

**Premier's No. 5**

**16 January 2004**

It is hereby notified that the Premier has assented to the following Act that is hereby published for general information:

**No. 9 of 2003**

**GAUTENG LIQUOR AMENDMENT ACT,  
2003**

**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.
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# ACT

To amend the Gauteng Liquor Act, 2003, so as to enable the Board to delegate certain powers to the local committees; to extend the discretionary powers of the Board; to amend provisions relating to the period required for lodgement of objections and responses thereto; to allow local committees to decide on applications for catering and occasional permits; to provide for the conversion of existing licenses; to amend the transitional provisions; and to provide for matters connected there with.

**B**E IT ENACTED by the Gauteng Legislature as follows:—

**Amendment of section 3(1) of Act 2 of 2003**

1. Section 3 of the Gauteng Liquor Act, 2 of 2003 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (1) of section 3 of the following subsection: 5

“(1) The Board shall receive applications referred to in section 21 from the local committees and after [the] considering such applications, refuse or grant the application concerned;”.

**Amendment of section 15 of Act 2 of 2003** 10

2. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Board may, with the approval of the Member of the Executive Council and subject to the provisions of this section, delegate its powers, functions and duties to any member of the Board or any committee of the Board or any local committee of the Board, on such terms as the Board may determine.”. 15

**Amendment of section 20 of Act 2 of 2003**

3. Section 20 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) one or more representatives appointed from the community in the area of the local committee appointed by reason of his or her knowledge in the field of welfare or socio-economic development or social services; and”. 20

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**Amendment of section 25 of Act 2 of 2003**

4. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person may lodge an objection to the granting of a licence in terms of this Act, in the prescribed manner, with the local committee and the applicant within twenty-one (21) days from [date of publication of a notice] date of lodgement of the application with the secretary of the local committee referred to in section [24] 23.” 5

**Amendment of section 28 of Act 2 of 2003**

5. Section 28 of the principal Act is hereby amended by the insertion immediately after paragraph (b)(v) of sub-section (1) of the following paragraph: 10

“(c) Any other licence that the Board, in its discretion will deem appropriate.”

**Amendment of section 31 of Act 2 of 2003**

6. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 15

“(1) An application for a catering or occasional permit shall be considered by the [Board via the] local committee, and the [Board] local committee may grant or refuse the application concerned.”;

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

“(2) The [Board] local committee shall not grant a catering or occasional permit under subsection (1) unless the applicant can show exceptional circumstances that warrant the granting of the catering or occasional permit for a period not longer than seven (7) consecutive days.”; 20

(c) by the substitution for subsection (4) of the following subsection: 25

“(4) The [Board] local committee shall be satisfied that the distribution or sale of liquor is not the principal business of the applicant, but incidental to the occasion held by the applicant.”; and

(d) by the substitution for subsection (5) of the following subsection:

“(5) The [Board] local committee shall approve the plan of the premises and may specifically exclude the sale of liquor on certain places on the premises and may determine the kind of liquor to be sold.”. 30

**Amendment of section 33 of Act 2 of 2003**

7. Section 33 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of following subsection: 35

“(1) After the Board has granted an application in terms of this Act, it shall, subject to section 35, issue the licence through the local committee to the applicant to sell the kind of liquor provided for in this Act in respect of the kind of licence concerned, or, in the case of a catering or occasional permit, the kind of liquor determined by the [Board] local committee and specific places on the premises which have been excluded by the [Board] local committee in terms of section 31 (5).”; and 40

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

“(2) The Board or local committee may at any time after the issue of a licence or permit in terms of subsection (1) or section 37, by a notice delivered to the licensee concerned—”. 45

**Amendment of section 37 of Act 2 of 2003**

8. Section 37 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) has in the preceding five (5) years been convicted of an offence in terms of this Act or the liquor Act, 1989 (Act no 27 of 1989) [or any similar law applicable prior hereto], and was sentenced to a fine of not less than R200 or to imprisonment without the option of a fine or both imprisonment and fine or has paid an admission of guilt fine of not less 50

than R200 unless the Board exercises its discretion in favour of granting the licence or unless the sentence has been set aside by a court or such a person has received a grant of amnesty or a free pardon in respect of any one of the sentences or the fine has been remitted.”.

**Amendment of section 38 of Act 2 of 2003** 5

9. Section 38 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) The Association shall promote an organized trade in liquor within the Province[,through—
- (a) diligence amongst its members and affiliates[,];
  - (b) compliance with all laws and policies relating to the regulation of liquor [and,];
  - (c) responsible consumption of liquor; and
  - (d) any other matter ancillary thereto.”.

**Amendment of section 39 of Act 2 of 2003** 15

10. Section 39 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (4) of the following paragraph.

- “(c) If [its] 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.”.

**Amendment of section 51 of Act 2 of 2003**

11. Section 51 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Notwithstanding any provision of this Act, the holder of an on-consumption licence may remain open for purposes stated in the licence from 21h00 of the [afternoon] evening of December 31 until 02h00 in the morning of January 1, unless otherwise prescribed.”.

**Amendment of section 86 of Act 2 of 2003**

12. Section 86 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph: 30

- “(c) Subject to 125(a), a person employed in [with] the carrying on of the business to which the licence relates, except an employee contemplated in section 45(2), for consumption in that place.”.

**Amendment of section 104 of Act 2 of 2003**

13. Section 104 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection: 35

- “(6) Upon granting an application for the transfer of a licence the Board shall issue a licence to the transferee who then becomes the licensee, with all rights and obligations of a licensee in terms of this Act.”.

**Amendment of section 106 of Act 2 of 2003** 40

14. Section 106 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Board shall convene an inquiry for purposes of section [102] 105.”.

**Amendment of section 109 of Act 2 of 2003**

15. Section 109 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (3) of the following paragraph: 45

- “(d) copy any document referred to in [paragraphs] paragraph (c), or if necessary, remove the document in order to copy it.”.

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**Amendment of section 112 of Act 2 of 2003**

16. Section 112 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An inspector executing a warrant in terms of section [107] 110 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.” 5

**Amendment of section 116 of Act 2 of 2003**

17. Section 116 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph: 10

“(d) any penalty that may be imposed in terms of section [131] 133 in the event of non-compliance with those steps.”

**Amendment of section 124 of Act 2 of 2003**

18. Section 124 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: 15

“(b) the categories of [person] persons who may sell methylated spirit;”

**Amendment of section 129 of Act 2 of 2003**

19. Section 129 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) refuse to take the oath or make the affirmation, having been required by the chairperson or the board to give evidence under oath or after the making of an affirmation; or” 20

**Amendment of section 133 of Act 2 of 2003**

20. Section 133 of the principal Act is hereby amended by the substitution for section 133 of the following section: 25

“Any person who is guilty of an offence in terms of this Act, shall on conviction be liable to a fine not exceeding R100 000,00 or to imprisonment for a period [of] not exceeding ten (10) years or both such fine and imprisonment.”

**Amendment of section 138 of Act 2 of 2003**

21. Section 138 of the principal Act is hereby amended by the substitution for section 138 of the following section: 30

“If it is proved in any prosecution for an offence in terms of section [125(1)(i)] 127(i) that the accused manufactured, had in his or her possession or custody or under his or her control, or consumed or sold, supplied or gave to any person liquid which had or has the appearance of a concoction or drink referred to in section [121 (1)] 123 (1) and in the charge, it shall be presumed, unless the contrary is proved, that the liquid was or is that concoction or drink.” 35

**Amendment of section 143 of Act 2 of 2003**

22. Section 143 is hereby amended—

(a) by the substitution for the heading of the following heading: 40

“[Validity of licenses] Conversion of existing licenses”; and

(b) by the substitution for section 143 of the following:

“[Licenses issued under the Liquor Act, 27 of 1989 shall continue to be in force and effect until they lapse or the licensee contravenes a provision of this Act] (1) Subject to subsections (2), (3) and (5), any 45  
authorization, permit or licence issued in terms of the Liquor Act, 1989 (Act no 27 of 1989) to engage in the retail sale, micro-manufacture or wholesale of liquor or methylated spirits which was valid immediately before the date of commencement of this Act, shall remain valid.

(2) The holder of an authorization, permit or licence contemplated in subsection (1), shall within the period determined by the Member of the Executive Council by notice in the *Provincial Gazette*, submit such authorization, permit or licence to the Board for conversion into an authorization, permit or licence under this Act.

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(3) A conversion contemplated in subsection (2) shall be made on the same terms and conditions and for the remaining duration of the original authorization, permit or licence.

(4) A converted authorization, permit or licence is deemed to have been issued in terms of this Act.

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(5) If a licensee fails to submit his or her licence as contemplated in subsection (2), the licence shall lapse.

(6) The Member of the Executive Council may prescribe fees for a conversion."

**Amendment of section 144 of Act 2 of 2003**

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23. Section 144 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) This Act is called the Gauteng Liquor Act, [2002] 2003 and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*."

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**Short Title**

24. This Act is called the Gauteng Liquor Amendment Act, 2003.

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