



PROVINCE OF THE EASTERN CAPE
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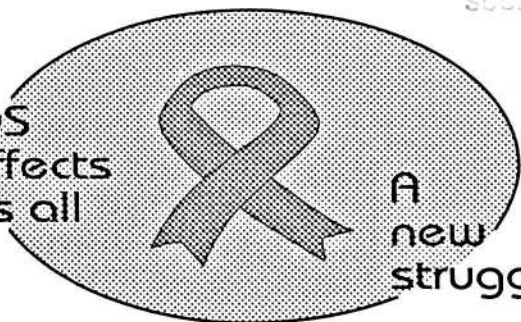
Vol. 9

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No. 912
(Extraordinary)

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPUNE**

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DEPARTMENT OF HEALTH



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GENERAL NOTICE

NOTICE 104 OF 2002

PROVINCE OF THE EASTERN CAPE

EXHUMATIONS BILL, 2002(EASTERN CAPE)

As Introduced

(MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR
HEALTH)

BILL

To consolidate laws relating to the exhumations in the Province; to prohibit desecration, destruction and damaging of graves, cemeteries and of receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies, and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape as follows:-

Definitions

1. In this Act, unless the context otherwise indicates –

“body” means the dead body of a human being and includes the body of a still-born child and any human remains;

“cemetery” means any land, whether public or private, containing one or more graves;

“department” means the department responsible for health in the Province;

“gazette” means the Provincial Gazette;

“grave” includes –

- (a) any place, whether wholly or partly above or below the level of the ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and
- (b) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure or whatsoever nature forming part of or appurtenant to a grave.

“Head of Department” means the administrative head of the department;

“MEC” means the member of the Executive Council responsible for health in the Province;

"Province" means the Province of the Eastern Cape established in terms of section 103 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"magistrate" includes an additional magistrate and an assistant magistrate;

"municipality" means a municipality as defined in the Municipal Structures Act, 1998 (Act No. of 1998);

"next-of-kin" for the purposes of section 3, means –

- (a) the surviving spouse of the deceased;
- (b) failing such spouse, an adult child of the deceased;
- (c) failing such child, a parent of the deceased;
- (d) failing such parent, an adult brother or sister of the deceased; or
- (e) failing such brother or sister, the nearest available adult relative of the deceased;

"spouse" means a person's spouse, a partner in a customary union according to indigenous law or partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

"this Act" means this Act and the Regulations made thereunder; and

"officer" means a person employed in the Department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994)

Desecration, destruction, or damaging of grave

2. No person may desecrate, destroy or damage or cause to be desecrated, destroyed or damaged any grave in a cemetery or any coffin or other receptacle containing a body which has not been interred.

Control over exhumation of bodies

3. (1) Subject to the provisions of this Act and any other law relating to the disposal of bodies, no person may exhume, disturb or re-inter any body in a cemetery, or cause or permit it to be exhumed, disturbed, removed or re-interred –

- (a) without the prior written approval of the MEC; and
 - (b) on such conditions as may be imposed by the MEC or by any medical practitioner appointed by the MEC or by any medical practitioner appointed by the MEC or by any medical practitioner appointed by the MEC or by any medical practitioner appointed by the MEC, provided that the preceding provisions of this subsection must not apply where any such body is exhumed, disturbed, removed or re-interred in consequence of, in the course of or for the purposes of the interment of another body by or on behalf or with the permission of the person or body having the control and management of such cemetery.
- (2) Any person who wants to obtain the written approval contemplated by subsection (1)(a) must make written application therefore and must –
- (a) in such application –
 - (i) state where the body which is to be exhumed, disturbed, removed or re-interred is interred and if and where such body is proposed to be re-interred;
 - (ii) state the reasons for the proposed exhumation, disturbed, removal or re-interment, and
 - (iii) specify the methods proposed to be adopted and the precautions proposed to be taken to prevent any danger to health or cause for offence arising; and
 - (b) together with such application –
 - (i) submit a medical certificate as to the date and cause of death or a certified copy of such a certificate;
 - (ii) submit the written approval of –
 - (aa) the municipality in whose area of jurisdiction the body concerned is interred and is proposed to be re-interred; and
 - (bb) the cemetery authority or other person in charge of the cemeteries in which the body concerned is interred and is proposed to be re-interred;
 - (iii) submit the written approval of –

- (aa) the surviving spouse of the deceased person concerned;
- (bb) if there is no such surviving spouse, an adult child of the deceased person concerned;
- (cc) if there is no such adult child, a parent of the deceased person concerned;
- (dd) if there is no such parent, an adult brother or sister of the deceased person concerned, or
- (ee) if there is no such brother or sister, the nearest available adult relative of the deceased person concerned, and
- (iv) where the cemetery in which the body concerned is interred or is proposed to be re-interred is owned by or under the control or management of a religious body or is a cemetery in which the controlling body of any particular religious group has a peculiar interest, submit the written approval of such religious body or controlling body.

(3) Where any medical certificate or written approval contemplated by subsection (2) is not or cannot be obtained or is not granted, the written application contemplated by that subsection must be accompanied by -

- (a) full details of the efforts made to obtain such certificate or approval; and
- (b) full reasons why the inability to obtain such certificate or approval should not preclude the grant of written approval in terms of subsection (1) (a).

(4) Written approval in terms of subsection (1) (a) may be granted subject to such conditions as the MEC may deem necessary or desirable and the MEC may, before any such approval is acted upon -

- (a) vary any condition so imposed, and
- (b) impose additional conditions in respect of such approval.

(5) The MEC may delegate any of his or her functions to an office in the Department.

Offences and penalties

4. Any person who contravenes any provision of this Act or who fails to comply with any condition imposed herein is guilty of an offence and is liable on conviction to a fine not exceeding R1000 or imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

Repeal of laws

5. The laws listed in the Schedule hereto are repealed to the extent indicated in the third column of the Schedule.

Short title

6. This Act is called the Exhumations Act, 2002 (Eastern Cape)

SCHEDULE

NUMBER AND YEAR	SHORT TITLE	EXTENT OF REPEAL
No. 12 of 1980	Exhumations Ordinance	The whole
No. 13 of 1981	Exhumations Act (Transkei)	The whole
No. 10 of 1982	Exhumations Act (Ciskei)	The whole

EXPLANATORY MEMORANDUM ON THE EXHUMATIONS BILL, 2002**PART I*****(Principles)***

The Province is currently engaged in the process of rationalizing all Provincial Legislation inherited from the administrations of former Republics of Transkei and Ciskei and the Cape Provincial administration. The legislation governing exhumations in the Province falls under the legislation to be rationalized in order to have a single piece of legislation applicable throughout the Province.

The Bill prohibits desecration and damaging of graves. It also prohibits exhumation of bodies without prior written approval of the MEC.

PART II*(clause by clause analysis)*

Clause	1	-	sets out definitions
Clause	2	-	prohibits desecration, destruction or damaging of graves
Clause	3	-	provides for control of exhumation of bodies
Clause	4	-	provides for offences and penalties
Clause	5	-	repeal of laws
Clause	6	-	short title

**GAMBLING AND BETTING AMENDMENT BILL
(EASTERN CAPE), 2002**

As Introduced

(MEMBER OF THE EXECUTIVE COUNCIL
RESPONSIBLE FOR ECONOMIC AFFAIRS, ENVIRONMENT AND TOURISM)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Gambling and Betting Act, 1997 (Act No. 5 of 1997) (Eastern Cape); to insert and amend certain definitions; to allow the board to impose fines for violation of the Act; to amend certain disqualifications and prohibitions; to amend certain procedures; to extend the period of validity of bookmakers licences; to extend the grounds on which persons can be excluded from gambling premises; to further prohibit certain actions; to amend certain fees and taxes; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Legislature of the Province of the Eastern Cape as follows:

Amendment of section 1 of Act No. 5 of 1997 as amended by Act No. 6 of 1998, Act No. 5 of 1999 and Act No. 3 of 2000.

1. Section 1 of the Gambling and Betting Act, 1997 (Act No. 5 of 1997) (Eastern Cape) (hereinafter "the principal Act") is hereby amended-

(a) by the insertion before the definition of "amusement game" of the following definition:

"advertisement" means any written, illustrated, visual, electronic or other descriptive material or oral statement, communication, representation or reference which is distributed among or transmitted to, members of the public or otherwise brought to their notice, which is intended, or purports to be intended, to promote the gambling business of a licence holder or any business which offers gambling to members of the public or to encourage the use of the services offered by such gambling business or to otherwise draw attention thereto where such distribution, transmission or bringing to the notice of members of the public is effected by such licence holder or business or is paid for, whether directly or indirectly by such licence holder or business and 'advertise' and 'advertising' have corresponding meanings;"

(b) by the substitution for the definition of "amusement game" of the following definition:

"amusement game" means an amusement game referred to in section 4(3) which is played or activated by the intention of payment of a coin, token, credit, electronic credit, debit, bill of exchange, or other value instrument whereby the player may win a prize which is not in the form of cash, tokens, cheques, credit, debits, bills of exchange or other value instruments but is limited to-

(i) one or more non-cash prizes with a combined retail monetary value not exceeding the limit set by the board;

- (ii) more than one opportunity to play a further game, provided that no more than 10 such opportunities may be won in respect of a single game; or
 - (iii) in the case of games and excluding games which involve a substantial element of skill contemplated in section 61(1)(a)(ii) or (iv), one or more tickets which cumulatively entitle or enable the player to receive a [prize contemplated in paragraph (i)] non-cash prize on the premises concerned and which are not transferable to any other person: Provided that no accumulation of tickets shall entitle or enable a player to receive a prize [other than, or] having a higher retail value than [that] 15 times the value contemplated in paragraph (i) and at least 20 tickets shall be required in respect of each Rand of the retail value of such non-cash prize: Provided further than no more than [10] 15 tickets may be won in respect of any single such game;”;
- (c) by the substitution for the definition of “financial interest” for the following definition:
- “‘financial interest’, in relation to a company or corporation, means:
- (a) having a right or entitlement to share in profits or revenue;
 - (b) being the holder of any real right in respect of any property of the company or corporation;
 - (c) being the owner or holder of a real or personal right in any property used by the company or corporation in conducting its gambling business; or
 - (d) having a direct or indirect interest in the voting shares or voting rights attaching to the shares of the company or having an interest in a close corporation;”;
- (d) by the substitution for the definition of “gambling” for the following definition:
- “‘gambling’ or ‘gamble’ means the playing of a gambling game and includes the acceptances of stakes by a totalisator or bookmaker but does not include social gambling or participation in a lawful lottery contemplated in the Lotteries Act, 1997 (Act No. 57 of 1997);”.

Amendment of section 4 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

2. Section 4 of the principal Act is hereby amended-

- (a) by the substitution for paragraph (xxi) of paragraph (c) of subsection (1) of the following paragraph:

“(xxi) to impose penalties for any breach of this Act or any of the [rules or] regulations, rules or licence conditions made under this Act by a licence holder or registrant, which may include [fines] a fine or the suspension of or the imposition of conditions relating to any licence issued in terms of this Act;”;
- (b) by the substitution for subsection (2) of the following substitution:

“(2) The board may, with the approval of the responsible member-

- (a) exercise such powers and perform such functions and duties in terms of the law of any other province or area in respect of persons and matters in the said province as the board may in terms of this Act perform and perform in this province; and
- (b) enter into an agreement with the National Gambling Board contemplated in section 1 of the National Gambling Act, 1996 (Act No. 33 of 1996) or the gambling regulatory authority of any other province or provinces which provides for the joint monitoring, licensing or regulation of activities having an inter-provincial nature, such as wide area progressive jackpots, monitoring systems or linked bingo systems;”;

(c) by the amendment of subsection (5) as follows:

“(5) The board may delegate its power relating to the award, issue, revocation and suspension of-

- (a) licences and registrations contemplated in subsection (1)(c)(xxx);
- (b) registrations in terms of sections 61, 65, 68 and 69;
- (c) temporary licences contemplated in paragraphs (b)[and], (c) and (d) of section 38(1).”.

Amendment of section 6 of Act No. 5 of 1997

3. Section 6 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Subject to section 7(3), [No] no person shall be appointed to or remain as a member of the board if such person-”.

Amendment of section 7 of Act No. 5 of 1997

4. Section 7 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

“(3) Notwithstanding the provisions of paragraphs (e), (f) and (k) of section 6, any person who would be disqualified from remaining a member of the board in terms of paragraphs (e), (f) and (k) of section 6 and who was not so disqualified at the time of his or her appointment may remain a member of the board and act in accordance with the provisions of this section if-

- (a) the provisions of subsection (1) are applicable to such person;
- (b) he or she recuses himself or herself in terms of subsection (1); and
- (c) such disqualification may reasonably fall away within 6 months of its coming into existence.

(4) If a disqualification in subsection (3) continues for longer than 6 months, the member of the board concerned shall be disqualified from remaining a member of the board from the date 6 months after the coming into existence of such disqualification.”.

Amendment of section 13 of Act No. 5 of 1997 as amended by Act No. 3 of 2000**5. Section 13 of the principal Act is hereby amended-**

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) solicit or accept employment from, or be employed at the gambling area of, the holder of, or an applicant for, a licence under this Act within [4 years] 1 year after the termination of his or her term of office or service, as the case may be.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) A member of the board or of the staff of the board, any family member of such member, or any person related to such member within the second degree of consanguinity, shall not accept any donation, reward or other such benefit directly or indirectly from an applicant for, or the holder of, a licence or registration in terms of this Act and no such person shall directly or indirectly give or offer such donation, reward or such benefit to such member, family member or relative: Provided that the provisions of this subsection shall not apply to-

- (a) a reasonable meal with a value of less than the amount determined by the responsible Member given to a board member or member of staff of the board whilst such member is acting in the course and scope of his or her duties;
- (b) a bona fide gambling win by such board member, staff member, family member or relative at premises of such applicant, licence holder or registrant or an affiliate thereof where such person is not prohibited from so gambling in terms of this Act;
- (c) a salary earned by such family member or person related to such member within the second degree of consanguinity from such applicant, licence holder or registrant in so far as the employment of such person by the licence holder will, in the opinion of the board, not compromise the objectivity of the board member or member of staff to whom such person is related;
- (d) any benefit such as discounted accommodation, promotional materials and the like available to all members of the general public;
- (e) any benefit or object with a value not exceeding that determined by the responsible Member.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) No family member of a member or member of staff of the board shall be employed at or by a gambling business in the province if such employment would, in the opinion of the board, lead to a conflict of interest.”;

(d) by the insertion after subsection (3) of the following subsection:

“[(3)](4) Any person who contravenes a provision of subsection 1 [or], (2) or (3) shall be guilty of an offence.”.

Amendment of section 17 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

6. Section 17 of the principal Act is hereby amended-

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) [lump sum payments made in terms of sections 45(2) or (4)] investigation fees contemplated in section 4(7); and”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) The board shall open an account with a bank determined by the board which is registered in the Republic and approved by the National Treasury as contemplated in section 7(2) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and shall deposit in that account all money referred to in subsection (1).”;

(c) by the insertion after subsection (6) of the following subsection:

“(7) The board may establish such other bank accounts at institutions complying with subsection (4) as the board, in consultation with the responsible Member, may determine.”.

Amendment of section 18 of Act No. 5 of 1997

7. The principal Act is hereby amended by the substitution for section 18 of the following section:

“Accounting responsibility

18.(1) The board members contemplated in section 5 shall collectively be the accounting authority of the board charged with accounting for all money received and payments made by the board: Provided that the Provincial Treasury may in exceptional circumstances approve or instruct that the chief executive officer or another member of staff of the board shall be the accounting authority for the board, which approval or instruction may at any time be withdrawn.

(2) The board may in writing delegate any of the powers delegated or entrusted to it by the Public Finance Management Act, 1999 (Act No. 1 of 1999) to the chief executive officer or a member of the staff of the board or instruct such person to perform a duty assigned to the members of the board in terms of this Act.

(3) A delegation or instruction contemplated in subsection (2)-

(a) is subject to such limitations or conditions as the members of the board may impose;

(b) may either be to a specific individual or the holder of an office; and

(c) shall not divest the members of the board of responsibility concerning the exercise of the delegated power or performance of the assigned duty.

(4) Subject to any vested rights, the board may revoke a decision taken by a person or a member of a delegation or instruction contemplated in subsection (2).

(5) The financial year of the board shall end on 31 March each year.

(6) The board shall-

- (a) keep full and proper records of all money received or expended by, and of all assets and liabilities and financial transactions of, the board;
- (b) follow the bookkeeping and accounting systems, instructions and requirements of the Provincial Treasury; and
- (c) as soon as is practicable, but not later than 2 months after the end of each financial year referred to in subsection (5), prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the board during, and its assets and liabilities at the end of, the financial year in question.

(7) The record and annual financial statements referred to in subsection (6) shall be audited by the Auditor-General."

Amendment of section 20 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

8. Section 20 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(6) The provisions of subsections (3), (4) and (5) and section 27(1) shall apply mutatis mutandis to-

- (a) any application for registration in terms of this Act;*
- (b) any application or investigation relating to a licence or registration contemplated in section 4(1)(c)(xxx) [or 38];*
- (c) any application or investigation regarding a consent to hold a financial interest contemplated in section 40;*
- (d) any application contemplated in sections 35, 36, 37 or 38;*
- [(d)](e) any application or investigation regarding suitability contemplated in section 86; and*
- (f) an application for a licence or consent to conduct social gambling."*

Amendment of section 25 of Act No. 5 of 1997

9. Section 25 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

- "(a) any document or information relating to the financial capacity of any person participating in the application, to the names of prospective employees, to the financial projections of the applicant or to the business plans of the applicant, shall not be open to public inspection, provided such information can be separated from the remainder of the application and is marked confidential; and*

Amendment of section 28 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

10. Section 28 of the principal Act is hereby amended by the insertion of the following subsection:

“(4) Notwithstanding the provisions of subsection (1) the board may hold the public hearing before the time period set out therein if it has completed its investigations and-

- (a) no objections have been received; or
- (b) one or more objections have been received and the applicant has responded thereto or had sufficient opportunity in terms of section 23 to respond thereto.”.

Amendment of section 31 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

11. Section 31 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) subject to the provisions of section 13 [(1)(f) and 13(1)(fA)] of the National Gambling Act, 1996 (Act No. 33 of 1996) the State, [a provincial government, any organisation with which the State or a provincial government is concerned] any organ of the State, any organisation with which the State is concerned, a political office bearer, a political party or any official of a political party does not hold a financial interest in the gambling business of the applicant apart from taxes or levies: [Provided that the provisions of this paragraph shall not be construed as preventing the board from granting and issuing a provisional licence to an applicant in respect of a gambling business to be located on land owned by the State, an organ of State or any organisation with which the State or such organ of State is concerned if the board is satisfied that the applicant has an option to acquire such land or has purchased such land subject to a suspensive or resolute condition relating to the award of a licence to such applicant and such land may be transferred to the applicant before the commencement of gambling activity by such applicant: Provided further that no temporary casino licence may be granted to the applicant and such provisional licence may not be converted into a casino licence unless and until such land is so transferred] Provided that, for the purposes of this section, “financial interest” does not include an interest arising out of an arms-length commercial transaction in respect of a lease, a sale of property or the granting of the option to purchase where the lessor, seller or granting of the option is the State, an organ of State or any organisation with which the State is concerned and, in the case of a lease, the rental payable is not based on the profit or turnover of the applicant or licence holder.”.

Amendment of section 35 of Act No. 5 of 1997

12. Section 35 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Where the application has been granted the chief executive officer shall cause an amended licence to be issued to the licence holder.”.

Substitution of section 37 of Act No. 5 of 1997

13. The following section is hereby substituted for section 37 of the principal Act:

"Removal of business to other premises and addition or deletion of licensed premises

(1) The holder of a licence may at any time make application for-

- (a) the removal, whether permanently or temporarily, of the gambling business concerned to other premises;
- (b) in the case of the holder of a racecourse licence, totalisator licence or bookmaker licence-
 - (i) additional premises to be added to the licence; or
 - (ii) premises to be deleted from the licence.

(2) Subject to subsection (3) the provisions of sections 19 to 26, 28 to 30, 32 and 33 shall *mutatis mutandis* apply in relation to an application contemplated in subsection (1)(a) and (1)(b)(i): Provided that in the case of a casino licence the provisions of sections 41, 42 and 43 shall likewise apply.

(3) Notwithstanding the provisions of subsection (2), the board may grant an application for the addition of premises to a totalisator licence or bookmaker licence or for deletion of any premises from such a licence without application of the provisions of sections 22 to 30 if-

(a) in the case of addition of premises to the licence-

- (i) the application is brought by an existing licence holder of a totalisator licence or bookmaker licence; and
- (ii) the premises which the applicant seeks to add to its licence are, or in the previous 3 months were, licensed to the holder of a totalisator licence, race course licence or bookmaker licence; and
- (iii) the board is of the opinion that the public interest does not require that the procedures contemplated in this Act are necessary in the specific circumstances;

(b) in the case of deletion from the licence, the board so sees fit.

(4) Where the application has been granted the chief executive officer shall cause an amended licence reflecting the amended premises to be issued together with a copy of the licence in respect of each premises added.

(5) Where a business is removed to other premises or premises are deleted from a licence the licence holder shall, within 14 days of the issue of the amended licence, deliver the original certificates relating to such premises to the chief executive officer."

Amendment of section 38 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

14. Section 38 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

“(1) The board may, subject to the provisions of this Act, the payment of the required fees and such conditions as it may impose, issue a temporary licence to cover-

- (a) the operation of a casino or a limited gambling machine site with 40 gambling machines on temporary premises by the holder of a provisional licence issued in respect of [a] such casino or limited gambling machine site;
- (b) temporary continuation of business in respect of a site licence in the event of death, incapacity, sequestration or liquidation of the licensee by the executor, trustee, liquidator or judicial manager of such site licence holder;
- (c) the temporary operation of a casino, limited gambling machine site, totalisator or bookmaking business on temporary premises by the holder of a casino licence, limited gambling machine site licence, totalisator licence or bookmaker licence respectively where-
 - (i) the licensed premises are destroyed; and
 - (ii) pending the outcome of an application for removal of the licence to other premises or amendment of the licence to include the new premises or the reconstruction of the premises concerned

as the case may be;

[(c)](d) social gambling.”.

Amendment of section 40 of Act No. 5 of 1997

15. Section 40 of the principal Act is hereby amended-

(a) by the substitution for subsection (4) of the following subsection-

“(4) The provisions of section 20, [21,] 24, 25, 27 and 32 shall, where applicable, *mutatis mutandis* apply to a person who wishes to procure an interest contemplated in subsection (1); Provided that, in any case in which it believes it is in the public interest to do so, the board may require that the provisions of sections 21, 22, 23, 24, 25, 27, 28, 29, 30 and 32 shall be applied *mutatis mutandis* in respect of a particular application.”;

(b) by the insertion after subsection (5) of the following subsections:

“(6) If the holder of an interest of a kind contemplated in subsection (1) at any time becomes disqualified from holding such interest in terms of section 31, or additionally in the case of a casino licence, section 42, the board may, after giving such person an opportunity to be heard, suspend such person’s ownership right or order such person to dispose of such interest within the period prescribed or determined by the board and may additionally order that such person may not dispose of such interest for more than he or she paid for it or such greater amount as the board may approve.

(7) From the date the board issues an order contemplated in subsection (3) or (6) on the applicant, licence holder or person concerned, he or she shall not exercise, whether directly or through any trustee or nominee, any voting right conferred by the ownership of his or her interest in the licensee until such suspension is terminated or such interest disposed of, as the case may be.

(8) A contravention of subsection (1), (3), (5) or (7) or an order made by the board in terms of subsection (6) shall constitute an offence."

Amendment of section 42 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

16. Section 42 of the principal Act is hereby amended-

- (a) by the substitution for the words of paragraph (a) preceding subparagraph (i) of the following words:

"(a) no applicant shall be granted a casino licence or a provisional licence in respect of a casino if any person in control of such applicant-;"

- (b) by the substitution for subparagraph (iv) of paragraph (b) of the following subparagraph:

"(iv) unless such applicant will be the owner or principal tenant of the whole of the [casino] premises on which the casino is located and sole occupier of the [gambling] area in which gambling takes place in terms of such casino licence with such security of tenure as the board may deem adequate: Provided that the provisions of this paragraph shall not be construed as preventing a licence holder from letting or subletting any part of such premises, excluding any part [of the gambling area] in which gambling takes place in terms of such casino licence, to other persons;"

Amendment of section 49 of Act No. 5 of 1997

17. Section 49 of the principal Act is hereby amended-

- (a) by the substitution for subsection (4) of the following subsection:

"(4) A route operator licence shall authorise, subject to any conditions imposed under section 33, the operation of not more than 5 limited gambling machines on the licensed premises of the holder of a gambling machine site licence, and for such purposes the holder of such a route operator licence may enter into an agreement with the holder of such a gambling machine site licence for the placement of such gambling machines on the premises concerned: Provided that in such special circumstances as determined by the board [in consultation with the responsible member] and subject to such conditions as may be prescribed, the abovementioned number of limited gambling machines may be increased in respect of one or more limited gambling machine sites."

- (b) by the substitution for subsection (6) of the following subsection:

"(6) The provisions of section 44 shall apply *mutatis mutandis* to a route operator licence."

(c) by the substitution for subsection (7) of the following subsection:

“(7) A route operator shall ensure that-

- (a) the maximum charge for playing on any such gambling machine shall not exceed the prescribed amount;
- (b) the prize in respect of any one game played by means of any such gambling machine does not in the aggregate exceed in value the prescribed amount;
- (c) the return to players of any gambling machine shall not be less than the prescribed percentage;
- (d) there shall be displayed on the screen of any such gambling machine the value of the maximum prize prescribed under paragraph (b) which can be won by playing a game once by means of such a gambling machine[.]; and
- (e) fees and taxes in respect of the limited gambling machines operated by it are paid.”.

Amendment of section 54 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

18. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A bookmaker licence shall attach to the premises specified in the licence and shall, subject to the provisions of section 39(16) and 79, be valid for [2] 5 years.”.

Amendment of section 60 of Act No. 5 of 1997

19. Section 60 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No person shall without the approval of the board have a direct or indirect financial interest of 5 percent or more in any gambling business or establishment within the Province: Provided that the provisions of this subsection shall not apply to any person who acquires an interest in a licence holder in the province and-

- (a) the time contemplated in section 40 within which such person must apply to the board for consent to hold such interest has not yet elapsed; or
- (b) such application has been submitted to the board and the board has not granted or refused to grant such consent; or
- (c) the board has refused to grant the consent and the time contemplated in section 40 within which such person must dispose of such interest has not yet elapsed.”.

Amendment of section 63 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

20. Section 63 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) A person may be included on the list contemplated in subsection (7) if he or she-

- (a) has contravened the gambling laws of any country;

- (b) has contravened or conspired to contravene the provisions of this or any similar Act;
- (c) has failed to pay any gambling debt;
- (d) is prohibited by a court order from entering any or specific licensed premises;
- (e) has been declared a prodigal by a competent court; [or]
- (f) has requested the board to place his or her name on such list;
- (g) has had his or her name placed on a similar list contemplated in the similar legislation of another province of the Republic;
- (h) is considered by the board, after application by an interested person, to suffer from a gambling problem, in that he or she regularly-
 - (i) gambles more than he or she can afford to lose; and
 - (ii) uses household funds to gamble to the serious detriment of his or her dependants in that such gambling causes such dependants to be deprived of food or shelter;
- (i) in the opinion of the board, after application by an interested party and consideration of a report by a registered psychiatrist or psychologist, suffers from a pathological gambling addiction in that he or she has a gambling addiction and-
 - (i) is unable to appreciate that he or she has a gambling addiction; or
 - (ii) appreciates that he or she has a gambling addiction but is unable to act in accordance with such appreciation; or
- (j) whilst gambling leaves a child under the age of 10 years unattended for more than two hours."

Amendment of section 68 of Act No. 5 of 1997 as amended by Act No. 6 of 1998

21. Section 68 of the principal Act is hereby amended by the insertion after subsection (12) of the following subsections:

"(13) If the board considers that an employee of any licence holder is a key person, it shall serve written notice to that effect on the licence holder by whom such licence holder is employed.

(14) The holder of a licence shall within 30 days of receipt of such written notice present to the board an application in the form required by the board for the registration of such employee as a key person or provide proof that such person is no longer employed by him or her.

(15) An employee who is subject to disqualification for registration as a key person in terms of this section may make written representation to the board to reconsider his or her status within the business concerned, and if the board thereupon determines that the employee is not a key person, such employee shall be allowed to withdraw his or her application and, if so, the application fee shall be refunded."

Amendment of section 69 of Act No. 5 of 1997

22. Section 69 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Persons employed in any of the following or substantially similar positions shall be regarded as gambling positions for the purposes of this section:

- (a) cashiers and ticket sellers;
- (b) counting room personnel;
- (c) dealers and croupiers;
- (d) machine mechanics;
- (e) bookmaker clerks; [and]
- (f) security personnel; and
- (g) any other position considered by the board to be that of a gambling employee generally or in relation to any gambling business in particular:

Provided that if the board is of the opinion that an employee of any licence holder is a gambling employee, it shall serve written notice to that effect upon the licence holder by whom such employee is employed whereupon the [proviso to section 68(2)] provisions of section 68(11), (13), (14) and (15) shall *mutatis mutandis* apply."

Insertion of section 69B into Act No. 5 of 1997

23. The following section is hereby inserted into the principal Act:

"69B.(1) Notwithstanding the provisions of section 68 and 69 of the Act, the board may issue a temporary gambling employee registration for purposes of section 68 or temporary gambling employee registration for purposes of section 69-

- (a) where a person has applied for permanent registration in terms of section 68 or 69 for temporary registration pending the outcome of such application for permanent registration; or
- (b) where such person is to be employed at a casino on a temporary period of no more than two weeks for training purposes or such other purposes as the board may approve.

(2) The temporary registration contemplated in subsection (1) shall be subject to-

- (a) conditions prescribed or determined by the board; and
- (b) payment of the prescribed application, registration and board administration fees."

Amendment of section 70 of Act No. 5 of 1997

24. The following section is hereby substituted for section 70 of the principal Act:

"Advertising

70(1) A person may only advertise the gambling business of a licence holder in the manner prescribed and in accordance with this Act and the National Gambling Act, 1996.

(2) No person shall within the province advertise the gambling business of any business offering gambling to members of the public or any part thereof unless-

- (a) the gambling business concerned is a licence holder;

- (b) the gambling business concerned is licensed to conduct gambling in terms of the law of another Province of the Republic of South Africa; or
- (c) the gambling business concerned is licensed to conduct gambling in terms of the law of a jurisdiction outside of South Africa and-
 - (i) the advertisement is published or transmitted from outside the republic of South Africa and persons resident in South Africa are not the sole or main audience for whom the advertisement is intended; or
 - (ii) the advertisement complies with the prescribed requirements and persons responding to the advertisement will have to travel out of the Eastern Cape to participate in the gambling contemplated in the advertisement.

[(2)](3) Any person who contravenes the provisions of [subsection (2)] subsections (1) or (2) shall be guilty of an offence."

Amendment of section 73 of Act No. 5 of 1997

25. Section 73 of the principal Act is hereby amended-

- (a) by the substitution for subparagraph (a)(ii) of subsection (3) of the following subparagraph:

"(ii) any agent for the holder of a totalisator licence which takes totalisator bets on behalf of such licence holder on premises specified in such licence if the agent is the holder of a licence issued in terms of the Act or has obtained a certificate of suitability in terms of section 86 and the natural person taking such bet on behalf of that agent is registered in terms of section 68 or 69; and";
- (b) by the substitution for subparagraph (b) of subsection (3) of the following subparagraph:

"(b) subsection (2) shall not apply to-
 - (i) a holder of a licence who gives or undertakes to give accommodation, meals or similar facilities to persons who may gamble on the licensed premises concerned;
 - (ii) a junket agent in respect of a junket to a casino."

Amendment of section 74 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

26. Section 74 of the principal Act is hereby amended-

- (a) by the substitution for subsection (4) of the following subsection:

"(4)(a) No person physically present in the Province shall participate in a gambling game by way of telephone, telefax, interactive television, electronic mail or internet transmission or any such communications medium.

(b) No person shall, in relation to any person who he or she knows to be physically present in the Province or should reasonably suspect is so present, invite such person to participate in a gambling game or enter into a gambling

game with such person if the gambling game concerned is conducted wholly or partially by way of telephone, telefax, interactive television, electronic mail or internet transmission or any such communications medium.

(c) The provisions of paragraphs (a) and (b) shall not apply-

- (i) to a bet taken with or by a bookmaker or totalisator licensed in a Province of the Republic who is licensed to accept such bet; and
- (ii) where the person playing the gambling game is physically present on the licensed premises of the licensee offering the game when the game is played.”;

(b) by the insertion after subsection (4) of the following subsection:

[4] (5) Any person who contravenes a provision of subsection (1), (2) [or], (3) or (4) shall be guilty of an offence.”.

Amendment of section 76 of Act No. 5 of 1997 as amended by Act No. 6 of 1998 and Act No. 3 of 2000

27. Section 76 of the principal Act is hereby amended:

(a) by the substitution for subsection (1) of the following subsection:

- “(1) For the purposes of this Act an inspector may at any time enter any licensed or unlicensed premises, where, in the opinion of the inspector, gambling is taking place, and may—
- (a) inspect or search those premises;
 - (b) examine, or make copies of or take extracts from, any document found in or upon those premises and which refers or is suspected to refer to any gambling or betting activity, and request from the owner or person in charge of those premises or from any person in whose possession or charge that document is, an explanation of any entry therein;
 - (c) to obtain any information, programme or data which refers to or is suspected to refer to gambling or betting or any activities incidental thereto stored on a computer by-
 - (i) personally operating or instructing a computer; or
 - (ii) requesting a competent person on the premises to operate or instruct the computerto produce a printout or electronic copy of any such information, programme or data;
 - [(c)](d) examine any article or other object found in or upon those premises which refers or is suspected to refer to any such activity, and request from the owner or person in charge of those premises or from any person in whose possession or charge that article or object is, information in regard thereto;
 - [(d)](e) seize, against the issue of a receipt, any document or object referred to in paragraphs (a), (b) [or], (c) or (d) if it appears to provide proof of a contravention of this Act, or if he or she wishes to retain it for further custody or for safe custody : Provided that a person from whose possession or charge any such document is taken shall, as long as it is in the possession or charge of the inspector concerned, at such person’s request be allowed, at his or her own expense and under supervision of such

inspector, to make copies thereof or take extracts therefrom at any reasonable time.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) An inspector may, if so authorised by a warrant or in the company of an officer of the South African Police Service so authorised or acting in terms of section 22 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and subject to the provisions of any other law—

- (a) enter any premises on or in which any article, document or other object connected with gambling or betting is or is suspected to be or which are occupied or used or suspected to be occupied or used for the purposes of any gambling or betting activity;
- (b) in respect of such premises, do everything set out in subsection (1) (a), (b) [and], (c) and (d), which shall apply mutatis mutandis;
- (c) inspect any account of any person at any bank or other financial institution which may afford evidence of the commission of an offence in terms of this Act; and
- (d) seize, against the issue of a receipt, any document or object referred to in subsection (1) (b) [and], (c) and (d), if it appears to provide proof of a contravention of a provision of this Act, or if he or she wishes to retain it for further examination or for safe custody: Provided that a person from whose possession or charge any such document has been taken shall, as long as it is in the possession or charge of the inspector concerned, at such person's request be allowed, at his or her own expense and under the supervision of such inspector, to make copies thereof or to take extracts therefrom at any reasonable time.”.

Amendment of section 80 of Act No. 5 of 1997

28. Section 80 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“80. (1) The responsible Member may, after consultation with the board, by notice in the *Provincial Gazette* make regulations regarding-

- (a) any matter pertaining to the board;
- (b) any matter pertaining to an application for a licence;
- (c) the management and control of licensed premises;
- (d) the take-out, commissions or other charges which the holder of the licence may charge;
- (e) the stakes for which any gambling game may be played;
- (f) the management and control of horse racing;
- (g) registration in terms of this Act;
- (h) gambling areas;
- (i) any matter which in terms of this Act is required to or may be prescribed;
- (j) any matter which is requiring to be limited or controlled in terms of the National Gambling Act, 1996;
- (k) the specifications relating to gambling devices including chips and tokens;
- (l) monitoring and surveillance systems and the operation thereof;
- (m) the keeping of records;

- (n) the distribution and location of limited gambling machines;
- (o) factors the board must take into account in considering applications for licences;
- (p) in general, any matter in respect of which it is necessary or expedient to make regulations for achieving the objects of this Act;

Provided that any regulation with financial implications shall be made with the concurrence of the member of the Executive Council responsible for finance.”.

Amendment of section 82 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

29. Section 82 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The board shall as soon as practicable after 31 March in each year but not later than [4] 5 months thereafter submit to the responsible Member and the Provincial Treasury a report on its activities [and finances] during the year ending in that date together with the audited financial statements referred to in section 18 and the reports of the Auditor-General on those statements.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) The responsible Member shall lay a copy of the annual report [and], audited financial statements and the report of the Auditor-General submitted to him or her in terms of subsection (1) upon the table of the Provincial Legislature within [14 days] 1 month after its receipt [if the Legislature is then sitting or, if the Legislature is not then sitting, within 14 days after the commencement of its next ordinary sitting].”.

Amendment of section 86 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

30. Section 86 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The board may-

- (a) prohibit a licensee from contracting with any person for the acquisition by such licensee of any goods or services or for the borrowing or lending of money or the letting or hiring of any movable or immovable property until;
or
- (b) require any person acquiring, or holding a financial interest of five percent or more in the holder of a certificate of suitability to alienate such financial interest unless

such supplier, lender, lessor or person has obtained a certificate of suitability from the board and paid the fees and expenses of the board relative thereto.”;

- (b) by the insertion after subsection (3) of the following subsection:

“(4) When considering an application contemplated in subsection (1) or revocation in terms of subsection (2), the board shall have regard to the grounds of disqualification contemplated in section 31.”.

Amendment of section 88 of Act No. 5 of 1997 as amended by Act No. 3 of 2000

31. Section 88 of the principal Act is hereby amended-

(a) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

“(i) is in possession of-

- (i) a gambling machine;
- (ii) any reel tape designed for use in a gambling machine;
- (iii) any device which would be a gambling machine but for the removal of any of its parts or the reprogramming thereof;
- (iv) any device which is capable of electronically representing the reels used in a gambling machine;
- [(v) any gambling machine or amusement machine capable of playing games such as roulette, bingo, twenty-one, blackjack, chermin de fer, baccarat, poker, Chinese roulette, keno, games of similar type usually played on gambling machines or games of similar type usually played on gambling machines or games derived from such games;]**
- [(vi)](v) any device which was manufactured as a gambling machine and which has been converted at any time so that is unable to pay out cash or tokens, whether such device enables a player to win a prize or not;**
- [(vii)](vi) any computer software which enables a player to download any credits won on a gambling game to another computer or to an external data storage device; or**
- [(viii)](vii) any computer hardware which is primarily designed or constructed for use in playing of games contemplated in subparagraph (v) on a computer,**

without an appropriate licence, without being registered in terms of section 61(1) and without being authorised by the board to transport such device in or through the Province;”;

(b) by the substitution for paragraph (l) of subsection (1) of the following paragraph:

“(l) exposes a gambling machine for play by members of the public without being the holder of an appropriate licence;”;

(c) by the substitution for paragraph (m) of subsection (1) of the following paragraph:

“(m) is the holder of a route operator licence or limited gambling machine site licence and exposes for play or allows to be exposed for play-

- (i) a gambling machine which does not comply with the provisions of section 49(7); or
- (ii) more limited gambling machines than such licence holder is licensed for;”;

(d) by the substitution for paragraph (n) of subsection (1) of the following paragraph:

“(n) in the case of a computer-

- (i) uses such computer to play a gambling game; or
- (ii) exposes such computer for play by members of the public or any section thereof and allows such computer to be used for the playing of gambling games,

whether on such premises or by way of internet or intranet transmission;”;

(e) by the substitution for paragraph (q) of subsection (1) of the following words:

- “(q) by way of a scheme or arrangement [which] directly or indirectly converts into cash, tokens, credit, debits, cheques or other value instruments any-
- (i) object or ticket contemplated in the definition of ‘amusement game’ in section 1 which was received by any person as a prize won on such amusement game;
 - (ii) non-cash object or ticket received by a person in return for attending any premises on which any electronic, mechanical or electro-mechanical device, whether a gambling machine, an amusement machine or otherwise is exposed for play by members of the public or any section thereof or in return for playing such device:

Provided that the provisions of this paragraph shall not apply to any family member of any person who received such prize, object or ticket or to any person related to such person within the third degree of consanguinity where the prize[, or object [or ticket] is not a ticket contemplated in subparagraph (i) and is not exchanged for more than its retail value;”;

(f) by the substitution of paragraph (v) of subsection (1) of the following paragraph:

- “(v) utilises the results of more than one game played on one or more amusement machines or limited gambling machines to pay a player a prize additional to that which would have been won by that player [of] if such player had only played such machines: Provided that this subparagraph shall not apply to a prize provided for in paragraph (iii) of the definition of ‘amusement game’ where all the requirements of that paragraph are complied with;”;

(g) by the substitution for paragraph (w) of subsection (1) of the following paragraph:

- “(w) possesses or exposes for play by members of the public or any section thereof an amusement machine capable of playing games such as roulette, bingo, twenty-one, blackjack, chermin de fer, baccarat, poker, Chinese roulette, keno and other games of similar type usually played on gambling machines or derived from such games;”;

(h) by the insertion after paragraph (w) of subsection (1) of the following paragraphs:

- “(x) exposes for play by members of the public or any section thereof a computer and uses such computer as an amusement machine to play amusement games of the kind contemplated in paragraph (w);
- (y) distributes computer software in the province which is intended to be used by persons in the province to link to gambling businesses located outside the province which offer gambling games on the internet;
- (z) contravenes or fails to observe any provision of this Act which does not provide accordingly.”;

(i) by the substitution for subsection (2) of the following subsection:

“(2) Any person who contravenes or fails to observe a rule made in terms of section 81 shall be guilty of an offence and liable on conviction to a fine not exceeding [R25 000] R500 000 or imprisonment for a period not exceeding 6 months.”;

(j) by the substitution for the words preceding subparagraph (i) of paragraph (d) of subsection (4) of the following words:

“(d) any [gamling] gambling school licensed or approved by the board or the National Gambling Board contemplated in section 2 of the National Gambling Act, 1996 (Act No. 33 of 1996) which uses such machine or device only for training purposes: Provided that-”;

(k) by the substitution for subsection (6) of the following subsection:

“(6) Whenever any person is convicted of an offence in terms of this Act or pays an admission of guilt fine in respect thereof in terms of section 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), all costs incurred by the [boad] board or the South African Police, including costs of the transport or storage of any gambling device, equipment or other thing by means of which the offence was committed, which was used in the commission of the offence or which was found in the possession of the convicted person, and any testing thereof by the South African Bureau of Standards, shall, in addition to any fine or penalty imposed or paid by such person, be paid by such person.”;

(l) by the insertion after subsection (6) of the following subsections:

“(7) If the board finds that a holder of a licence has contravened the provisions of the Act or any Regulation, Rule or licence condition made in terms of the Act, the board may instead of referring that matter to the South African Police Service or Office of the Director for Prosecutions for prosecution impose an administrative fine on such licence holder and in doing so may impose any such fine which a court of law could have imposed if it had found such licence holder guilty of an offence in respect of such violation.

(8) A fine shall not be imposed in terms of subsection (7) unless-

- (a) such licence holder has had an opportunity to be heard; or
- (b) such licence holder has stated its case in writing and has agreed that oral argument is not necessary.”.

Repeals

32. (1) The Horse Racing and Betting Act, 1986 (Act No. 20 of 1986) of the erstwhile Republic of Ciskei is hereby repealed.

(2) The Premier may by proclamation in the *Provincial Gazette* provide for such transitional and savings provisions relating to the repeal of the Act contemplated in subsection (1) as are necessary and expedient: Provided that the number, date and title of the proclamation and the number and date of the *Provincial Gazette* in which it was published shall be laid upon the table in the Legislature of the Eastern Cape within 21 days of such publication.”.

Transitional provisions relating to certain amusement machines

33. (1) Any person in possession of an amusement machine the possession of which is prohibited in terms of section 88(1)(w) of the principal Act (as amended by this Act) may apply to the board for a permit for the storage of such amusement machine, which application shall be-

- (a) made within 60 days of the coming into operation of this section;
- (b) made in the manner and form determined by the board; and
- (c) accompanied by a non-refundable application fee of R1 000,00 excluding Value Added Tax.

(2) The application shall contain such particulars as the board may require, which shall include-

- (a) the number of such devices or machines;
- (b) a description of each device or machine and its serial number;
- (c) the address of the place where the devices or machines are being or shall be kept;
- (d) whether the applicant is the owner of such devices or machines and, if not the owner-
 - (i) the name and address of the owner;
 - (ii) the details of the arrangement in terms of which the applicant is the possessor thereof;
- (e) whether it is the intention of the applicant or owner to apply for any licence contemplated in the principal Act which would allow the machine to be played, and, if so, which licence; and
- (f) whether it is the intention of the applicant or owner to dispose of such devices or machines, and, if so, in what manner and to whom.

(3) The board may issue a permit to an applicant subject to any conditions it may deem fit: Provided that it shall be a condition of all such permits that-

- (a) if the applicant intends to apply for any licence contemplated in the principal Act which would allow the machine to be played all such amusement machines or devices contemplated in section 88(1)(w) of the principal Act (as amended by this Act), shall at the cost of the applicant or permit holder be submitted for testing by the South African Bureau of Standards against the set norms and standards for gambling devices within 90 days of the coming into operation of this section;

- (b) all such devices and amusement machines contemplated in subsection (1) shall subject to subsection (7) be stored in such a manner so as not to be available to be played or operated by any person or accessible to any member of the general public or any part thereof;
 - (c) inspectors of the board or members of the South African Police Service shall at all reasonable times have free access to the premises on which such devices or machines are located for inspection purposes;
 - (d) the person to whom a permit is issued shall apply for the licence indicated in subsection (2)(e) within one month of any applicable notice under the principal Act inviting applications for such licences;
 - (e) the holder of a permit and owner of such devices or machines shall, before disposing of the amusement machines in the possession of a permit holder, apply to the board for approval of the manner of such disposal and shall furnish the board with such information regarding the disposal as it may require: Provided that the board shall not be obliged to approve any or any particular disposal thereof;
 - (f) that any costs associated with such storage shall be at the cost of the permit holder.
- (4) A permit contemplated in this section shall expire-
- (a) in respect of every amusement machine contemplated in section 88(1)(w) and which does not comply with the relevant norms and standards, two months after notification of the permit holder by the board that such device or machine does not comply: Provided that if the permit holder modifies such device or machine before the expiry of the two-month period and such device or machine thereafter complies with the relevant norms and standards, the provisions of paragraph (e) shall apply;
 - (b) if the person to whom the permit is granted fails to apply for a licence as contemplated in subsection (3)(d), on expiry of the period contemplated in that subsection;
 - (c) in respect of any device or machine not submitted for testing within the period contemplated in subsection (3)(a), upon expiry of the period referred to in that subsection;
 - (d) on the granting of a licence contemplated in subsection (3)(d);
 - (e) two months after the date of refusal of a licence contemplated in subsection (3)(d); or
 - (f) upon disposal by the permit holder of the devices or machines in respect of which a permit has been granted in terms of this section.
- (5) The issue of a permit under this section shall not found any expectation of the granting of a licence or registration under the Act.
- (6) The provisions of section 61 of the principal Act shall not apply to disposal of a device or machine contemplated in this section where the board has approved such disposal.
- (7) The provisions of section 88(1)(w) of the principal Act (as amended by this Act) shall not apply to the possession of an amusement machine or any device which is contemplated in that section if-
- (a) the period during which the owner or possessor thereof is entitled to apply for a permit in terms of this section has not expired; or

- (b) the owner or possessor thereof has applied for a permit in terms of subsections (1) and (2) within the period contemplated in subsection (1)(a) and such permit has not yet been issued by the board; or
- (c) the amusement machine or other device is being properly stored in terms of a valid permit issued under this Act.

(8) Notwithstanding the provisions of section 88(1)(w) of the principal Act, the holder of an amusement machine licence may expose for play amusement machines contemplated in section 88(1)(w) for a period of 60 days after the coming into operation of this Act, if-

- (a) such person is in possession of a valid amusement arcade licence which has not expired; and
- (b) the machines concerned are registered with the board and such registration has not expired; and
- (c) such licence holder and such machines comply with the rules made by the board in terms of the principal Act; and
- (d) the amusement machines are not used for gambling.

(9) Any holder of a permit who does not comply with a condition contained in such permit or disposes of such device or machine otherwise than in accordance with the manner approved by the board shall be guilty of an offence and liable on conviction to the sentence contemplated in section 88(1) of the principal Act, and, in addition the board may revoke such permit.

(10) This section shall not entitle any person-

- (a) to obtain possession of any devices or machines in policy custody at the time of the coming into operation of this Act; or
- (b) to use such machines for gambling in contravention of the provisions of the principal Act.

Short title and commencement

34. (1) This Act shall be called the Gambling and Betting Amendment Act, 2002 (Eastern Cape) and shall, subject to subsection (2), come into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates may be so fixed in respect of different sections and subsections of this Act.

PROVINCE OF THE EASTERN CAPE

**DEPARTMENT OF ECONOMIC AFFAIRS, ENVIRONMENT AND
TOURISM**

EASTERN CAPE LIQUOR BILL, 2002

(As introduced)

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR
ECONOMIC AFFAIRS, ENVIRONMENT AND TOURISM)**

BILL

To provide for the registration of the retail sale of liquor in the Province of the Eastern Cape; and for matters connected therewith.

ARRANGEMENT OF SECTIONS

Section

1. Definitions

CHAPTER 1

OBJECTS AND APPLICATION OF ACT

2. Objects of Act

3. Application of Act and conflict with other laws

CHAPTER 2

PROVINCIAL STRUCTURES AND FUNCTIONS

Part 1

Eastern Cape Liquor Board

4. Establishment of the Eastern Cape Liquor Board

5. Composition of the Eastern Cape Liquor Board

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BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:-

Definitions

1. (1) In this Act, unless the context indicates otherwise-

"any other law" includes the common law;

"beer" means -

(a) a drink manufactured by the fermentation of a mash of malt, with or without cereals and flavored with hops;

(b) ale or stout; or

(c) any substance or other fermented drink;

(d) manufactured as or sold under the name of beer, ale or stout; or

(e) declared to be beer under subsection (2)(a),

if it contains more than one per cent by volume of alcohol, but does not include sorghum beer;

"board" means a body established by section 4 of this Act;

"chairperson" means the relevant chairperson appointed in terms of section 11;

"Companies Act, 1973" means the Companies Act, 1973 (Act No. 61 of 1973);

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

"controlling interest" means a controlling interest as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979);

"court" means a competent court that has jurisdiction;

"Department " means the department responsible for liquor matters in the Province;

"financial year" means-

- (a) the period from the date on which this Act takes effect to the last day of March in the following year; and
- (b) each period of 12 months thereafter ending on the last day of March;

"Gazette" means the *Provincial Gazette* of the Province;

"inspector" means an inspector designated in terms of section 47(1);

"judicial officer" means a judge or a magistrate;

"Legislature" means the Legislature of the Province of the Eastern Cape;

"liquor" means-

- (a) any liquor product as defined in section 1 of the Liquor Products Act, 1989;
- (b) any beer or sorghum beer; and
- (c) any other substance or drink declared to be liquor under subsection (2)(b);

"Liquor Act, 1989" means the Liquor Act, 1989 (Act No. 27 of 1989);

"Liquor Products Act, 1989" means the Liquor Products Act, 1989 (Act No. 60 of 1989);

"methylated spirit" means-

- (a) spirit denatured in accordance with any law on the denaturation or methylation of spirit;
- (b) any other denatured, medicated, perfumed or otherwise treated spirit declared to be methylated spirit under subsection (2)(a);

"MEC" means the member of the Executive Council of the Province, to whom the Premier has assigned the responsibility for liquor matters;

"municipality" means a municipality in terms of section 8, 9 or 10 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);

"micro-manufacturer" means a producer, rectifier, blender, broker, distiller, bottler of liquor or a wine farmer who in a calendar year does not deal in the volume of liquor that exceeds the prescribed volume;

"Minister" means the member responsible for liquor matters in the National Cabinet;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"panel of appeal" means a body established by section 9(1);

"person" includes a trust;

"Premier" means the Premier of the Province;

"premises" includes any place, land, building or conveyance, or any part thereof;

"prescribe" means prescribe by regulation;

"Province" means the Province of the Eastern Cape established by section 103 of the Constitution;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No 1 of 1999);

"register" means the relevant register referred to in section 35(1)(a);

"registered person" means a person to whom a certificate of registration has been issued or who is deemed to be registered in terms of this Act;

"registered premises" means premises in respect of which a certificate of registration has been issued;

"regulation" means a regulation made under this Act;

"retailer" means any person registered for a category of registration contemplated in section 19(a), (b), (c) or (d);

"sell" includes exchange or keep, offer, display, deliver, supply or dispose of for sale, or authorise, direct or allow a sale;

"South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 80 of 1995);

"sorghum beer" means-

- (a) the drink generally known as sorghum beer and commonly manufactured from grain sorghum, millet or other grain;
- (b) any other drink manufactured or sold under the name of sorghum beer; or
- (c) any other substance or fermented drink declared to be sorghum beer under subsection (2)(c);

"this Act" includes any regulation or notice made or issued under this Act.

(2) The Premier may, by notice in the *Gazette*-

- (a) declare any substance or fermented drink other than the drinks contemplated in paragraphs (a), (b) and (c) of the definition of "beer" in subsection (1), to be beer for the purposes of this Act;
- (b) declare any substance or drink other than the liquor contemplated in paragraphs (a) and (b) of the definition of "liquor" in subsection (1), to be liquor for the purposes of this Act;
- (c) declare any substance or fermented drink other than the drink contemplated in paragraphs (a) and (b) of the definition of "sorghum beer" in subsection (1), to be sorghum beer for the purposes of this Act; and
- (d) declare any denatured, medicated, perfumed or otherwise treated spirit other than the spirit contemplated in paragraph (a) of the definition of "methyalted spirit" in subsection (1), to be methyalted spirit for the purposes of this Act.

CHAPTER 1

OBJECTS AND APPLICATION OF ACT

Objects of Act

2. The objects of this Act are to make provision for the registration of retail sales of liquor in the Province, to encourage and support the liquor industry and to

manage and reduce the socio-economic and other costs of excessive alcohol consumption by creating an environment in which-

- (a) the entry of new participants into the liquor industry is facilitated;
- (b) appropriate steps are taken against those selling liquor outside the administrative and regulatory framework established in terms of this Act;
- (c) those involved in the liquor industry may attain and maintain adequate standards of service delivery;
- (d) community considerations on the registration of retail premises are taken into account; and
- (e) the particular realities confronting the liquor industry in the Province can be addressed.

Application of Act and conflict with other laws

3. (1) This Act must not apply to-

- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions as such;
- (b) an administrator of a deceased or insolvent estate, in the administration of that estate;
- (c) sheriff or any other officer acting in terms of an order of a court, judge or magistrate, in the performance of his or her functions as such;
- (d) the master of a ship or the commander of an aircraft of an air service licensed in terms of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), to provide a scheduled air transport service, with regard to the sale of liquor to a passenger on board that ship while in a harbour in, or in the territorial waters of, the Republic during a voyage of not less than 100 kilometres, or to a passenger on board that aircraft while on a flight of not less than 100 kilometres from one airport in the Republic to another;
- (e) a person referred to in a notice under section 10 of the Liquor Products Act, 1989, with regard to the sale of any sacramental beverage under such a notice;

(f) a person, with regard to the sale of any spiritous or distilled perfumery or medicated spirit, which perfumery or spirit is not methylated spirit; and

(g) the manufacturer of sweets containing more than two per cent by mass of alcohol and manufactured in the Republic, with regard to the sale of those sweets to a registered person.

(2) Subject to sections 22(a), 32(1) and (2), 47(1), 48(2), 50(2)(a) and 51(4), if any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, save the Constitution or any Act amending this Act, the provisions of this Act must prevail.

CHAPTER 2

PROVINCIAL STRUCTURES AND FUNCTIONS

Part 1

Eastern Cape Liquor Board

Establishment of the Eastern Cape Liquor Board

4. There is hereby established a board to be known as the Eastern Cape Liquor Board.

Composition of the Eastern Cape Liquor Board

5. (1) Subject to subsection (2), the board must consist of no more than five members appointed by the MEC.

(2) At least one, but not more than two members of the board must be officers in the Provincial public service.

(3) Whenever the MEC is required to appoint any person to the board that is not a person contemplated in subsection (2), he or she must-

(a) publish an invitation in at least two newspapers with wide circulation in the Province, a notice calling for nomination or application and stating the criteria for nomination; and

(b) consider all nominations and applications submitted in response to the notice and appoint a fit and proper person.

(4) A member of the board must hold office for the period determined by the MEC at the time of the member's appointment, but not exceeding three years at a time, and a member must be eligible for reappointment at the end of his or her first term of office.

Personnel and administration of the board

6. The Department must, subject to the laws governing the public service, appoint or designate the officers, and provide the administrative and other resources and services required to enable the board to perform its functions.

Funds of the board

7. (1) The funds of the board must consist of-

- (a) money appropriated by the Legislature; and
- (b) any money which may accrue to the board from any other source.

(2) The board may pay out of its funds any amount required to meet the operational costs of the board in connection with its functions, in accordance with an annual budget for each financial year approved by the head of the Department.

Powers and functions of the board

8. The board-

- (a) must consider and approve or refuse applications for the categories of registration contemplated in section 19(a), (b), (c); (d) or (e);
- (b) may cancel or vary any registration approved by it in the manner contemplated in this Act;
- (c) may determine conditions applicable to the categories of registration contemplated in section 19(a), (b), (c); (d) or (e); and
- (d) may exercise any other power and must perform any other duty conferred or imposed on it in terms of this Act.

Part 2

Panel of appeal

Establishment of panel of appeal

9. (1) A panel of appeal for the Province is hereby established.
- (2) A panel of appeal must consist of at least three, but not more than five, fit and proper persons appointed by the MEC;
- (3) At least one member of the panel must have a suitable degree of skill and experience in the administration of civil and criminal law matters.
- (4) Whenever the MEC is required to appoint any member contemplated in subsection (2), he or she must-
- (a) publish in at least two newspapers with wide circulation in the Province an invitation calling for nomination or application; and
 - (b) consider all nominations and applications submitted in response to the invitation and appoint members to the board.
- (5) A member contemplated in subsection (2) must hold office for the period determined by the MEC at the time of the member's appointment, but not exceeding three years at a time, and a member is be eligible for reappointment at the end of his or her first term of office.
- (6) Section 7 must apply with regard to the funds of the panel of appeal.
- (7) Section 6 must apply with regard to the officers and the administrative and other resources and services required to enable the panel of appeal to perform its functions.
- (8) The panel of appeal must consider appeals against decisions made by the board.
- (9) The decision of the panel of appeal is final.

Part 3

General provisions applicable to provincial structures

Disqualification for and vacating of office

10. (1) No person must be appointed to the board or the panel of appeal if he or she -

(a) is not a South African citizen;

(b) is of unsound mind;

(c) has at any time been convicted and sentenced to imprisonment without the option of a fine;

(d) is an unrehabilitated insolvent; or

(e) is a member of Parliament, the Legislature, a provincial legislature, a Municipal Council, the National Cabinet or the Executive Council of the Province.

(2) A member of a body referred to in subsection (1) must vacate his or her office if he or she-

(a) becomes subject to a disqualification contemplated in subsection (1);

(b) ceases to hold a qualification, office or interest by virtue of which that member was appointed;

(c) has been absent without permission of the relevant chairperson for more than two consecutive ordinary meetings of the board or the panel of appeal;

(d) resigns by one month's written notice to the MEC; or

(e) is removed from office by the MEC, if he or she is of the opinion that it is in the public interest to remove a member.

(3) Without prejudice to the generality of subsection (2)(e), the MEC may at any time remove from office any member of a body referred to in subsection (1), for reasons of -

(a) incompetence;

(b) nepotism;

- (c) dishonesty;
- (d) conflict of interest;
- (e) failure to act in the interests of the board or panel;
- (f) failure to attend to the matters of the board or panel; and
- (g) the member bringing the board or panel into disrepute.

(4) All vacancies in the bodies referred to in subsection (1) must be filled in accordance with the procedure contemplated in section 5(3) or 9(4), as the case may be.

Designation of chairpersons

11. (1) The MEC must designate one member of the board to serve as chairperson of the board.

(2) The MEC must designate one member of the panel of appeal to serve as chairperson.

(3) The MEC may appoint any other member of the board or panel of appeal as vice-chairperson, who must act as chairperson if the chairperson contemplated in subsection (1) or (2) is unable to serve in that capacity or if the office becomes vacant.

Allowances of members

12. (1) A member of the board or the panel of appeal who is not in the full time employ of the State or an organ of state may, subject to subsection (2), be paid such remuneration and allowances in connection with the affairs of the board or panel as determined by the MEC, and different remuneration and allowances may be determined in respect of different members.

(2) The MEC, in consultation with the Member of the Executive Council responsible for finance in the Province may determine the amount, terms and conditions of the remuneration and allowances contemplated in subsection (1).

(3) The board or the panel must pay the remuneration and allowances contemplated in this section out of the funds and in accordance with the budget of the board or panel of appeal, as the case may be.

Annual reports and audit

13. (1) The board and the panel of appeal must-

(a) according to generally accepted accounting standards, keep accounting records of its income, expenditure, assets and liabilities, in the original or a reproduced form, for at least five years; and

(b) annually, not later than two months after the end of each financial year, draw up financial statements, which must include at least -

(i) a statement of income and expenditure for that financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

(2) The financial statements referred to in subsection (1)(b) must be audited by the Auditor-General.

(3) The bodies referred to in subsection (1) must annually, not later than five months after the end of each financial year, submit to the MEC a report on all its activities during the previous year, including:

(a) the audited financial statements referred to in subsection (2);

(b) a narrative report on its affairs and activities during the relevant financial year in the prescribed manner;

(c) a report on its administrative efficiency; and

(d) any other requirements specified for Provincial Public Entities in section 55 of the Public Finance Management Act.

(4) The report referred to in subsection (3) must be laid upon the Table in the Legislature within 30 days after it was received by the MEC if the Legislature is then in session, or, if the Legislature is not then in session, within 30 days after the commencement of its next ensuing session.

Part 4

Meetings and conduct of business

Procedures

14. The MEC may prescribe the necessary matters and procedures for the conduct of meetings and business by the board or the panel of appeal.

Disqualification of members at meetings

15. A member of the board or the panel of appeal must not sit at a meeting of the relevant body when-

(a) any premises in respect of which any application is made and of which the member or his or her spouse or child is the owner, mortgagee, lessor or lessee;

(b) any applicant, objector or person who has made representations in support of an application and of whom the member or his or her spouse or child is a partner, director, manager, agent, officer or employee; or

(c) any business in respect of which any application is made and in which the member or his or her spouse or child has a direct financial interest,

is concerned in the consideration of a matter by the relevant body.

Notices and summons

16. (1) The chairperson of the board or the panel of appeal may cause any person who is or may be affected by or is concerned in the consideration of a particular matter by the relevant body, to be notified in the prescribed manner to be present at any meeting, with notice to him or her of the date, time and place of the meeting at which his or her presence is required and the relevant matter to be considered thereat.

(2) A person who has received a notice in terms of subsection (1), must personally appear before the relevant body on the date and at the time and place set out in the notice and may appoint an advocate or attorney to assist him or her.

(3) The chairperson of a body referred to in subsection (1) may cause any person to be summonsed in the prescribed manner to be present at any meeting to-

(a) give evidence; or

(b) produce any document or any other thing which is in his or her possession or custody or under his or her control and which, in the opinion of the chairperson, relates or may relate to a matter to be considered thereat,

with notice to that person of the date, time and place of the meeting at which his or her presence is required.

Accessibility of meetings

17. (1) Subject to subsections (2) and (3), any meeting of the board or the panel of appeal must be accessible to the public.

(2) The chairperson of the relevant meeting may direct that any person whose presence is in his or her opinion not desirable at the relevant meeting, may not attend the meeting or must leave the meeting.

(3) The deliberations and voting on any matter at a meeting must take place behind closed doors.

CHAPTER 3

REGISTRATION

Compulsory registration

18. Subject to section 3(1), no person shall sell liquor unless that person is registered or is deemed to be registered in terms of this Act to sell that liquor.

Categories of registration

19. An application for registration in terms of this Act may be made in respect of only one of the following categories:

- (a) the retail sale of liquor for consumption off the premises where the liquor is being sold;
- (b) the retail sale of liquor for consumption on the premises where the liquor is being sold;
- (c) the retail sale and consumption of liquor on and off the premises on which the liquor is being sold;
- (d) the retail sale and consumption of liquor at a special event; or
- (e) micro-manufacturing.

Disqualification and other incompetency

20. No person may apply to be registered in terms of this Act, if that person-
- (a) is a minor on the date of submitting the application for registration;
 - (b) in the three years preceding the date on which the application for registration has been submitted, was convicted of or completed serving a sentence of imprisonment for murder, rape, robbery, culpable homicide involving an assault, assault with intent to cause grievous bodily harm, any offence arising from the trade in or the possession of drugs, any offence involving sexual abuse or any offence involving dishonesty, or any attempt to commit any of those offences;
 - (c) is an unrehabilitated insolvent;
 - (d) is of unsound mind;
 - (e) is a company or a close corporation that is not registered in terms of the provisions of the Companies Act, 1973, or the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be;
 - (f) is a trust in which-
 - (i) the majority of trustees having the controlling power at any given time are not South African citizens; and
 - (ii) the majority of the beneficial interests are held by the persons referred to in subparagraph (i);
 - (g) is a partner, co-director, co-trustee or co-beneficiary of any person who, in terms of this Act, is disqualified or incompetent to register; or
 - (h) owes a prescribed debt to the State or an organ of state.

Application procedure for registration for retail sale of liquor

21. (1) An application for a category of registration contemplated in section 19(a), (b), (c) or (d) must:

- (a) be made to the board;

(b) subject to subsection (13) and section 72(1)(h), be made in terms of this section.

(2) An application for registration contemplated in subsection (1) must be made by submitting to the board-

(a) the prescribed form properly completed and specifying-

(i) the particulars of the applicant which, in the case of-

(aa) a natural person, must include his or her full name, identity number and residential address and a statement that he or she is not disqualified for registration in terms of section 20;

(bb) a company or close corporation must include its full name, registration number and the address of its registered office;

(cc) a company, except for a company which is listed on the Johannesburg Stock Exchange, must include the names, identity numbers and residential addresses of all shareholders and a statement that none of them is disqualified from registration in terms of section 20;

(dd) a close corporation, the names, identity numbers and residential addresses of all its members and a statement that none of them is disqualified from registration in terms of section 20;

(ee) a trust, must include the names, identity numbers and residential addresses of all its trustees and known beneficiaries, and a statement that none of them is disqualified from registration in terms of section 20; or

(ff) an association or partnership, must include the names, identity numbers and residential addresses of all its members or partners, and a statement that none of them is disqualified from registration in terms of section 20;

(ii) the physical address and the erf, street or farm number and a description of the premises from which the applicant intends to sell liquor, including a plan of the premises;

(iii) the category in respect of which registration is being sought;

(iv) proof that the premises concerned are zoned for use for the purpose of selling liquor; and

(v) in respect of the premises from which the applicant intends to sell liquor, whether the premises concerned are-

(aa) in existence, in which case the application must be accompanied by confirmation in writing from the municipality in whose area of jurisdiction the premises are situated that the applicant has complied in all respects with municipal requirements for the purpose of selling liquor from those premises; or

(bb) the premises concerned are not yet in existence, in which case the applicant must furnish details of the steps to be taken in the event of the application for registration being approved to construct the premises and to obtain the approval of the municipality in whose area of jurisdiction the premises are situated;

(b) other information that may be required by the board to enable the board to determine whether or not the applicant meets the requirements of registration;

(c) the prescribed fee which must be paid in the prescribed manner;

(d) proof that the applicant has published a notice in the Provincial Gazette and a registered newspaper widely circulated in the area in which the premises in respect of which the application is made, is situated, at least 28 days prior to submitting the application; and

(e) proof of service of the notice contemplated in paragraph (d) on the governing body of every education institution or place of worship within a radius prescribed by the MEC from the premises in respect of which the application is made.

(3) A notice contemplated in subsection (2)(e) must state-

(i) the applicant's intention to apply for registration within a month of the notice;

(ii) the premises in respect of which the registration is sought; and

(iii) that any person may within 28 days of the notice lodge objections in writing regarding the application to the board.

(4) For a continuous period of at least 28 days prior to submitting the application, an applicant must affix a copy of the notice referred to in subsection (2)(d) to the premises or on a board affixed to a pole firmly planted in the ground at the premises in respect of which the application is made, in such a manner that the notice is clearly visible and legible to passers-by.

(5) Upon receipt of the application contemplated in subsection (2), the board must in the prescribed manner enable the public to-

(a) have access to, inspect or obtain a copy of the application; and

(b) lodge objections to any application.

(6) Within 60 days after receiving an application which complies fully with subsection (3), the board must consider the application and any further information provided by the applicant and register the applicant by entering the applicant's name in the register if it is satisfied that-

(a) the applicant complies with the requirements for registration contemplated in subsection (4); and

(b) no objections have been received by the board.

(7) If, after considering an application for registration contemplated in subsection (1), the board is of the opinion that the application does not comply with the requirements for registration referred to in subsections (2), (3) and (4); or if an objection to the application has been received, the board must notify the applicant in writing of the reasons for its decision or must provide the applicant with a copy of any objection received, and inform the applicant that he, she or it has 30 days from the date of service of the notice to comply with the requirements and respond to any objection.

(8) The period contemplated in subsection (7) may be extended by the board on good cause shown by the applicant.

(9) If an applicant who has been served a notice contemplated in subsection (7) complies with the requirements as set out in that notice or responds to any objection timeously and adequately, the board must register the applicant by entering the applicant's name in the register.

(10) If an applicant who has been served a notice contemplated in subsection (7) has not complied with the requirements as set out in that notice timeously and adequately or has failed to respond to any objection, the board must refuse to register the applicant and notify the applicant in writing of the refusal and the reasons therefor.

(11) The board must not register a person if the approval of the registration would result in the person having a controlling interest in a different category of registration.

(12) The board must within 30 days of its final decision on the registration of an applicant, serve on all objectors to that application a notice in writing of its decision and the reasons therefor.

(13) The provisions of subsections (2)(a)(iv), (d) and (e), (3) and (4) shall not be applicable in respect of an application for registration in terms of section 19(d).

Death or incapability of applicant

22. If a person who has made an application for a registration, excluding the category of registration contemplated in section 19(d), dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs on or before the date on which the application is considered:

(a) the relevant administrator of the deceased or insolvent estate, judicial manager or curator or, if such an administrator, manager or curator has not yet been appointed or the holder of that office is unable or unwilling to act, a person who is duly authorised thereto by the board considering the application, must, subject to the law regarding deceased estates, insolvency, judicial management or mental health, have all the rights that the applicant would have had if he or she had not died, become insolvent, been placed under judicial management or been declared so incapable; and

(b) the board may, subject to this Act and the said law, in its discretion approve the registration in favour of such an administrator, manager, curator or person.

Appeals against refusals and conditions

23. (1) An applicant may, within 30 days after being served a notice of a decision of the board not to approve an application for registration, or of a determination of terms and conditions, appeal against the decision or determination by submitting to the panel of appeal-

(a) the application to register;

(b) the notice sent to the applicant by the board in terms of section 21(7) or (10);

(c) details of the applicant's response to the board's notice; and

(d) the board's final notice and reasons for the decision which is the subject of the appeal.

(2) An objector to an application may, within 30 days after being served the notice contemplated in section 21(12), appeal against the relevant decision by submitting to the panel of appeal-

(a) a copy of the objection;

(b) a copy of the notice contemplated in section 21(12); and

(c) the grounds of appeal.

(3) Within 90 days after receipt of the relevant documents, the panel of appeal must consider the appeal in the prescribed manner, including providing the appellant, the board and any other interested party with the opportunity to make oral representations, and must send notices in writing of its decision to the appellant, the board and other parties involved, stating the reasons for the decision.

(4) If the panel of appeal upholds an appeal-

(a) contemplated in subsection (1), the board must register the person; or

(b) contemplated in subsection (2), the board must consider afresh the registration in respect of which the appeal was made.

Certificate of registration

24. (1) Upon grant of registration, the board must-

(a) register the applicant for a period of ten years from the date on which the applicant's name was entered in the register;

(b) issue a certificate of registration in the applicant's name on the prescribed form, which must include-

(i) a registration number;

(ii) the premises in respect of which registration has been granted;

(iii) the conditions upon which registration was granted;

(iv) the category of registration; and

(v) the period for which registration is granted;

(c) send the certificate to the applicant; and

(d) advise the applicant of the date on which the applicant's name was entered in the register.

(2) The registration and registration certificate of any registered person must be valid until-

- (a) the period of registration determined by the board has elapsed;
 - (b) the registration is cancelled in terms of this Act;
 - (c) the registered person has voluntarily de-registered; or
 - (d) in the case of a body corporate, it is wound-up or dissolved.
- (3) A registration is subject to the payment of the prescribed annual fee before the prescribed date.
- (4) Despite the provisions of subsection (2)(a), a registration must continue to be of force and effect until the board has made its decision regarding an application for renewal in terms of section 27.

Commencement of registrations

25. (1) Subject to subsection (2), a registration certificate which has been issued must be valid-

- (a) if no fees have been prescribed in respect of the issue thereof, as from the date of such issue;
- (b) if any fees have prescribed, as from the date on which such fees are paid.

(2) If any fees prescribed under subsection (1) are not paid in respect of an applicable registration before the expiry of the period so prescribed, that registration must not acquire validity and the application for the registration must be deemed not to have been approved.

Effects of registration

26. (1) The certificate of registration of a person or a duly certified copy of the certificate, must be sufficient proof that the person-

- (a) has met all the requirements of registration; and
- (b) has been registered in terms of this Act.

(2) A registered person must reflect its registered status and registration number on all of that person's trading documents.

Renewal of registration

27. (1) An application to renew a registration in terms of this Act may be made before the date on which the registration expires.

(2) Despite the provisions of subsection (1), an application to renew a registration may be submitted at any time within 90 days after the date of expiry, in which event the applicant must be liable to pay a prescribed penalty, in addition to the prescribed fees, in respect of each day after the expiry date which the applicant delayed in timeously renewing the registration.

(3) The procedures set out in sections 20 and 21 apply, with the necessary changes, to an application for renewal of registration.

Non-compliance with obligations

28. (1) The board must-

(a) serve a compliance notice in the prescribed form on a registered person if the board has reason to believe that the person has not complied with-

(i) a material provision of the terms and conditions of that person's registration;

(ii) that person's obligations in terms of this Act; and

(b) refer the person, to the South African Police Service for criminal investigation if it is satisfied that any non-compliance contemplated in paragraph (a) may constitute an offence.

(2) A compliance notice contemplated in sub-section (1), must-

(a) be in writing;

(b) notify the person of the alleged non-compliance and the steps the person is required to take in order to comply; and

(c) inform the person, that he, she or it has 30 days from the date of the notice to comply with the requirements.

(3) The period contemplated in subsection (2)(c) may be extended by the board on good cause shown by the registered person.

Cancellation of registration

29. (1) If a registered person who has been served a notice in terms of section 28 does not comply timeously with the requirements stated in the notice or

becomes disqualified or otherwise incompetent in terms of this Act, the board must-

- (a) cancel the person's certificate of registration and registration;
- (b) notify the person in writing of-
 - (i) the cancellation and state the reasons therefor; and
 - (ii) the date on which the registration was cancelled; and
- (c) amend the register accordingly.

(2) When a person's registration has been cancelled, all the rights, benefits and allowances accruing therefrom must lapse immediately.

(3) For the purposes of this Act, cancellation of registration takes effect on the date on which the certificate of registration is cancelled by the board.

Appeals against cancellation of registration

30. (1) A registered person may refer the decision of the board to cancel that person's registration for appeal to the panel of appeal, and the procedure established by section 23(1), must apply, with the necessary changes, to the noting of that appeal.

(2) Within 90 days after receipt of the relevant documents, the panel of appeal must consider the appeal in the prescribed manner and must send notices in writing of its decision to the appellant and the board, stating the reasons for the decision.

(3) If the panel of appeal upholds an appeal-

- (a) the board must re-instate the registration of the relevant person, by-
 - (i) re-issuing the certificate of registration; and
 - (ii) amending the register accordingly;

(b) the person must be deemed not to have had that person's registration cancelled.

Voluntary deregistration and winding-up or dissolution

31. (1) A registered person may deregister voluntarily by sending the board a notice in writing-

- (a) stating the person's intention and reasons to deregister voluntarily; and
- (b) specifying a date, at least 60 days after the date of the notice, on which the deregistration is to take effect.

(2) If a registered person resolves to be sequestrated, wound-up or dissolved, that person must within 30 days of the completion of the sequestration, winding-up or the dissolution process or an order of court, send to the board a written notice-

- (a) stating that fact; and
- (b) containing certified copies of all relevant documents confirming the winding-up or dissolution.

(3) Upon receiving a notice contemplated in subsection (2), the board must on the date specified in the notice-

- (a) cancel the certificate of registration of the person and deregister it by amending the register; and
- (b) notify the person in writing of the date on which the deregistration was effected in the register.

Death or incapability of certain registered persons

32. (1) If a registered person, excluding a registered person in respect of a category of registration contemplated in section 19(d), dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs-

(a) the relevant administrator of the deceased or insolvent estate, judicial manager or curator must, subject to the law regarding deceased estates, insolvency, judicial management or mental health, as from the date of his or her appointment as such, for all purposes become the registered person;

(b) the relevant administrator of the deceased or insolvent estate, judicial manager or curator may, for the purposes of the administration or management of the estate concerned, conduct the business to which the registration relates.

(2) The chairperson of the board may, on application by any person and if satisfied that every person who has a financial interest in the business contemplated in subsection (1) has been given reasonable notice of the

application, appoint any person who is not disqualified or otherwise incompetent in terms of this Act to hold the relevant registration, to conduct that business until the appointment of the administrator, manager or curator so contemplated, and a person so appointed must, subject to the law regarding deceased estates, insolvency, judicial management or mental health, for the period of his or her appointment for all purposes be deemed to be the registered person.

(3) If the only member of a company or close corporation which is a registered person dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs, subsections (1) and (2) must apply, with the necessary changes, despite any other law, to that company or corporation.

Replacement of registration certificate

33. (1) The chairperson of the board may at any time after the issue of a registration certificate and with the concurrence of the registered person, replace that certificate by the issue of another certificate of the same kind in respect of the relevant premises to the registered person against payment of the prescribed fee.

(2) A registration certificate issued under subsection (1) must be subject to the conditions set out in that certificate that the chairperson may in his or her discretion impose.

Controlling interest

34. (1) A registered person must not permit any other person to procure a controlling interest in the business to which the registration relates, unless the chairperson of the board has, on application by the registered person, granted consent that the other person may procure that interest in that business.

(2) The chairperson must not grant consent under subsection (1)-

(a) where the person who is the subject of the application, is disqualified or incompetent in terms of this Act to be registered; or

(b) if in his or her opinion the possibility exists that the granting of the application may cause a harmful monopolistic situation to arise or be aggravated in the liquor trade or a branch thereof.

Register of registered persons

35. (1) The board must-

(a) in respect of the decisions of that board keep a register in the prescribed form of all persons-

- (i) that have been registered;
- (ii) whose registrations have been cancelled or varied; and
- (iii) that have voluntarily deregistered or have been wound-up or dissolved; and
- (iv) applied for registration to sell or micro-manufacture liquor; and
- (v) terms and conditions of registration or variation.

(b) submit the information referred to in paragraph (a) on a monthly basis to the responsible department.

(2) The responsible department must keep a provincial record of registrations in the prescribed form of all persons-

- (a) that have been registered;
- (b) whose registrations have been cancelled; and
- (c) that have voluntarily deregistered or have been wound-up or dissolved.

(3) Within 60 days after the end of each financial year, the responsible department must publish in the Gazette and at least one other widely circulated means of communication the provincial record of registrations, setting out the names of all persons-

- (a) who are registered on the last day of the relevant financial year;
- (b) whose registrations were cancelled during the relevant financial year; and
- (c) who deregistered voluntarily or have been wound-up or dissolved during the relevant financial year.

(4) Subsection (3) does not preclude the responsible department from publishing the names of the persons contemplated in that subsection in any widely circulated means of communication as and when deemed fit.

Payments into revenue funds

36. All prescribed fees received in terms of this Act by the board, must be paid into the Provincial Revenue Fund.

CHAPTER 4**TERMS AND CONDITIONS APPLICABLE TO SALE OF LIQUOR****Persons to whom liquor may be sold**

37. A retailer, registered for a category of registration contemplated in section 19(a), (b), (c) (d) or (e) may not sell liquor to a manufacturer or a wholesaler.

Prohibition on sale of liquor to certain persons

38. No registered person may sell liquor to -

- (a) any person who is under the age of 19 years; or
- (b) an intoxicated person.

Conditions applicable to storing and display of liquor

39. A registered person selling liquor must, in the case of a retailer, display liquor for the purpose of sale only in that portion of the premises designated for that purpose on the plan accompanying the application for registration.

Management of business

40. (1) A person other than a natural person must not conduct any business under a registration unless a natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, is appointed by him or her in the prescribed manner to manage and be responsible for its business.

(2) A natural person who is a registered person may in the prescribed manner appoint another natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, to manage and be responsible for the business to which the said registration relates.

(3) If a registered person or the only member of a company or close corporation which is a registered person-

(a) has, in the opinion of the chairperson of the board, left the relevant registered premises without making provision for the conduct thereon of the business to which the registration relates; or

(b) becomes a person who is disqualified or otherwise incompetent in terms of this Act to be a registered person,

or if the registered person which is a partnership, is dissolved, the chairperson of the board may, on application by a person who has an interest in the relevant business, appoint any person who is in the opinion of the chairperson, fit to manage and be responsible for that business for a period of not more than 12 months, and a person so appointed must, subject to subsection (4)(b), for the period of his or her appointment for all purposes be deemed to be the registered person.

(4) An appointment under subsection (3)-

(a) must be subject to the conditions set out in the appointment that the chairperson may in his or her discretion impose;

(b) must not affect any right of a person who has an interest in the business concerned; and

(c) may at any time be withdrawn by the chairperson.

(5) A person managing and responsible for a business to which a registration relates, must be subject to the same obligations and liabilities as the relevant registered person.

(6) Subsection (5) must not be interpreted to release the registered person from any obligation or liability to which he or she is subject in law.

Sale of liquor at special events

41. A person who is registered to sell liquor at a special event may-

(a) sell liquor only at that event; and

(b) sell liquor only at the place where and during the times when that event is held as set out in the application for registration.

Trading hours

42. A person registered to sell liquor may-

- (a) despite any other law, sell liquor on any day of the week; and
- (b) sell liquor only during the hours determined by the municipality in whose area of jurisdiction the premises are situated.

Other business on registered premises

43. (1) Despite any other law, a registered person may also sell such goods on the registered premises or conduct the business thereon, that the Premier may prescribe.

(2) Subject to subsection (3), the primary business of a registered premises must be the sale of liquor.

(3) Subsection (2) does not apply to-

- (a) a general dealer dealing in groceries and foodstuffs;
- (b) a bona fide theatre at which dramatic performances, concerts or films are regularly presented or shown to the public; and
- (c) registered premises where bona fide meals and sleeping accommodation are regularly supplied to guests.

Limitations on employers

44. (1) No registered person may employ any person in or in connection with the sale of liquor who-

- (a) is under the age of 18 years; or
- (b) has within the preceding three years been convicted of a contravention of any law governing the sale of liquor.

(2) Subsection (1)(a), does not apply to any person of or above the age of 16 years who is undergoing or has undergone training in catering services, and who is employed on the premises of the registered person to whom he or she is duly apprenticed in any capacity.

Public health notices

45. The MEC may, in consultation with the MEC responsible for health in the Province, determine the content and the manner in which public health notices relating to the sale and consumption of liquor must be displayed by a person selling liquor.

CHAPTER 5**LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS****Part 1****Inspections****Designation of inspectors**

46. (1) Subject to any other law, the MEC or his or her delegatee may designate any officer of a Provincial department as an inspector.

(2) A designation in terms of subsection (1) may be general or specific.

(3) An inspector must, in the exercise of his or her powers in terms of this Act, be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(4) A certificate of designation in the prescribed form issued by the MEC certifying that a person has been designated as an inspector must be *prima facie* proof of the designation.

Powers and duties of inspectors

47. (1) An inspector may conduct an inspection and monitor and enforce compliance with this Act and any other law which authorises him or her to conduct an inspection or monitor and enforce compliance on any liquor related matter.

(2) Subject to sections 49 and 50 and any other law, an inspector who conducts an inspection may-

- (a) question any person present on any land or premises in respect of any matter which may be relevant to the inspection;
- (b) question any person whom the inspector believes may have information relevant to the inspection;

- (c) inspect any document that a person is required to maintain in terms of this Act or any other law or that may be relevant to any liquor related inspection;
- (d) copy the document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- (e) take samples of any substance that is relevant to the work or inspection;
- (f) take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; and
- (g) do all things necessary for conducting the inspection.

(3) An inspector who removes anything other than a substance contemplated in subsection (2)(e) from land or premises being inspected, must-

- (a) issue a receipt for it to the owner of or person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

Entry with warrant

48. (1) An inspector may enter any land or premises if a magistrate has issued a warrant in accordance with subsection (2) to enter or inspect the land or premises, and the warrant is still valid.

(2) A magistrate may issue a warrant to enter and inspect any land or premises, if, from information in writing on oath, the magistrate has reason to believe that-

- (a) it is necessary to obtain information, in the interest of the public, that cannot be obtained without entering the land or those premises; or
- (b) there is non-compliance with this Act.

(3) A warrant in terms of subsection (2) may be issued at any time and must specifically-

- (a) identify the land or premises that may be entered and inspected; and
 - (b) authorise the inspector to enter and inspect the land or premises and to do anything contemplated in section 48(2).
- (4) A warrant in terms of subsection (2) is valid until-
- (a) it is executed;
 - (b) it is cancelled by the magistrate who issued it or, in the magistrate's absence, by any other judicial officer;
 - (c) the purpose for which it was issued has lapsed; or
 - (d) 90 days have passed since the date it was issued.
- (5) Before commencing any inspection, an inspector who carries out a warrant must-
- (a) if the owner of or a person apparently in control of the land or premises is present-
 - (i) identify himself or herself and explain his or her authority to that person or furnish proof of his or her designation; and
 - (ii) hand a copy of the warrant to that person or a person named in it; or
 - (b) if the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, attach a copy of the warrant to the land or premises in a prominent and visible place.

Entry without warrant

49. (1) An inspector who does not have a warrant in his or her possession may enter and inspect-

- (a) any land or premises with the consent of the owner or person apparently in control of the land or those premises; or
- (b) any land or premises in respect of which a certificate of registration has not been issued.

(2) In addition to the entry permitted in terms of subsection (1), an inspector may enter any land or premises without a warrant-

- (a) if authorised to do so by any other law; or
- (b) in respect of which there is an outstanding compliance notice issued in terms of section 55, for the purpose of determining whether that notice has been complied with; or
- (c) there are reasonable grounds to believe that a warrant would be issued in terms of section 49 and the delay in obtaining such warrant would defeat the object of the warrant.

(3) Before commencing an inspection on any land or premises in terms of this section, an inspector must identify himself or herself and explain his or her authority or furnish proof of his or her designation to the person apparently in control of the land or premises or the person who gave permission to enter.

Use of force

50. (1) An inspector carrying out a warrant in terms of section 49 may overcome any resistance to entry or inspection by using the force that is reasonably required, including breaking a lock, door or window of the land or premises to be entered.

(2) Before using force, the person carrying out the warrant must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with, any object or document that is the object of the inspection.

(3) Subject to any other law, or except in the case of an emergency contemplated in section 50, force may not be used to effect an entry or conduct an inspection.

Inspector may be accompanied

51. An inspector may be accompanied during an inspection by a member of the South African Police Service, or any other person reasonably required to assist in conducting the inspection.

Duty to produce documents

52. Any person who is in possession of any document relevant to an inspection, must produce it at the request of the inspector.

Duty to answer questions and assist inspector

53. (1) Any person who is questioned by an inspector in terms of this Chapter must first be informed of his or her constitutional rights before any questioning commences and any voluntary answer thereafter by that person must be truthful and to the best of his or her ability.

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

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

(3) An owner or occupier of any land or premises must provide any facility and assistance that is reasonably required by an inspector to perform his or her functions effectively.

Compliance notices

54. (1) An inspector who is of the opinion that any provision of this Act has not been complied with, may, subject to subsection (2), issue a compliance notice in the prescribed form to the owner or person apparently in control of the relevant land or premises.

(2) A compliance notice contemplated in subsection (1) must set out-

- (a) the provision that has allegedly not been complied with;
- (b) details of the nature and extent of the alleged non-compliance;
- (c) any steps that are required to be taken and the period within which those steps must be taken; and
- (d) any penalty that may be imposed in terms of section 63 in the event of non-compliance with those steps.

(3) A compliance notice must remain in force until an inspector issues a prescribed compliance certificate in respect of that notice.

(4) An inspector who is satisfied that the owner or person apparently in control of any land or premises has satisfied the terms of a compliance notice may issue a prescribed compliance certificate to indicate that compliance.

Closing of registered and other premises

55. (1) An inspector or the chairperson of the board may, if he or she is of the opinion that a public disturbance, disorder, riot or public violence is occurring or threatening at or near any registered premises or any premises on or place in which liquor may be sold without a registration, in such manner as may appear to him or her in the circumstances of the case to be the most effective, order the registered person or the person concerned, as the case may be, or the manager or agent of the person, to close the premises or place concerned during the times or for the periods that the inspector or member may deem fit.

(2) A registered person or the person concerned, or his or her manager or agent, 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 the steps and use or cause to be used the force that he or she may deem necessary to close the premises or place concerned.

(3) Any order given under subsection (1), may at any time be withdrawn-

- (a) by the person who gave such an order; or
- (b) by the chairperson of the board.

Part 2

Prohibited and controlled liquids

Prohibited concoctions and drinks

56. (1) No person may have in his or her possession or custody or under his or her control, consume or sell, supply or give to any person-

- (a) any concoction manufactured by the fermentation of treacle, sugar or other substances and known as isishimiyana,

hopana, qediviki, skokiaan, uhali or Barberton, but excluding indigenous qhilika;

- (b) any concoction which, though called by another name is similar or substantially similar to any of the concoctions referred to in paragraph (a);
- (c) any concoction manufactured by the fermentation of any substance the consumption of which would, in the opinion of the MEC in consultation with the Minister, be prejudicial to the health and well-being of the population of the Republic, and specified by him or her by a notice in the Gazette; or
- (d) any drink manufactured by the distillation of any concoction referred to in paragraph (a), (b) or (c).

(2) The MEC may, in consultation with the Minister, at any time by a like notice withdraw or amend any notice issued under subsection (1)(c).

Part 3

Offences and penalties

Offences regarding inspections

57. (1) No person shall-

- (a) refuse to grant an inspector access to premises to which the inspector is duly authorised to have access;
- (b) obstruct, interfere or hinder an inspector who is exercising a power or performing a duty in terms of this Act;
- (c) refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of this Act;
- (d) furnish false or misleading information to an inspector;
- (e) unlawfully prevent the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of this Act;

- (f) pretend to be an inspector;
- (g) falsify an authorisation or a warrant, compliance notice or compliance certificate contemplated in this Chapter;
- (h) fail to comply with a compliance notice issued in terms of this Chapter;
- (i) enter any land or premises without a warrant in circumstances requiring a warrant;
- (j) act contrary to a warrant issued in terms of this Chapter;
- (k) without authority enter or inspect land or premises;
- (l) disclose any information relating to the financial or business affairs of any person which was acquired in the exercise of any power or performance of any duty in terms of this Act, except-
 - (i) to a person who requires that information in order to exercise a power or perform a duty in terms of this Act;
 - (ii) if the disclosure is ordered by a competent court; or
 - (iii) if the disclosure is in compliance with the provisions of any law.

Offences regarding trading in liquor

58. (1) Subject to Section 63, no registered person may enter into or be a party to any agreement, understanding or condition whereby any registered person is directly or indirectly bound at any time-

- (a) to take delivery of liquor, whether together with any other article or not, from or through any registered person whether to the exclusion wholly or partly of any other registered person or not;
- (b) to take delivery of, distribute or keep in stock liquor of a particular registered manufacturer;

- (c) not to take delivery of liquor from or through a particular registered person; or
- (d) not to take delivery of, distribute or keep in stock liquor of a particular registered manufacturer.

(2) Subject to section 63, no registered person may hold a controlling interest in another person registered in a different category of registration: Provided that this subsection does not apply to registration for the sale of liquor at a special event.

(3) Subject to section 63, no registered retailer may accept delivery of any liquor which has not been ordered by such retailer.

(4) No registered person may fix, maintain or establish the price at which another registered person must sell any liquor.

(5) No registered manufacturer, officer or director of any registered manufacturer shall be the owner, proprietor or lessor of any premises covered directly or indirectly by any wholesaler's registration.

(6) No registered manufacturer or wholesaler may, either directly or indirectly, give or lend any money or make any donation in cash or in kind to any retailer for the purposes of equipping, fitting out or maintaining and conducting, either in whole or in part, or the establishment of a business operated under a liquor retail registration, except the usual and customary credit for returning packages or containers in which liquor was packed for the market by the manufacturer.

General offences

59. (1) No person may-

- (a) sell liquor otherwise than in terms of a registration;
- (b) be violent or drunk and disorderly on premises in respect of which a certificate of registration has been issued;
- (c) if he, she or it is the owner or occupier of registered premises, allow violent or drunk and disorderly behaviour on that premises;
- (d) be drunk and disorderly in or on-
 - (i) any road, street, lane, thoroughfare, square, park or market;

- (ii) any shop, warehouse or public parking garage;
- (iii) any form of public transport; or
- (iv) any place of entertainment, cafe, eating-house or racecourse or any other premises or place to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not;
- (e) consume any liquor in any road, street, lane or thoroughfare, or on vacant land adjacent thereto, in an urban area or other area subdivided into erven or plots with streets bounded by such erven or plots;
- (f) introduce, possess or consume any liquor on a sports ground that is not a registered premises, to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not, except on any registered premises situated on the sports ground concerned;
- (g) falsely represents himself or herself or any other person to be over the age of 18 years in order to persuade a registered person, or his or her agent or employee, to sell or supply liquor to him or her or to that other person; or
- (h) supply liquor to a person in his, her or its employment as wages or remuneration or as a supplement therefor.

Responsibility of registered persons for other persons

60. When the manager of the business to which a registration relates, the agent or employee of the registered person or a member of the family of such a person or manager does or omits to do any act which would be an offence in terms of this Act for the relevant registered person to do or omit to do, that registered person must, in the absence of evidence to the contrary, be deemed himself or herself to have done or omitted to do the act, unless the court is satisfied that-

- (a) the registered person neither connived at nor permitted the act or omission by the manager, agent, employee or member concerned;
- (b) the registered person took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstance fell within the scope of the authority or employment of the manager, agent, employee or member concerned,

and the fact that the registered person issued instructions whereby an act or omission of that nature is prohibited must not in itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

Penalties

61. (1) Any person who contravenes or fails to comply with a provision of-

- (a) section 16, 59 or 61(b), (c), (d), (e), (f), or (g) must be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both such fine and imprisonment;
- (b) section 18, 37, 38, 40, 41(1), 42, 45, 57 or 61(a) must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both such fine and imprisonment; or
- (c) section 60, 61(h) or 76(2), (3) or (4) must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.

(2) Any person who is found to be continuously contravening or failing to comply with a provision of this Act, must in respect of each day on which that person contravenes or fails to comply with that provision, be guilty of an offence, including the day of any conviction for an offence in terms of this subsection or any subsequent day, and liable on conviction to a fine or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

(3) Any person who is convicted of an offence in terms of this Act within a period of five years after he or she was convicted of any offence in any

law governing the sale of liquor, must be liable to double the fine or imprisonment which may be imposed for that offence or to both that fine and that offence.

(4) Despite any other law, a magistrate's court must have jurisdiction to impose any penalty prescribed by this Act.

Part 4

Judicial proceedings against or by the board

Service of notices and documents

62. Any notice or document required to be served in terms of this Act, may be served by hand or sent by telefacsimile or registered letter addressed to the person to whom a notice or a document is to be served at the physical address, postal address or telefacsimile number, as the case may be, most recently provided by that person to the board or the person who wish to serve such document or notice, and knowledge of the contents must be deemed to exist-

- (a) when the notice or document was hand delivered, when it was delivered;
- (b) where the notice or document was sent by telefacsimile, upon recordal thereof by the sending station; and
- (c) where the notice or document was posted by registered mail, fourteen days after it was sent,

in the absence of evidence of the contrary that the person on whom it was served, acting in good faith, through absence, accident, illness or other cause beyond that person's control did not receive the notice, or did not receive the notice until a later date.

Service of process

63. In any judicial proceedings instituted against the board, the service on the chairperson and at the office of the State Attorney if it is, or the branch of that office that is, situated in the area of jurisdiction of the court, of any process or any document whereby the proceedings are instituted, must be sufficient service on the board.

Notices of intention to defend

64. The time to be allowed for the delivery of a notice of intention to defend in any judicial proceedings contemplated in section 65 must, despite any other law,

be not less than one month after service of the document whereby the proceedings are instituted, unless the court concerned has in a particular case authorised a shorter period.

Costs

65. The costs incurred by the board in connection with any judicial proceedings contemplated in section 65 must, unless the court orders the costs to be borne by the opposite party or by the board, and subject to section 51(3), be paid out of the Provincial Revenue Fund.

Appeals to High Court

66. (1) A person who has made any application, objection or representations in terms of this Act and who feels aggrieved by a decision on a question of law made by the panel of appeal in connection with the application, objection or representations, may appeal to a division of the High Court against the decision.

(2) An appeal contemplated in subsection (1) must be noted and prosecuted as if it were an appeal against a judgment in a magistrate's court in civil proceedings.

(3) If the court, after considering the appeal, is satisfied that the panel of appeal has misdirected itself in the making of the decision concerned, the court may set aside that decision, and must in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the board consider afresh the matter in respect of which the decision was made.

Part 5

Evidential matters

Proof of certain facts by affidavit

67. (1) If the question arises in any civil proceedings whether a particular act, transaction or occurrence did or did not take place in a particular department of the State or an organ of state or in a branch or office of such a department or organ, or the question arises in such proceedings whether a particular functionary in such a department, organ, branch or office did or did not perform a particular act or did or did not take part in a particular transaction, a document purporting to be an affidavit by a person who in that affidavit alleges-

- (a) that he or she is the employ of the State or organ of state in the department, branch or office concerned;
- (b) that-
 - (i) if the act, transaction or occurrence concerned took place in that department, branch or office; or
 - (ii) if the functionary concerned performed such an act or took part in such a transaction, it would in the ordinary course of events have come to the deponent's knowledge and a record thereof which is available to him or her would have been kept; and
- (c) that it has not come to his or her knowledge-
 - (i) that such an act, transaction or occurrence took place; or
 - (ii) that that functionary performed such an act or took part in such a transaction, and that there is no record thereof, must on mere production be admissible as proof in those proceedings that the act, transaction or occurrence concerned did not take place or that the functionary concerned did not perform the act concerned or did not take part in the transaction concerned.

(2) If the question arises in any civil proceedings whether a person with a particular name did or did not furnish a particular officer with particular information or a particular document, a document purporting to be an affidavit by a person who in that affidavit alleges that he or she is that officer and that no person with such a name furnished him or her with such information or document, must on mere production be admissible as proof in those proceedings that the person did not furnish that officer with such information or document.

(3) If the question arises in any civil proceedings whether a fact or information has been recorded under this Act or whether a document is kept or retained thereunder, a document purporting to be an affidavit by a person who in that affidavit alleges that he or she is the person on whom this Act confers the power or imposes the duty to record that fact or information or to keep or retain that document and that he or she has recorded the fact or information concerned or keeps or retains the document concerned or that he or she has satisfied himself or herself that the fact or information concerned has been recorded or that the document concerned is kept or retained, must on mere production be

admissible as proof in those proceedings that that fact or information has been so recorded or that that document is so kept or retained.

Procedural requirements for proof by affidavit

68. (1) An affidavit contemplated in section 70 must not be admissible as proof in terms of the applicable subsection unless a copy thereof has been served by the party intending to make use thereof on every other party to the proceedings concerned at least seven days before the date of the production thereof.

(2) The court to which an affidavit referred to in subsection (1) is produced may on application by any party to the proceedings concerned order that the person who made the affidavit concerned be called upon to give evidence in those proceedings or that written interrogatories be submitted to him or her for reply, and such interrogatories and any reply thereto purporting to be a reply by that person must likewise be admissible as proof in those proceedings.

CHAPTER 6

REGULATIONS

Regulations

69. (1) The MEC may make regulations regarding-

- (a) the empowerment of new entrants into the industry in respect of retail trade;
- (b) the payment of fees in respect of-
 - (i) any application made in terms of this Act;
 - (ii) registrations; and
 - (iii) annual registration fees;
- (c) the duties of officers by virtue of this Act;
- (d) the form of certificates of registration, notices, summonses, appointments and designations, determinations, applications, objections and other documents in terms of this Act;
- (e) notices of information with regard to the abuse of liquor or any other related matter deemed by him or her to be in the public interest;
- (f) within the framework of section 21, the application procedure for the category of registration contemplated in section 19(d);

- (g) the manner in which a general dealer which is a registered person must demarcate areas and keep, display and sell liquor and control access thereto;
 - (h) any matter required or permitted to be prescribed in terms of this Act;
 - (i) the volume of liquor which a micro-manufacturer must not exceed; and
 - (j) generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.
- (2) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, must be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.
- (3) A regulation regarding any fees must be made in consultation with the MEC responsible for provincial expenditure.

CHAPTER 7

GENERAL PROVISIONS

Limitation of liability

70. The State, an organ of state, a member of the board, and the panel of appeal, or any person in their service or acting on their authority, or any person appointed to exercise any power or to perform any duty in terms of this Act, is not liable in respect of any loss or damage resulting from anything done or not done in good faith in terms of this Act.

Transitional arrangements

71. (1) Any application made by virtue of a law repealed by the Liquor Act, 1989 before the date of commencement of the repeal and not disposed of on that date, must be continued and disposed of as if the law were not so repealed.

(2) Every exemption, licence or approval referred to in the first column of the Schedule hereto and in force immediately before the date of commencement of this Act, must be deemed from that date to be a registration in the category referred to in the second column of that Schedule.

(3) A notice issued under section 33 of the Liquor Act, 1989, in respect of an application for a licence referred to in the first column of the Schedule hereto and in force immediately before the date of commencement of this Act, must be deemed from that date to be a registration referred to in the second column of that Schedule.

(4) Subject to subsection (2), any application or matter received by a local authority in terms of the Liquor Act, 1989, before the commencement of this Act and not disposed of prior to such commencement, must be disposed of by that local authority in terms of that Act.

(5) The holder of a grocer's wine licence in terms of the Liquor Act, 1989, who is deemed to be registered to sell wine by virtue of the conversion contemplated in subsection (2), must be entitled to sell wine as defined in section 1 of the Liquor Products Act, 1989, for a period of ten years after the commencement of this Act: Provided that the holder of such registration may, at any stage after expiry of a period of five years from the date of commencement of this Act, apply for registration to sell all kinds of liquor in separate premises as prescribed.

Short title and commencement

72. This Act is called the Eastern Cape Liquor Act, 2001, and comes into operation on a date fixed by the Premier by proclamation in the *Gazette*.

SCHEDULE**Conversion of exemptions, licences and approvals****[Section 71(2)]**

Kind of exemption, licence or approval in force immediately before the date of commencement of this Act	Category of registration deemed to be in force from the date of commencement of this Act
An exemption in terms of section 3(1)(e), (f), (g), (h), (j), or (k) or (2) of the Liquor Act, 1989, or any other law.	A registration for the retail sale of liquor referred to in section 19(a), (b), (c), or (d) of this Act, as the case may be, for a period of 5 years, whereafter such registration must lapse.
An exemption referred to in section 4(1) of the Liquor Act, 1989.	A registration for the retail sale of liquor referred to in section 19(a), (b), (c), or (d) of this Act, as the case may be, for a period of 5 years, whereafter such registration must lapse.
A hotel liquor licence referred to in section 20(a)(i) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act, for a period of ten years after which such registration must lapse.
A restaurant liquor licence referred to in section 20(a)(ii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of

	this Act, for a period of ten years after which such registration must lapse.
A wine-house licence referred to in section 20(a)(iii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act, for a period of ten years after which such licence must lapse.
A theatre liquor licence referred to in section 20(a)(iv) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act, for a period of ten years after which such registration must lapse.
A club liquor licence referred to in section 20(a)(v) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act after which such licence, for a period of ten years after which such licence must lapse.
A sorghum beer licence referred to in section 20(a)(vi) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act, for a period of ten years after which such licence must lapse.
A special liquor licence referred to in section 20(a)(vii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act, for a period of ten years after which such licence must lapse.
A temporary liquor licence referred to in section 20(a)(viii) of the Liquor Act 1989.	A registration for the retail sale of liquor at a special event referred to in section 19(d) of this Act.
An occasional licence referred to in section 20(a)(ix) of the Liquor Act, 1989.	A registration for the retail sale of liquor at a special event referred to in section 19(d) of this Act.
A liquor store licence referred to in	A registration for the retail sale of liquor for

section 20(b)(iii) of the Liquor Act, 1989.	consumption off the premises on which liquor is being sold, referred to in section 19(a) of this Act, for a period of ten years after which such licence must lapse.
A grocer's wine licence referred to in section 20(b)(iv) of the Liquor Act, 1989.	A registration for the retail sale of wine for consumption off the premises on which wine is being sold, referred to in section 19(a) of this Act, for a period of ten years after which such registration must lapse, provided that the holder of such a registration may at any stage after expiry of a period of five years after the date of commencement of this Act, apply for registration to sell all kinds of liquor on separate premises as prescribed.
A sorghum beer licence referred to in section 20(b)(vii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, referred to in section 19(a) of this Act, for a period of ten years after which such licence must lapse.
A special licence referred to in section 20(b)(viii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, referred to in section 19(a) of this Act, for a period of ten years after which such licence must lapse.
An approval granted in terms of section 60 of the Liquor Act, 1989 to the holder of the wine-house licence.	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, referred to in section 19(a) of this Act, for a period of ten years after which such licence must lapse.
A sports ground liquor licence referred to in section 189 of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 19(b) of this Act, for a period of ten years after which such licence must lapse.

A special licence (Tavern) referred to in section 20(a)(vii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on and off the premises on which the liquor is being sold, referred to in section 19(c) of this Act, for a period of ten years after which such licence must lapse.
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