



**NORTH WEST  
NOORDWES**

**EXTRAORDINARY • BUITENGEWOON**

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PROVINSIALE KOERANT**

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**PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS**

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**PROVINCIAL NOTICE 162 OF 2018****NORTH WEST PROVINCIAL GOVERNMENT****NORTH WEST  
BUSINESS LICENSING BILL, 2018**

I, Wendy Nelson, Member of the Executive Council responsible for Finance, Economy and Enterprise Development hereby gives notice to publish the draft North West Business Licensing Bill, 2018 for public comments.

Members of the public are invited to submit to the MEC, within 30 days from the publication of the Notice in the Gazette, written representation to the draft North West Business Licensing Bill, 2018 to the following address:

Given under my Hand at Mahikeng, this <sup>03</sup> day of *August* Two thousand and eighteen.

By Post to : Deputy Director General: Department of Finance, Economy and Enterprise Development

Attention : Ms Phemelo Jood  
Private Bag X15  
**MMABATHO**  
2735

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Cnr. University Drive and Provident Streets  
2<sup>nd</sup> Floor  
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**HON WENDY JOY NELSON**  
Member of the Executive Council of the North West Province  
responsible for Finance, Economy and Enterprise Development

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# **NORTH WEST BUSINESS LICENSING BILL, 2018**

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*(As introduced in the Provincial Legislature)  
(The English text is the official text of the Bill)*

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(FEED)  
BILL

**To provide for the regulation control and licensing of businesses in the North West Province; to provide for the appointment of the North West Business Licensing Authority; to provide for restrictions on businesses; to provide for the appointment and assignment of business licensing authorities; to provide for licensing of persons conducting businesses; to provide for the imposition of fees and penalties on the various business activities; to provide for the appointment and designation of inspectors and their powers and duties; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of the Province of North West, as follows:-

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## CHAPTER 1 DEFINITIONS, OBJECTS OF ACT, APPLICATION AND PROHIBITIONS

### Definitions

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

"**Businesses Act**" means the Business Act, 1991 (Act No. 71 of 1991);

"**business licence**" means a business licence issued by the Business Licensing Authority in terms of this Act;

"**business licensing authority**" means a person, body or local municipality appointed or assigned in terms of section 5 of the Act;

"**business premises**" means the physical outlet, physical structure, space or place from which a business operates;

"**carry on business**" includes the selling of goods or services to the public in a fixed premises;

"**Chairperson**" means chairperson appointed in terms of section 6 of the Act.

"**Department**" means the department in the Provincial Government of North West responsible for business regulation;

"**escort agency**" is a company or business that provides escorts for clients, usually for sexual services;

"**financial interest**" means –

- (a) a right or entitlement to share in profits or revenue;
- (b) a real right in respect of property of a company, corporation or business;

(c) a real or personal right in property used by a company, corporation or business; or

(d) a direct or indirect interest in the voting shares, or voting rights attached to shares, of a company or an interest in a close corporation;

**"Gazette"** means the official *Provincial Gazette* of North West;

**"grocer shop"** means a retail store that primarily sells consumables;

**"inspector"** means any person –

(a) appointed as an inspector by the responsible Member; or

(b) specially authorised by the Business Licensing Authority to exercise any authority or perform any duty conferred on an inspector in terms of any provision of this Act;

**"licence"** means a licence issued in terms of this Act;

**"licensed premises"** means the premises on which the business takes place under the authority of a licence issued in terms of this Act;

**"licensee"** means a person who holds a valid licence or temporary licence issued in terms of this Act;

**"licensing officer"** means a licensing officer referred to in section 19(1)(a) of the act;

**"Member of the Executive Council responsible for finance"** means the member of the Executive Council of the Province of North West responsible for finance;

**"municipality"** means a municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"person"** means a natural or juristic person, a group of such persons or a corporate body unless the context indicates a contrary intention;

**"political office bearer"** means –

(a) a member of the National Assembly, the National Council of Provinces or the Cabinet;

(b) a member of a provincial legislature or of the Executive Council of a province;

(c) a municipal councillor;

(d) a diplomatic representative of the Republic who is not a member of the public service;

(e) a member of a house of traditional leaders; or

(f) a national or provincial office bearer of a political party, organisation, body, alliance or movement registered in terms of section 15 or 15A of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

**"Portfolio Committee"** means the Portfolio Committee appointed by the Provincial Legislature, in accordance with its standing rules, for the purposes of dealing with matters which fall under the portfolio of the responsible Member;

**"premises"** means any land, building or structure, or part thereof;

**"prescribed"** means prescribed by regulation, and **"prescribe"** has a corresponding meaning;

**"Province"** means the North West Province established in terms of section 103 of the Constitution;

**"Provincial Legislature"** means the Legislature of the North West Province;

**"publish"** includes to exhibit, circulate, announce or cause to be exhibited or circulated or announced in any manner whatsoever;

**"regulations"** means regulations made in terms of this Act;

**"responsible Member"** means the member of the Executive Council of the Province of North West responsible for economic development;

**"spaza shop"** means a small shop often run from a private home within a residential area with specifications as prescribed in the regulations; and

**"this Act"** includes the schedules thereto and the regulations;

## **Objects of Act**

2.(1) The objects of the Act are to –

- (a) provide for licensing of businesses and assignment of business licensing authorities;
- (b) ensure that businesses promote the Province's objectives for developing a business industry based on promotion of tourism, employment, economic and social development in the Province; and
- (c) promote opportunities for historically disadvantaged persons to participate fully in the business industry.

**Application of Act and other laws**

3.(1) Save for person in possession of a licence issued in terms of national legislation, this Act applies to any person operating a business in the Province referred to in section 17.

(2) The granting of any application in terms of this Act does not relieve the person granted the application from complying with any other law or legal requirement in relation to the business in question.

(3) A person who complies with the provisions of this Act is not exempted from complying with any relevant provisions of the provincial or national legislation.

**Exemptions**

4.(1) The responsible Member may, on application and if circumstances so warrant, declare that this Act, excluding such provisions as he or she may determine, do not apply to –

- (a) premises occupied, controlled or maintained by a department or public entity;
- (b) employees of a department or public entity contemplated in subsection (1) and its bona fide guests, for business on such premises;
- (c) on a statutory institution on premises in or at a public resort, national park or game or nature reserve;

(2) The responsible Member may, on application and if the circumstances so warrant, declare that this Act, excluding such provisions as he or she may determine, do not apply to the sale, by a person named in the declaration, of any relevant item if that person is a licensed auctioneer acting on behalf of a bona fide cultural or welfare organization or an educational institution.

(3) A declaration issued under subsection (1) or (2) may be subject to such conditions set out therein as the responsible Member may in his or her discretion impose.

(4) The responsible Member may at any time after the issue of a declaration under subsection (1) or (2), by a notice delivered or tendered to the person named in the declaration concerned, subject to the relevant provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 33 of 2000), –

- (a) in his or her discretion impose such conditions or further conditions as may be set out in the notice, to which the notice shall be subject;
- (b) withdraw or amend any condition imposed by him or her under this section; or
- (c) withdraw or amend such declaration.

(5) Notwithstanding the provisions of subsections (1) to (4), a business which is carried on by a charitable, religious, educational, cultural or agricultural association, organisation or institution of a public nature, if all profits derived from the business are devoted entirely to the purpose of that or any other such association, organisation or institution, is exempted by the Act.

### **Prohibitions on conducting business**

5.(1) A person may not –

(a) conduct a business referred to in section 17 unless in accordance with the provisions of this Act.

(b) conduct business in premises which are not licensed or approved in terms of this Act;

(c) A person may not conduct a business –

(i) in a premises owned by the State or a municipality;

(ii) in a building declared a heritage site,

unless authorised by applicable legislation.

(2)(a) The owner or lawful occupier of any building, dwelling, structure or premises of any other nature may not use such building, dwelling, structure or premises for business purposes or allow any other person to conduct any business activity therein or thereon unless he or she or the person conducting the business activity in or on such building, dwelling, structure or premises, is in possession of a licence issued in terms of this Act.

(b) The owner of any building, dwelling, structure or premises of any other nature must take reasonable steps to ensure that such building, dwelling, structure or premises is not used for any business activity by persons who are not in possession of a licence issued in terms of this Act.

## CHAPTER 2 NORTH WEST BUSINESS LICENSING AUTHORITY

### **Establishment of Business Licensing Authority**

6.(1) The responsible Member must appoint three officials from the public service to serve as members of the Business Licensing Authority.

(2) The responsible Member must in a prescribed manner appoint two additional independent persons to serve as members of the Business Licensing Authority, one of whom must be the Chairperson.

- (3) The responsible Member must also, in a prescribed manner, appoint the deputy chairperson.
- (4) The quorum of Business Licensing Authority is all three members present.
- (5) The responsible Member may by agreement assign a local municipality as a Business Licensing Authority.
- (6) The administrative and financial support for a Business Licensing Authority contemplated in subsection (1), must be provided by the department-.

### **Objects of Business Licensing Authority**

7.(1) The objects of the Business Licensing Authority are to –

- (a) ensure that all businesses licensed under this Act are conducted in a manner which promotes the integrity of the business sector and does not cause harm to the public interest;
- (b) ensure that all businesses licensed under this Act promote the Province's objectives for developing a business industry which objectives are the promotion of tourism, employment and economic and social development in the Province;
- (c) promote opportunities for historically disadvantaged persons to participate fully in the business industry; and
- (d) advise the responsible Member on any matter referred to it for consideration and arising from the application of this Act.

(2) The responsible Member may issue directives to the Business Licensing Authority relating to the objects of the Business Licensing Authority.

### **Powers, duties and functions of Business Licensing Authority**

8. The Business Licensing Authority must –

- (a) consider applications for business licencing in terms of in terms of Chapter 3 of this Act.
- (b) grant or refuse licence applications, and subject to the relevant provisions of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), revoke a business licence;
- (c) investigate, furnish a report and make recommendations to the responsible Member, regarding any matter relating directly or indirectly to the business industry in the Province;
- (d) determine any conditions or restrictions to be attached to the granting of business licences, or under which a business licence may be surrendered;
- (e) licence and control business activities in the Province;

- (f) amend, substitute or rescind a condition attached to a business licence;
- (g) engage any person or law enforcement agency to undertake any investigation or inspection necessary to determine the suitability of an applicant for a licence;
- (h) renew a licence upon its expiry, unless it has been cancelled or surrendered;
- (i) conduct an enquiry into any alleged contravention of this Act and take appropriate action against any licensee, which may include –
  - (i) instituting legal action against such licensee or person;
  - (ii) suspending or withdrawing the licence; or
  - (iii) levying a fine or penalty on such licensee or person: provided that the amount of such fine or penalty does not exceed the prescribed amount;
  - (k) conduct hearings, call for the attendance of witnesses at such hearings and demand the production of any books, records and any other documents which, in the opinion of a Business Licensing Authority, has been used in connection with or will reveal a contravention of this Act;
- (j) provide periodic reports to the department on instruction of the responsible Member; and
- (k) perform any other function or exercise any other power which the responsible Member may, by regulation, empower the Business Licensing Authority to do.

### **Position of public trust**

9. A member of the Business Licensing Authority is in a position of public trust and may not –
- (a) accept any donation, reward or other benefit from or on behalf of any person, a licensee under this Act;
  - (b) participate in any business activity contemplated in this Act in the Province, except in the performance of his or her duties; and
  - (c) solicit or accept employment from a licensee or an applicant in terms of this Act within one year after the termination of his or her appointment as a member.

### **Term of office of members of Business Licensing Authority**

10. The persons appointed to the Business Licensing Authority hold office for a period of three years and are eligible for reappointment at the expiration of such period: Provided that no person may be reappointed after having served on the Business Licensing Authority for a continuous period of nine years.

### **Vacancies, removal and resignation from office and filling of vacancies**

11.(1) A member of the Business Licensing Authority must vacate office if he or she becomes leaves the public service.

(2) The responsible Member may, at any time terminate the term of office of a member if, in his or her discretion, there are good reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Business Licensing Authority or responsible Member, from three consecutive meetings of the Business Licensing Authority for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office in writing to the responsible Member.

(5) Whenever a vacancy occurs on the Business Licensing Authority, the responsible Member must, subject to section 11, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

#### **Recusal of member from meetings and proceedings of Business Licensing Authority**

12.(1) A member must, prior to the commencement of the proceedings of the Business Licensing Authority, fully disclose the nature of any interest whatsoever, including a pecuniary interest, which –

(a) he or she; or

(b) his or her relative, whether as an employee or as a director, member or partner, may have in the business of any applicant for a licence a under this Act or may derive from the grant of a licence a under this Act to an applicant whose application is before the Business Licensing Authority for consideration.

(2) Upon making the disclosure referred to in subsection (1), the member recuse himself or herself from consideration of such an application.

(3) Any disclosure in terms of this section must be recorded in the minutes of the meeting concerned.

(4) In the event that a member fails to make a disclosure as contemplated in subsection (1) and is present at a meeting in which an application for a licence a under this Act is considered, the decision of the Business Licensing Authority will be invalid.

(5) A member of the Business Licensing Authority must not take part in the proceedings of the Business Licensing Authority where any application for a licence in terms of this Act is under consideration and such member or his or her relative, business partner or associate is associated with any person objecting to the application.

### **Meetings and procedures at meetings**

13.(1) The first meeting of the Business Licensing Authority must be held on a date and at a time and venue determined by the chairperson where after all future meetings must be as determined by the Business Licensing Authority.

(2) The proceedings at a meeting of the Business Licensing Authority must, subject to the provisions of this section, be determined by the chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.

(3) The chairperson must preside at all meetings of the Business Licensing Authority: Provided that in his or her absence the deputy chairperson must preside and in the event that neither the chairperson nor the deputy chairperson are present at a meeting of the Business Licensing Authority, the members then present may elect, from their own number, a person to act as chairperson for the duration of that particular meeting.

(4) A decision of the Business Licensing Authority must be taken by a majority of the votes of the members present at a meeting and, in the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(5) The Business Licensing Authority must arrange for minutes of its meetings to be kept and such minutes must be open to public inspection in the manner prescribed.

(6) No decision of the Business Licensing Authority is invalid merely by reason of a vacancy in the Business Licensing Authority: Provided that the decision is taken by the required majority of the members of the Business Licensing Authority then present and entitled to sit as members of the Business Licensing Authority.

(7) The chairperson, or a majority of the Business Licensing Authority, may call an extraordinary meeting of the Business Licensing Authority in which event the provisions of this section apply with the necessary changes.

### **Remuneration of members of Business Licensing Authority**

14. (1) A member of the Business Licensing Authority may ~~must~~ be paid such remuneration and allowances out of the funds of the Department as may be determined by the Department.

(2) The provisions of subsection (1) do not apply to members who are in the public service.

### **Confidentiality**

15.(1) No member of the Business Licensing Authority or any other person associated with the Business Licensing Authority in terms of this Act, may disclose any information,

documents or records at the disposal of or belonging to the Business Licensing Authority, except –

- (a) to any person who requires it for the performance of his or her functions in terms of this Act or any other similar law in force in the Republic of South Africa; or
- (b) to any other person in terms of an order of a competent court or under this Act or any other law.

(2) Notwithstanding the provisions of subsection (1), the Business Licensing Authority is not prohibited from disclosing any information or statistics, if such information or statistics do not refer to or reflect on the affairs of business of any applicant for a licence under this Act, a licensee or registrant, or any other person connected therewith or person who has made representations to the Business Licensing Authority.

### CHAPTER 3 LICENSING PROCEDURE

#### *Part 1* *General*

#### **Compulsory licensing**

16.(1) A person may not conduct any business unless that person is licensed in terms of this Act.

(2) Any person who contravenes subsection (1), commits an offence.

#### **Categories of licences**

17. An application for a business licence in terms of this Act may be made in respect of the following categories –

- (a) a licence for the sale of consumables. –

##### Part A –

- (i) a retail store licence;
- (ii) a grocers' licence;
- (iii) a spazashop;
- (iv) a hardware store
- (v) tent rental and accessories thereto
- (vi) motor mechanic services;
- (vii) auto body repairers;
- (viii) Bookstore;
- (ix) Dealer in office equipment and data systems;
- (x) Dealer/collector in glass and glassware;
- (xi) Furniture and household appliance dealer

(xii) Laundry and dry cleaner; and

(xiii) Shoemaker and repairer; and

(b) a licence for the sale of any beauty or lifestyle services. –

**PART B**

(i) a beauty salon licence;

(ii) a hair salon licence;

(iii) a treatment spa licence;

(iv) a gym license;

(c) a licence for the sale of any lifestyle and sport entertainment services are rendered on the business premises, namely –

**PART C**

(i) a video games arcade licence;

(ii) a Video hire shop;

(iii) Record bar/dealer in music ware;

(d) a licence for the sale of any adult entertainment services, namely –

**PART D**

(i) a massage parlour licence;

(ii) an escort agency licence;

(iii) a strip club licence.

**Disqualification**

**18.** A person may not be issued with a licence if he or she –

(a) is a minor on the date of submitting the application for a licence;

(b) is committed in terms of the Mental Health Act, 1973 (Act No. 18 of 1973), or the Mental Health Care Act, 2002 (Act No. 17 of 2002), as the case may be;

(c) has had his or her licence cancelled in terms of this Act within a period of three years immediately preceding the lodgement of an application.

(d) is not a South African citizen or does not have permanent residency.

*Part 2*

*Applications for licences*

**Applications**

**19.(1)** A person who wishes to apply for a business licence in respect of the categories listed under section 17 must –

(a) lodge an application with the relevant licensing officer using form NWBLA 1 in Schedule 1 on any week day, except weekends and public holidays; and

(b) pay the application fee contemplated in Schedule 3.

- (2) The application must include and be accompanied by –
- (a) a description of the location of the premises in terms of identifiable landmarks;
  - (b) a certified copy of an identity document of the applicant
  - (c) in relation to the premises in respect of which licensing is being sought, the details in respect of the premises, including a plan of the premises;
  - (d) a tax clearance certificate issued by South African Revenue Service indicating whether the applicant is registered as a taxpayer;
  - (e) proof of lawful occupation of the premises, in the form of a title deed or a lease agreement in the name of the applicant or a permission to occupy the premises issued in favour of the applicant by the relevant authority, where applicable; and
  - (f) a written consent from the owner of the premises or the relevant authority for the applicant to conduct the intended business from the premises concerned, where applicable.

### **Notice of application**

20.(1) Where the application is for a licence for the sale of any adult entertainment services, applicant must within 14 days publish a notice in a dominant newspaper circulating in the area where the business is to be conducted the intention to conduct such a business; and submit proof of compliance within seven days from date of publication and notification to the Business Licensing Authority.

- (2) The notice referred to in subsection (1) must state that the application will be open for inspection at the offices of the Business Licensing Authority; and
- (3) The Business Licensing Authority must, within the period of 21 days, allow any person to inspect and copy the application.

### **Objections and representations**

21.(1) A person who has an objection to the granting of the application may, within the period referred to in section 20(3) and in writing, make representations against the granting of the application.

- (2) The person making objections or representations must –
- (a) serve a copy thereof to the Business Licensing Authority and to the applicant or his or her representative; and
  - (b) submit proof of service to the applicant to the Business Licensing Authority.
- (3) The person making representations or objections must set out the following –
- (a) his or her full name and address;

- (b) his or identity number or, if a company or close corporation, its registration number;
- (c) if applicable, the name or address of his or her representative;
- (d) the nature of his or her interest in the refusal of the application; and
- (e) comprehensive grounds for the objection to the application.

(4) The applicant may, within seven days of receipt of an objection or representations, submit a written response to the Business Licensing Authority.

### **Non-compliance with notification and publication**

**22.** (1) The Business Licensing Authority must –

- (a) examine the application within a reasonable time from the expiry of the 21 day period referred to in section 20(3), to determine whether the applicant has complied with the provisions of section 20(1); and
- (b) where such provisions have not been complied with, issue a notice to the applicant within a reasonable time to ensure compliance within 14 days.

(2) If the applicant fails to comply with the notice referred to in subsection (1)(b), the Business Licensing Authority must refuse the application and inform the applicant accordingly.

### **Objection hearings**

**23.**(1) Where the Business Licensing Authority has received objections or representations in relation to an application, the Business Licensing Authority must, before considering an application, hold an objection hearing.

(2) The Business Licensing Authority must –

- (a) determine the date, time and place of the hearing; and
- (b) notify the interested parties about the details of the objection hearing.

(3) At the hearing contemplated in subsection (1) –

- (a) any interested person may present their objections based on written representations; and applicant must be given an opportunity to respond to the objection
- (b) the applicant and each such person may be assisted or represented by any person of his or her choice.

(4) The Business Licensing Authority may, for the purpose of dealing with any matter before it at an objection hearing –

- (a) by written notice delivered by hand, e-mail or post, require any person to appear

before it to give evidence or to produce any book, plan or other document or article in his or her possession or under his or her control;

(b) call upon any person present in or at the place where such matter is dealt with by the Business Licensing Authority, to appear before it to give evidence or to produce any book, plan or other document or article which such person may at the time have in his or her possession;

(c) question any person appearing before it;

(d) refuse to hear a person appearing before it who refuses to be sworn in or to be affirmed; and

(e) not hear any matter which is frivolous or vexatious, or which it does not have authority to hear as provided for in this Act.

(5) An objection hearing must be open to the public.

(6) The Chairperson presiding over the objection hearing at which a person appears as a witness must administer an oath or affirmation to the witness.

#### **Consideration of applications by Business Licensing Authority**

**24.** (1) The Business Licensing Authority must within 14 of conclusion of the hearing, consider the application.

(2) In considering the application, the Business Licensing Authority must consider all documents submitted, and any other matter which, in the opinion of the Business Licensing Authority, may be relevant.

(3) The Business Licensing Authority may, if considered necessary carry out an inspection of the premises and call upon the services of experts.

(4) After having considered an application, the Business Licensing Authority may –

(a) grant the application, subject to –

(i) such terms and conditions it may deem fit;

(ii) such trading days and hours it may determine; and

(iii) in relation to premises not yet complete or that require structural alteration so as to make the premises suitable, such conditions relating to the completion or alteration of the premises as the Business Licensing Authority may deem fit, within a time period stipulated; or

(b) refuse the application.

(5) Before granting an application, the Business Licensing Authority must satisfy itself that –

(a) the applicant is not disqualified from holding a licence in terms of this Act;

(b) the premises upon which the business will be conducted will upon completion be

suitable for use by the applicant for the purposes of the licence; and

(c) the use of the proposed premises for the proposed activity would not be contrary to existing zoning laws or land use rights.

(6) In determining whether the application will be in the public interest as contemplated in subsection (5)(a), the Business Licensing Authority must consider, without detracting from the generality thereof, the extent to which the proposed licence will contribute to, or detract from, the achievement of the objects of the Act, including the extent to which the proposed licence will or is likely to impact on the socio-economic rights of society, including the prevalence of crime;

### **Communication of decision**

25.(1) Within seven days of the Business Licensing Authority having made a decision on an application, the Business Licensing Officer must communicate the decision in writing –

- (a) to the applicant and, where the application has been granted subject to conditions or has been refused, provide reasons for the decision; and
- (b) to any person who objected to or made representations in writing, where the application has been granted.

(2) The Business Licensing Authority must simultaneously inform the applicant that the licence will be issued upon payment of the prescribed fee.

### **Part 3**

#### ***Renewal, suspension, cancellation, surrender, transfer of licence and related matters***

#### **Renewal of licence**

26.(1) A licence, subject to the provisions of this Act and the conditions under which it was granted, remains in force until the date of renewal.

(2) It is the responsibility of the licensee to renew a licence with the Business Licensing Authority by paying the prescribed licence fee before the date on which the licence becomes renewable.

(3) If a licensee fails to renew his or her licence by the date of renewal, the licence lapses and the licensee must –

- (a) cease the activities authorised by the licence; and
- (b) if he or she so wishes, apply to the Business Licensing Authority for a new licence in accordance with the provisions of this Act, in which event all the provisions of this Act relating to an application for a new licence apply, with the necessary changes.

#### **Suspension of licence**

27.(1) The Business Licensing Authority may at any time, and after giving the licensee

concerned an opportunity to be heard, suspend for such period as it may determine, any licence if –

(a) any information given to the Business Licensing Authority during an investigation contemplated in section 34(2) or any information contained in any application made by the licensee for the purpose of obtaining a licence, a variation to any specification or condition attached to a licence, the renewal or transfer of a licence or for the removal of the business concerned to other licensed premises, was at the time of being furnished false in any material respect or was subject to any material omission with the intention to mislead the Business Licensing Authority;

(b) the licensee is disqualified from holding a licence in terms of this Act;

(c) the licensee, an employee of such licensee or any other person acting on his or her behalf has failed to comply with any term or condition of the licence or any provision of this Act or has not complied with such term, condition or provision within 30 days, or such further period as the Business Licensing Authority may in writing allow, after delivery of a written notice by the Business Licensing Authority to the licensee requiring such failure to be remedied; or

(d) the licensee has, without the prior written consent of the Business Licensing Authority, failed to conduct the business activities authorised by his or her licence for a period of 12 consecutive months.

(2) The Business Licensing Authority may, pending an enquiry contemplated in section 37(1), immediately suspend the licence of any licensee for a material contravention of any provision of this Act, a condition of a licence or of the rules.

(3) The Business Licensing Authority may at any time lift any order of suspension issued in terms of subsection (1) if the reasons for such suspension have been remedied to the satisfaction of the Business Licensing Authority.

(4) When a licence is suspended in terms of subsection (1) –

(a) the Business Licensing Authority must immediately inform the licensee in writing of such suspension and of the reasons for the suspension; and

(b) the licensee has no claim to a refund of any licence fee paid or any portion thereof.

### **Cancellation of licence**

**28.(1)** Where the Business Licensing Authority considers that sufficient grounds exist for the cancellation of a licence, it must serve a written notice on the licensee which must –

(a) notify the licensee that the Business Licensing Authority proposes to consider the cancellation of the licence concerned;

- (b) state clearly the ground or grounds for cancellation;
  - (c) invite the licensee to, within 30 days after the date of the written notice –
    - (i) make written representations to the Business Licensing Authority; or
    - (ii) notify the Business Licensing Authority in writing that he or she intends making oral representations to the Business Licensing Authority; and
  - (d) state clearly that, should the licensee fail to respond to the written notice in the manner contemplated in paragraph (c), the Business Licensing Authority will take a decision as to whether or not the licence concerned should be cancelled.
- (2) The Business Licensing Authority may, when taking the action referred to in subsection.
- (3) Where written representations are made to the Business Licensing Authority by the holder of –
- (a) a licence, the Business Licensing Authority must on such representation consider whether or not the licence should be cancelled; or
  - (b) any other licence, the Business Licensing Authority must take such decision as may be justified by the information at its disposal and the written representations received.
- (4) When a licensee notifies the Business Licensing Authority that he or she intends making oral representations to it, the Business Licensing Authority must set a date, time and place for the hearing and notify the licensee concerned in writing.
- (5) The licensee may be assisted or represented at a hearing by any person of his or her choice.
- (6) The Business Licensing Authority must after the hearing, in the case of any licence, take a decision as to whether or not the licence concerned should be cancelled.
- (7) The Business Licensing Authority must convey to the licensee, in writing –
- (a) the relevant decision of the Business Licensing Authority; and
  - (b) the reasons for the said decision.
- (8) A licence must be cancelled forthwith if the licensee or any person in control of the licensee has been convicted of an offence in terms of this Act.

### **Surrender of licence and conditions imposed thereon**

**29.** The Business Licensing Authority may, in its discretion and subject to this Act, impose any conditions on the surrender of a licence.

**Transfer of licence**

**30.**(1) A licensee may at any time make application to the Business Licensing Authority for his or her licence to be transferred to another person provided that the person is not disqualified in terms of section 17.

(2) A Licensee applying in terms of subsection (1) must submit the original licence to the Business Licensing Authority.

(3) When an application is granted, the Business Licensing Authority must cause the name of the licensee to be altered appropriately on the licence.

**Death of licensee**

**31.**(1) In the event of the death of a licensee any licence which was held by that person must be dealt with in terms of the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

**CHAPTER 4****INSPECTIONS, INVESTIGATIONS AND ENQUIRIES****Appointment of inspectors**

**32.**(1) The responsible Member may appoint an official within the public service as an inspector for the purposes of this Act.

(2) An inspector must, on appointment, be provided with an certificate of appointment in the prescribed form signed by the responsible Member.

(3) An inspector must, whenever performing a function or exercising a power in terms of this Act, have such certificate of appointment in his or her possession and must produce it whenever requested to do so by any person affected by the actions of the inspector concerned.

**Position of public trust**

**33.** An inspector is in a position of public trust and may not –

(a) accept any donation, reward or other benefit from or on behalf of any person, a licensee or registrant under this Act or any other person associated with an activity and neither may any such licensee, registrant or person give or offer or intimate that he or she is willing to give or offer any donation, reward or other benefit;

(b) participate in any a or betting activity contemplated in this Act in the Province, except in the performance of his or her duties; and

(c) solicit or accept employment from a licensee or registrant or an applicant for a licence a in terms of this Act within one year after the termination of his or her appointment as an inspector: Provided that an inspector may solicit and accept such employment within such period if –

(i) the Business Licensing Authority has consented thereto in writing, after having satisfied itself that –

(aa) exceptional circumstances exist; and

(bb) such employment would not frustrate the purpose of this Act; and

(ii) the responsible Member has concurred with the Business Licensing Authority.

### **Functions and powers of inspectors**

**34.(1)** An inspector may at any time and without prior notice or permission enter, be and remain upon any licensed premises and may –

(a) inspect the license and consider compliance with the conditions attached thereto.

(b) issue a compliance notice make appropriate recommendations to the Business Licensing Authority; and

(c) investigate any complaint referred to the Business Licensing Authority.

(d) question the licensee or any person deemed by the inspector to be in charge of the premises at the time as to any entries in such books, accounts, records and documents or request any information about any business equipment;

(e) demand from any licensee, the production of any books, documents or records or statements relating to the licensed business.

(2) Where an inspector has reason to believe that a provision of this Act or the conditions attached to a licence have been contravened, he or she must within 14 days, investigate the matter in the manner contemplated in this section and must forthwith furnish the Business Licensing Authority with a report on the findings of such investigation.

(3) A person commits an offence if he or she –

(a) obstructs or hinders an inspector or a member of the South African Police Service accompanying such inspector in the performance of their functions under this section;

(b) when asked to give an explanation or information to an inspector, gives an explanation or information which is false or misleading, knowing it to be false or misleading; or

(c) falsely represents himself or herself to an inspector.

### **Enquiries by Business Licensing Authority**

**35.(1)** The Business Licensing Authority may conduct an enquiry into any matter falling within the scope of its powers and functions.

(2) The Business Licensing Authority may, after any enquiry, find a licensee guilty of not complying with any of the provisions of this Act and may –

- (a) suspend the relevant licence;
- (b) withdraw a licence; or
- (c) levy a fine or penalty on such licensee or person: Provided that the amount of such fine or penalty does not exceed the prescribed amount.

## **CHAPTER 5 GENERAL PROVISIONS**

### **Appeals**

**36.(1)** Any person who is aggrieved by a decision of the Business Licensing Authority made in accordance with the provisions of this Act, may appeal to the responsible Member in the manner prescribed.

(2) The provisions of subsection (1) do not limit the right of any person aggrieved by a decision of the Business Licensing Authority from applying to any Court with jurisdiction for a review of such decision

(3) The responsible Member may appoint an *ad hoc* committee to hear an appeal.

### **Offences, penalties**

**37.(1)** Any person who contravenes any provision of this Act, if such contravention is not elsewhere in this Act declared to be an offence, commits an offence.

(2) Any person convicted of conducting any business without a valid licence issued in terms of this Act is, on conviction and in addition to any forfeiture of his or her stock or merchandise, liable to imprisonment for a period not exceeding one year with the option of a fine not exceeding R5000.

### **Regulations**

**38.** The responsible Member may by notice in the *Gazette* make regulations not inconsistent with the provisions of this Act in respect of –

- (a) any matter applicable to the Business Licensing Authority;
- (b) any matter applicable to any licence required in terms of this Act;
- (c) the procedures to be applied in respect of any licence application;

- (d) the management and control of licensed premises;
- (e) any matter which may be prescribed in terms of this Act;
- (f) the appointment of an inspector and any matter relating to such inspectors and to investigations and enquiries; and
- (g) any other matter which is necessary in order to give effect to the objects and purposes of this Act.

#### **Repeal, amendment or substitution of schedules**

**39.**(1) The responsible Member may, in consultation with the Member of the Executive Council responsible for finance, by notice in the *Gazette*, and with effect from a date to be specified in such notice, repeal, amend or substitute Schedule 3.

(2) The consultation contemplated in subsection (1) does not apply if the responsible Member is also Member of the Executive Council responsible for finance.

#### **Repeal or amendment of laws and savings**

**40.** The North West Businesses Act, 1997 (Act No. 6 of 1997) is hereby repealed: Provided that and save for Notice of 03 September 2010 which assigned powers to Licensing Authorities, such repeal does not affect any notice, order, determination, approval or authority made or given or licence issued under the repealed North West Businesses Act, 1997, and in force immediately prior to the coming into operation of this Act, such notice, order, determination, approval, authority, registration or licence continuing to be in force as if made, given or issued under this Act, except insofar as repugnant to or inconsistent with this Act.

#### **Short title**

**41.** This Act is called the North West Business Licensing Act, 2018 and comes into operation on a date to be determined by the responsible Member.

**SCHEDULE 1**

**APPLICATION FORM**  
 North West Business Licensing Act, 2017  
 (Act No. X of 2017)

NWBLA 1

Date stamp Business Licensing Authority
---

Amount: R .....

Receipt No.: .....

Date: .....

**APPLICATION IN TERMS OF SECTION 33(1) FOR LICENCE**

<b>(PART A)</b>	
<b>(PART B)</b>	
<b>(PART C)</b>	
<b>PART D</b>	

*(Indicate the category of licence application that you intend to apply for by marking the relevant square with an X)*

**INDEX****Description of document****Annexures:**

- |  |   |
|--|---|
| (i) Application  | A |
| (iii) Plan of the premises with dimensions,                        | B |
| (iv) Description and photographs of the premises                   | C |
| (v) Documents required to be attached to application in section XX |   |

**Application prepared by:**

Applicant

**A. PARTICULARS OF APPLICANT**

1.(a) Full names and surname of applicant:

Yes

(b) Age of applicant:

(c) Identity number /Company registration number:

(d) Residential address:

(e) Business address:

(f) Postal Address:

(g) District Municipality:

(h) Local Municipality:

(i) Business contact details:

Cell:

Tel.:

Fax:

Email:

2.(a) Is applicant a person who –

(i) has, in the Republic or elsewhere, in the preceding 10 years been sentenced for any offence to imprisonment without the option of a fine;

Yes

No

(ii) is a South African citizen;

Yes

No

(iii) if not, state the country of origin and submit a valid work or business permit from Home Affairs:

.....;

Yes

No

(iv) is an un-rehabilitated insolvent;

(vii) is the spouse of a person contemplated in subparagraphs (i), (ii) or (iv)

 Yes

 No

**B. PARTICULARS OF APPLICATION**

1. Location of premises: physical address or identifiable landmarks:

(a) Residential:

(b) Commercially zoned area:

(c) Urban:

(d) Rural:

3. Details pertaining to the total number of jobs to be created in terms of the proposed

premises to be provided: .....

4. Proof of a valid and current tax clearance certificate to be attached at the time of submission of this application.

 Yes

 No

5. Do you have lawful occupation of the premises?

(If yes, proof is to be submitted.)

 Yes

 No

 Yes

 No

6. Are you the owner of the proposed premises from which the business is to be conducted?

(If not, consent is required from the owner of the premises or relevant authority to conduct business and proof is to be submitted.)

7. Do you have a plan for the proposed premises, including storage goods? (If yes, attach proof.)

 Yes

of

 No

8. Do you have additional storage?

(If yes, attach a sketch plan with dimensions.)

 Yes

 No

**If the premises will be managed by a person other than the applicant, then the application form must be accompanied by details of such person and Form NWBLA 18 of Annexure P.**

**C. DETAILS OF THE PROPOSED PREMISES**

(1) The name in which the business is to be conducted: .....

(2) State the physical address of the premises where the business will be conducted or the description of the location of the premises in terms of identifiable landmarks

(3) In which district or metropolitan area is the premises referred to in subparagraph (4) situated?

(7) Is application made in respect of premises which –

(a) have not yet been erected;

Yes	No
-----	----

(b) are already erected, but require additions or alterations to make them suitable for the purposes of the proposed business;

Yes	No
-----	----

(c) are already erected and, in the applicant’s opinion, do not require additions or alterations in order to make them suitable for such purposes; or

Yes	No
-----	----

(d) a business licence from the relevant local authority is attached where proposed premises will be physically located?

Yes	No
-----	----

**(proof to be submitted)**

(8)(a) If paragraph 7(a) or (b) applies, state –

(i) the date on which such erections, additions or alterations will be commenced with: .....

and

(ii) the period which will be required for the erection, additions or alterations: .....

I declare/truly affirm that the information furnished in this application and in the documents attached to it, is true and correct.

Date	Signature (of applicant or person authorised to sign application)
------	---

I certify that this declaration has been signed and sworn to/affirmed before me at..... on this ..... day of ..... 20..... by the applicant/person authorised to sign the application and who has acknowledged that –

- (a) he/she knows and understands the contents of this declaration;
- (b) he/she has no objection to taking the prescribed oath/affirmation;
- (c) he/she considers the prescribed oath/affirmation to be binding on his/her conscience,

and that he/she uttered the following words –

“I swear that the contents of this declaration are true, so help me God.”/“I truly affirm that the contents of this declaration are true.”

.....  
*Commissioner of Oaths*

.....  
*Affirmation*

Full names and surname: .....

Business address: .....

Designation: .....

Area for which appointment is held: .....

Office held if appointment is ex officio: .....

**PART C: MICRO-MANUFACTURING**

(1) State type of product applicant intends manufacturing:  
 .....

(2) State intended amount of product to be manufactured per year: .....

(3)(a) Is application made in respect of premises which –

(i) have not yet been erected;

Yes

No

(ii) are already erected, but require additions or alterations to make them suitable for the purposes of the proposed business; or

Yes

No

(iii) are already erected and, in the applicant’s opinion, do not require additions or alterations in order to make them suitable for such purpose?

Yes

No

(4) If paragraph 3(a)(i) or (ii) applies, state –

(a) the date on which such erections, additions or alterations will be commenced with:

.....; and

(b) the period which will be required for the erection, additions or alterations:

.....

I declare/truly affirm that the information furnished in this application and in the documents attached to it, is true and correct.

Date

Signature (of applicant or person authorised to sign application)

I certify that this declaration has been signed and sworn to/affirmed before me

at..... on this ..... day of ..... 20.....

by the applicant/person authorised to sign the application and who has acknowledged that –

- (a) he/she knows and understands the contents of this declaration;
(b) he/she has no objection to taking the prescribed oath/affirmation; and
(c) he/she considers the prescribed oath to be binding on his/her conscience,

and that he/she uttered the following words:

“I swear that the contents of this declaration are true, so help me God.”/“I truly affirm that the contents of this declaration are true.”

.....

*Commissioner of Oaths*

.....

*Affirmation*

Full names and surname: .....

Business address: .....

.....

Designation: .....

Area for which appointment is held: .....

Office held, if appointment is ex officio: .....

**SCHEDULE 2  
LICENCE CERTIFICATE**  
North West Business Licensing Act, 2017  
(Act No. X of 2017)

**NWBLA 2**

<b>PARTICULARS OF THE LICENCE HOLDER</b>
<b>Licence number:</b>
<b>Licence category:</b>
<b>Type of premises:</b>
<b>Period of validity:</b>
<b>Date for renewal application:</b>
<b>Name of licence holder:</b>
<b>Identity number of licence holder:</b>
<b>Physical address of licence holder:</b>
<b>Name of licensed premises:</b>
<b>Physical address of licensed premises:</b>
<b>Name of person managing licensed premises:</b>
<b>Amount paid:</b>
<b>Receipt number:</b>
<b>District:</b>
<b>Local municipality:</b>
<b>General conditions:</b>
<b>Special conditions, if any:</b>
<b>Place of issue:</b>
<b>Date of issue:</b>

.....  
**Person acting under power assigned by  
 Business Licensing Authority**

**MEMORANDUM ON THE OBJECTS ON  
THE NORTH WEST BUSINESS LICENSING ACT, 2018**

**1. BACKGROUND AND PURPOSE**

1.1 The North West Businesses Act, 1997 (Act No. 6 of 1997) was assigned to the Province and therefore in terms of 104(1)(b)(iii) of the Constitution of the Republic of South Africa, 1996, the provincial legislature has the power to pass legislation with regard to business licensing, which is a matter falling outside the functional areas listed in Part A of Schedules 4 and 5 of the Constitution, but expressly assigned to the province by national legislation, namely the North West Businesses Act.

1.2 It further seeks to address challenges experienced with the implementation of the North West Businesses Act, 1997 (Act No. 6 of 1997).

**2. CLAUSE BY CLAUSE EXPLANATION**

In summary, the Act provides as follows –

**Clause 1**

Chapter 1 provides for definitions of certain words used in the context of this Act.

**Clause 2**

Clause 2 outlines the objects of this Act

**Clause 3**

Clause 3 outlines the application of this Act and other laws.

**Clause 4**

Clause 4 deals with exemptions

**Clause 5**

Clause 5 provides for certain prohibitions on conducting a business.

**Clause 6**

**Clause 6 provides for the establishment of the Business licensing Authority**

**Clause 7**

Clause 7 provides for the objects of the Business Licensing Authority

**Clause 8**

**Clause 8 outlines the powers, duties and functions of the Business Licensing Authority**

**Clause 9**

Clause 9 States provides that a member of the Business Licensing Authority is in a position of public trust

**Clause 10**

Clause 10 provides for term of office of the members of the Business licensing Authority

**Clause 11**

Clause 11 provides for vacancies, removal, resignation from office and filling of vacancies in the Business licensing Authority

**Clause 12**

Clause 12 provides for recusal of member from meetings and proceedings of Business Licensing Authority

**Clause 13**

Clause 13 outlines/ provides for meetings and procedures at the meetings of Business Licensing Authority

**Clause 14**

Clause 14 provides for remuneration of members the Business Licensing Authority

**Clause 15**

**Clause 15** deals with confidentiality of any information, documents or records at the disposal of or belonging to the Business Licensing Authority

**Clause 16**

Clause 16 prohibits the conducting of any business under this Act without a licence

**Clause 17**

**Clause 17 outlines categories of licenses for which an application for a business licence in terms of this Act may be made**

**Clause 18**

Clause 18 deals with disqualification of certain persons to hold licence under this Act

**Clause 19**

Clause 19 deals with the application procedures and outlines the requirements for application under this Act

**Clause 20**

Clause 20 provides for the notice of application where the license is for sale of any adult entertainment services.

**Clause 21**

Clause 21 provides for lodging of objections to the granting of a license through making written representations

**Clause 22**

Clause 22 provides for non-compliance with notification and publication

**Clause 23**

Clause 23 provides for hearings of objections by the Business Licensing Authority before considering an application.

**Clause 24**

Clause 24 provides timeframes within which applications should be considered after conclusion of the hearing by Business Licensing Authority

**Clause 25**

Clause 25 provides for procedure and timeframes in which the decision of the Business Licensing Authority must be communicated

**Clause 26**

**Clause 26** deals with renewal, suspension, cancellation, surrender, transfer of licence and related matters

**Clause 27**

Clause 27 provides for the suspension of a licence

**Clause 28**

Clause 28 outlines the procedure to be followed before cancellation of a licence

**Clause 29**

Clause 29 provides for conditions to be imposed on the surrender of licence

**Clause 30**

Clause 30 outlines circumstances under which a license may be transferred.

**Clause 31**

Clause 31 explains how a licence may be dealt with in the event of death of licensee

**Clause 32**

Clause 32 Appointment of inspectors

**Clause 33**

Clause 33 outlines position of public trust by an inspector

**Clause 34**

Clause 34 provides for functions and powers of inspectors

**Clause 35**

Clause 35 deals with powers to make enquiries by Business Licensing Authority

**Clause 36**

Clause 36 provides for appeals by the aggrieved licensee.

**Clause 37**

Clause 37 provides for offences and penalties

**Clause 38**

Clause 38 set out grounds/ limitations/parameters on which the MEC may make

**Clause 39**

Clause 39 Deals with repeal, amendment or substitution of schedules

**Clause 40**

Clause 40 deals with repeal or amendment of laws and savings

**Clause 41**

Clause 41 provides for the short title

**3. PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

Since this Act does not establish a new entity the administrative support of the North West Business Licensing Authority will be rendered by employees employed by the Department, using departmental resources.

**4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT**

There are no financial implications for the Provincial Government foreseen.

**5. DEPARTMENTS/ BODIES/ PERSONS TO BE CONSULTED OR BODIES CONSULTED**

The Act has been drafted in consultation with –

- 5.1 The Portfolio committee;
- 5.2 Local municipalities;
- 5.2 formal and/ or informal business traders;
- 5.3 North West Business Chambers
- 5.4 The Department of Trade and Industry; and
- 5.4 Office of the Chief State Law Advisor.

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