give or supply liquor to a person under the age of eighteen (18) years or allow such a person in his or her care or under his or her supervision to consume liquor, except where it is given for the purpose of worship associated with the celebration of a religious observance: Provided that such an observance follows rules made by the appropriate public authorities. 50

(3) A licensee or a manager, as the case may be, may not allow a person under the age of eighteen (18) years to consume liquor on the licensed premises. 55

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

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

(6) Any contravention of or failure to comply with subsection (1), (2), (3), (4) or (5) is an offence. 5

Employers and employees

55. (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; 10
- (b) undergoing training in catering services; and
- (c) apprenticed to the licensee.

(2) An employer may not—

- (a) supply liquor to a person as an inducement to secure his or her employment; 15
- (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) Any contravention of or failure to comply with subsection (1) or (2) is an offence. 20

Access to licensed premises

56. (1) Except as provided for in section 55(1) and subsection (3) of this section, a licensee may not permit a person under the age of eighteen (18) years to enter a restricted area.

(2) A restricted area is— 25

- (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 Licensing Tribunal has demarcated as an area in which persons under the age of eighteen (18) years are not allowed to be; and 30
- (c) premises, not being a retail food store, licensed only for the sale of liquor for consumption off the licensed premises.

(3) A person under the age of eighteen (18) years may have access to a restricted area if accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian. 35

(4) Every restricted area must be indicated as such in a manner as prescribed.

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

Storing of liquor

57. (1) A licensee must store his, her or its liquor on the licensed premises or in such other or additional place within the Province as may be approved by the Liquor Licensing Tribunal when granting a licence or by the Presiding Officer, on application, at any time thereafter. 40

(2) A licensee may not sell, supply or allow the consumption of liquor in or from such other or additional place of storage. 45

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

Place of sale

58. (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. 50

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

Trading hours

59. (1) Subject to conditions imposed by the Liquor Licensing Tribunal when granting a licence or after a meeting in terms of section 20, a licensee may sell liquor on such days and during such trading hours as the Liquor Licensing Tribunal may determine for licensed businesses: Provided that the trading hours imposed by the Liquor Licensing Tribunal may not exceed the hours determined by the municipality by bylaw. 5

(2) A municipality may by bylaw determine different trading days and hours for licensed businesses selling liquor for consumption on the licensed premises and for those selling liquor for consumption off the licensed premises, but may not prescribe different trading days and hours for individual licensed businesses: Provided that the trading hours determined by the municipality may not exceed the trading hours set out in subsection (3)(a) and (b). 10

(3) (a) Subject to conditions imposed by the Liquor Licensing Tribunal in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (2), a licensee of premises on which liquor may be sold for consumption off the licensed premises may sell liquor on any day between 09:00 and 18:00. 15

(b) Subject to conditions imposed by the Liquor Licensing Tribunal in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (1), a licensee of premises on which liquor may be sold for consumption on the licensed premises may sell liquor on any day between 11:00 and 02:00 the next day. 20

(c) If the licensee has a licence for consumption of liquor both off and on the licensed premises, paragraph (a) applies in as far as the sale of liquor is for consumption off the licensed premises and paragraph (b) applies in as far as the sale is for consumption on the licensed premises. 25

(4) A licensee may at any time apply to the Liquor Licensing Tribunal to have his, her or its trading hours extended to a time later than the trading hours referred to in subsection (3): Provided that such extended time period imposed by the Liquor Licensing Tribunal may not exceed 20:00 the same day with regard to subsection (3)(a) and 04:00 the next day with regard to subsection (3)(b). 30

(5) The Liquor Licensing Tribunal may not grant an application referred to in subsection (4) unless it is satisfied on a balance of probabilities that the granting thereof—

(a) is in the public interest; and 35

(b) does not prejudice—

(i) the residents of a residential area;

(ii) the residents of an institution for the aged or frail;

(iii) the learners of an educational institution who are under the age of eighteen (18) years; 40

(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 licensed premises concerned.

(6) The Board must, within the prescribed period after granting or refusing an application made in terms of subsection (4), notify the applicant of the decision of the Liquor Licensing Tribunal. 45

(7) Where the application has been granted, the applicant must pay the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (6) in as far as the notice applies to the granting of the application.

(8) Subject to section 89(10), a licensee who sells or supplies, or allows the consumption of, liquor on the licensed premises at a time when the sale of liquor is not permitted by the licence, is guilty of an offence. 50

Quantity of liquor sold and keeping of records

60. (1) A licensee must keep, in the prescribed manner, a record of all liquor sold for consumption off the licensed premises. 55

(2) No 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 Minister may prescribe, without the prior written consent of the Presiding Officer.

(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 60

prescribed in terms of subsection (2), except with the consent provided for in that subsection.

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

Prohibited substances

61. (1) A person may not micro-manufacture, sell or supply any substance under the name of any liquor, if that substance is not liquor as defined in this Act. 5

(2) A person may not micro-manufacture, sell or supply as liquor any impotable substance, add an impotable substance to liquor, or sell or supply any liquor to which an impotable substance has been added.

(3) A contravention of or failure to comply with subsection (1) or (2) is an offence. 10

CHAPTER 8

VALIDITY AND RENEWAL OF LICENCES

Validity of licences

62. (1) A licence is valid from the date upon which it is issued.

(2) A licence lapses— 15

(a) on the date on which the licensee abandons it in writing;

(b) on 1 January of the year in respect of which the applicable fees prescribed are not paid on or before 31 December of the preceding year;

(c) on the date determined by the Liquor Licensing Tribunal when it revokes the licence; 20

(d) where the licence has already acquired validity, on the date on which a court sets aside the decision to grant or issue the licence; or

(e) on the date on which it is converted into another licence in terms of section 89.

(3) A licence which has lapsed, and the rights, privileges, obligations and liabilities which were attached thereto immediately before the date on which it lapsed, become valid again on the date on which— 25

(a) where the licence has lapsed under the circumstances contemplated in subsection (2)(b), the fees so contemplated—

(i) plus a penalty of 50% are paid on or before 31 January; or

(ii) plus a penalty of 100% are paid between the first and the last day of February of the year in respect of which those fees should have been paid; 30

(b) where the licence has lapsed under the circumstances contemplated in subsection (2)(c), the decision by the Liquor Licensing Tribunal to revoke that licence is set aside by a court; or 35

(c) where the licence has lapsed under the circumstances contemplated in subsection (2)(d), the decision by the court to set aside the decision to grant or issue that licence is set aside on appeal.

(4) The Presiding Officer may, upon receipt of a report that the licensee has abandoned the licensed premises, suspend the licence in the prescribed manner with immediate effect. 40

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

Automatic renewal of licences 45

63. (1) The Board must issue an annual renewal notice, in the prescribed form, not later than 31 October of the year preceding the year in respect of which the prescribed renewal fees should be paid.

(2) Upon payment of the prescribed renewal fee, the licence is automatically renewed until 31 December of the year in respect of which those fees have been paid. 50

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

(4) A licensee who has failed to pay the prescribed renewal fee on or before the last day in February of the year in respect of which the renewal fee should have been paid, may, on or before 31 March of that year, apply in writing to the Chief Executive Officer 55

for condonation of such failure, and the Chief Executive Officer may condone the failure and allow the late payment of the prescribed renewal fee by a date to be determined by the Board, subject to the payment of the renewal fee plus a penalty of 150%.

(5) If the Chief Executive Officer has in terms of subsection (4) granted condonation and the prescribed renewal fee and penalty have been paid, the licence is deemed to have been renewed from 31 December of the year preceding the year in respect of which the renewal fees should be paid. 5

(6) If the licensee fails to pay the prescribed renewal fee and penalty imposed in terms of subsection (4), the licence will be deemed to have lapsed on 1 January of the year in respect of which the prescribed renewal fee should have been paid. 10

Applications for renewal of licences

64. (1) If a licensee has, since the date of issue of the licence or, if the licence has been renewed, since the last renewal of the licence—

- (a) become disqualified in terms of section 35 to hold a licence;
- (b) been declared unfit by the Liquor Licensing Tribunal to hold a liquor licence; 15
- (c) failed to comply with a compliance notice issued in terms of this Act;
- (d) been the subject of a report in terms of section 73(7)(c) or (d); or
- (e) been the subject of a complaint received by a municipality,

the licence is not capable of automatic renewal in terms of section 63, but may be renewed by the Board upon application by the licensee in the prescribed manner and upon payment of the prescribed fee. 20

(2) The Board must, before 31 July of the year in which a renewal notice should be issued, serve a notice upon a licensee referred to in subsection (1)—

- (a) informing the licensee that the licence will not be automatically renewed; and
- (b) calling upon the licensee to make application in the prescribed form for the renewal of the licence by not later than 30 September of that year. 25

(3) If the licensee fails to comply with the notice contemplated in subsection (2), the licence will lapse on 31 December of that year, subject to subsection (4).

(4) If the licensee makes an application as contemplated in subsection (2)(b) after 30 September but before 31 December of the year in which the renewal notice should be issued, the licensee may apply in writing to the Liquor Licensing Tribunal for condonation of such failure, and the Liquor Licensing Tribunal may condone the failure and allow the late payment of the prescribed renewal fee by a date to be determined by the Liquor Licensing Tribunal, subject to the payment of a penalty of 150% of that fee. 30

(5) If the licensee complies with the notice, the licence remains valid until the Liquor Licensing Tribunal has completed its consideration of the application for renewal. 35

(6) When considering an application for renewal, the Liquor Licensing Tribunal has the same duties and powers which it has when considering an application for a new licence, including the right to refuse or grant the application, subject to such conditions as it may deem appropriate. 40

(7) If the Liquor Licensing Tribunal grants an application for the renewal of the licence, the licence is deemed to have been renewed in terms of section 63(2).

(8) If the Liquor Licensing Tribunal refuses an application for the renewal of a licence, the licence lapses immediately or upon such date as the Liquor Licensing Tribunal determines. 45

CHAPTER 9

ALIENATION, TRANSFER AND REMOVAL OF LICENCES

Alienation and transfer of licences

65. (1) A licensee who alienates the licensed business must, within thirty (30) days from the date of alienation, notify the Board in writing and in the prescribed manner of the date and nature of alienation. 50

(2) Failure to notify the Board of such alienation is an offence.

(3) A person who has purchased a licensed business may apply to the Presiding Officer for consent to operate and conduct the licensed business pending the transfer of the licence to such person. 55

(4) An application in terms of subsection (3) must be made by the lodgement thereof in the prescribed form with the Presiding Officer.

(5) The Presiding Officer 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 Presiding Officer may at any time revoke or upon application by the purchaser extend a consent granted in terms of subsection (5). 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 licence, 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 licence. 10

(9) A licensee may apply for the transfer of the licence to another person by lodging with the Board an application, in the prescribed manner and form, and upon payment of the prescribed fee.

(10) The Board must, in the prescribed manner, notify the designated liquor officer of the application, and request from him or her a report regarding the qualification and fitness of the proposed licensee to hold the licence. 15

(11) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (10), and may include in such report any other matter which the designated liquor officer may deem relevant to the application.

(12) The Liquor Licensing Tribunal must, within the prescribed period, either refuse 20 the application or grant it.

(13) The Liquor Licensing Tribunal may not grant an application for transfer unless it is satisfied that the proposed licensee—

- (a) is not disqualified from holding a licence in terms of section 35;
- (b) is of good character; and 25
- (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.

(14) The Liquor Licensing Tribunal may, when granting an application for transfer, direct that the proposed licensee, or one or more employees of such a person, must 30 undergo such education and training as the Liquor Licensing Tribunal may direct.

(15) The Board must notify the proposed licensee, within the prescribed period after the Liquor Licensing Tribunal has granted an application for transfer of a licence, in writing that the application has been granted.

(16) The proposed licensee must pay the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (15). 35

(17) The Board must, within the prescribed period after the payment of the prescribed fee referred to in subsection (9), and subject to sections 42, 43, 44, 45 and 53(1) and (2), issue a certificate of transfer to the proposed licensee in the prescribed form, setting out the conditions of the licence as imposed by the Liquor Licensing Tribunal. 40

(18) If the proposed licensee fails to pay the fee referred to in subsection (16), the granting of the application will lapse, subject to subsection (19).

(19) The proposed licensee may, within a period of sixty (60) days after the expiry of the period referred to in subsection (16), apply in writing to the Chief Executive Officer for condonation of the failure to pay the prescribed fee referred to in subsection (16) and the Chief Executive Officer may condone the failure and allow the late payment of the said fee by a date to be determined by the Chief Executive Officer, subject to the payment of a penalty of 100 % of that fee. 45

(20) If the proposed 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. 50

(21) The Liquor Licensing Tribunal 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 Licensing Tribunal may deem appropriate. 55

Removal of licences

66. (1) A temporary liquor licence or special event liquor licence is not removable from the licensed premises concerned to other premises. 60

(2) A licensee, excluding the holder of a temporary liquor licence and special event liquor licence, may at any time apply for the removal, whether permanently or temporarily, of the licence from the licensed premises concerned to any other premises situated in the Province.

(3) The Board must, in the prescribed manner, notify the designated liquor officer in whose area of jurisdiction the licence is currently located, of the application and request a report, as prescribed, from him or her and where the granting of the application will have the effect of removing the licence to the area of jurisdiction of another designated liquor officer, the Board must also, in the prescribed manner, notify the designated liquor officer to whose area of jurisdiction the licence will be removed, of the application and request a report, as prescribed, from him or her.

(4) The Liquor Licensing Tribunal must consider each application for the removal of a licence and may—

(a) refuse the application; or

(b) grant the application.

(5) The Board must, within the prescribed period after the Liquor Licensing Tribunal has granted an application for the removal of a licence, but subject to subsection (10), notify the applicant in writing that the application has been granted.

(6) The Board 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.

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

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

(9) A certificate of removal is subject to such conditions set out in the certificate as the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, may in his or her or its discretion impose.

(10) The Presiding Officer 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 him or her or the Liquor Licensing Tribunal under subsection (9).

(11) 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 Presiding Officer or the Liquor Licensing Tribunal, as the case may be, and mentioned in the certificate, conduct the business to which the licence relates, on the premises, the plan of which has been approved by the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, but which premises may not for the purposes of the licence in respect of which the application concerned was made, include such place or places thereon as he or she or it has in his or her or its discretion specifically excluded therefrom.

(12) Where a certificate of removal permits the removal of a licence for a determined period, the Presiding Officer 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.

(13) If an application for the removal of a licence is granted by the Liquor Licensing Tribunal 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 licence, the Board 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 as the Presiding Officer may determine, within such period as the Presiding Officer may determine.

(14) The Presiding Officer 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 (13);

(b) extend the period determined under subsection (13);

(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 he or she is satisfied that a substantial part of the premises has since been erected; or

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

(15) The period determined under subsection (13) or the period so determined and extended under subsection (14)(b), as the case may be, may 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. 5

(16) When the Presiding Officer is satisfied that the premises in respect of which a notice has been issued under subsection (13), have been completed in accordance with the plan thereof approved by the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, the conditions and requirements determined by the Presiding Officer have been complied with and the premises are suitable for the purposes for which they will be used under the licence concerned, the Board must issue the certificate of removal in accordance with subsection (6). 10

(17) If the certificate of removal is not issued before the expiration of the period determined under subsection (13) or extended under subsection (14)(b) or further extended under subsection (14)(c), as the case may be, the notice concerned lapses and the application for the removal of the licence is deemed not to have been granted. 15

Abandonment of premises and death or incapacity of licensee

67. (1) The Liquor Licensing Tribunal 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, 20

appoint a person to hold the licence 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. 25

(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 licence 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; 30

- (b) the executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator may conduct the licensed business in the same manner and subject to the same conditions as the licensee would have save for his or her death, insolvency, such declaration or its liquidation; 35

- (c) the executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator may make application for the transfer of the licence in terms of section 65 and is for purposes of such application deemed to be the licensee. 40

CHAPTER 10

APPEALS AND REVIEWS

Appeals and reviews to Appeal Tribunal

68. (1) The Appeal Tribunal must consider any appeal against, or an application for the review of, a decision of the Liquor Licensing Tribunal in terms of section 20(3). 45

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

(3) An applicant or interested party who is aggrieved by a decision of the Liquor Licensing Tribunal may, within the prescribed period after receiving reasons for a decision of the Liquor Licensing Tribunal, lodge with the Liquor Licensing Tribunal a notice of appeal or review as prescribed. 50

(4) The appeal or review must be heard as if it were an appeal to the High Court against the judgment of a magistrate's court in a civil matter and any rule applicable to such civil appeal applies, with the necessary changes. 55

(5) Except where the applicant or interested party has been exempted from the payment of security in terms of subsection (6), a person who is aggrieved by a decision

of the Liquor Licensing Tribunal must simultaneously with the lodgement of the notice of appeal or review in terms of subsection (3), pay an amount prescribed as security for the anticipated costs of the Liquor Licensing Tribunal or an opposing party.

(6) The Appeal Tribunal, may upon application by the applicant or the interested party who is aggrieved by the decision of the Liquor Licensing Tribunal, reduce the amount of security or exempt the applicant or interested party from the payment of security. 5

(7) Money paid as security in terms of this section must be paid to the Chief Executive Officer, who must deposit it in a separate banking account pending the outcome of the appeal or review, when he or she makes payment thereof in accordance with the order of the Appeal Tribunal. 10

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

(9) An applicant or interested party who is aggrieved by the decision of the Liquor Licensing Tribunal may appear in person before the Appeal Tribunal or may be represented thereat by an advocate, an attorney or any other person appearing on his or her behalf. 15

(10) 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 therefrom 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. 20

CHAPTER 11

COMPLIANCE

Compliance notices 25

69. (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 licence.

(2) A compliance notice must stipulate—

- (a) the provisions of this Act or the conditions of the licence which must be complied with; 30
- (b) the act or omission constituting non-compliance;
- (c) the measures which must be taken to comply;
- (d) the date by which compliance must be completed; and
- (e) the possible consequences of non-compliance. 35

(3) A 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 Chief Executive Officer of the issuing or service of that notice on or before the prescribed date.

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

(5) A compliance notice remains in force until the date for 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 earlier. 45

(6) If the person served with a compliance notice has complied therewith, the inspector or designated liquor officer, as the case may be, 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, as the case may be, a statement disputing the notice and stating the grounds upon which it is disputed. 50

(8) An inspector or designated liquor officer, as the case may be, 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 Chief Executive Officer who must decide whether or not the act or omission referred to subsection (2)(b) justified the issuing of the compliance notice. 55

(9) The Chief Executive Officer may, if he or she decides that the issuing of the compliance notice was unjustified, set it aside, or, if he or she 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 he or she may determine.

(10) The Chief Executive Officer may delegate the function referred to in subsection (9) to an employee of the Board.

(11) Failure to comply with a compliance notice is an offence. 5

(12) Proof of non-compliance with a compliance notice, at a meeting of the Liquor Licensing Tribunal, constitutes *prima facie* proof of the commission of an offence or a transgression of the licence conditions stipulated in the compliance notice.

Closing of licensed premises

70. (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. 10

(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. 15

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

(a) by the designated liquor officer, inspector or police officer who gave such an order; 20

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

(c) by the Liquor Licensing Tribunal.

Interim orders 25

71. (1) The Liquor Licensing Tribunal may grant an interim order suspending a licence 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; 30

(b) proof is submitted that the application and supporting affidavit have been served upon the licensee at least forty-eight (48) hours prior to the lodgement 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 Licensing Tribunal and comes into effect upon the date and at the time of service thereof. 35

(4) An order granted in terms of subsection (1) must stipulate a date upon which the licensee must appear before the Liquor Licensing Tribunal to show cause why the order should not be made final. 40

(5) The licensee may, prior to the date stipulated in subsection (4), lodge with the Liquor Licensing Tribunal a notice of opposition and must thereafter lodge an affidavit 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 affidavit on the inspector or the designated liquor officer referred to in subsection (1). 45

(6) A licensee may at any time prior to the date stipulated in terms of subsection (4) apply to the Presiding Officer 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 Presiding Officer may order the return date to be brought forward to an earlier date. 50

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

Suspension, cancellation and lapsing of licences

72. (1) A licence which has been suspended in terms of any provision of this Act remains valid in all respects, except that the licensee may not sell liquor in terms thereof during the period of suspension.

(2) A licence which has been cancelled by the Liquor Licensing Tribunal is void from the date of cancellation, or such other date as the Liquor Licensing Tribunal may determine. 5

(3) A licence which has lapsed in terms of section 62, 63 or 64 is void from the date upon which it lapses.

(4) The licensee of a licence which has been suspended, cancelled or has lapsed, may within thirty (30) days of such suspension, cancellation or lapsing, sell by public auction conducted by a licensed auctioneer any liquor which was on the licensed premises on the date upon which the suspension, cancellation or lapsing came into effect. 10

CHAPTER 12

LAW ENFORCEMENT

15

Designation and functions of designated liquor officers and inspectors

73. (1) The Western Cape 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. 20

(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 Western Cape 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). 25

(4) The Board may appoint any person in the employ of the Board 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 Board 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 Board, as the case may be. 30

(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. 35

(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 Licensing Tribunal 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; 40

(b) at the request of the Liquor Licensing Tribunal, report on or furnish such information in connection with a matter as the Liquor Licensing Tribunal 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 licence, a compliance notice or the provisions of this Act; 45

(d) report the fact that a licensee has become disqualified or unfit to hold a licence 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 50

(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.

Powers of designated liquor officers and inspectors

- 74.** (1) Subject to section 75, 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; 5
 - (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, 10
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 licence, record or other document which is in the possession, custody or control of that person or any other person on his or her behalf; 15
 - (c) inspect any document referred to in paragraph (b), make copies thereof or extracts therefrom, and request from the person contemplated in the said paragraph an explanation of any part thereof; 20
 - (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 licence;
 - (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 25
 - (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. 30
- (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. 35
- (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— 40
- (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.

Exercise of powers to enter and search or inspect premises

- 75.** (1) A designated liquor officer or an inspector may exercise a power referred to in section 74 relating to the entry, search or inspection of premises, if authorised by a warrant issued by a magistrate in accordance with subsection (3). 45
- (2) An inspector or a designated liquor officer may, in exercising and performing any power or function as contemplated in subsection (1), be accompanied by a peace officer or peace officers. 50
- (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 interest of the public, to obtain information— 55
 - (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— 60

- (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 69, 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— 5
 - (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. 10
- (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 15
 - (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 20 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 25 summoned to appear at a meeting of the Liquor Licensing Tribunal within thirty (30) days from the date of the seizure, the article seized must be returned to the person from whom it was seized.

General offences

76. A person who— 30
- (a) (i) is drunk and disorderly in or on any premises on which liquor is sold; or (ii) is drunk in any place to which the public has access;
 - (b) 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; 35
 - (c) 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;
 - (d) 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; 40
 - (e) 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;
 - (f) being a licensee, permits the licensed premises to be used as a brothel or frequented by prostitutes; 45
 - (g) being a licensee, allows a supplier of unlawful drugs to remain on the licensed premises;
 - (h) being a licensee, allows the sale, use or possession of drugs upon the premises in contravention of any law dealing with such sale, use or possession; or 50
 - (i) being a licensee, or a person on his or her behalf, 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.

Offences regarding information 55

77. 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 Licensing Tribunal 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. 5

Offences regarding meetings of Liquor Licensing Tribunal and Appeal Tribunal

- 78.** (1) A person who— 10
- (a) having been duly notified to appear before the Liquor Licensing Tribunal, fails to do so either in person or represented by any other person, attorney or advocate;
- (b) appears before the Liquor Licensing Tribunal, but without the leave of the Presiding Officer, absents himself or herself from the meeting before the conclusion thereof; 15
- (c) having at a meeting been notified by the Presiding Officer to attend a meeting upon a date to which the meeting has been postponed, fails to be present thereat;
- (d) having been called upon by the Presiding Officer to give evidence or to produce a document, refuses or fails to do so; 20
- (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; 25
- (g) wilfully disrupts the proceedings of the Liquor Licensing Tribunal; or
- (h) refuses to leave the meeting when ordered to do so by the Presiding Officer,
- is guilty of an offence.
- (2) A person who was duly notified to appear before the Liquor Licensing Tribunal must— 30
- (a) notify the Presiding Officer 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. 35
- (4) The provisions of subsections (1) and (2) apply, with the necessary changes, to meetings of the Appeal Tribunal.

Offences regarding designated liquor officers and inspectors

- 79.** A person who—
- (a) misrepresents himself or herself as being a designated liquor officer or inspector; 40
- (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; 45
- (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 74,
- is guilty of an offence. 50

Offences regarding motor vehicles

- 80.** (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 55

(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.

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Offence regarding service stations

81. (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.

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

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

Failure to comply with order of Liquor Licensing Tribunal

82. (1) Failure by a licensee to comply with an order of the Liquor Licensing Tribunal in connection with the licence or licensed premises concerned is an offence. 15

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

(a) suspend the licence pending compliance with the order;

(b) impose a fine, the payment of which may be suspended pending compliance with the order; 20

(c) refer the matter to the South African Police Service for the prosecution of the offender; or

(d) cancel the licence.

Vicarious responsibility

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83. (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 30

(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). 35

(3) When a licensee is liable for an act or omission of another person in terms of subsection (1) such other person is also liable therefor 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). 40

Exemptions

84. (1) The following persons are exempt from the operation of this Act—

(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) a sheriff or his or her employee or any other officer acting in terms of an order of a court in the execution of his or her duties; 45

(c) a person referred to in a notice under section 10 of the Liquor Products Act, 1989 (Act 60 of 1989), with regard to the sale of a sacramental beverage under such notice; and

(d) a person manufacturing or selling medicine as defined in the Medicines and Related Substances Act, 1965 (Act 101 of 1965). 50

(2) The Liquor Licensing Tribunal may, on application in the prescribed manner 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—

(a) a collector of liquor;

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- (b) a person manufacturing or selling spirituous or distilled perfumery; and
 - (c) a person micro-manufacturing wine not for sale.
- (3) The Liquor Licensing Tribunal or the Presiding Officer may at any time after the issue of a declaration under subsection (2), by a notice delivered or tendered to the person named in the declaration concerned— 5
- (a) in its or his or her discretion, 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 by it or him or her under this section; or
 - (c) revoke or amend the declaration. 10

Evidence

85. (1) If in any criminal proceedings or at a meeting of the Liquor Licensing Tribunal 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; 15
 - (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 60 without the prior consent required by that section; or 20
 - (d) bought or procured more liquor than the maximum volume referred to in section 60 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 Licensing Tribunal— 25
- (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; 30
 - (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 licence, it is on its mere production *prima facie* proof of the licence or permit and any condition or endorsement thereon or attached thereto is deemed to be a condition or endorsement imposed in terms of this Act; 35
 - (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 40
 - (e) evidence is produced that a licensee who is accused of a contravention of section 54 failed to obtain from a person under the age of eighteen (18) years either— 45
 - (i) his or her valid identity document;
 - (ii) his or her valid drivers' licence; or
 - (iii) his or her valid passport, 50
 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.

Notices

86. (1) The Minister may, subject to section 41 of the Liquor Act, prescribe—
- (a) the content of public notices which must be displayed; and 55
 - (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.

Penalties and forfeiture

87. (1) A person who is charged with an offence referred to in—

- (a) sections 32(3), 54(6), 55(3), 76(g) or 76(h) 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; 5
- (b) section 49(7), 50(2), 51(9), 53(4), 58(3), 59(8), 76(e), 76(f), 76(i) or 81(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 50(3), 57(3), 60(4), 65(2), 69(11), 76(b), 76(c) or 82(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 10
- (d) section 23(13), 56(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) or 86(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. 15

(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. 20

(3) Upon payment by a person of an admission of guilt fine in terms of section 57 of the Criminal Procedure Act, the court—

- (a) must, where the payment relates to a charge of a contravention of section 32(1), 54(1) to (4), 55(1), 55(2), 76(h) or 76(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 25
- (b) may, where the payment relates to a charge of a contravention of section 49(4), 49(5), 50(1), 51(1), 51(7), 52(9), 56(1), 56(4), 57(1), 57(2), 58(1), 59(8), 60(1) to (3), 65(1), 69, 75, 77, 78(1), 78(2), 79, 80(1), 81(1), 82(1) or 86(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, 30

whereupon section 35 of the Criminal Procedure Act applies, with the necessary changes, to anything forfeited in terms of this section. 35

(4) Any item that is forfeited to the State in terms of this section must be disposed of in the prescribed manner.

CHAPTER 13

REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE

Regulations

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88. (1) The Minister 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 31(3); 45
- (d) the disposal of liquor forfeited to the State in terms of section 87(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 Minister responsible for finance for the Province.

Transitional provisions

89. (1) The Liquor Board instituted for the Province by section 5 of the Liquor Act, 1989 (Act 27 of 1989), continues to exist and function under the name Western Cape Liquor Licensing Tribunal, in accordance with the provisions of this Act, as if it were established in terms of section 15(1) of this Act. 55

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

- (a) hotel liquor licence;
- (b) restaurant liquor licence; 5
- (c) wine-house licence;
- (d) sorghum beer licence for on-consumption;
- (e) theatre liquor licence;
- (f) club liquor licence; and
- (g) special liquor licence for on-consumption. 10

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

- (a) liquor store licence;
- (b) grocer's wine licence; 15
- (c) sorghum beer licence for off consumption;
- (d) wine farmer's licence;
- (e) special liquor licence for off-consumption which does not include the right to micro-manufacture liquor; and
- (f) wholesale liquor licence (public), approved under the Liquor Act, 1977 (Act 20 87 of 1977).

(4) A licence 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 licence for the 25 micro-manufacture and sale of liquor for consumption off the licensed premises—

- (a) wholesale liquor licence;
- (b) producer's licence;
- (c) brewer's licence;
- (d) sorghum beer brewer's licence; and 30
- (e) special liquor licence for off-consumption, which includes the right to micro-manufacture liquor.

(5) A licence 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 35 may on application by the licensee be converted to a licence for the sale of liquor for consumption off the licensed premises—

- (a) wholesale liquor licence;
- (b) producer's licence;
- (c) brewer's licence; and 40
- (d) sorghum beer brewer's licence.

(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 44 of this Act.

(7) Notwithstanding the repeal of any law by this Act, any application made prior to 45 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 licences granted in terms of the provisions of the Liquor Act, 1989, subsequent to the date of commencement of 50 this Act.

(9) Unless determined otherwise by the Liquor Licensing Tribunal upon application, a licence which has been issued in respect of premises located upon an erf upon which a service station selling petrol, diesel and other petroleum products is being carried on at the date of commencement of this Act, lapses twelve (12) months from the date of commencement of this Act. 55

(10) Any licence 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 59(3) is after twelve (12) months from the date of commencement of this Act subject to section 59.

(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, 60 is deemed to be a consent, approval or privilege granted in terms of this Act.

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

(13) A licensee of premises licensed before the commencement of this Act and referred to in section 49(5) must within twelve (12) months from the date of commencement of this Act comply with the conditions referred to in said subsections. 5

Repeal provision

90. The Liquor Act, 1989 (Act 27 of 1989) is repealed in so far as it applies in the Province.

Short title and commencement

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91. This Act is called the Western Cape Liquor Act, 2008 and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.