

**PROVINCE OF THE EASTERN CAPE**



**EASTERN CAPE**  
**LIQUOR BOARD**

**EASTERN CAPE LIQUOR ACT, 2003**  
**(EASTERN CAPE)**

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*Act No 10 of 2003 (EC)*

# ACT

**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

6. Allowances of members

7. Personnel and administration of the board

8. Funds of the board

9. Powers and functions of the board

##### Part 2

Panel of appeal

10. Establishment of panel of appeal

Part 3

General provisions applicable to provincial structures

11. Disqualification for and vacating of office

12. Designation of chairpersons

13. Financial accountability

14. Annual reports and audit

Part 4

Meetings and conduct of business

15. Procedures

16. Disqualification of members at meetings

17. Notices and summons

18. Accessibility of meetings

CHAPTER 3

REGISTRATION

19. Compulsory registration

20. Categories of registration

21. Disqualification and other incompetency

22. Application procedure for registration, transfer or removal

23. Death or incapability of applicant

24. Appeals against refusals and conditions

25. Certificate of registration, transfer or removal

26. Commencement of registrations
27. Effects of registration
28. Non-compliance with obligations
29. Variation, suspension or cancellation of registration
30. Appeals against variation, suspension and cancellation of registration
31. Voluntary deregistration and winding-up or dissolution
32. Death or incapability of certain registered persons
33. Replacement of registration certificate
34. Controlling interests
35. Register of registered persons and national record of registrations
36. Payments into revenue funds

#### CHAPTER 4

##### TERMS AND CONDITIONS APPLICABLE TO SALE OF LIQUOR

37. Persons to whom liquor may be sold
38. Prohibition on sale of liquor to certain persons
39. Conditions applicable to storing and displaying of liquor
40. Management of business
41. Sale of liquor at special events
42. Trading hours
43. Other business on registered premises
44. Limitations on employers
45. Public health notices

#### CHAPTER 5

LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

Part 1

Inspections

46. Appointment or designation of inspectors
47. Powers and duties of inspectors
48. Entry with warrant
49. Entry without warrant
50. Use of force
51. Inspector may be accompanied
52. Duty to produce documents
53. Duty to answer questions and assist inspector
54. Compliance notices
55. Closing of registered and other premises

Part 2

Prohibited and controlled liquids

56. Prohibited concoctions and drinks

Part 3

Offences and penalties

57. Offences regarding inspectors
58. Offences regarding trading in liquor
59. General offences
60. Responsibility of registered persons for other persons

61. Penalties

Part 4

Judicial proceedings against or by the board

62. Service of notices and documents

63. Service of process

64. Notices of intention to defend

65. Costs

66. Appeals to High Court

Part 5

Evidential matters

67. Proof of certain facts by affidavit

68. Procedural requirements for proof by affidavit

CHAPTER 6

REGULATIONS

69. Regulations

CHAPTER 7

GENERAL PROVISIONS

70. Limitation of liability

71. Transitional arrangements

72. Short title and commencement

Schedule: Conversion of exemptions, licences and approvals

**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 12;

"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 appointed or designated in terms of section 46(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)(d);

"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 person registered as such in terms of this Act to manufacture liquor at or below the prescribed threshold volume, and includes micro-manufacturing of African traditional beer and methylated spirits;

“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 10(1), and “panel” has a corresponding meaning;

"person" includes a trust, and any other entity mentioned in the definition of “person” as defined in section 1 of the Interpretation Act, 1957(Act No. 33 of 1957);

“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 20(a), (b), (c), (d) or (e);

"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 "methylated spirit" in subsection (1), to be methylated 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 and micro-manufacturing 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 23(a), 32(1) and (2), 47(1), 48(2), 50(2)(a) and 51, 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 the Eastern Cape Liquor Board which is a juristic person.

##### **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) 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.

(b) A member must be eligible for reappointment at the end of his or her first term of office.

(c) The MEC may appoint any member of the Board other than a member contemplated in subsection 5(2) on a full-time contractual basis for a period not exceeding such member's term of office on such terms and conditions as determined by the MEC in consultation with the MEC responsible for finance in the Province.

### **Allowances of members**

6. A member of the board other than a member contemplated in section 5 (2) and (4)(c) must be paid such allowances in connection with the affairs of the board as determined by the MEC in consultation with the MEC responsible for finance.

### **Personnel and administration of the board**

7. (1) The Board must, in consultation with the MEC, establish a staff structure for the Board.

(2) The Board must appoint staff in terms of the structure contemplated in subsection (1).

(3) The staff contemplated in subsection (2) must be remunerated by the Board on such terms and conditions determined by the Board in consultation with the MEC.

### **Funds of the board**

8. 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.

**Powers and functions of the board**

## 9. The board-

- (a) must consider and approve or refuse applications for the categories of registration contemplated in section 20(a), (b), (c); (d) or (e);
- (b) may cancel, suspend 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 20(a), (b), (c); (d) or (e); and
- (d) must publish in the Provincial Gazette applications received for registration, transfer or removal as prescribed.
- (e) 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**

10. (1) A panel of appeal for the Province is hereby established.
- (2) The 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 eligible for reappointment at the end of his or her first term of office.

(6) Section 8 must apply with regard to the funds of the panel of appeal.

(7) Section 7 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**

11. (1) No person may 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 10(4), as the case may be.

### **Designation of chairpersons**

12. (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.



***Financial accountability***

13. The Board is the accounting authority in terms of the Public Finance Management Act, and must to that end comply with the provisions of that Act.

**Annual reports and audit**

14. (1) The board 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**

15. 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**

16. 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**

17. (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**

18. (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**

19. 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**

20. An application for registration in terms of this Act may be made in respect 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**

21. 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) is an unrehabilitated insolvent;
  - (c) is of unsound mind;
  - (d) 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;
  - (e) 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);
  - (f) 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.

### **Application procedure for registration, transfer or removal**

22. (1) An application for a category of registration contemplated in section 20(a), (b), (c), (d) or (e) must -
- (a) be made to the board;

- (b) subject to subsection (13) and section 71(2), 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 21;
      - (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 21;
      - (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 21;
      - (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 21; 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 21;
    - (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) in respect of the premises from which the applicant intends to sell liquor, whether the premises concerned are-
    - (aa) in existence, 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.;
  - (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 of service of the notice contemplated in the prescribed manner on the -
    - (i) ward committee which must on receipt of the notice consult the community of the area where the premises are situated and simultaneously submit a report to the board and the relevant municipal council; and
    - (ii) 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) 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 representations or objections to any application.
- (4) Within 60 days after receiving an application which complies fully with subsection (3), the board must consider the application, the report from the ward

committee 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 (3); and
- (b) no objections have been received by the board.

(5) 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) and (3); 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.

(6) The period contemplated in subsection (5) may be extended by the board on good cause shown by the applicant.

(7) If an applicant who has been served a notice contemplated in subsection (5) 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.

(8) If an applicant who has been served a notice contemplated in subsection (5) 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.

(9) 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.

(10) The provisions of subsection (2)(d) shall not be applicable in respect of an application for registration in terms of section 20(d).

(11) The holder of a registration certificate may at any time make application to the board for the transfer thereof to another person.

(12) The holder of a registration certificate may at any time make application for the removal of the registration certificate from the registered premises concerned to other premises situated in the same district municipal area as the registered premises.

(14) (a) The procedure and consultation process provided for in this section is applicable to an application for a transfer or removal.

(b) The provisions of section 21 are applicable in respect of an application for removal.

### **Death or incapability of applicant**

23. If a person who has made an application for a registration, excluding the category of registration contemplated in section 20(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**

24. (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, transfer or removal 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 22(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 22(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 22(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, transfer or removal**

25. (1) Upon grant of registration, transfer or removal, the board must-

- (a) register the applicant 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) In the case of approval by the board of an application for transfer, the board must issue a certificate of transfer in a prescribed form in the name of the transferee

(5) In the case of approval by the board for a removal, the board must issue a removal certificate in a prescribed form

### **Commencement of registrations**

26. (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**

27. (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.

### **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.

### **Variation, suspension or cancellation of registration**

29. (1) If a registered person who has been served a notice in terms of section 28 does not comply with the requirements stated in the notice or becomes disqualified or otherwise incompetent in terms of this Act, the board must -

- (a) vary or suspend the registration on such terms and conditions as the board may determine; or
- (b) cancel the registration certificate; and
- (c) notify the person in writing of-
  - (i) the variation or suspension or cancellation and state the reasons therefor;
  - (ii) the date on which the registration was varied or suspended or cancelled; and
- (d) 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, variation, suspension or cancellation of registration takes effect on the date on which the registration certificate is varied, suspended or cancelled by the board.

### **Appeals against variation, suspension or cancellation of registration**

30. (1) A registered person may refer the decision of the board to vary, suspend or cancel that person's registration for appeal to the panel of appeal, and the procedure established by section 24(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 20(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) where the person who is the subject of the application, is disqualified or incompetent in terms of this Act to be registered.

### **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) Within 60 days after the end of each financial year, the board 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 board 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 20(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 18 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 is under the age of 18 years.

(2) Subsection (1) 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

##### Appointment or designation of inspectors

46. (1) The Board may appoint any person, or designate any officer of the Board, 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 board 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 54, 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 48 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 48 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 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 61 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 responsible for



health, 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 responsible for health, 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) 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) No registered retailer may accept delivery of any liquor which has not been ordered by such retailer.

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

(4) 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.

(5) 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;
- (h) supply liquor to a person in his, her or its employment as wages or remuneration or as a supplement therefore; or
- (i) allow prostitution and drug-trafficking on registered premises.

### **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 17, 59 or 59(1)(b) or (c) 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 19, 37, 38, 40, 41(a), 42, 45, 57 or 59(1)(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 59(1)(h) or 60 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 62 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 66 must, unless the court orders the costs to be borne by the opposite party or by the board.

## 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 67 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 22, the application procedure for the category of registration contemplated in section 20(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.

(6) Any person who within six months from the date of commencement of this Act was operating an illegal shebeen may make application in a prescribed manner to the board to be issued with a temporary registration certificate which must be valid for a period of twelve months from such date of issue, on such conditions as prescribed.

(7) The person contemplated in subsection (6) must within a period of twelve months make application to the board for registration in terms of section 22.

(8) The temporary registration certificate issued in terms of subsection (6) must lapse at the expiry of a period of twelve months unless the holder lodges an application for registration in terms of section 22.

(9) The temporary registration certificate issued to a holder in terms of subsection (6), who has lodged an application in terms of section 22 within twelve months as contemplated in subsection (7), must remain valid until the board has considered the application.

(10) The rights, duties and obligations that flow from a temporary registration certificate are the same as those of registration in terms of this Act.

### **Short title and commencement**

72. This Act is called the Eastern Cape Liquor Act, 2003, and comes into operation on a date fixed by the Premier by proclamation in the *Gazette*.

**SCHEDULE****Conversion of exemptions, licences and approvals**

<b>Kind of exemption, licence or approval in force immediately before the date of commencement of this Act</b>	<b>Category of registration deemed to be in force from the date of commencement of this Act</b>
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 20(a), (b), (c), (d) or (e) 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 20(a), (b), (c), (d) or (e) 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 20(b) of this Act.
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 20(b) of this Act.
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 20(b) of this Act.
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 20(b) of this Act.
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 20(b) of this Act.
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 20(b) of this Act. .
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 20(b) 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 20(d) of this Act, and must lapse at the closure of the occasion for which it was granted.
A liquor store licence referred to in section 20(b)(iii) 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 20(a) of this Act.
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 20(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 20(a) of this Act. .
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 20(a) of this Act.
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 20(a) of this Act.
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 20(b) of this Act.
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 20(c) of this Act.

## **EXPLANATORY MEMORANDUM ON THE EASTERN CAPE LIQUOR ACT, 2003**

### **PART I (General Principles)**

#### **Background**

The Eastern Cape Liquor Act, 2003 is enacted pursuant to a Constitutional Court judgement where the Constitutional Court ruled that retail sale and micro-manufacturing of liquor is a provincial competence and that wholesale trade and large scale manufacturing of liquor is a national competence.

#### **Policy aspects**

The Bill provides for registration of sellers of liquor, and in that regard substitutes registration for the licencing requirement for sellers of liquors. Further, it provides for the registration of micro-manufacturers of liquor and prohibits the manufacture of specified concoctions.

The Bill contains transitional provisions for temporary registration of illegal shebeen owners and further provides for conversion of existing licences.

The Bill establishes the Eastern Cape Liquor Board as juristic person. Further, it provides for a panel of appeal.

#### **Constitutional implications**

The Bill falls with Schedule 4 to the Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996), which is an area of concurrent legislative jurisdiction between the National Government and the provinces.

## **Financial implications**

The Bill has been budgeted for in the current financial year.

The Bill provides for the determination by the MEC by regulation of lodgement fee, registration fee annual fees and penalties.

## **Social implications**

The Bill prohibits, the selling of liquor to a person under the age of eighteen, drug trafficking and prostitution on registered premises, the payment of liquor in lieu of wages, the employment of people under the age of sixteen on registered premises, regulates the granting of registration where premises are situated within a prescribed radius to a place of worship and educational institutions, requires consultation with the affected communities, penalises drunken and disorderly conduct on the registered premises and the sale of liquor to an intoxicated person and the sale or consumption of liquor in a public place.

## **Consultations**

In 1996 the Department of Trade and Industry (hereinafter referred to as the "DTI") in conjunction with the 9 provinces to initiate legislation to regulate liquor in the Republic.

The DTI published a policy document.

This Province like all the other 8 provinces consulted extensively on the document as published with the stakeholders. To this end the Department of Economic Affairs Environment and Tourism in the Eastern Cape conducted workshops throughout the Province.

The DTI set up a task team to consider the comments received from all the provinces and submitted a liquor policy document to Cabinet which considered and approved it.

A National Bill was drafted by the DTI and published for comment. The Department of Economic Affairs, Environment and Tourism conducted workshops and received written comments from stakeholders.

The National Bill was considered and passed by both the National Assembly and the National Council of Provinces. The President refused to assent to the Bill and referred it back to National Assembly as provided for in the Constitution.



The National Assembly declined to effect any amendments on the Bill as passed and the President was obliged to refer it to the Constitutional Court for determination of its constitutionality.

The Constitutional Court held inter alia that the Bill was unconstitutional in so far as it regulated retail registration and micro-manufacturing, but was constitutional in the regulation of macro-manufacturing and wholesaling.

This Bill therefore, provides for the regulation of retail sale of liquor and micro-manufacturing which was held to be a provincial competence.

- |        |    |   |  |
|--------|----|---|--|
| Clause | 1  | : | provides for definitions   |
| Clause | 2  | : | provides for objects of the Act                                      |
| Clause | 3  | : | provides for the application of the Act and conflict with other laws |
| Clause | 4  | : | establishes the Eastern Cape Liquor Board                            |
| Clause | 5  | : | provides for the composition of the Eastern Cape Liquor Board        |
| Clause | 6  | : | provides for allowances of members                                   |
| Clause | 7  | : | provides for personnel and administration of the board               |
| Clause | 8  | : | provides for funds of the board                                      |
| Clause | 9  | : | sets out powers and functions of the board                           |
| Clause | 10 | : | establishes panel of appeal  |
| Clause | 11 | : | provides for disqualification for and vacating of office             |
| Clause | 12 | : | provides for designation of chairpersons                             |
| Clause | 13 | : | provides for financial accountability                                |
| Clause | 14 | : | Provides for annual reports and audit                                |

- Clause 15 : provides for procedures
- Clause 16 : disqualification of members at meetings
- Clause 17 : provides for notices and summons
- Clause 18 : provides for accessibility of meetings
- Clause 19 : provides for compulsory registration
- Clause 20 : sets out categories of registration
- Clause 21 : provides for disqualification and other incompetency
- Clause 22 : sets out application procedure for registration for retail sale of liquor
- Clause 23 : provides for death or incapability of applicant
- Clause 24 : provides for appeals against refusals and conditions
- Clause 25 : provides for certificate of registration
- Clause 26 : provides for commencement of registrations
- Clause 27 : sets out effects of registration
- Clause 28 : provides for non-compliance with obligations
- Clause 29 : provides for variation, suspension or cancellation of registration
- Clause 30 : provides for appeals against variation, suspension and cancellation of registration
- Clause 31 : provides for voluntary deregistration and winding-up or dissolution
- Clause 32 : deals with death or incapability of certain registered persons
- Clause 33 : provides for replacement of registration certificate
- Clause 34 : provides for controlling interests

- Clause 35 : provides for register of registered persons and national record of registrations
- Cause 36 : provides for payments into revenue funds
- Clause 37 : sets out persons to whom liquor may be sold
- Clause 38 : provides for the prohibition on sale of liquor to certain persons
- Clause 39 : sets out conditions applicable to storing and displaying of liquor
- Clause 40 : provides for management of business
- Clause 41 : provides for sale of liquor at special events
- Clause 42 : provides for trading hours
- Clause 43 : provides for other business on registered premises
- Clause 44 : sets out limitations on employers
- Clause 45 : provides for public health notices
- Clause 46 : provides for appointment or designation of inspectors
- Clause 47 : sets out powers and duties of inspectors
- Clause 48 : provides for entry with warrant
- Clause 49 : provides for entry without warrant
- Clause 50 : provides for use of force
- Clause 51 : provides for the accompaniment of an Inspector
- Clause 52 : sets out duty to produce documents
- Clause 53 : sets out duty to answer questions and assist inspector

- Clause 54 : provides for compliance notices
- Clause 55 : provides for closing of registered and other premises
- Clause 56 : prohibits certain concoctions and drinks
- Clause 57 : provides for offences regarding inspectors
- Clause 58 : provides for offences regarding trading in liquor
- Clause 59 : sets out general offences
- Clause 60 : sets out responsibilities of registered persons for other persons
- Clause 61 : sets out penalties
- Clause 62 : provides for service of notices and documents
- Clause 63 : provides for service of process
- Clause 64 : provides for notices of intention to defend
- Clause 65 : provides for costs
- Clause 66 : provides for appeals to High Court
- Clause 67 : provides for proof of certain facts by affidavit
- Clause 68 : sets out procedural requirements for proof by affidavit
- Clause 69 : provides for regulations
- Clause 70 : provides for limitation of liability
- Clause 71 : provides for transitional arrangements
- Clause 72 : provides for short title and commencement

