

KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SAKWAZULU-NATALI

Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI

(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
(Irejistiwee njengephephandaba eposihhovisi)

Vol. 5

PIETERMARITZBURG,

3 FEBRUARY 2011
3 FEBRUARIE 2011
3 kuNHLOLANJA 2011

No. 541

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No. 1

3 February 2011

[English text signed by the Premier]

KWAZULU-NATAL LIQUOR LICENSING ACT, 2010
(Act. No. 06 of 2010)

Assented to on 15-12-2010

ACT

To provide for the regulation, control and licensing of the retail sale and micro-manufacture of liquor in the Province of KwaZulu-Natal; to provide for the establishment of the KwaZulu-Natal Liquor Authority and local committees of the Liquor Authority; to provide for the appointment of inspectors and their powers and duties; and to provide for matters connected therewith.

BE IT ENACTED by the Legislature of the Province of KwaZulu-Natal, as follows:–

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CHAPTER 1
INTRODUCTION

Definitions

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

“accommodation” means any premises where lodging is provided and includes an hotel, a motel, an inn, a bed and breakfast establishment, a caravan and camping park, a farmhouse, a guest-house, a lodge, a boat and a house boat;

“beer” includes –

(a) ale, cider and stout; and

(b) any other fermented drink, other than traditional African beer –

(i) that is manufactured as, or sold under the name of, beer, ale, cider or stout, if it contains more than one percent by volume of alcohol; or

(ii) that is declared to be beer under the Liquor Act, 2003 (Act No. 59 of 2003);

“Chief Executive Officer” means the Chief Executive Officer of the KwaZulu-Natal Liquor Liquor Authority appointed in terms of section 22;

“close corporation” means a corporation as defined in section 1(1) of the Close Corporations Act, 1984 (Act No. 69 of 1984);

“club” means an association or organisation consisting of members dedicated to a particular activity or pursuing similar interests, which is subject to a set of rules or a constitution to which all members subscribe;

"company" means a company as defined in the Companies Act, 2008 (Act No. 71 of 2008 or its successor);

"Constitution" means the Constitution of the Republic of South Africa, 1996, or its successor;

"controlling interest" means any interest acquired or held, enabling the holder thereof to exercise, directly or indirectly, any control, as determined in accordance with section 12(2) of the Competition Act, 1998 (Act No. 89 of 1998), over the activities of the business or undertaking;

"convenience store" means a store located on the site of a service station selling petrol, diesel or other petroleum products to the public, whose main business is the sale of a limited number and variety of fast moving consumer goods;

"co-operative" means a co-operative as defined in the Co-operatives Act, 1981 (Act No. 91 of 1981);

"days" for the purposes of calculation of time periods in this Act, means business days and excludes weekends and public holidays;

"Department" means the department in the Provincial Government of KwaZulu-Natal responsible for liquor licensing;

"distribute" means to offer liquor for sale, or to sell liquor, to a licensed person;

"distributor" means a person licensed as such in terms of the Liquor Act, 2003 (Act No. 59 of 2003);

"family member" includes –

- (a) a husband or a wife, any partner in a marriage concluded under any tradition or under any system of religious practice or any partner in a relationship where the parties live together in a manner resembling a marital partnership, a marriage concluded under any tradition or under any system of religious practice;

(b) any child born out of any one of the marriages or unions referred to in paragraph (a) or any child born to one of the partners referred to in the said paragraph; or

(c) the parents of a person referred to in paragraph (a) and the parents of such person's husband, wife or partner referred to in the said paragraph (a);

"financial interest" means the ownership of shares in a company, a member's interest in a close corporation, an interest in a partnership and, in respect of a business or undertaking, any interest which enables the holder thereof to share in the profits and income of such business or undertaking;

"gaming premises" means any premises on which gambling, as defined in the KwaZulu-Natal Gambling Act, 1996 (Act No. 10 of 1996), or its successor, takes place under the authority of a licence issued in terms of that Act, or its successor;

"Gazette" means the official *Provincial Gazette* of the Province of KwaZulu-Natal;

"grocer" means a business retailing in groceries and foodstuffs, but excludes a convenience store;

"Head of Department" means the head of the department in the Provincial Government of KwaZulu-Natal responsible for liquor licensing;

"intoxicated" means the condition a person is in when his or her mental and physical faculties are so impaired by liquor that he or she is likely to cause injury to himself or herself or to another person or be a danger, nuisance or disturbance to others;

"learning institution" means a public and private institution or non-governmental organization which provides training and/or facilitates a training process for the achievement of competencies in line with nationally recognized standards;

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

“licensed person” means a person to whom a licence has been issued or who is regarded as licensed in terms of this Act ;

“licensed premises” means the premises on which liquor may be micro-manufactured or sold under a licence or permit in terms of this Act;

“liquor” means –

- (a) a liquor product, as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989);
- (b) beer or traditional African beer; or
- (c) any other substance or drink declared to be liquor under the Liquor Act, 2003 (Act No. 59 of 2003), but does not include methylated spirits;

“Liquor Act” means the Liquor Act, 2003 (Act No. 59 of 2003);

“Liquor Authority” means the KwaZulu-Natal Liquor Authority established in terms of section 5;

“Liquor Board” means the Board established in terms of section 5 of the Liquor Act, 1989 (Act No. 27 of 1989);

“liquor store” means an outlet licensed to sell liquor for consumption off the premises;

“local committee” means a committee of the Liquor Authority established in terms of section 30 for the metropolitan municipality and each district municipality in the Province;

“Member of the Executive Council for Finance” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

“Member of the Executive Council for Health” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for health;

“methylated spirits” means –

- (a) a spirit denatured in accordance with any law on the denaturation or methylation of spirits; or
- (b) any other denatured spirit, including –
 - (i) a medicated spirit; or
 - (ii) a denatured spirit declared to be methylated spirits in terms of the Liquor Act, 2003 (Act No. 59 of 2003);

“micro-manufacture” means to produce liquor at or below the prescribed threshold volume determined in terms of section 4(10) of the Liquor Act, 2003 (Act No. 59 of 2003);

“micro-manufacturer” means a person registered as such under this Act to micro-manufacture liquor at or below the threshold volume prescribed in terms of the Liquor Act, 2003 (Act No. 59 of 2003) ;

“minor” means a person who has not attained the age of 18 years;

“municipality” means a municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000), and **“district municipality”** and **“metropolitan municipality”** have a corresponding meaning;

“natural wine” means a wine product as defined in the Liquor Products Act, 1989 (Act No. 60 of 1989) read with the relevant Regulations thereto;

“nightclub” means premises that are open at night and where dancing and music are usually provided;

“permit” means a special events permit referred to in section 39(1)(c);

“person” means a natural or a juristic person, a group of such persons or a

corporate body, unless the context indicates a contrary meaning;

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

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

"Province" means the province of KwaZulu-Natal established in terms of section 103 of the Constitution;

"Provincial Legislature" means the Legislature of the Province of KwaZulu-Natal;

"pub" means any commercially zoned licensed premises where liquor is sold for consumption on the premises and where meals prepared on the premises may be provided incidentally thereto;

"public office bearer" means –

- (a) a member of the National Assembly, the National Council of Provinces or the Cabinet;
- (b) a member of a provincial legislature or of the Executive Council of a province;
- (c) a municipal councillor;
- (d) a diplomatic representative of the Republic who is not a member of the public service;
- (e) a member of a house of traditional leaders; or
- (f) a national or provincial office bearer of a political party, organisation, body, alliance or movement registered in terms of section 15 or 15A of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

"public servant" means a public servant as defined in section 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), and includes a municipal employee;

"regulation" or **"regulations"** means a regulation or regulations made in terms of this Act;

“religious institution” means a place of worship;

“responsible Member of the Executive Council” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for liquor licensing;

“restaurant” means any premises licensed under the Businesses Act, 1991 (Act No. 71 of 1991) or its successor, where meals prepared on the premises are provided and where the sale of liquor for consumption on the premises is incidental thereto;

“retail sale” means the sale of liquor for the purposes of consumption and includes exchange or keep, offer, display, deliver, supply or dispose of, for retail sale, or authorise, direct or allow a retail sale, and **“sale”** and **“sell”** have corresponding meanings;

“Revenue Fund” means the Provincial Revenue Fund established in terms of section 226 of the Constitution;

“special event” means an event organised at a specified place for a specified duration;

“sports ground” means a place where sports meetings, games or recreational activities are held;

“supply” with regard to any retail sale of liquor, means to place a person in possession or control of that liquor;

“tavern” means any residentially zoned premises where liquor is sold for consumption on the premises, and where food may be provided incidentally thereto;

“theatre” means any premises where dramatic performances, plays, concerts,

shows or films are regularly shown or presented to the public;

“this Act” includes the regulations;

“traditional African beer” means a fermented liquid –

(a) made by –

(i) the fermentation of malt, unmalted grain or meal of the cereals sorghum, maize, finger millet or pearl millet, with no more than five per cent sugar by weight relative to the combined weight of all the malt, grain or cereal ingredients; or

(ii) combining traditional African beer powder with water;

(b) with no addition of ethyl alcohol;

(c) with an alcohol content not exceeding 3,5 per cent by volume;

(d) in a state of fermentation, or of which the fermentation has not been arrested; and

(e) not containing or flavoured with hops or any product derived from hops;

“traditional African beer powder” means a dry product –

(a) comprising –

(i) not more than three parts by mass of milled sorghum or maize malt; and

(ii) not less than seven parts by mass of milled precooked maize or sorghum unmalted grain or meal; and

(b) which –

(i) does not contain any sugar derived from any source;

(ii) does not contain, and is not flavoured with, hops or products derived from hops; and

(iii) may contain active dry yeast added as a processing aid; and

Objects of Act

2. The objects of this Act are –

(a) to provide for the regulation of the micro-manufacturing and the retail sale of liquor;

(b) to provide for mechanisms aimed at reducing the socio-economic and other

effects of alcohol abuse;

(c) to provide for public participation in the consideration of applications for registration; and

(d) to promote the development of a responsible and sustainable retail and micro-manufacturing liquor industry in a manner that facilitates –

- (i) the entry of new participants into the industry;
- (ii) diversity of ownership in the industry; and
- (iii) an ethos of social responsibility in the industry.

Exemptions

3. This Act does 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;
- (b) a sheriff or any other officer of a court acting in terms of an order of a court;
- (c) a judge or magistrate, acting in the performance of his or her functions;
- (d) the seller of any spiritous or distilled perfumery or medicated spirit, which perfumery or spirit is not methylated spirits; and
- (e) the manufacturer of sweets containing not more than two per cent by mass of alcohol.

Functions of responsible Member of Executive Council

4. The responsible Member of the Executive Council must –

- (a) within 12 months after the coming into operation of this Act, –
 - (i) develop provincial policy and norms and standards pertaining to the retail liquor industry and the micro-manufacturing of liquor;
 - (ii) establish and set guidelines for the conduct of business in the Liquor Authority and local committees;
- (b) establish a social responsibility programme in respect of alcohol consumption; and
- (c) perform such other functions as may be assigned to him or her in terms of this Act.

CHAPTER 2 KWAZULU-NATAL LIQUOR AUTHORITY

Establishment of Liquor Authority

5.(1) A juristic person to be known as the KwaZulu-Natal Liquor Authority is hereby established.

(2) The Liquor Authority is a provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The Liquor Authority is the accounting authority, as contemplated in section 49(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Objects of Liquor Authority

6. The objects of the Liquor Authority are to –

- (a) consider, grant or reject liquor licence applications in the Province;
- (b) issue licences in terms of Chapter 6 of this Act;
- (c) enhance accessibility of liquor licences in the Province;
- (d) ensure a uniform, fair, equitable and transparent process in the issuing of liquor licences;
- (e) work with the responsible Member of the Executive Council, the Department, municipalities and the liquor industry in the Province in order to implement and promote national and provincial liquor policies and norms and standards; and
- (f) to implement and promote initiatives which addresses the objects of the Act as provided for in Section 2(b) and (d).

Powers, duties and functions of Liquor Authority

7.(1) The Liquor Authority must –

- (a) consider and process all applications for liquor licensing in terms of Chapter 6 of this Act;
- (b) refuse or grant liquor licence applications contemplated in paragraph (a);
- (c) advise the responsible Member of the Executive Council on any matter referred to the Liquor Authority by the responsible Member of the Executive Council;
- (d) investigate and make recommendations to the responsible Member of the Executive Council, regarding any matter relating directly or indirectly to the liquor industry in the Province;
- (e) advise the responsible Member of the Executive Council on the development of a social responsibility programme in respect of alcohol consumption and the implementation thereof;
- (f) assist the responsible Member of the Executive Council in formulating policy and in establishing norms and standards concerning any matters in relation to the liquor industry in the Province;
- (g) participate in programmes aimed at promoting the development of a responsible and sustainable retail and micro-manufacturing liquor industry in the Province;
- (h) initiate and participate in the development programmes aimed at reducing the socio-economic and other effects of alcohol abuse;
- (i) assist and advise the responsible Member of the Executive Council on the development of a programme in order to pursue the objects of the Act outlined in section 2;
- (j) within the framework of national and provincial liquor policies, assist and advise the responsible Member of the Executive Council with regard to advising and guiding
 - (i) local committees;
 - (ii) the business unit within the Department responsible for small business development; and
 - (ii) stakeholders in the liquor industry, consumers and organisations or institutions whose activities or aims have an impact on and relate to the liquor industry in the Province; and
- (k) perform such other functions as may be assigned to it in terms of this Act.

(2) The Liquor Authority may, after the consideration by it of any other matter contemplated in this Act –

- (a) suspend for an indefinite time or for such period as it may determine or withdraw from such date as it may determine, a licence which is the subject of a report, complaint or objection concerned, any right or privilege which is attached thereto;
- (b) declare the licence concerned to be subject to such conditions or further conditions as it may in its discretion impose;
- (c) rescind the suspension of the licence concerned or of any right or privilege which is attached thereto, with immediate effect or from such date as it may determine, subject to such conditions as it may in its discretion impose;
- (d) revoke and cancel an issued licence where there has been a breach of the licence conditions;
- (e) authorise the Chief Executive Officer to renew a licence prior to its expiry where the inspector confirms that the requirements as prescribed and referred to in section 64 are satisfied, unless it has been cancelled or surrendered and in accordance with the provisions of section 64;
- (f) grant or refuse any application by a licensee to transfer a licence from one person to another in terms of section 74, or transfer of a licence from one licenced premise to other premise`s in terms of section 75, within the Province; or
- (g) take any such other steps as it may deem fit.

Composition of Liquor Authority

8.(1) The Liquor Authority consists of –

- (a) not more than five members appointed by the responsible Member of the Executive Council; and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 22.

(2) The members contemplated in subsection (1) must include –

- (a) two persons who are admitted as Attorneys or Advocates with at least five years experience in the legal profession or the administration of justice;
- (b) one person who has knowledge and experience in the field of welfare, socio-economic development, social services or health;
- (c) one person who has knowledge and experience in the liquor industry and not actively involved nor having a financial interest therein, whether directly or indirectly;

(d) one member of the South African Police Service of the rank of Lieutenant Colonel or above, nominated by the Lieutenant General of Police.

(3) In appointing members to the Liquor Authority, the responsible Member of the Executive Council must ensure that historic imbalances are addressed.

(4) The responsible Member of the Executive Council must designate –

(a) one of the members of the Liquor Authority as the Chairperson of the Liquor Authority; and

(b) one of the members of the Liquor Authority as the Deputy Chairperson of the Liquor Authority.

(5) The responsible Member of the Executive Council must, by notice in two newspapers circulating widely in the Province and using any other method designed to reach the greatest number of residents in the Province, invite any interested parties within the Province to nominate candidates for appointment to the Liquor Authority, within 21 days of the date of publication of the said notice.

(6) The invitation for nominations as prescribed must specify –

(a) the nomination procedure;

(b) the requirements for nominations which may include-

(i) the full names of the nominee, his or her address and the *curriculum vitae* of such person together with a written motivation for the nomination by the nominator; and

(ii) an affidavit by the nominee wherein the nominee affirms that he or she is not disqualified in terms of section 9: Provided that if the nominee has been convicted of an offence contemplated in section 9(1)(f), such nominee must furnish an affidavit wherein he or she discloses full details of any conviction and affirms that he or she is not disqualified in terms of any of the other provisions of section 9; and

(c) the closing date for the nominations.

(7) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of no less than four departmental senior officials to review all the nominations and make

recommendations to the responsible Member of the Executive Council regarding the candidates for appointment to the Liquor Authority.

(8) The responsible Member of the Executive Council must cause the names of the persons appointed to the Liquor Authority to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Liquor Authority.

(9) The responsible Member of the Executive Council must, within two months after the appointment of members of the Liquor Authority inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

(10) The responsible Member of the Executive Council may appoint an official within the Department as his or her representative whose functions and duties may be prescribed who-

- (a) must facilitate liaison between the responsible Member of the Executive Council and the Liquor Authority;
- (b) must report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
- (c) may attend meetings of the Liquor Authority and participate in discussions, but does not have the right to vote when a decision of the Liquor Authority is being taken.

(11) This section applies, with the necessary changes, to the filling of a vacancy on the Liquor Authority.

Disqualification from being appointed to Liquor Authority

9. A person is disqualified from being appointed to the Liquor Authority or from remaining on the Liquor Authority, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Liquor Authority and

fails to declare his or her interest and the nature thereof in the manner required by this Act;

(d) is a person under curatorship;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon such nominee disclosing full details of the offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed;

(g) fails to disclose an interest in accordance with section 11 or attended or participated in the proceedings of the Liquor Authority while having an interest contemplated in the said section;

(h) is a public servant;

(i) is a public office bearer; or

(j) is not a citizen of the Republic and resident in the Province.

Declaration of financial or other interests of members of Liquor Authority

10.(1) A person who has been nominated to serve on the Liquor Authority in terms of section 8 must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company, close corporation and of any other business interests.

(2) Any failure by a nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 9 from being appointed to the Liquor Authority.

(3) Every member of the Liquor Authority must, upon assuming office and at the beginning of every financial year of the Liquor Authority, submit a written declaration of his or her direct or indirect interest in any company, close corporation or other business interests.

(4) Where a member of the Liquor Authority acquires interest in any company, close corporation or other business interests, at any time during his or her tenure as a member of the Liquor Authority he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.

(5) Any failure on the part of the member to disclose his or her interests as contemplated in subsections (3) and (4) results in the termination of appointment of such member in terms of section 13(2).

(6) The responsible Member of the Executive Council must keep an updated register of the interests of members of the Liquor Authority disclosed in terms of this section.

Failure to declare financial or other interests by member of Liquor Authority

11.(1) A member of the Liquor Authority who fails to make a declaration envisaged in section 10 may, subject to subsection (2), be disqualified from remaining on the Liquor Authority.

(2) The responsible Member of the Executive Council, on becoming aware that a member of the Liquor Authority has failed to comply with the provisions of section 10, must investigate the matter and consider appropriate disciplinary action.

Term of office and reappointment of member of Liquor Authority

12.(1) A member is appointed to serve on the Liquor Authority for a period of three years or such lesser period as the responsible Member of the Executive Council may determine.

(2) A member is eligible for re-appointment upon the expiry of his or her term of office for one additional term.

Vacancies, removal and resignation from office of members of Liquor Authority

13.(1) A member of the Liquor Authority must vacate office if he or she becomes subject to a disqualification contemplated in section 9.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her opinion, there are sound, cogent and justifiable reasons for doing so.

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

(4) A member may resign from office by giving not less than 30 days written notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice.

(5) Whenever a vacancy occurs on the Liquor Authority, the responsible Member of the Executive Council must, subject to section 8, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(6) The responsible Member of the Executive Council may, subject to subsection (2), terminate the appointment of all or some of the members of the Liquor Authority.

(7) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (6), he or she may, notwithstanding the procedure for the appointment of the members of the Liquor Authority set out in section 8, but subject to subsections (2) and (3) of section 8, appoint persons to serve as members of the Liquor Authority on an interim basis: Provided that –

(a) the persons appointed to replace the members whose appointment has been terminated in terms subsection (6), may not remain on the Liquor Authority for a period of more than 90 days from the date of their appointment; and

(b) the responsible Member of the Executive Council, must, subject to section 8,

appoint the permanent members of the Liquor Authority within 90 days of the appointment contemplated in paragraph (a) of this subsection.

Temporary suspension of member of Liquor Authority

14.(1) The responsible Member of the Executive Council may, after applying the relevant rules of natural justice, suspend a member on full remuneration if –

- (a) the member is alleged to have committed a serious offence; and
- (b) the responsible Member of the Executive Council reasonably believes that the presence of such member at the Liquor Authority might jeopardise any investigation and the enquiry into the alleged misconduct, or endanger the well-being or safety of any person or state property: Provided that a suspension of this kind is a precautionary measure, which does not constitute a finding.

(2) If a member is suspended as a precautionary measure contemplated in subsection (1), the responsible Member of the Executive Council must hold the enquiry within 60 days from the effective date of such suspension.

Meetings and procedures at meetings of Liquor Authority

15.(1) The responsible Member of the Executive Council or his or her authorised delegate or representative must convene the first meeting of the Liquor Authority.

(2) The Liquor Authority must thereafter meet as often as necessary, at such places and times as the Liquor Authority may determine.

(3) Every member of the Liquor Authority must be notified of each meeting in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

(4) If both the Chairperson and the Deputy Chairperson are absent from a meeting of the Liquor Authority, the meeting may not proceed.

(5) The Chairperson may call a special meeting of the Liquor Authority and he or she must do so at the written request of two-thirds of the members of the Liquor Authority.

(6) A notice calling a special meeting must be in writing and it must set out the date, time and place of the meeting and the business to be transacted thereat.

(7) A *quorum* for a meeting of the Liquor Authority is a simple majority of its members.

(8) Any decision of the Liquor Authority must be taken by resolution of the majority of the members present at any meeting of the Liquor Authority and, in the event of an equality of votes on any matter, the member presiding at the meeting in question has a casting vote in addition to his or her deliberative vote as a member of the Liquor Authority.

(9) The proceedings of all meetings of the Liquor Authority must be duly recorded and confirmed by all members present as a true reflection of the meeting's deliberations and decisions and signed by the Chairperson at that meeting.

(10) The Chairperson must decide on questions of order or procedure: Provided that if any member objects to any such decision, the question must be put to the vote and the decision of the majority of the members is final and binding on the Liquor Authority.

(11) A member of the Liquor Authority may not vote or in any manner participate in the proceedings at any meeting of the Liquor Authority, nor be present at the venue where such a meeting is held if, in relation to any matter before the Liquor Authority, such a member has any interest which, reasonably considered, may preclude him or her from performing his or her functions as a member of the Liquor Authority in a fair, unbiased and proper manner.

(12)(a) Subject to paragraph (b), all meetings of the Liquor Authority are open to the public.

(b) The deliberations and voting by the Liquor Authority on any matter must take place to the exclusion of the public.

Establishment of committees to assist Liquor Authority

16. (1) The Liquor Authority may establish committees consisting of one or more of its

members to –

- (a) which specific matters or classes of matter relating to the powers and functions of the Liquor Authority contemplated in section 7 may be referred for consideration, investigation and report to the Liquor Authority;
- (b) assist it in the performance of any of the powers or functions of the Liquor Authority contemplated in section 7; or
- (c) enquire or conduct research into any matter falling under the Liquor Authority's jurisdiction in terms of this Act.

(2) When establishing a committee contemplated in subsection (1), the Liquor Authority must –

- (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Liquor Authority; and
- (b) appoint a chairperson and deputy chairperson of such committee who must be members of the Liquor Authority and fulfil the requirements as prescribed in section 8(2)(a).

(3) The Liquor Authority may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Liquor Authority.

(4) The *quorum* for a committee is a simple majority of the persons appointed to such committee.

(5) Decisions of a committee must be taken by a majority of the members present at a meeting and, in the event of an equality of votes; the chairperson of the committee has a casting vote in addition to a deliberative vote.

(6) The committee must arrange for minutes of its meetings to be kept and such minutes will, subject to the provisions of section 15, be open to public inspection in the manner prescribed.

(7) A member of the committee who is not a member of the Liquor Authority must be

paid such remuneration and allowances out of the funds of the Liquor Authority as may be determined by the Liquor Authority.

Recusal of member from meetings and proceedings of Liquor Authority

17.(1) A member of the Liquor Authority must recuse himself or herself from a matter being investigated, considered or voted upon by the Liquor Authority if one or more of the following occur –

- (a) if he or she has a direct or indirect interest in the matter; or
- (b) if there is a possibility that a direct or indirect interest in the matter might arise.

(2) If at any stage during the course of any proceedings before the Liquor Authority it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such member must forthwith disclose the nature of his or her interest and leave the meeting.

(3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(4) If it subsequently emerges that the Liquor Authority took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Liquor Authority is invalid.

(5) For the purposes of this section "**indirect interest**" includes, but is not limited to, an interest held by any member's –

- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage, or person with whom such member cohabits or lives as though they are married; or
- (c) child, parent or sibling.

Remuneration of members of Liquor Authority

18.(1) A member of the Liquor Authority may be paid from the funds of the Liquor

Authority such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

(2)(a) A member of the Liquor Authority and a person who has been co-opted to the Liquor Authority may, in respect of his or her functions as a member or co-opted member, receive reimbursement from the funds of the Liquor Authority for reasonable actual subsistence and traveling expenses necessitated by the actual attendance of a meeting of the Liquor Authority.

(b) The Chief Executive officer must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

Expert and other assistance

19.(1) The Liquor Authority may appoint such experts or other persons as service providers as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties.

(2) The terms, conditions, and fees applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered must be determined by the Liquor Authority, and be contained in a written agreement entered into for that purpose between the Liquor Authority and the expert or person concerned.

(3) The experts or other persons appointed under subsection (1) may not vote on any decision taken by the Liquor Authority.

Confidentiality

20.(1) Members of the Liquor Authority, staff of the Liquor Authority, committee member, consultant or any other person associated with the Liquor Authority in terms of this Act, must not disclose any information, documents or records at the disposal of or belonging to the Liquor Authority, except –

(a) to any person who requires it for the performance of his or her functions in terms

of this Act or any other similar law in force in the Republic of South Africa;

(b) to any other person in terms of an order of a competent court or under this Act or any other law; or

(c) with the permission of the Liquor Authority, another government agency charged with law enforcement powers or with powers to regulate the Liquor industry, in which event such agency must take steps to ensure the confidentiality of the information, documents or records concerned, failing which the Liquor Authority may withdraw any permission granted in terms of this paragraph.

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

Delegation of powers, duties and functions

21.(1) The Liquor Authority may, issue in the prescribed manner, subject to such conditions it deems appropriate –

- (a) delegation to the Chief Executive Officer, the following powers and functions:
- (i) to grant a liquor licence as contemplated in Chapter 6, to impose conditions on the issue of such a licence and to amend, substitute or rescind any condition;
 - (ii) to refuse an application for a liquor licence as contemplated in Chapter 6, with reasons, subject to the provisions of Promotion of Administrative Justice Act, (Act No 3 of 2000) as amended;
 - (iii) to grant or refuse an application by a licence holder to relocate his or her or its licenced premises to other premises within the Province;
 - (iv) to grant or refuse an application by a licence holder for the transfer of his or her or its licence to another person within the Province;
 - (v) to revoke a licence after consideration of the merits of the breach of the licence conditions, by the Liquor Authority;
 - (vi) to appoint persons to assist the Liquor Authority and the Chief Executive Officer;

(vii) to appoint or refuse to appoint a manager in terms of section 77, to impose conditions on such appointment and to amend, substitute or rescind any such condition;

(b) delegate to a committee established in terms of section 16, an employee, or any other person or body, the powers, functions and obligations of the Liquor Authority contemplated in this Act.

(2) Any delegation in terms of subsection (1) does not prevent the Liquor Authority from exercising such power or performing such duty or function itself.

CHAPTER 3 CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF KWAZULU NATAL LIQUOR AUTHORITY

Appointment of Chief Executive Officer of KwaZulu Natal Liquor Authority

22.(1) The Liquor Authority in consultation with the responsible Member of the Executive Council must appoint a fit and proper person as the Chief Executive Officer of the Liquor Authority for a term of five years.

(2) The Chief Executive Officer is an *ex officio* member of the Liquor Authority without voting powers.

(3) The Chief Executive Officer is eligible for re-appointment for one additional term only.

(4)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Liquor Authority or its duly delegated representative.

(b) The Liquor Authority or its duly delegated representative and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(5) The Liquor Authority in consultation with the responsible Member of the Executive Council may terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

(6) The Chief Executive Officer must be paid the remuneration and allowances as may be determined by the Liquor Authority in consultation with the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

(7) Sections 10 and 11 apply to the Chief Executive Officer, with the necessary changes, except that he or she must disclose his or her interests or any conflict of interest to the Liquor Authority.

Functions of Chief Executive Officer

23.(1) The Chief Executive Officer is responsible for –

- (a) the financial and administrative management of the KwaZulu Natal Liquor Authority, subject to the direction of the Liquor Authority;
- (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the responsible Member of the Executive Council or his or her delegated representative;
- (c) the appointment of members of staff of the Liquor Authority referred to in section 24(1); and
- (d) the control of, and maintenance of discipline over, members of staff of the Liquor Authority;

(2) In respect of licence applications, the Chief Executive Officer must –

- (a) after an application for a licence or permit has been granted by the Liquor Authority or its delegated committee, issue a licence certificate or permit in the applicant's name in the prescribed form;
- (b) keep and maintain in due and proper order, a register in respect of all decisions of the Liquor Authority in respect of such applications;
- (c) within 60 days after the end of each calendar year, publish the record of licences or permits, setting out the names of all persons –
 - (i) who had been issued with licences or permits on the last day of the relevant year;
 - (ii) whose licences or permits were cancelled during the relevant year;

- (iii) who surrendered voluntarily, or have been finally sequestered, wound up or dissolved during the relevant year; and
 - (iv) who were refused a licence or permit during the relevant year;
 - (d) maintain a catalogue in chronological order of all the decisions of the Liquor Authority, and after five years, must cause such decisions to be stored in the archives of the Province; and
 - (e) perform all other functions and duties required of the Chief Executive Officer in terms of this Act.
- (3) A licence certificate or permit issued in terms of subsection (2) must include –
- (a) a licence or permit number;
 - (b) the date on which the applicant's name was entered in the register;
 - (c) the fixed address of the premises in respect of which a licence or permit has been granted;
 - (d) the conditions upon which the licence or permit was granted;
 - (e) the trading hours and trading days applicable to the licence or permit; and
 - (f) the category of licence or permit.
- (4) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the responsible Liquor Authority in consultation with the responsible Member of the Executive Council must, in writing, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

Staff of Liquor Authority

24.(1) The Chief Executive Officer must, employ members of staff of the Liquor Authority to do the administrative, secretarial and other work incidental to the performance of the functions of the Liquor Authority, sub committees of the Liquor Authority and the local committees.

- (2) The Liquor Authority, in consultation with the responsible Member of the Executive Council and the Member of the Executive Council for Finance, must –
- (a) determine a human resources policy for the Liquor Authority; and

(b) determine the remuneration and conditions of service of the Chief Executive Officer and the other members of staff of the Liquor Authority.

(3) The Liquor Authority must, in consultation with the Chief Executive Officer, determine a code of conduct, applicable to all members of staff of the Liquor Authority and justiciable for purposes of disciplinary proceedings, to ensure –

- (a) compliance with applicable law;
- (b) the effective, efficient and economical use of the Liquor Authority's funds and resources;
- (c) the promotion and maintenance of a high standard of ethics;
- (d) the prevention of conflicts of interest other than those contemplated in section 26;
- (e) the protection of confidential information held by the Liquor Authority; and
- (f) professional, honest, impartial, fair, ethical and equitable service.

Secondment of staff to Liquor Authority

25. The Liquor Authority may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Conflict of interest

26.(1) A member of staff of the Liquor Authority must, on appointment, submit to the Liquor Authority a written statement in which it is declared whether or not that member has any direct or indirect interest, financially or otherwise, which –

- (a) may constitute a conflict of interest in respect of his or her functions as a member of staff of the Liquor Authority; or
- (b) could reasonably be expected to compromise the Liquor Authority in the performance of its functions.

(2) If any member of staff of the Liquor Authority acquires an interest referred to in subsection (1), he or she must immediately in writing declare that fact to the Liquor Authority.

(3) A member of staff of the Liquor Authority may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Liquor Authority in which that member has an interest referred to in subsection (1).

(4) A member of staff of the Liquor Authority may not use his or her position or privileges, or confidential information obtained as a member of staff of the Liquor Authority, for personal gain or to improperly benefit another person.

(5) A member of staff of the Liquor Authority who fails or refuses to comply with subsection (1), (2), (3) or (4) is subject to disciplinary measures in terms of applicable employment and labour law, and the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(6) The Liquor Authority must keep a register of the interests of members of staff disclosed in terms of subsection (1) and must update that register from time to time.

CHAPTER 4 FUNDING AND FINANCIAL MANAGEMENT OF LIQUOR AUTHORITY

Funds of Liquor Authority

27.(1) The funds of the Liquor Authority consist of –

- (a) money appropriated by the Legislature to the Department; and
- (b) money accruing to the Liquor Authority from any other lawful source, including fees paid in terms of this Act.

(2) The Liquor Authority must utilise its funds to cover costs in connection with the performance of its duties and functions and the exercise of its powers in terms of this Act.

(3) The Chief Executive Officer must in consultation with the Liquor Authority–

- (a) open an account in the name of the KwaZulu Natal Liquor Authority with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of subsection (1).

Financial management

28.(1) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure that the Liquor Authority's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The Chief Executive Officer must, within three months before the end of each financial year, submit to the Liquor Authority for approval –

- (a) a business plan for the Liquor Authority, containing measurable objectives; and
- (b) a statement of the estimated income and expenditure of the Liquor Authority, in respect of the following three financial years.

(4) In any financial year the Chief Executive Officer may submit to the Liquor Authority for approval adjusted or supplementary statements of the estimated income and expenditure of the Liquor Authority for that financial year.

(5) The Liquor Authority may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(6) Where the Liquor Authority acts contrary to the provisions of subsection (5), the Chief Executive Officer must, within a reasonable time, inform the responsible Member of the Executive Council.

(7) The responsible MEC, on becoming aware of a contravention of subsection (5) or of any failure of the Chief Executive Officer to inform the MEC as contemplated in subsection (6), must investigate the matter and consider appropriate disciplinary action.

Audit and annual report

29.(1) The Auditor-General must audit the financial statements of the Liquor Authority.

(2)(a) The Chief Executive Officer must on behalf of the Liquor Authority table a report on the activities of the Liquor Authority during a financial year, in the Provincial Legislature, within five months after the end of that financial year.

(b) Within five months after the report has been tabled, a delegation consisting of the chairperson of the Liquor Authority and at least two other members of the Liquor Authority must brief the relevant Portfolio Committee on the annual report.

(3) The report must –

(a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

(b) state the extent to which the Liquor Authority has achieved or advanced its objects referred to in section 2 and the measurable objectives as set out in its business plan during the financial year concerned; and

(c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

CHAPTER 5 LOCAL COMMITTEES

Establishment of local committees

30.(1) The responsible Member of the Executive Council must, for the area of a district or metropolitan municipality in the Province, and within 180 days of enactment of this Act, by notice in the *Gazette*, establish a local committee of the Liquor Authority.

(2) A local committee contemplated in subsection (1) is not a juristic person.

Powers and functions of local committees

31.(1) A local committee must deal with and consider all applications for licences made

in terms of section 41, in accordance with the provisions of sections 42 to 46.

(2) A local committee must make recommendations in respect of all applications in terms of subsection (1) to the Liquor Authority immediately after consideration of the applications.

(3) A local committee may advise the Liquor Authority or furnish a report or recommendation to the Liquor Authority on any matter referred to it by the Liquor Authority for consideration and arising from the application of this Act.

(4) A local committee must perform such other functions as may be assigned to it in terms of this Act.

Composition of local committees

32.(1) Each local committee consists of eight members, being fit and proper persons, appointed by the responsible Member of the Executive Council.

(2) The committee contemplated in subsection (1), must include –

- (a) one person who is in possession of a legal qualification, with at least five years experience in the legal profession or the administration of justice;
- (b) one person representing an organised commerce body who has knowledge of the liquor industry but who has no direct vested interest within the liquor industry, for which area the local committee is established;
- (c) a representative of the municipality within which area the local committee is established, being an employee of the municipality concerned who is experienced in, or in charge of, business licensing or similar functions within the municipality;
- (d) two representatives appointed from the community in the area of the local committee, appointed by reason of his or her knowledge in the field of welfare or socio-economic development, social services or health;
- (e) a member of the Community Policing Forum from the South African Police Services Cluster within the district of the local committee concerned, nominated by the KwaZulu-Natal Provincial Secretary of the Community Policing Forum;
- (f) a councilor elected by the district or metropolitan municipality concerned; and

- (g) a member of the South African Police Services from the South African Police Services Cluster within the district of the local committee concerned.
- (3) The Liquor Authority must second a secretary to a local committee.
- (4) The secretary contemplated in subsection (2) has no voting rights.
- (5) A person may not be appointed as a member of the local committee if that person –
- (a) is not a South African citizen and resident in the Province;
 - (b) is an unrehabilitated insolvent;
 - (c) is subject to an order of a court declaring such person to be mentally ill or disordered;
 - (d) has at any time been convicted of any offence involving dishonesty: provided that a disqualification in terms of this subsection ends three years after the sentence has been served;
 - (e) has at any time been removed from an office of trust on account of misconduct; or
 - (f) has a direct or indirect financial interest in the liquor industry, or whose spouse, life partner or close relative has a direct or indirect financial interest in the liquor industry, where such relationship in the opinion of the responsible Member of the Executive Council constitutes a conflict or potential conflict of interest.
- (6) The responsible Member of the Executive Council must designate –
- (a) one of the members of the local committee as the Chairperson of the local committee; and
 - (b) one of the members of the local committee as the Deputy Chairperson of the local committee, where such members referred to in subsection (6)(a) and (b) are in possession of a legal qualification as contemplated in the provisions of subsection (2)(a).

Appointment of members of local committees

33.(1) In respect of the persons referred to in section 32(2)(a),(b) and (d) –

- (a) The responsible Member of the Executive Council must by notice published in

two newspapers circulating widely in the area of the municipality where the local committee is established, invite the nomination of persons as members of the local committee.

(b) The invitation for nominations in terms of paragraph (a) must specify the –

(i) criteria for selection;

(ii) nomination procedure;

(iii) requirements for nomination; and

(iv) date by which nominations must be received by the responsible Member of the Executive Council.

(c) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice.

(d) The responsible Member of the Executive Council may appoint a selection panel of no less than four Departmental senior officials to review all nominations and make recommendations on the nominees referred to in this subsection.

(2) In respect of the persons referred to in section 32(2)(c) and (f), the responsible Member of the Executive Council must call for nominations from the metropolitan municipality, local municipalities and the district municipalities concerned, where applicable.

(3) In respect of persons referred to in section 32(2)(e), the responsible Member of the Executive Council must invite the KwaZulu-Natal Provincial Secretary of the Community Policing Forum to provide the names of the persons concerned.

(4) The responsible Member of the Executive Council must, after considering the nominations and recommendations, if any, appoint the members to the local committees.

Remuneration of members of local committees

34.(1) A member of a local committee may be paid from the funds of the Liquor Authority such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

(2) A member of a local committee who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

- (a) the national government;
- (b) a provincial government;
- (c) a municipality; or
- (d) a corporation, body or institution in which the national or a provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a member of a local committee, may only receive remuneration and allowances referred to in subsection (1) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.

(3) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in subsection (2).

Filling of vacancies

35. Where a vacancy occurs for any reason in the office of the Chairperson, the Deputy Chairperson, or in the ranks of members of a local committee, the responsible Member of the Executive Council may, subject to the provisions of section 34, appoint a person to fill such vacancy.

Meetings of local committees

36.(1) The chairperson of a local committee must convene the first meeting of that committee.

(2) The local committee must thereafter meet as often as necessary, at such places and times as the chairperson of the committee may determine.

(3) Every member of a local committee must be notified of each meeting in writing, at least seven days prior to such meeting, and such notification must contain an agenda for

the proposed meeting.

(4) If both the Chairperson and the Deputy Chairperson are absent from any meeting of the local committee, the meeting may not proceed.

(5) The Chairperson may call a special meeting of the local committee and he or she must do so at the written request of two-thirds of the members of the committee.

(6) A notice calling a special meeting must be in writing and it must set out the date, time and place of the meeting and the business to be conducted at the meeting.

(7) A *quorum* for a meeting of a local committee is a simple majority of its members.

(8) Any decision of a local committee must be taken by resolution of the majority of the members present at any meeting of the committee and, in the event of an equality of votes on any matter, the member presiding at the meeting in question has a casting vote in addition to his or her deliberative vote as a member of the committee.

(9) The proceedings of all meetings of a local committee must be duly recorded and minuted.

(10)(a) The minutes of the previous meeting must be read and adopted at the commencement of each meeting.

(b) The minutes may be regarded as read if copies thereof were furnished to the members of the local committee prior to the meeting.

(c) The Chairperson may only sign the minutes once any objections have been considered and any corrections have been effected.

(11) The Chairperson must decide on questions of order or procedure: Provided that if any member objects to any such decision, the question must be put to the vote and the decision of the majority of the members is final and binding on the committee.

(12) A member of a local committee may not vote or in any manner participate in the proceedings at any meeting of the committee, nor be present at the venue where such a

meeting is held if, in relation to any matter before the committee, such a member has any interest which, reasonably considered, may preclude him or her from performing his or her functions as a member of the local committee in a fair, unbiased and proper manner.

(13)(a) Subject to paragraph (b), all meetings of a local committee are open to the public.

(b) The deliberations and voting by a local committee on any matter must take place to the exclusion of the public.

(14) The chairperson of the Local Committee may invite other officials or local councillors, where necessary, in addition to members provided for in section 32(2)(c) and (f) in respect of those applications within whose area of municipal jurisdiction such proposed liquor premise is being contemplated.

(15) Persons invited in terms of subsection (14) have no voting rights.

General provisions relating to local committees

37.(1) The provisions of sections 9 apply with the necessary changes with regard to disqualification of persons from being appointed as members of the local committee: Provided that a public servant and a public office bearer is not disqualified from being appointed as a member of a local committee.

(2) The provisions of sections 10, 11, 12, and 14 apply with the necessary changes to local committees.

CHAPTER 6
LICENSING PROCEDURE

Part 1
General

Compulsory licensing

38.(1) No person may sell liquor for retail or micro-manufacture liquor unless that person is licensed in terms of this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence.

Categories of licences and permits

39. An application for a liquor licence or permit in terms of this Act may be made in respect of the following categories –

(a) a licence for the retail sale of liquor for consumption on the following premises where the liquor is sold, namely –

- (i) an accommodation;
- (ii) a restaurant;
- (iii) a club;
- (iv) a nightclub;
- (v) a gaming premises;
- (vi) a sports ground;
- (vii) a pub;
- (viii) a tavern; and
- (ix) a theatre.

(b) a licence for the retail sale of liquor for consumption off the following premises where the liquor is sold, namely –

- (i) a liquor store; and
- (ii) a grocers' store;

(c) a special events permit for the retail sale of liquor for consumption on the premises where the liquor is sold; and

(d) a licence for the micro-manufacture of liquor.

Disqualification

40.(1) No person may be issued with a licence or permit if he or she –

- (a) is a minor on the date of submitting the application for a licence or permit;
- (b) is committed in terms of the Mental Health Act, 1973 (Act No. 18 of 1973), or the Mental Health Care Act, 2002 (Act No. 17 of 2002), as the case may be;
- (c) is an un-rehabilitated insolvent;
- (d) has in the preceding 10 years been sentenced for any offence to imprisonment without the option of a fine, unless the Liquor Authority is of the opinion that the offence is of such a nature that the offence does not render the applicant unsuitable to hold a licence or permit or unless the sentence has been set aside by a competent court or such a person has received a grant of amnesty or a free pardon;
- (e) has been convicted of a contravention of the Liquor Act, 1989 (Act No. 27 of 1989), within the three years immediately preceding the commencement of this Act;
- (f) has been convicted of an offence in terms of this Act: Provided that the person convicted will be disqualified from obtaining a licence or permit in the case of –
 - (i) a first offence, for a period of one year;
 - (ii) a second offence, for a period of two years; and
 - (iii) a third or subsequent offence, for a period of three years, calculated from the date of the sentence; or
- (g) has had his or her licence or permit cancelled in terms of this Act within a period of three years immediately preceding the lodgement of an application.

(2) No company, close corporation, co-operative, association, partnership or trust may be issued with a licence or permit if a person who is in terms of subsection (1) disqualified from being registered –

- (a) has a controlling interest in that company, close corporation, cooperative, association or trust;
 - (b) is a partner in that partnership; or
 - (c) is the main beneficiary under that trust,
- as the case may be.

Part 2
Applications for licences for the retail sale of liquor for consumption on and off the premises

Applications

41.(1) A person who wishes to apply for a liquor licence in respect of the categories listed under section 39(a) or (b) must –

- (a) lodge an application with the Liquor Authority in the prescribed manner and on the prescribed days; and
- (b) pay the prescribed application fee in the prescribed manner.

(2) The application must include and be accompanied by –

- (a) the physical address of the premises where the business will be conducted or a description of the location of the premises in terms of identifiable landmarks;
- (b) a detailed written motivation as prescribed in support of the licence application which must include –

- (i) the proximity of the proposed premise to learning institutions, religious Institutions and other licenced premises;
- (ii) in such instances where the applicant is a legal business entity constituted in terms of applicable legislation, a Black Economic Empowerment rating certificate from a recognized source or an approved rating agency as required in terms of the applicable Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and applicable Codes;
- (iii) an indication of the total number of new employment opportunities that would be created in terms of the potential new licence;
- (iv) the measures that will be instituted by the applicant to establish a social responsibility programme in respect of alcohol consumption in relation to the proposed licence premises as contemplated in section 4(b) of the Act; and
- (v) representations with regard to public interest issues.

- (c) the prescribed particulars of the applicant;
- (d) the category in respect of which licensing is being sought;
- (e) in relation to the premises in respect of which licensing is being sought, the prescribed details in respect of the premises, including a detailed sketch plan of the premises showing the rooms, services, buildings, construction material and other pertinent information together with photographs of the external and internal features

of the premises;

(f) subject to section 48(4)(iii) read with section 49, proof of a business or trading licence issued by the relevant municipality in terms of any law or by-law to enable the applicant to trade in the manner contemplated, where applicable;

(g) a certificate issued by the South African Police Service indicating the criminal offences of which the applicant has been convicted, if any;

(h) tax clearance certificate issued by South African Revenue Service indicating whether the applicant is registered as a taxpayer, and whether any taxes are outstanding;

(i) proof of lawful occupation of the premises, in the form of a title deed or a lease agreement in the name of the applicant or a permission to occupy the premises issued in favour of the applicant by the relevant authority, where applicable;

(j) a written consent in the prescribed form, from the owner of the premises or the relevant authority for the applicant to conduct the intended business from the premises concerned, where applicable;

(k) Proof of payment together with the application, lodged within a period of three months from date of payment. Should the applicant fail to lodge the application within the period of three months of payment, then the payment is non-refundable, and therefore lapses; and

(l) A detailed security plan with a written representation in terms of the measures to be taken by the applicant in terms of providing security measures for both inside the proposed premise, as well as within a circumference of five (5) metres outside of the proposed premise.

3) The Chief Executive Officer must –

(a) receive all applications;

(b) endorse on each application the date of receipt;

(c) compile a list of applicants and retain and maintain the list as part of the register contemplated in section 23(2)(b); and

(d) on receipt of an application, examine the application in order to determine whether it is complete.

(4) If the Chief Executive Officer determines that the application is incomplete and not in

accordance with the provisions of this Act, he or she must within a reasonable period issue a notice in the prescribed form, calling on the applicant to supplement or remedy the incomplete application within twenty (21) days of dispatch.

(5) Within 14 days of receipt of a complete application, the Chief Executive Officer must dispatch the application and all accompanying documents in the prescribed manner to the local committee in whose area of jurisdiction the premises in respect of which licensing is sought are situate, for consideration.

Notice of application

42.(1) Upon receipt of an application referred to in section 41(5), the local committee must notify the applicant in writing within fourteen (14) days that –

- (a) the application has been received from the Liquor Authority;
- (b) the applicant must give notice of the application in the prescribed form as follows

- (i) in at least one newspaper circulating widely in the area in which the licenced premises will be located;
 - (ii) display a notice in the prescribed form and size in a prominent place at the proposed premises, so that it is visible to passers-by; and
 - (iii) if the premises are in a residential area, serve notice of the application in the prescribed form on a member of a household over the age of sixteen years of each of the households occupying residences within a radius of 100 metres of the proposed premises;
- (c) the applicant must, simultaneously with publication of the application in the newspaper, deliver a copy of the application to the offices of the Station Commissioner of the South African Police Service in whose area of jurisdiction the proposed premises are or will be located; and
- (d) the applicant must submit proof of compliance within seven days from date of publication and notification to the local committee.

(2) The notice in terms of subsection (1)(b)(ii) must remain in place for a period of 21 days from the date of display of the notice.

- (3) The notices referred to in subsection (1)(b) must state that –
- (a) the application will be open for inspection at the offices of the relevant local committee and the office of the relevant Station Commissioner of the South African Police Service for a period of 21 days from the date of publication of the notice in the newspaper as contemplated in subsection (1)(b)(i); and
 - (b) any interested person may object to or make representations for or against the granting or refusal of the application to the relevant local committee within the 21 day period.
- (4) The relevant local committee and Station Commissioner must, within the period of 21 days, allow any person to inspect and copy the application upon payment of the prescribed fee.

Objections and representations

43.(1) A person who has an interest in the granting or refusal of the application may, within the period referred to in section 42(3)(b) and in writing, object to or make representations for or against the granting or refusal of the application.

- (2) The person making objections or representations must –
- (a) serve a copy thereof to the local committee and to the applicant or his or her representative; and
 - (b) submit proof of service to the applicant to the local committee.
- (3) The person making representations or objections must set out the following –
- (a) his or her full name and address;
 - (b) his or her identity number or, if a company or close corporation, its registration number, and if a Trust, the Master's reference number as proof of registration;
 - (c) if applicable, the name or address of his or her representative;
 - (d) the nature of his or her interest in the granting or refusal of the application; and
 - (e) comprehensive grounds for the objection to, or support of, the application.
- (4) The applicant may, within seven days of receipt of an objection or representations, submit a written response to the local committee.

Non-compliance with notification and publication

44.(1) The secretary of the local committee must –

- (a) examine the application within a reasonable time from the expiry of the 21 day period referred to in section 42(3), to determine whether the applicant has complied with the provisions of section 42; and
- (b) where such provisions have not been complied with, issue a notice to the applicant within a reasonable time to ensure compliance within 14 days.

(2) If the applicant fails to comply with the notice referred to in subsection (1)(b), the local committee must decline the application and inform the applicant and the Chief Executive Officer accordingly.

Inspections

45.(1) On expiry of the periods referred to in section 43(1) and (4), the secretary of the local committee must direct an inspector as contemplated in section 81(1)(a) to carry out an inspection to determine -

- (a) the physical address or description of the location of the premises as referred to in section 41(1)(a);
- (b) the proximity of other licensed premises, learning and religious institutions within the 500 meter circumference area to the proposed premises; and
- (c) the details referred to in section 41(2)(e).

(2) The inspector must conduct the inspection and submit a report in the prescribed form to the local committee within 14 days.

Consideration of application by local committee

46.(1) On receipt of the report from the inspector referred to in section 45(2), the local committee must consider the application, taking into account the following –

- (a) the application form and all accompanying documents;

- (b) the inspection report referred to in section 45(2);
- (c) any written objections or representations received and any response thereto;
- (d) the criteria referred to in section 48(5) and (6); and
- (e) any other matter which, in the opinion of the local committee, should be taken into consideration.

(2) After consideration of the application, the local committee must within a period of 14 days –

- (a) submit a report to the Liquor Authority, accompanied by copies of all documentation received by it; and
- (b) in its report, make a recommendation to the Liquor Authority either to grant or refuse the application, subject to such terms and conditions it may deem appropriate.

Objection hearings

47.(1) Where the local committee has received objections or representations in relation to an application, the Local committee must, before considering an application, hold an objection hearing.

(2) The Local Committee must –

- (a) determine the date, time and place of the hearing; and
- (b) notify the affected parties of the hearing in the manner prescribed.

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

- (a) the applicant must be afforded an opportunity to be heard;
- (b) any person may make oral or written representations; and
- (c) the applicant and each such person may be assisted or represented by any person of his or her choice.

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

- (a) by written notice delivered in the manner prescribed, require any person to appear before it to give evidence or to produce any book, plan or other document or

article in his or her possession or under his or her control;

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

(c) question any person appearing before it;

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

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

(5) An objection hearing must be –

(a) held in the manner prescribed; and

(b) open to the public.

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

Consideration of applications by Liquor Authority

48.(1) The Liquor Authority must within 14 days of receipt of the application from the local committee or, where an objection hearing was held in terms of section 47, within 14 days of conclusion of the hearing, consider the application.

(2) In considering the application, the Liquor Authority must consider all documents submitted, including the report and recommendations of the local committee and any other matter which, in the opinion of the Liquor Authority, may be relevant.

(3) The Liquor Authority may, if considered necessary –

(a) carry out an inspection of the premises; and

(b) call upon the services of experts or other service providers as contemplated in section 19.

- (4) After having considered an application, the Liquor Authority must either—
- (a) grant the application, subject to —
 - (i) such terms and conditions it may deem fit;
 - (ii) such trading days and hours it may determine in accordance with section 78; and
 - (iii) in relation to premises not yet complete or that require structural alteration so as to make the premises suitable, such conditions relating to the completion or alteration of the premises, as well as the issue of a Business Licence or consent to trade as contemplated in section 41(2)(f) as it relates to such premises, where applicable, as the Liquor Authority may deem fit, within a time period of eighteen(18) months subject to the provisions of section 49(2)(b);
 - (b) refuse the application; or
 - (c) postpone the matter.
- (5) Before granting an application, the Liquor Authority must satisfy itself that —
- (a) the granting of the application will be in the public interest;
 - (b) the applicant is not disqualified from holding a licence in terms of this Act;
 - (c) the premises upon which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence;
 - (d) the use of the proposed premises for the proposed activity would not be contrary to existing zoning laws or land use rights;
 - (e) the proposed premise is not located within a circumference of 500 metres of any religious or learning institutions; and
 - (f) the proposed premise is not located within a circumference of 500 metres of other licensed premises within residential areas.
- (6) In determining whether the application will be in the public interest as contemplated in subsection (5)(a), the Liquor Authority must consider, without detracting from the generality thereof, —
- (a) the prejudice or harm, or potential prejudice or harm, of the proposed licence to or on residents, property owners, other businesses including licensed liquor

premises, property values, schools and religious institutions within a radius of 500 metres surrounding the proposed premises or in close proximity thereto; and

(b) the extent to which the proposed licence will contribute to, or detract from, the achievement of the objects of the Act, including the extent to which the proposed licence –

- (i) will or is likely to impact on the socio-economic rights of society, including the prevalence of crime, and the costs of alcohol abuse;
- (ii) will facilitate the entry of new participants and diversity in the liquor industry; and
- (iii) will contribute to the fostering of an ethos of social responsibility in the liquor industry.

(7) A liquor licence issued to a licensee where the provisions as contemplated in section 41(2)(f); Section 41(2)(i); or Section 41(2)(j) are met, then such licence remains valid until such time as the consent contemplated in the said sections are either withdrawn or revoked by the persons authorised to do so .

(8) Where circumstances contemplated in subsection (7) arise, then the Liquor Authority must review the license in the manner prescribed.

Conditional approvals

49.(1) The Liquor Authority may grant conditional approvals, valid for a period of eighteen (18) months from date of grant, only in circumstances as is contemplated in section 48(4)(a)(iii), and when granting such an application, direct in writing that the licence may not be issued until the applicant complies with such conditions as the Liquor Authority may deem appropriate to impose.

(2) The Liquor Authority may at any time, upon application by the applicant in the prescribed manner –

- (a) amend or withdraw the conditions;
- (b) extend the time period as contemplated in subsection(1) for one further period of six (6) months only; or
- (c) grant an amendment of the plan of the premises.

(3) If the applicant fails to comply with the conditions contemplated in subsections (1) and (2) within the period as the Liquor Authority may determine from the date of granting of the application, the granting of the licence will lapse and the licence will be deemed not to have been granted.

(4) If the Liquor Authority is satisfied that the applicant has complied with the conditions, it must grant the final licence.

Special conditions

50.(1) The holder of a licence for the retail sale of liquor for consumption on the premises must ensure that liquor sold is consumed on the licensed premises and is not removed from such premises.

(2) The holder of a licence for the retail sale of liquor for consumption off the premises must ensure that –

- (a) a container containing liquor is not opened on the premises except for tasting purposes as granted by the Liquor Authority; and
- (b) liquor is not consumed on the licensed premises except for tasting purposes as granted by the Liquor Authority.

(3) The holder of an off consumption liquor licence in respect of a grocers' store premises must–

- (a) not sell liquor other than natural wine as prescribed in the Liquor Products Act, (60 of 1989), or its successor;
- (b) not sell liquor from any other place, other than the lockable area specifically demarcated for such sale with a separate pay point, as is prescribed;
- (c) ensure that the liquor is locked during the non- trading hours as is contained in schedule 3 of this Act.

(4) A licensed person may not lease the licence to any person or allow any person to carry on business in terms of the licence.

- (5) The holder of an on consumption liquor licence from a theatre premises –
- (a) may not sell liquor to a person who has not been granted access to a performance, play, concert, show or film on the premises; and
 - (b) may only sell liquor on those days at which a performance, play, concert, show or film is presented or shown at the premises.
- (6) The holder of an on consumption liquor licence from a tavern premises must ensure that the licensed premises are separate from any other dwelling, especially a residential dwelling, and if attached to a dwelling, it must be separated by means of walls constructed out of brick and mortar, separate access points of entry into the licenced premises and securable doors.
- (7) An on consumption liquor licence issued for a gaming premise remains valid only for the duration of the gambling licence issued to the premise[s] by the relevant Gambling Authority.
- (8) The holder of an on consumption liquor licence from a sports ground premise may only sell liquor on those days on which sports meetings, games or recreational activities are held on the sports ground concerned.
- (9) The holder of an on consumption liquor licence from a club premise may not sell liquor to a member's guest for his or her consumption, unless the member has entered his or her name and the name of the guest in the records of the club.
- (10) In accordance with the provision of section 41(2)(l), the holder of a licence for the retail sale of liquor for consumption on the premises and off the premises, must be responsible to manage the area within a circumference of five (5) metres immediately outside of the licenced premise.
- (11) notwithstanding any law to the contrary and on application to the Liquor Authority, and subject to the approval thereof –

(a) the holder of an on-consumption licence referred to in section 39(a) may also sell or supply newspapers, light refreshments and smokers' requisites on the licensed premises, or conduct such other business thereon on such conditions as the Liquor Authority, may think fit; and

(b) the holder of an off consumption liquor license or referred to in section 39(b), may also sell or supply mineral waters, other drinks (other than liquor as defined in section 1 tobacco, cigars, cigarettes, matches, cooler bags and such other articles as the responsible Member of Executive Council may by a notice in the Gazette declare to be articles normally used in or in connection with the serving of liquor, on the licensed premises;

(12) The responsible Member of Executive Council may at any time by notice withdraw or amend any declaration made under subsection (1) (a) or (b).

(13) Any person who fails to comply with subsections (1) to (11) is guilty of an offence.

Communication of decision

51.(1) Within seven days of the Liquor Authority having made a decision on an application, the Chief Executive Officer must communicate the decision in writing –

(a) to the applicant and, where the application has been granted subject to conditions or has been refused, provide reasons for the decision; and

(b) to any person who objected to or made representations in the manner prescribed, where the application has been granted, or refused.

(2) The Chief Executive Officer must simultaneously inform the applicant that the licence will be issued upon payment of the prescribed fee.

Part 3
Applications for a special events permit

Applications

52.(1) Any person who intends to engage in the retail sale of liquor at a special event for consumption on the premises, must –

- (a) lodge an application for a special events permit with the Liquor Authority, in the prescribed manner, not less than 14 days prior to the date of the event; and
- (b) pay the prescribed application fee in the prescribed manner.

(2) The Liquor Authority may dispense with the prescribed period contemplated in subsection (1)(a) if such a period places an unfair burden on the applicant.

(3) The application must, in the prescribed form –

- (a) specify the following particulars –
 - (i) the physical address of the premises where the special event will take place or a description of the location of the premises in terms of identifiable landmarks;
 - (ii) a detailed written motivation in support of the application;
 - (iii) the required particulars of the applicant;
- (b) be accompanied by a letter from the organizer of the special event consenting to the issue of a special events permit to the applicant for that event;
- (c) submit proof of payment of the prescribed fee together with the application, lodged within a period of 14 days from date of payment. Should the applicant fail to lodge the application within the said period, then the payment is non-refundable, and the application therefore lapses;
- (d) provide a situational report from the station commissioner at the local South African Police Services;
- (e) submit a letter of consent from the Local municipality for the special event;
- (f) if the premises are in a residential area the applicant must give notice of the application to the public in the prescribed form as follows –
 - (i) in at least one newspaper circulating widely in the area in which the licenced premises will be located;
 - (ii) display a notice in the prescribed form and size in a prominent place at the proposed premises of the special event, so that it is visible to passers-by; and
 - (iii) serve the notice of the application in the prescribed form on a member of a

household over the age of sixteen years of each of the households occupying residences within a radius of 100 metres of the proposed special event;

(g) the applicant must, simultaneously with publication of the application in the newspaper, deliver a copy of the application to the offices of the Station Commissioner of the South African Police Service in whose area of jurisdiction the proposed special event are or will be located; and

(h) submit a detailed security plan with a written representation in terms of the measures to be taken by the applicant in terms of providing security measures for both inside the proposed premise for the special event, as well as within a circumference of five (5) metres outside of the proposed premise of the special event.

(4) The Chief Executive Officer must –

(a) receive all such applications;

(b) endorse on each such application the date of receipt;

(c) compile a list of the applicants and retain and maintain the list as part of the register contemplated in section 23(1)(b); and

(d) on receipt of the application, examine the application in order to determine whether it is complete.

(5) If the Chief Executive Officer determines that the application is incomplete, he or she must notify the applicant in writing and call upon the applicant to supplement or remedy the incomplete application within five days.

Consideration of applications by Liquor Authority

53.(1) On receipt of a complete application for a special events permit, the Liquor Authority must –

(a) consider the application; and

(b) in doing so, consider all documents submitted in support of the application.

(2) The Liquor Authority may –

(a) grant the application, subject to such conditions as it deems appropriate; or

(b) refuse the application.

(3) Before granting an application, the Liquor Authority must be satisfied that the retail sale of liquor for consumption on the premises concerned is not the principal business of the applicant and is incidental to the special event.

(4) An applicant whose application for a special events permit is successful may only sell liquor –

- (a) for consumption on the premises where the special event is held; and
- (b) at the place where, and during the times when, the special event is held, as set out in the application for a special events permit; and
- (c) for no more than a total of 30 calendar days per year

(5) A holder of a special events permit may not lease, sell, cede or in any other way transfer the permit to any other person or allow any other person to carry on business in terms of the permit.

(6) Any person who –

- (a) sells liquor at a special event without being in possession of a special events permit issued for that event;
- (b) is the holder of a special events permit and fails to comply with the conditions imposed by the Liquor Authority as contemplated under subsection (2)(a), or fails to comply with subsection (4); or
- (c) contravenes subsection (5),

is guilty of an offence.

(7) A liquor license issued to a licensee where the provisions as contemplated in section 52(3)(b) and (d) are met, then such license remains valid until such time as the consent contemplated in the said sections are either withdrawn or revoked by the persons authorised to do so .

(8) Where circumstances contemplated in subsection (7) arise, then the Liquor Authority must review the license in the manner prescribed.

Communication of decision

54.(1) Once the Liquor Authority has made a decision on an application for a special events permit, the Chief Executive Officer must -

- (a) communicate the decision to the applicant;
- (b) issue the applicant with a notice to effect payment of the prescribed fee for each trading day for the duration of the special event; and
- (c) where applicable, inform the applicant that the permit will only be issued upon payment of the prescribed fee.

*Part 4**Applications for a micro-manufacturer's licence***Applications**

55.(1) Any person who intends to engage in the micro-manufacturing of liquor must –

- (a) apply to the Liquor Authority in the prescribed manner and form, and upon payment of the prescribed fee, for a licence to micro-manufacture liquor; and
- (b) indicate clearly in the application the extent to which the person wishes to distribute liquor.

(2) The application contemplated in section 55(1) must include and be accompanied by

- (a) the physical address of the premises where the business will be conducted or a description of the location of the premises in terms of identifiable landmarks;
- (b) the prescribed particulars of the applicant;
- (c) in relation to the premises in respect of which licensing is being sought, the prescribed details in respect of the premises, including a detailed sketch plan of the premises showing the rooms, services, buildings, construction material and other pertinent information together with photographs of the external and internal features of the premises;
- (d) subject to section 57(3)(ii) read with section 58 proof of a business or trading license, or any other relevant certification, issued by the relevant municipality or Government department where applicable, in terms of any law or bylaw to enable the

- applicant to trade in the manner contemplated, where applicable;
- (e) a certificate issued by the South African Police Service indicating the criminal offences of which the applicant has been convicted, if any;
 - (f) a tax clearance certificate issued by South African Revenue Service indicating whether the applicant is registered for Value Added Tax or is otherwise registered as a taxpayer, and whether any taxes are outstanding;
 - (g) proof of lawful occupation of the premises, in the form of a title deed or a lease agreement in the name of the applicant or a permission to occupy the premises issued in favour of the applicant by the relevant authority, where applicable; and
 - (h) a written consent in the prescribed form from the owner of the premises or the relevant authority for the applicant to micro-manufacture liquor from the premises concerned, where applicable;
 - (i) a detailed written motivation as prescribed in support of the licence application which must include –
 - (i) the proximity of the proposed premise to learning institutions, religious Institutions and other licensed premises;
 - (ii)) in such instances where the applicant is a legal business entity constituted in terms applicable legislation, a Black Economic Empowerment rating certificate from a recognized source or an approved rating agency as required in terms of the applicable Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and applicable Codes;
 - (iii) an indication of the total number of new employment opportunities that would be created in terms of the potential new license;
 - (iv) the measures that will be instituted by the applicant to establish a social responsibility programme in respect of alcohol consumption in relation to the proposed licence premises as contemplated in section 4(b) of the Act; and
 - (v) representations with regards to public interest issues.
 - (j) proof of payment together with the application, lodged within a period of three months from date of payment. Should the applicant fail to lodge the application within the period of three months of payment, then the payment is non-refundable, and therefore lapses

- (3) The Chief Executive Officer must –
- (a) receive all such applications;
 - (b) endorse on each such application the date of receipt;
 - (c) compile a list of applicants and retain and maintain the list as part of the register contemplated in section 23(2)(b); and
 - (d) on receipt of the application, examine the application in order to determine whether it is complete.
- (4) If the Chief Executive Officer determines that the application contemplated in section 55(1) is incomplete and not in accordance with the provisions of this Act, he or she must within a reasonable period issue a notice in the prescribed form, calling on the applicant to supplement or remedy the incomplete application within twenty one (21) days of dispatch.

Inspections

56.(1) The Chief Executive Officer must within 14 days of receipt of a complete application contemplated in section 55(1), request an inspector to inspect the premises to determine the suitability thereof.

- (2) An inspector must conduct an inspection contemplated in subsection (1) as prescribed, and verify the following information –
- (a) the physical address or description of the location of the premises as referred to in section 55(2)(a);
 - (b) the details referred to in section 55(2)(b);(c);(e);(f);(g);(h) and (i); and
 - (c) proof of a business or trading license as contemplated under section 55(2)(d).

(3) The inspector, after having completed the inspection, must submit a report, with recommendations, in the prescribed format to the Liquor Authority within 14 days.

Consideration of applications by Liquor Authority

57.(1) Upon receipt of the report from the inspector referred to in section 56(3), the Liquor Authority must consider the application contemplated in section 55(1).

(2) In considering the application contemplated in section 55(1), the Liquor Authority must consider all the documents submitted, including the report of the inspector referred to in section 56(3).

(3) After having considered the application contemplated in section 55(1), the Liquor Authority must –

- (a) grant the application, subject to –
 - (i) such terms and conditions as it may prescribe; and
 - (ii) in relation to premises not yet complete or that require structural alteration so as to make the premises suitable, such conditions relating to the completion or alteration of the premises; as well as the requirements as specified in section 55(2)(d) as it relates to such premises, where applicable, as the Liquor Authority may deem fit, , within a time period of eighteen(18) months subject to the provisions of section 58(2)(b); or
- (b) refuse the application.

(4) Before granting an application contemplated in section 55(1), the Liquor Authority must be satisfied that –

- (a) the granting of the application is in the public interest;
- (b) the applicant is not disqualified from holding a license in terms of this Act;
- (c) the premises upon which the micro-manufacture of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the license;
- (d) the use of the proposed premises for the proposed activity would not be contrary to existing zoning laws or land use rights.; and
- (e) the proposed premise is not located within a circumference of 500 metres of any religious or learning institutions.

(5) In determining whether the application contemplated in section 55(1) is in the public interest as contemplated in subsection (4)(a), the Liquor Authority must consider, without detracting from the generality thereof –

- (a) the prejudice or harm, or potential prejudice or harm, of the proposed license to

or on residents, property owners, other businesses, property values, learning institutions and religious institutions within a radius of 500 metres surrounding the proposed premises or in close proximity thereto; and

(b) the extent to which the proposed license will contribute to, or detract from, the achievement of the objects of the Act, including the extent to which the proposed license –

- (i) will or is likely to impact on the incidence, socio-economic effects, including the prevalence of crime, and the costs of alcohol abuse;
- (ii) will facilitate the entry of new participants and diversity in the industry; and
- (iii) will contribute to the fostering of an ethos of social responsibility in the industry.

(6) A liquor license issued to a licensee where the provisions as contemplated in section 55(2)(d);(g) or (h) are met, then such license remains valid until such time as the consent contemplated in the said sections are either withdrawn or revoked by the persons authorised to do so .

(7) Where circumstances contemplated in subsection (6) arise, then the Liquor Authority must review the license in the manner prescribed.

Conditional approvals

58.(1) The Liquor Authority may grant conditional approvals, valid for a period of eighteen (18) months from date of grant, only in circumstances as is contemplated in section 57(3)(a)(ii), and when granting an application, direct that the license may not be issued until the applicant complies with such conditions as the Liquor Authority may deem appropriate.

(2) The Liquor Authority may at any time, upon application by the applicant in the prescribed manner–

- (a) amend or withdraw the conditions;
- (b) extend the time period as contemplated in subsection(1) for one further period of six (6) months only; or

(c) grant an amendment of the plan of the premises.

(3) If the applicant fails to comply with the conditions referred to in subsection (1) or (2) within the period as the Liquor Authority may determine, the granting of the license will lapse and the license will be deemed not to have been granted.

(4) If the Liquor Authority is satisfied that the applicant has complied with the conditions stipulated, it must grant the final license.

Communication of decision

59.(1) Within seven days of the Liquor Authority having made a decision on an application, the Chief Executive Officer must communicate the decision in writing to the applicant, and where the application has been granted subject to conditions or has been refused, provide reasons for the decision.

(2) The Chief Executive Officer must simultaneously inform the applicant that the license will be issued upon payment of the prescribed fee.

Special conditions

60.(1) Subject to the conditions of a licence, a micro-manufacturer may –

- (a) manufacture liquor in volumes not exceeding the prescribed threshold volume determined in terms of section 4(10) of the Liquor Act;
- (b) distribute the liquor that it has manufactured to –
 - (i) another manufacturer or to a distributor; and
 - (ii) to a retail seller, and to the extent, permitted by the licence.

(2) A micro-manufacturer may hold more than one category of license referred to in section 39.

(3) A micro-manufacturer may sell or distribute liquor only to a licensed person.

(4) For purpose of subsection (3), a "licensed person" includes a person to whom a liquor licence has been issued in terms of –

- (a) this Act;
- (b) the Liquor Act; or
- (c) any other applicable legislation.

(5) A micro-manufacturer may not lease the licence to another person or allow another person to carry on business in terms of the licence.

(6) Any person who fails to comply with subsections (1), (3) and (5) is guilty of an offence.

Part 5 Appeals

Appeals against decisions of Liquor Authority

61.(1) A person affected by a decision taken by the Liquor Authority and who wishes to appeal against the decision, must lodge a notice of intention to appeal in the prescribed manner with the responsible Member of the Executive Council within 10 days after that person has been notified of the decision.

(2) The appellant must in the prescribed manner serve on each person and interested and affected party in relation to the application, a copy of the notice referred to in subsection (1).

(3) The responsible Member of the Executive Council may in the prescribed manner, in writing and on good cause, extend the period within which a notice of intention to appeal must be submitted.

(4) An appeal contemplated in subsection (1) must be in the prescribed manner and must be in writing and accompanied by –

- (a) a statement setting out the grounds of appeal; and
- (b) supporting documentation which is referred to in the appeal and which is not in the possession of the responsible Member of the Executive Council.

(5) An appeal must be submitted in the prescribed manner to the responsible Member of the Executive Council within 30 days of the lodging of the notice of intention to appeal referred to in subsection (1).

(6) The responsible Member of the Executive Council must in the prescribed manner consider an appeal lodged in terms of subsection (1) within 30 days of receipt of such appeal.

(7) When the responsible Member of the Executive Council has reached a decision on an appeal, the appellant must in the prescribed manner be notified in writing, of the decision and the extent to which the decision appealed against is upheld or overturned.

(8) The powers vested in the responsible Member of the Executive Council in terms of this section may in the prescribed manner be delegated.

Part 6 Licencing

Licence certificate or permit

62.(1) The Chief Executive Officer must, after a licence or permit has been granted by the Liquor Authority and after having received payment of the prescribed licence or permit fee –

(a) issue a licence certificate or permit in the applicant's name in the prescribed form, which must include –

- (i) a licence or permit number;
- (ii) the date on which the applicant's name was entered in the register;
- (iii) the premises in respect of which a licence or permit has been granted, if applicable;
- (iv) the terms and conditions upon which the licence or permit was granted, including the trading days and trading hours; and
- (v) the category of licence or permit; and

(b) send the licence certificate or permit to the applicant.

(2) The licence or permit of any licensed person takes effect on the date on which the licence certificate or permit is issued and remains in effect until –

(a) the licence or permit is cancelled in terms of this Act; or

(b) the licensed person is –

(i) deceased;

(ii) finally sequestrated or finally wound up, as the case may be;

(iii) dissolved or deregistered, as the case may be; or

(iv) no longer trading,

subject to the provisions of section 64 and 68.

Effects of licensing

63.(1) The licence certificate or permit issued to a person or a duly certified copy thereof, is sufficient proof that the person –

(a) has met all the requirements for a valid licence or permit to have been granted; and

(b) has been licensed or permitted in terms of this Act.

(2) A licensed person must –

(a) reflect his, her or its licensed status and licence or permit number on all of that person's correspondence

(b) display a certified copy of the licence certificate or permit at any fixed premises in respect of such licensing, including a certified copy of the terms and conditions applicable to the licence or permit; and

(c) where applicable, display a certified copy of proof of payment of the annual fee.

(3) Upon the issue of a licence or permit the licensed person is permitted to commence trade forthwith.

(4) A licensed person must for the duration of the licence or permit show a clear and continuous commitment to the social responsibility programme as contemplated in section 4(b), read with section 41(2)(b)(iv) and section 55(2)(i)(iv) of this Act.

(5) Any person who fails to comply with the provisions of subsection (2)(a),(b) and (c) is guilty of an offence.

Annual fee

64.(1) All licensed persons must pay the prescribed annual fee in respect of each licence issued to such licensed persons, on or before the prescribed date.

(2) All licence holders where licences that are due for payment of the fees as contemplated in subsection (1) must, in compliance with the provision of section 2(d) read with section 4(b) of the Act, and in the prescribed manner –

- (a) apply to the Liquor Authority, for an evaluation of their original licence;
- (b) ensure that application referred to in subsection (a) is made six (6) months prior to the expiry of the validity of the licence; and
- (c) ensure that the original licence conditions issued by the Liquor Authority, are retained,

(3) The Chief Executive Officer must within 14 days of receipt of the application as contemplated in subsection (2)(a), request an inspector to inspect the premises to verify the existence of the original conditions of the licence.

(4) An inspector must conduct an inspection contemplated in subsection (3) in respect of licences issued in terms of section 41 and section 55 and verify the following information –

- (a) the criteria as listed in section 41(2) or section 55(2) are still prevalent;
- (b) the special conditions as contemplated in section 50 or section 60(1) where applicable read with the general conditions attached to the licence are still prevalent;

(5) The inspector, after having completed the inspection, must submit a report, with recommendations, in the prescribed format to the Chief Executive Officer within 14 days.

(6) Upon receipt of the report from the inspector referred to in subsection (5), the Chief Executive Officer must consider the application contemplated in subsection (2).

(7) In considering the application contemplated in section 55(1), the Chief Executive Officer must consider all the documents submitted, including the report of the inspector referred to in section 56(3).

(8) If after having considered the application, the Chief Executive officer determines that the licence conditions have been satisfied, he or she must within a reasonable period issue the notification in the prescribed form, calling on the licence holder to pay the prescribed annual fee

(9) If after having considered the application, the Chief Executive officer determines that the licence conditions have not been satisfied, he or she must within a reasonable period refer the matter to the Liquor authority for a further determination in accordance section 7(2), as prescribed.

(10) Should a licensed person fail to act in terms of subsection (2) read with the provisions of subsection (9) and fail to pay the annual fee for a particular licence on or before the due date –

- (a) the licence will immediately become suspended;
- (b) the licensed person must forthwith cease trading in terms of that licence; and
- (c) the annual fee will attract a penalty calculated in accordance with the provisions of subsection (12).

(11) Upon receipt by the Liquor Authority of the late payment of the annual fee together with the penalty referred to in subsection (10)(c), the suspension on that licence will immediately be lifted and the licensed person may forthwith continue trading.

(12) The penalty for each month, or part of each month that the annual fee is overdue, will be an amount equal to the prescribed annual fee, subject to a maximum penalty of three times the annual fee.

(13) If the annual fee, together with the penalty referred to in subsection (12), is not paid during the fourth month after the annual fee is due, or the provisions of subsection (9) are not complied with, the Liquor Authority must instruct the Chief Executive Officer to, subject to the relevant provisions of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) –

- (a) cancel the licence in question;
- (b) endorse the register accordingly; and
- (c) notify the licensed person in writing of the cancellation, the reasons for the cancellation and the date of the cancellation.

(14) If a licence certificate has been cancelled in terms of subsection (13), all the rights, benefits and allowances accruing therefrom lapse immediately.

(15) The Member of the Executive Council must, in the prescribed manner, revise the fees referred to in section 41(2)(k); section 52(1)(b); section 55(1)(a); section 62(1) and section (64)(1) on an annual basis

Cancellation of licence on grounds of disqualification

65.(1) If a licensed person becomes disqualified or otherwise incompetent in terms of this Act, the Liquor Authority must instruct the Chief Executive Officer to –

- (a) cancel the person's licence certificate or permit;
- (b) notify the person in writing of the cancellation, the reasons therefor and the date on which the licence or permit was cancelled; and
- (c) amend the register accordingly.

(2) For the purposes of subsection (1), cancellation takes effect on the date on which the licence certificate or permit is cancelled by the Chief Executive Officer.

(3) When a licence certificate or permit has been cancelled in terms of subsection (1), all the rights, benefits and allowances accruing therefrom lapse immediately.

Cancellation of licence due to non-trading

66.(1) The Liquor Authority may, on application by an interested person in the prescribed manner, cancel a licence where the Liquor Authority is satisfied that the licence holder has not been trading in the manner contemplated by the licence for a continuous period of 12 months.

(2) The procedure to be followed once an application referred to in subsection (1) has been received must be prescribed by the responsible Member of the Executive Council.

(3) Once a licence has been cancelled by the Liquor Authority, the Chief Executive Officer must amend the register and notify the licence holder in writing accordingly.

(4) Cancellation of a licence as contemplated in subsection (1) takes effect on the date on which the licence certificate is cancelled by the Registrar.

(5) When a licence has been cancelled in terms of subsection (1), all rights, benefits and allowances accruing therefrom lapse immediately.

Part 7

Voluntary surrender, death or incapacity of the licence holder or applicant who is the holder of a conditional grant, prospective holders or permit holder and transfer of financial interests

Voluntary surrender of liquor licence and winding-up or dissolution

67.(1) A licensed person may surrender his, her or its liquor licence or permit voluntarily by sending the Liquor Authority a notice in writing –

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

(2) If a licensed person or permit holder is sequestrated or wound up or ceases to trade as a licensed person, that person must within 30 days of the sequestration, winding-up or cessation of trade, send to the Liquor Authority a written notice –

- (a) stating that fact; and

(b) containing certified copies of all relevant documents confirming the sequestration, winding-up or cessation of trade.

(3) Upon receiving a notice referred to in subsection (1) and (2), the Liquor Authority must instruct the Chief Executive Officer to –

(a) cancel the licence certificate or permit of the person or endorse the transfer of the person's licence certificate or permit to the relevant administrator contemplated in section 75, as the case may be, with effect from the date specified in the notice;

(b) amend the register accordingly; and

(c) notify the person and the relevant administrator, if any, in writing of the date on which cancellation or transfer to the administrator was effected in the register.

Death or incapacity of certain licensed persons, or applicants who are holders of conditional grants, or prospective holders or permit holders

68.(1) If a licensed person, or an applicant who is the holder of a conditional grant, or prospective holder or permit holder dies, is sequestrated, placed in liquidation or under judicial management, or is declared by a court to be incapable of handling his or her own affairs –

(a) the relevant administrator 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 licensed person, or applicant who is the holder of a conditional grant, or applicant who is the prospective holder in terms of section 74 or permit holder; and

(b) the relevant administrator may, for the purposes of the administration or management of the estate concerned, conduct the business to which the licence, or conditional grant, or prospective holder applicant or permit relates.

(2)(a) The Liquor Authority may –

(i) on application by any person; and

(ii) if satisfied that every person who has a financial interest in the business referred to 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 licence, or conditional grant, or to be the prospective holder

applicant in terms of section 74 or permit, to conduct the business until the appointment of the relevant administrator.

(b) Subject to the appointment of the relevant administrator, a person appointed in terms of paragraph (a) is, subject to the law regarding deceased estates, insolvency, judicial management or mental health, for the period of his or her appointment regarded as the licensed person, or applicant who is the holder of the conditional grant, or applicant in terms of section 74 who is the prospective holder or permit holder.

(3) If the only member of a company or close corporation which is a licensed person, or applicant who is the holder of the conditional grant, or applicant in terms of section 74 is the prospective holder or permit holder dies, is sequestrated, liquidated or placed under judicial management, or is declared by a court to be incapable of handling his or her own affairs, subsections (1) and (2) apply with the necessary changes.

Transfer of financial interest

69.(1) A licensed person may not transfer to any other person a financial interest in the business to which the licence relates, unless the Liquor Authority has, on application by the licensed person made in the prescribed manner, granted consent that the other person may procure that interest in that business.

(2) The Liquor Authority may grant consent under subsection (1) except if the person who is the subject of the application is disqualified in terms of this Act to be licensed.

Part 8 *Payment into Provincial Revenue Fund*

Payment of fees into Provincial Revenue Fund

70. All prescribed fees received by the Liquor Authority in terms of this Act must be paid into the Provincial Revenue Fund.

CHAPTER 7
PROVISIONS APPLICABLE TO LICENSED PERSONS

Deliveries

71.(1) A holder of a licence for the retail sale of liquor for consumption off the premises where liquor is sold may not –

(a) deliver liquor from a vehicle unless –

(i) the liquor was ordered from the licensed premises before the dispatch of the liquor; and

(ii) an invoice or delivery note was issued, the original of which was retained on the licensed premises; and

(b) deliver liquor –

(i) to an address other than the address shown on the invoice or delivery note referred to in paragraph (a)(ii); and

(ii) without retaining a copy of the invoice or delivery note in the delivery vehicle from the time of dispatch to the time of delivery of the liquor.

(2) A person may not accept delivery of liquor purchased from a supplier unaccompanied by an invoice or delivery note describing the name, address and licence number of the supplier as well as the nature, quantity and purchase price of the liquor supplied.

(3) Any person who fails to comply with subsections (1) and (2) is guilty of an offence.

Alteration of licensed premises or nature of business

72.(1) A licensed person may not, except with the prior consent of the Liquor Authority –

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

(b) carry out any structural alteration, addition, reconstruction or extension of, or to, the licensed premises and which has been subjected to the requisite Local Municipality consents pertaining to such structural alteration, addition, reconstruction

or extension, where applicable.

(2) Any person who fails to comply with subsection (1) is guilty of an offence..

Storage of Liquor

73.(1) A licensed person or permit holder must store his or her liquor on the licensed premises or in such other or additional place indicated to the Liquor Authority, within the Province as the Liquor Authority may grant.

(2) The licensed person or permit holder contemplated in subsection (1), may not sell liquor in or from such other or additional place of storage.

(3) Any person who fails to comply with subsections (1) and (2) is guilty of an offence.

Transfer of licence to the prospective holder

74.(1) A licensed person, (excluding special events permits issued in terms of section 53(2)(a), may apply to the Liquor Authority in the prescribed manner for the transfer of that person's licence to another person called the prospective holder, who is not disqualified in terms of section 40 to be a licensed person.

(2) Upon receipt of the application by the Liquor Authority, the provisions of section 41(2)(b)(ii),(iii) and (iv); section 41(2)(c),(f),(g),(h),(i) and (l); section 48; section 50 and 51 or section 55(2)(b),(d),(e),(f),(g)(i),(ii),(iii) and (iv) and section 57, section 59 and section 60 where applicable must be applied.

(3) After the Liquor authority has granted the application in terms of sub section(1) a certificate of transfer must be issued reflecting the name of the prospective holder in the certificate, with such conditions as may be imposed by the Liquor Authority, and the provisions of section 63 will be applicable.

(4) The provisions of section 64 in respect of the payment of annual fees must be applicable to the holder of the licence and the prospective holder of the licence, pro rata.

(5) The transfer certificate must only be issued once the licence holder has met all the requirements in relation to the payment of his, her or its portion of the annual fee.

(6) Upon receipt of the transfer certificate, the prospective holder then becomes liable for the payment of balance of the annual fees, as per the applicable provisions, as prescribed.

(7) Where the fees as is contemplated in subsection (5) are not paid within the prescribed period, the application for the transfer in terms of this section would lapse and be deemed to have not been granted.

Removal of licence from licensed premises to other premises

75.(1) A licensed person (excluding special events permits issued in terms of section 53(2)(a), may apply to the Liquor Authority in the manner prescribed for the removal of a licence from the licensed premises to other premises situated in the same district or metropolitan municipality of the licenced premise.

(2) Upon receipt of the application by the Liquor Authority, the provisions of section 41 to 51 or section 55 to 60 where applicable, must be applied.

(3) After the Liquor authority has granted the application in terms of sub section(1) a certificate of removal must be issued reflecting the details of the premises with such conditions as may be imposed by the Liquor Authority, and the provisions of section 63 will be applicable.

(4) The provisions of section 64 in respect of the payment of annual fees must be applicable to the holder of the licence at the licenced premises prior to the removal of the licence to the proposed new premise on a pro rata basis.

(5) The removal certificate to the new proposed premise must only be issued once the

licence holder has met all the requirements in relation to the payment of his, her or its portion of the annual fee.

(6) Upon receipt of the removal certificate, the licence holder then becomes liable for the payment of balance of the annual fees, as per the applicable provisions, as prescribed.

(7) Where the fees as is contemplated in subsection (5) are not paid within the prescribed period, the application for the removal in terms of this section would lapse and be deemed to have not been granted.

Prohibition on sale or supply of liquor to certain persons

76.(1) A person may not –

- (a) sell liquor to a person under the age of 18 years;
- (b) give or supply liquor to a person under the age of 18 years or allow such a person in his or her care or under his or her supervision to consume liquor, except where it is given or supplied in negligible quantities and in the performance of a religious ceremony or service;
- (c) allow a person under the age of 18 years to consume liquor on premises of which he or she is the licensed person or which are under his or her control;
- (d) allow a person under the age of 18 years to be in a part of the licensed premises upon which such a person may not be in terms of this Act, or in terms of a condition of the licence save for persons who are being trained at such licensed premises; or
- (e) sell or supply liquor to any person who is visibly intoxicated, violent, disorderly or under the influence of a drug having a narcotic effect.

(2) A person under the age of 18 years may not –

- (a) obtain or consume liquor in contravention of this Act; or
- (b) mislead any person as to his or her age in order to obtain or consume liquor or to gain access to parts of licensed premises which such person may not enter.

(3) Any person who fails to comply with subsections (1) and (2) is guilty of an offence..

Management of business

77.(1) A business may not operate under a licence in terms of this Act unless –

- (a) it is managed by a natural person who is not disqualified or incompetent in terms of this Act to be a licensed person; and
- (b) the natural person contemplated in paragraph (a) is appointed in terms of a written contract of employment to manage and be responsible for that business.

(2) A natural person who is a licensed person may, in terms of a written contract of employment, appoint another natural person who is not disqualified or incompetent in terms of this Act to be a licensed person, to manage and be responsible for the business to which the said licence relates.

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

- (a) has abandoned the licensed premises without making provision for the conduct thereon of the business to which the licence relates;
- (b) becomes a person who is disqualified or otherwise incompetent in terms of this Act to be a licensed person; or
- (c) in the case of a partnership, is dissolved,

the Liquor Authority may, on application by a person who has an interest in the relevant business, appoint any person who is fit to manage and be responsible for that business for a period of not more than 12 months, and a person so appointed is, subject to subsection (4)(b), for the period of his or her appointment regarded as a licensed person.

(4) An appointment in terms of subsection (3) –

- (a) is subject to the conditions set out in the appointment by the Liquor Authority;
- (b) does not affect any right of a person who has an interest in the business concerned; and
- (c) may be withdrawn by the Liquor Authority on good cause.

(5) A person managing and responsible for a business to which a licence relates is subject to the same obligations and liabilities as the relevant licensed person.

(6) Subsection (5) must not be interpreted so as to release the licensed person from any obligation or liability to which such person is subject to in law.

Trading days and trading hours

78.(1) A licensed person may sell liquor only on such days and during such trading hours as the Liquor Authority may determine: Provided that the trading days and hours imposed by the Liquor Authority may not exceed the trading days and hours –

- (a) as stipulated in Schedule 3 for the particular category of licence; or
- (b) as determined by a municipal by-law in respect of the business to which the liquor licence relates,

whichever is the lesser.

(2) In determining the trading days and hours, the Liquor Authority must consider the recommendations of the local committee, where applicable.

(3) A holder of a permit may sell liquor only on the days and during the hours stipulated on the permit.

(4) A licensed person or permit holder who sells liquor at a time when the sale of liquor is not permitted by the licence or permit, is guilty of an offence.

(5) The Liquor Authority has the authority to amend, vary or withdraw the provision of this section, and may do so in the manner to be prescribed.

Limitations on employers

79.(1) No licensed person may employ any person in or in connection with the sale of liquor who –

- (a) has not attained the age of 16 years; or

(b) has within the preceding three years been convicted of contravening this Act.

(2) Subsection (1)(a) does not apply to any person of or under the age of 16 years who is undergoing or has undergone training in catering services, and who is employed by the licensed person as part of his or her training.

(3) An employer may not –

(a) supply liquor to a person as an inducement to secure his or her employment;

(b) supply liquor to an employee instead of wages;

(c) deduct from an employee's wages the cost of liquor supplied to that employee or to any other person on his or her behalf; or

(d) withhold payment of the wages of that employee pending the repayment of a debt in respect of the sale of liquor.

(4) Any person who fails to comply with subsections (1) and (3) is guilty of an offence.

Place of sale

80.(1) A licensed person may not sell or supply liquor from any place other than the licensed premises.

(2) Any person who fails to comply with subsection (1) is guilty of an offence.

CHAPTER 8 INSPECTORS, COMPLAINTS AND COMPLIANCE

Part 1 *Inspectors*

Appointment of inspectors

81.(1) The responsible Member of the Executive Council –

(a) may appoint any person as an inspector, with either general or specific authority to exercise powers in terms of this Act; and

(b) must issue to each inspector a certificate in the prescribed form stating that that person has been appointed as an inspector.

(2) A certificate issued in terms of subsection (1)(b) is sufficient evidence of the authority of the inspector named on it.

(3) An inspector must, when exercising his or her functions in terms of this Act, upon demand by any person affected by the performance of that function, provide proof of appointment as an inspector.

(4) When exercising powers in terms of this Act, an inspector, once appointed as a Peace Officer in terms of a notice contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), has those powers as defined in that notice.

Functions of inspectors

82.(1) An inspector may –

(a) investigate complaints in respect of licenced premises submitted to the Liquor Authority, in the prescribed manner and form; and

(b) subject to this Act or any other law authorizing the inspector to conduct an inspection –

(i) to monitor and enforce compliance with this Act or any other law;

(ii) in respect of applications contemplated in terms of section 41, 52 and section 55;

(iii) with regards to processes contemplated in section 64; and

(iv) on any other matter as directed by the Liquor Authority.

(2) Subject to sections 84(2) and 88(1) and (3) and the provisions of any other law, an inspector may –

(a) question any person present on any premises in respect of any matter which may be relevant to the inspection;

(b) question any person whom the inspector on reasonable grounds 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 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;
- (g) with the assistance of a police officer from the South African Police Service seize and remove any liquor which in his or her opinion may furnish proof of a contravention of any provision of this Act; and
- (h) do all things necessary for conducting the inspection.

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

- (a) issue a receipt for it to the owner, or person in control, of the premises; and
- (b) secure the goods pending a decision concerning forfeiture in terms of section 96(3), or return it as soon as practicable after achieving the purpose for which it was removed.

Entry with warrant

83.(1) An inspector may with the assistance of a police officer from the South African Police Service enter any premises if a magistrate has issued a warrant in accordance with subsection (2) to enter or inspect the premises, and the warrant is still valid.

(2) A magistrate may issue a warrant to enter and inspect any 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 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 premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the premises and to do anything contemplated in section 82.

- (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 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 appointment; 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 premises is absent or refuses to accept a copy, attach a copy of the warrant to the premises in a prominent and visible place.

Entry without warrant

84.(1) An inspector who does not have a warrant in his or her possession may with the assistance of a police officer from the South African Police Service enter and inspect –

- (a) any premises with the consent of the owner or person apparently in control of those premises;
- (b) any licensed premises on a routine basis, to determine compliance with the terms and conditions of the licence;
- (c) any premises in respect of which there is an outstanding compliance notice issued in terms of section 89, for the purpose of determining whether that notice has been complied with;
- (d) any premises where there are reasonable grounds to believe that a warrant would be issued in terms of section 83 and the delay in obtaining such warrant would defeat the object of the warrant; or
- (e) any premises if authorised to do so by any other law.

(2) Before commencing an inspection on any premises in terms of this section, an inspector must identify himself or herself, explain his or her authority, and furnish proof

of his or her appointment to the person apparently in control of the premises or the person who gave permission to enter.

(3) An entry and inspection contemplated in subsection (1)(b) and (c) may be carried out only during the trading hours applicable to that licensed premises.

Use of force

85.(1) An inspector carrying out a warrant in terms of section 83, 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 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 in terms of section 84.

Inspector may be accompanied

86. An inspector may be accompanied during an inspection by a police officer from the South African Police Service or any other person reasonably required, to assist in conducting the inspection.

Duty to produce documents

87.(1) Any person who is in possession of any document relevant to an inspection, must produce such document at the request of the inspector.

(2) Any person who fails to comply with subsection (1) is guilty of an offence.

Duty to answer questions and assist inspector

88.(1) Before questioning a person in terms of this Chapter, an inspector must inform that person of his or her applicable constitutional right.

(2) A person who is questioned by an inspector in terms of this Chapter must answer every question truthfully and to the best of his or her ability.

(3) 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.

(4) An owner or occupier of any premises must provide any facility and assistance that is reasonably required by an inspector to conduct an inspection effectively.

(5) Any person who fails to comply with subsections (2) and (4) is guilty of an offence.

Part 2
Complaints and Compliance

Compliance notices

89.(1) Where an inspector is of the opinion that a licensed person or permit holder has breached the terms and conditions of a licence or permit or has failed to comply with the provisions of this Act, the inspector must issue and serve upon that licensed person or permit holder or any person in control of licensed premises, a compliance notice in the prescribed form.

(2) A compliance notice must stipulate –

- (a) the provisions of this Act or the conditions of the licence which must be complied with;
- (b) the nature and extent of the non-compliance;

- (c) the measures which must be taken to comply;
 - (d) the date by which compliance must be completed; and
 - (e) the possible consequences of non-compliance, which may include cancellation of the licence or permit.
- (3) A compliance notice remains in force until the date for compliance or any extension thereof, or the issue by the inspector of a certificate of compliance, whichever is the earlier.
- (4) An inspector may, at the request of the person served with the compliance notice, extend the period of compliance, upon good cause shown, by issuing an amended compliance notice.
- (5) If the person served with the compliance notice has complied therewith, the inspector must issue a certificate of compliance.
- (6) A person served with a compliance notice may lodge an objection with the inspector in the prescribed manner and state the grounds for the objection.
- (7) An inspector receiving an objection in terms of subsection (6) must, within the prescribed period submit the compliance notice, the objection in terms of subsection (6) and any other document which he or she deems relevant, to the Liquor Authority who must determine whether or not the complaint set out in the compliance notice is justified.
- (8) In making a determination as contemplated in subsection (7), the procedure as set out in section 44, read with the necessary changes, must be followed.
- (9) The Liquor Authority may –
- (a) if it decides that the complaint set out in the compliance notice is unjustified, set it aside; or
 - (b) if it finds the complaint to be justified, order that the compliance notice be complied with by such date as it may determine.
- (10) An inspector must after the period stipulated for compliance submit a report on

compliance to the Liquor Authority.

(11) If the order referred to in subsection (9)(b) –

- (a) has been complied with, the inspector must issue a certificate of compliance; or
- (b) has not been complied with, the Liquor Authority may forthwith cancel the licence or permit.

(12) In the event that the licensed person or permit holder who is served with the compliance notice has failed to comply with the notice and has not objected to the notice as contemplated in subsection (6) within the prescribed period, the inspector must submit the compliance notice and all relevant documentation to the Liquor Authority for consideration.

(13) If the Liquor Authority makes a finding of non-compliance with the compliance notice, it may cancel the licence or permit.

(14) The Liquor Authority must inform the licence or permit holder in writing of the cancellation of the licence or permit as contemplated in subsection (11)(b) and (13) respectively, and provide reasons for such cancellation.

(15) Proof of non-compliance with a compliance notice at a meeting of the Liquor Authority constitutes *prima facie* proof of the commission of the offences, or transgressions of the licence conditions stipulated in the compliance notice.

(16) Any person who fails to comply with a compliance notice is guilty of an offence.

Interim order of suspension

90.(1) A magistrate or, if the magistrate is not available, any police officer of or above the rank of warrant officer may, if he or she is of the opinion that a strike or lock-out or public disturbance, disorder, riot or public violence is occurring or threatening at or near any licensed premises or any premises on or place in which liquor may be sold without a licence, in such manner as may appear to him or her in the circumstances or the case to be the most effective, order a holder of the licence or an exempted person concerned,

as the case may be, or a manager or agent of that holder or person, to close the premises or place concerned during such times or for such periods as the magistrate or the police officer concerned may think fit.

(2) A holder of a licence or an exempted person, 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 such steps and use or cause to be used such force as he or she may think necessary to close the premises or place concerned.

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

- (a) by the magistrate or police officer who gave such an order;
- (b) where such an order was given by the magistrate, by any other magistrate of the district concerned; and
- (c) where such an order was given by a police officer, by a police officer of more senior rank.

(4) An order granted in terms of subsection (1) must be served upon the licensed person or permit holder as directed by the Liquor Authority and comes into effect upon the date and at the time of service thereof.

(5) An order granted in terms of subsection (1) must stipulate a date upon which the licensed person or permit holder must appear before the Liquor Authority to show cause why the order should not be made final.

(6) A licensed person or permit holder may, prior to the date stipulated in subsection (4) lodge with the Liquor Authority a notice of opposition and must thereafter lodge affidavits setting out the grounds upon which the application is opposed.

(7) A licensed person or permit holder may at any time prior to the date stipulated in terms of subsection (4) apply to the Liquor Authority to set the matter down for hearing on an earlier date.

(8) The Liquor Authority may order the return date to be brought forward to an earlier date.

(9) Upon the date of the hearing of the application the Liquor Authority may discharge the interim order or confirm it, together with an order compelling the licensed person or permit holder to rectify the breach of the terms and conditions or the non-compliance with the Act or the complaint referred to in subsection (1)(b), within the prescribed period.

(10) If a licensed person or permit holder fails to comply with the order contemplated in subsection (9), the Liquor Authority –

- (a) may cancel the licence or permit; and
- (b) must notify the licensed person or permit holder in writing of the cancellation, together with reasons.

(11) A licence or permit which has been suspended in terms of subsection (1) and (9) remains valid in all respects, except that the licensed person or permit holder may not sell or micro-manufacture liquor in terms thereof during the period of suspension.

Effective date of cancellation

91.(1) Cancellation of a licence or permit in terms of sections 89(11)(b) and (13) and 90(9)(a) takes effect upon the date of cancellation by the Liquor Authority.

(2) The Chief Executive Officer must amend the register accordingly.

CHAPTER 9 LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

Part 1 Prohibited and controlled liquids

Prohibition of sale and micro-manufacture of unhealthy concoctions

92.(1) Subject to the requirements and regulations of the Liquor Act, no person may sell for retail or give to any person or micro-manufacture –

- (a) any concoction manufactured by the fermentation of any substance the consumption of which would, in the opinion of the responsible Member of the Executive Council, in consultation with the Member of the Executive Council for Health and the Minister of Trade and Industry, acting in terms of the Liquor Act, be harmful to the health and well-being of the population of the Province, and specified by him or her by notice in the *Gazette*; or
- (b) any drink manufactured by the distillation of any concoction referred to in paragraph (a).

(2) The responsible Member of the Executive Council may, subject to consultation processes referred to in subsection (1), withdraw or amend the notice issued in terms of subsection (1).

Part 2
Offences and penalties

General offences

93.(1) No person may –

- (a) sell liquor for retail or micro-manufacture liquor in contravention of the terms and conditions of a licence;
- (b) be intoxicated, violent or disorderly on premises in respect of which a licence has been issued;
- (c) if he, she or it is the owner or occupier of licensed premises, allow intoxicated, violent or disorderly behaviour on those premises;
- (d) be intoxicated, violent or disorderly in a public place;
- (e) introduce, possess or consume any liquor on a sports ground that is not a licensed 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, except on any licensed premises situated on the sports ground concerned;
- (f) misrepresent himself or herself or any other person to be over the age of 18 years in order to persuade a licensed person, or his, her or its agent or employee, to sell or supply liquor to him or her or to that other person;
- (g) in connection with any application, objection, representation, reply to any objection or complaint in terms of this Act, submit or provide any information which he or she

knows to be false or misleading or which he or she ought reasonably to have known was not true, or any false document or document which purports to be but is not a true copy of an original document;

(h) be in possession of a firearm on premises in respect of which a licence has been issued, except for the owner or manager of the premises or a police officer on duty; or

(i) involve themselves or permit any illegal activities, prohibited by law, on any licenced premises.

(2) A member of the Liquor Authority, a member of staff, advisor, agent or other person employed by or acting on behalf of the Liquor Authority is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Liquor Authority.

(3) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by the Liquor Authority, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Liquor Authority.

(4) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of the Liquor Authority, is guilty of an offence.

(5) Any person who contravenes the provisions of subsection (1), is guilty of an offence.

Offences regarding hearings of Liquor Authority

94. Any person who –

(a) fails to appear before the Liquor Authority on the date and at the time and place when called upon to do so in terms of section 47(4)(a) or (b) without having appointed a person to so appear on his or her behalf;

(b) appears before the Liquor Authority in terms of section 47(4)(a) or (b) but without the leave of the Chairperson fails to remain in attendance until the conclusion of the hearing or meeting;

(c) having in terms of section 47(4)(a) or (b) been called upon to appear and give evidence, or to produce any book, plan or other document or article which such person may at the time have in his or her possession, fails or refuses to do so;

(d) having in terms of section 47(4)(a) or (b) been required to give evidence, refuses to take the oath or make an affirmation; or

(e) wilfully disrupts a hearing or meeting of the Liquor Authority or wilfully hinders or obstructs the Liquor Authority any member thereof in the performance of, his or her functions,

is guilty of an offence.

Service stations

95.(1) No person may sell liquor in a convenience store franchised to a service station selling petrol, diesel or other petroleum products to the public.

(2) Any person who contravenes the provisions of subsection (1) is guilty of an offence.

Penalties

96.(1) Any person who is guilty of an offence in terms of sections 38(2), 50(10), 53(6), 60(5), 63(5), 71(3), 72(2), 73(3), 76(3), 79(4), 80(2), 89(16), 93 or 95 is, on conviction, liable to a fine, or imprisonment not exceeding five years, or to both such fine and such imprisonment.

(2) Any person who is guilty of an offence in terms of sections 87(2), 88(5) or 94 is, on conviction, liable to a fine, or imprisonment not exceeding one year, or to both such fine and such imprisonment.

(3) In addition to imposing a penalty in terms of subsection (1), a court that has convicted a person of an offence in terms of section 38(2) must order the forfeiture to the State of any liquor seized in terms of section 82(2)(g).

Part 3

Cancellation of licence certificate or permit on conviction

Production of licence certificate or permit in court

97.(1) Any licensed person charged with any offence in terms of this Act must produce the licence certificate or permit issued to him or her, or a certified duplicate thereof issued in terms of this Act if he, she or it is not in possession of the original, to the court at the time of the hearing of a charge.

(2) No person referred to in subsection (1) may, without reasonable excuse, refuse or fail to produce the certificate or permit or duplicate so referred to on request.

Cancellation of licence or permit on conviction

98.(1) Subject to subsection (3), the Liquor Authority must cancel the licence certificate or permit of any person convicted of an offence in terms of this Act.

(2) Where a court has convicted a person of an offence in terms of this Act, the Chief Executive Officer or clerk of the court must inform the Liquor Authority accordingly.

(3) If the Liquor Authority is satisfied that circumstances exist which do not justify the cancellation referred to in subsection (1), it may resolve not to cancel the licence or permit.

(4) For the purposes of this section, cancellation of a licence or permit takes effect on the date on which the licence certificate or permit is cancelled by the Liquor Authority.

(5) When a person's licence certificate or permit has been cancelled in terms of subsection (1), all the rights, benefits and allowances accruing therefrom lapse immediately.

(6) The responsible Member of the Executive Council must prescribe, by regulation, the procedure to be followed in terms of this section after a court has convicted a person of

an offence in terms of this Act.

CHAPTER 10 GENERAL PROVISIONS

Regulations

99.(1) The responsible Member of the Executive Council may make regulations regarding –

- (a) the payment and amount of any fees payable in terms of this Act in respect of –
 - (i) any application made in terms of this Act;
 - (ii) the issue of a licence or permit; and
 - (iii) the annual fee payable by a licensed person in respect of each licence issued;
- (b) the form of licences, permits, consents, approvals, certificates, determinations, notices, including compliance notices and other documents referred to in this Act;
- (c) the manner and form in which, and the days on which, if applicable, any application in terms of this Act may or must be made and lodged;
- (d) the manner and form of service, delivery or despatch of any notice or other document required to be served, delivered or despatched in terms of this Act;
- (e) the manner and form of publication of any notice or other document required to be published in terms of this Act;
- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
- (g) the content and form of an inspection report or other report or recommendation to be made or given in terms of this Act;
- (h) the manner and form in which an objection hearing or a hearing in respect of a compliance notice in terms of section 89 must be conducted;
- (i) time periods, or the extension of time periods, to be prescribed in terms of this Act;
- (j) the details of premises in respect of which licensing is sought that must be included in an application for a licence;
- (k) the manner and form in which an application for appeal or review to the responsible Member of the Executive Council must be made;
- (l) the manner in which proceedings and meetings must be conducted by the

- responsible Member of the Executive Council;
- (m) the tariff of witness fees payable on appeal or review proceedings;
 - (n) the form of a certificate issued to an inspector;
 - (o) the manner and form in which a complaint must be submitted to the Liquor Authority;
 - (p) the procedure to be followed for the cancellation of a licence or permit on conviction of an offence in terms of section 98;
 - (q) the manner and form in which an application for temporary amnesty must be made;
 - (r) the manner and form in which an application for payment of annual fees as contemplated in section 64 must be made;
 - (s) any matter which must or may be prescribed in terms of this Act; and
 - (t) in general, any matter in respect of which the responsible Member of the Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act, the generality of this paragraph not being limited by the preceding paragraphs.

(2) A regulation regarding fees or money to be paid must be made in consultation with the responsible Member of the Executive Council for Finance.

Repeal of laws

100. The laws mentioned in Part A, B and C of Schedule 1 are hereby repealed to the extent indicated in the third column of the said Schedule.

Conversion of licences, approvals, notices and determinations

101.(1) Notwithstanding the provisions of section 39, and in accordance with the transitional provisions of the Liquor Act –

- (a) every licence or approval set out in the first column of Schedule 2 and in force immediately before the date of commencement of this Act, is from the commencement date of this Act regarded as a licence in the category set out in the second column of Schedule 2: Provided that –

- (i) the terms and conditions and trading days and trading hours applicable to

such licence, immediately prior to this Act coming into effect, continue in force until the date upon which such licence is required to be renewed in terms of the Liquor Act, 1989 (Act No. 27 of 1989);

(ii) the said terms and conditions and trading days and trading hours are not inconsistent with the provisions of this Act; and

(iii) in the event that the said terms and conditions or trading days and trading hours are inconsistent with the provisions of this Act, then the provisions of this Act are applicable;

(b) a notice issued in terms of section 33 of the Liquor Act, 1989 (Act No. 27 of 1989), and in force immediately before the date of commencement of this Act, are regarded as conditions set out in writing in terms of section 49 and 58 of this Act; and

(c) any determination made in terms of section 51 of the Liquor Act, 1989 (Act No. 27 of 1989), and in force immediately before the date of commencement of this Act, is regarded as a consent granted in terms of section 72(1) of this Act.

(2)(a) The holders of the licences, approvals, notices and determinations referred to in subsection (1) are entitled to a licence certificate or permit in terms of section 62 of this Act for the relevant category of licence as contemplated in section 39, without having to comply with the application procedure for such a licence or permit contemplated in Chapter 6.

(b) All existing terms and conditions and trading hours applicable to such licences, approvals, notices and determinations must be endorsed on the licence certificate in accordance with subsection (1).

(3)(a) The holders of the licences, approvals, notices and determinations referred to in subsection (1) must receive such licence certificate or permit upon presentation to the Liquor Authority of proof of their licences, approvals, notices and determinations referred to in subsection (1) and the terms and conditions and trading hours to which such licences, approvals, notices and determinations are subject, and upon payment of the annual fee prescribed in terms of section 64.

(b) The holders of the licences, approvals, notices and determinations referred to in subsection (1) must obtain their licence certificates or permits under this Act within three years of the commencement of this Act.

(4) In the event that a holder does not convert the licences, approvals, notices and determinations within the prescribed period referred to in subsection (3)(b), such licences, approvals, notices and determinations become invalid, as provided for in the transitional provisions of the Liquor Act.

(5) In accordance with item 7 of Schedule 1 to the Liquor Act, any application for a liquor licence made under the Liquor Act, 1989 (Act No. 27 of 1989), before the date of the repeal of that Act and not disposed of prior to that date, must be disposed of in terms of that Act, despite its repeal.

Transitional arrangements and validation

102.(1) The Liquor Authority is the legal successor to the Liquor Board.

(2) Notwithstanding anything to the contrary contained in this Act, on the date on which this Act comes into operation, any lawful act, determination, designation, decision, matter or any other thing done, made, taken, executed or carried out or purported to have been done, made, taken, executed or carried out by the Liquor Board or a member of staff of the Liquor Board, including a member of the Liquor Board or the Chief Executive Officer of the Liquor Board, or the responsible Member of the Executive Council, in pursuance of the Liquor Act, is regarded to have been done, made, taken, executed or carried out or issued under this Act;

(3) Any person who, on the day before the date of commencement of this Act, was a member of the Liquor Board continues as a member of the Liquor Authority until the responsible Member of the Executive Liquor Authority has appointed new members of the Liquor Authority in terms of section 8 of this Act.

(4) Any application for a liquor licence made before the commencement of this Act in terms of the repealed Liquor Act, 1989 (Act No. 27 of 1989), and the Regulations made in terms of that Act, must be dispensed of and finalised as if this Act has not come into operation.

(5) A person who, on the day before the date of commencement of this Act, was a member of staff of the Liquor Board, is regarded as having been appointed in terms of section 24 of this Act.

Short title and commencement

103.(1) This Act is called the KwaZulu-Natal Liquor Licensing Act, 2010, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

(2) The responsible Member of the Executive Council may determine different dates for the coming into operation of different sections of this Act.

SCHEDULE 1**Repeal of laws**
(Section 100)**PART A: NATIONAL LEGISLATION WITHIN THE FUNCTIONAL AREA OF
EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE IN TERMS OF
SCHEDULE 5 TO THE CONSTITUTION**

No. and year of law	Short Title	Extent of repeal
Act No. 27 of 1989	Liquor Act, 1989	Sections 5, 6,6A, 7 to 32, 32A, 33 to 74, 78, 82,84 to 123, 128, 156, 160 to 162, 165, 166, 169, 170, 173 to 175, 177 to 181, 184 to 186 and 189, but – (a) only to the extent that such provisions relate to the micro-manufacture, retail sale or consumption of liquor or methylated spirits; and (b) provided that the repeal of the said provisions come into effect only upon the date declared by the Minister responsible for liquor matters in the national sphere of government, in the <i>Government Gazette</i> , in accordance with item 2 of Schedule 1 (Transitional Provisions) to the Liquor Act, 2003 (Act No. 59 of 2003)
Act No. 57 of 1995	Liquor Amendment Act, 1995	Section 54

PART B: ENACTMENTS OF THE FORMER KWAZULU LEGISLATIVE ASSEMBLY

No. and year of law	Short title	Extent of repeal
Act No. 11 of 1984	KwaZulu Licences and Business Hours Act, 1984	Items 41 and 46 of Schedule 1 to the extent that such provisions relate to the retail sale of liquor

**PART C: REGULATIONS MADE IN TERMS OF SECTION 182 OF THE LIQUOR ACT,
1989 (ACT NO. 27 OF 1989)**

No. and year of law	Short title	Extent of repeal
Regulation No. 1405 of 1992	Regulations in terms of section 182 of the Liquor Act, 1989 (Act No. 27 of 1989)	The whole, but – (a) only to the extent that such provisions relate to the micro-manufacture, retail sale or consumption of liquor or methylated spirits; and (b) provided that the repeal of the said provisions come into effect only upon the date declared by the Minister responsible for liquor matters in the national sphere of government, in the <i>Government Gazette</i> , in accordance with item 2 of Schedule 1 (Transitional Provisions) to the Liquor Act, 2003 (Act No. 59 of 2003)

SCHEDULE 2**Conversion of licences, approvals, notices and determinations**
(Section 101)

Category/ type of licence or approval in force immediately before the date of commencement of this Act	Category of licence deemed to be in force from the date of commencement of this Act, subject to section 101(4)
An exemption referred to in section 4(1) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39 (a)(ii) or (vii) of this Act
A hotel liquor licence referred to in section 20(a)(i) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(i) of this Act
A restaurant liquor licence referred to in section 20(a)(ii) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(ii) of this Act
A wine-house licence referred to in section 20(a)(iii) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(vii) of this Act
A theatre liquor licence referred to in section 20(a)(iv) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(ix) of this Act
A club liquor licence referred to in section 20(a)(v) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(iii) of this Act
A sorghum beer licence referred to in section 20(a)(vi) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(vii) or (viii) of this Act
A special licence referred to in section 20(a)(vii) of the Liquor Act, 1989	A licence for the retail sale of liquor in a category referred to in section 39(a) most similar to that category of this Act
A temporary liquor licence referred to in section 20(a)(viii) of the Liquor Act, 1989	A special events permit referred to in section 39(c) of this Act
An occasional licence referred to in section 20(a)(ix) of the Liquor Act, 1989	A special events permit referred to in section 39(c) of this Act
A brewer's licence referred to in section 20(b)(ii) of the Liquor Act, 1989	A licence for the micro-manufacture, of liquor referred to in section 39(d) of this Act, if applicable
A liquor store licence referred to in section 20(b)(iii) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(b)(i) of this Act
A grocer's wine licence referred to in section 20(b)(iv) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(b)(ii) of this Act
A wine farmer's licence referred to in section 20(b)(v) of the Liquor Act,	A licence for the micro-manufacture of liquor referred to in section 39(d) of this Act

Category/ type of licence or approval in force immediately before the date of commencement of this Act	Category of licence deemed to be in force from the date of commencement of this Act, subject to section 101(4)
1989	
A sorghum beer brewer's licence referred to in section 20(b)(vi) of the Liquor Act, 1989	A licence for the micro-manufacture of liquor referred to in section 39(d)
A special licence referred to in section 20(b)(viii) of the Liquor Act, 1989	A licence for the retail sale of liquor in a category referred to in section 39(b) of this Act most similar to that category
A producer's licence referred to in section 20(b)(ix) of the Liquor Act, 1989	A licence for the micro-manufacture, including wholesale supply, of liquor referred to in section 39(d) of this Act, if applicable
An approval granted in terms of section 60 of the Liquor Act, 1989, to a holder of a wine-house licence	A licence for the retail sale of liquor referred to in section 39(b)(i) of this Act
A sports ground liquor licence referred to in section 189 of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(vi) of this Act
A special licence (Tavern) referred to in section 20(a)(vii) of the Liquor Act, 1989	A licence for the retail sale of liquor referred to in section 39(a)(viii) of this Act

SCHEDULE 3
Trading days and trading hours
(Section 78)

CATEGORY A: ON-CONSUMPTION	TRADING HOURS	TRADING DAYS
1. Accommodation	10h00 – 02h00	Every day
2. Restaurant	10h00 – 02h00	Every day
3. Club	10h00 – 02h00	Every day
4. Nightclub	10h00 – 04h00	Every day
5. Gaming premises	24h00	Every day
6. Sports ground	10h00 – 23h00	Any day
7. Pub	10h00 – 02h00	Every day
8. Tavern	10h00 – 24h00	Every day
9. Theatre	10h00 – 24h00	Every day
CATEGORY B: OFF-CONSUMPTION	TRADING HOURS	TRADING DAYS
1. Liquor store	08h00 – 20h00 08h00 – 17h00 10h00 – 15h30	Monday – Friday Saturday Sunday
2. Grocer's wine	08h00 – 20h00 08h00 – 17h00 10h00 – 15h30	Monday – Friday Saturday Sunday
CATEGORY C: SPECIAL EVENTS PERMIT	TRADING HOURS	TRADING DAYS
Special events permit	Starting of event – Closing of event	Any day
CATEGORY D: MICRO-MANUFACTURER	TRADING HOURS	TRADING DAYS
Micro-manufacturer	07h00 – 22h00	Every day

No. 1

3 Februarie 2011

[Engelse teks deur die Premier geteken]

**KWAZULU-NATAL
WET OP DRANKLISENSIËRING, 2010
(No. 06 van 2010)**

Goedgekeur op 15-12-2010

WET

Om voorsiening te maak vir die regulering, beheer en lisensiëring van die kleinhandelverkope en die mikrovervaardiging van drank in die provinsie KwaZulu-Natal; om voorsiening te maak vir die instelling van die KwaZulu-Natal Drankowerheid en plaaslike komitees van die Drankowerheid; om voorsiening te maak vir die aanstelling van inspekteurs en hul bevoegdhede en pligte; en om voorsiening te maak vir aangeleenthede wat verband hou daarmee.

DAAR WORD soos volg deur die Wetgewer van die provinsie KwaZulu-Natal bepaal: —

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Artikel

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2. Oogmerke van Wet
3. Vrystellings
4. Funksies van verantwoordelike lid van die Uitvoerende Raad

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6. Oogmerke van Drankowerheid
7. Bevoegdhede, pligte en funksies van Drankowerheid
8. Samestelling van Drankowerheid
9. Onbevoegdheid vir aanstelling op Drankowerheid
10. Verklaring van finansiële of ander belange van lede van Drankowerheid
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14. Tydelike skorsing van lede van Drankowerheid
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16. Instelling van komitees om Drankowerheid by te staan
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18. Besoldiging van lede van Drankowerheid
19. Kundige en ander bystand aan Drankowerheid
20. Vertroulikheid
21. Delegering van bevoegdhede, pligte en funksies

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HOOFSTUK 1 INLEIDING

Omskrywings

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

“**akkommodasie**” enige perseel waar verblyf en etes verskaf word en sluit in 'n hotel, motel, herberg, bed-en-ontbytinstelling, karavaan-en-kampeerpark, plaashuis, gastehuis, hut, boot en huisboot;

“**beherende belang**” enige belang verkry of gehou, wat die houer daarvan in staat stel om, direk of indirek, enige beheer soos bepaal in ooreenstemming met artikel 12(2) van die Kompetisiewet, 1998 (Wet No. 89 van 1998), oor die werksaamhede van die besigheid of onderneming uit te voer;

“**beslote korporasie**” 'n korporasie soos omskryf in artikel 1(1) van die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984);

“**bier**” sluit in –

(a) Engelse bier, appelwyn en swartbier; en

(b) enige ander gegiste drank, buiten tradisionele Afrikabier –

(i) wat vervaardig is, of verkoop word onder die naam van bier, Engelse bier, appelwyn of swartbier, indien dit meer as een persent alkohol per volume bevat; of

(ii) wat as bier verklaar word onder die Drankwet, 2003 (Wet No. 59 van 2003);

“brandspiritus” –

(a) 'n sterk drank wat ooreenkomstig enige wet op die denaturasie of metilering van spiritus gedenatureer is; of

(b) enige ander gedenatureerde sterk drank, met inbegrip van –

(i) 'n medisinale spiritus; of

(ii) 'n gedenatureerde spiritus wat ooreenkomstig die Drankwet, 2003 (Wet No. 59 of 2003) as brandspiritus verklaar is;

“dae” vir die doeleindes van berekening van tydperke in hierdie Wet, besigheidsdae uitsluitend naweke en openbare vakansiedae;

“Departement” die departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir dranklisensiëring;

“dobbelperseel” enige perseel waarop dobbelary, soos omskryf in die KwaZulu-Natal Dobbewelwet, 1996 (Wet No. 10 van 1996), of die opvolger daarvan, plaasvind onder die outoriteit van 'n lisensie wat uitgereik is ooreenkomstig daardie Wet of die plaasvervanger daarvan;

“drank” –

(a) 'n drankprodukt, soos omskryf in artikel 1 van die Wet op Drankprodukte, 1989 (Wet No. 60 van 1989);

(b) bier of tradisionele Afrikabier; of

(c) enige ander stof of drankie wat onder drank verklaar word ingevolge die Drankwet, 2003 (Wet No. 59 van 2003);

maar sluit nie brandspiritus in nie;

“Drankowerheid” die KwaZulu-Natal Drankowerheid wat ingevolge artikel 5 ingestel is;

“Drankwet” die Drankwet, 2003 (Wet No. 59 van 2003);

“Drankraad” die Raad wat ingevolge artikel 5 van die Drankwet, 1989 (Wet No. 27 van 1989) ingestel is;

“drankwinkel” ‘n afsetgebied gelisensieer om drank te verkoop vir gebruik weg van die perseel;

“dronk” die toestand waarin ‘n persoon verkeer wanneer sy of haar verstandelike en fisieke vermoëns so deur drank aangetas is dat daar ‘n waarskynlikheid bestaan dat hy of sy hom- of haarself of ‘n ander persoon kan beseer of ‘n gevaar of oorlas of steurnis vir ander kan wees;

“familielid” –

- (a) ‘n man of vrou, enige genoot in ‘n huwelik wat kragtens enige tradisie of enige sisteem van godsdienstrykystelsel voltrek is of enige genoot in ‘n verhouding waar die partye saamleef op ‘n wyse wat met ‘n huweliksverhouding ooreenkom;
- (b) enige kind wat uit enige van die huwelike of eenhede vermeld in paragraaf (a) gebore is of enige kind wat gebore is uit een van die genote vermeld in die vermelde paragraaf; of
- (c) die ouers van ‘n persoon vermeld in paragraaf (a) en die ouers van sodanige persoon se man, vrou of genoot vermeld in die vermelde paragraaf (a);

“finansiële belang” die eienaarskap of aandele in ‘n maatskappy, ‘n lid se belang in ‘n beslote korporasie, ‘n belang in ‘n vennootskap en, met betrekking tot ‘n besigheid of onderneming, enige belang wat die houer daarvan in staat stel om in die wins en inkomste van sodanige besigheid of onderneming te deel;

“gelisensieerde perseel” die perseel waarop drank kragtens ‘n lisensie of permit ingevolge hierdie Wet mikrovervaardig of verkoop mag word;

“gelisensieerde persoon” ‘n persoon wat ‘n geldige lisensie het, uitgereik ingevolge hierdie Wet;

“geriefswinkel” ‘n winkel geleë op die perseel van ‘n diensstasie wat petrol, diesel

of ander petroleum produkte aan die publiek verkoop, waarvan die hoofbesigheid die verkope van 'n beperkte aantal en verskeidenheid vinnigbewegende gebruiksware is;

"Grondwet" die Grondwet van die Republiek van Suid-Afrika, 1996;

"hierdie Wet" met inbegrip van die regulasies;

"hoof- uitvoerende beampte" means die Hoof- uitvoerende beampte van die KwaZulu-Natal Drankowerheid appointed ingevolge artikel 22;

"Hoof van departement" die hoof van die departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir dranklisensiëring;

"Inkomstefonds" die Provinsiale Inkomstefonds ingestel ingevolge artikel 226 van die Grondwet;

"kantien" enige residensieelgesoneerde perseel waar drank verkoop word vir gebruik op die perseel, en waar kos, buiten kos wat op die perseel voorberei word, bykomend is;

"kleinhandelverkope" die verkoop van drank vir doeleindes van gebruik insluitend die ruil of hou, aanbied, vertoon, aflewer, verskaf of van die hand sit, vir kleinhandelverkope, of magtiging, opdraggewing of toelaat van 'n kleinhandelverkoop, en **"verkope"** en **"verkoop"** het ooreenstemmende betekenis;

"klub" 'n vereniging of organisasie bestaande uit lede wat toegewyd is aan 'n spesifieke aktiwiteit of soortgelyke belange deel, wat onderhewig is aan 'n stel reëls of 'n grondwet wat deur alle lede onderskryf word;

"Koerant" die amptelike *Provinsiale Koerant* van die provinsie KwaZulu-Natal;

"koöperasie" 'n koöperasie soos omskryf in die Koöperasiewet, 1981 (Wet No. 91

van 1981);

“kroeg” enige kommersieel gesoneerde gelisensieerde perseel waar drank verkoop word vir gebruik op die perseel en waar etes wat op die perseel voorberei word, bykomend is;

“kruidenier” 'n besigheid wat hoofsaaklik kruideniersware en lewensmiddele in die kleinhandel verkoop, maar 'n geriefswinkel uitsluit;

“lisensiehouer” 'n persoon aan wie 'n lisensie uitgereik is of wat as gelisensieerd geag word ingevolge hierdie Wet, of 'n persoon wat ingevolge die Drankwet, 2003 (Wet No. 59 van 2003) gelisensieer is;

“Lid van die Uitvoerende Raad vir Finansies” die Lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

“Lid van die Uitvoerende Raad vir Gesondheid” die Lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir gesondheid;

“maatskappy” 'n maatskappy soos omskryf in die Maatskappywet, 1973 (Wet No. 61 van 1973);

“mikrovervaardiging” om drank te produseer teen of onder die voorgeskrewe drempelvolumen soos bepaal ingevolge artikel 4(10) van die Drankwet, 2003 (Wet No. 59 van 2003);

“mikrovervaardiger” 'n persoon wat as sodanige ingevolge hierdie Wet geregistreer is om drank te mikrovervaardig teen of onder die drempelvolumen ingevolge die Drankwet, 2003 (Wet No. 59 van 2003);

“minderjarige” 'n persoon wat nie die ouderdom van 18 jaar bereik het nie;

“munisipaliteit” 'n munisipaliteit bedoel in artikel 155 van die Grondwet van die Republiek van Suid-Afrika, 1996, en ingestel by en kragtens artikels 11 en 12 van die

Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998), saamgelees met artikels 3, 4 en 5 van die KwaZulu-Natal Wet op die Bepaling van Soorte Munisipaliteite, 2000 (Wet No. 7 van 2000), en “**distriksmunisipaliteit**” en “**metropolitaanse munisipaliteit**” het ’n ooreenstemmende betekenis;

“**nagklub**” perseel wat gedurende die nag oop is en waar dansery en musiek gewoonlik verskaf word;

“**natuurlike wyn**” ’n wynprodukt soos omskryf in die Wet op Drankprodukte, 1989 (Wet No.60 van 1989) saamgelees met die betrokke regulasies daarby;

“**onderriginstelling**” ’n openbare en privaatinstelling of nie-regeringsorganisasie wat opleiding verskaf en/of ’n opleidingsproses fasiliteer vir die bereiking van bekwaamhede in lyn met nasionaalerkende standaarde;

“**openbare ampsdraer**” –

- (a) ’n lid van die Nasionale Vergadering, die Nasionale Raad van Provinsies of die Kabinet;
- (b) ’n lid van ’n provinsiale wetgewer of van die Uitvoerende Raad van ’n provinsie;
- (c) ’n munisipale raadslid;
- (d) ’n diplomatieke verteenwoordiger van die Republiek wat nie ’n lid van die staatsdiens is nie;
- (e) ’n lid van ’n huis van tradisionele leiers; of
- (f) ’n nasionale of provinsiale ampsdraer van ’n politieke party, organisasie, liggaam, alliansie of beweging geregistreer ingevolge artikel 15 of 15A van die Kieswet, 1996 (Wet No. 51 van 1996);

“**permit**” ’n spesiale geleentehede-permit waarna in artikel 39(1)(c) verwys word;

“**perseel**” enige grond, gebou of struktuur of deel daarvan;

“**persoon**” ’n natuurlike of regspersoon, ’n groep van sodanige persone of ’n liggaam met regspersoonlikheid, tensy uit die konteks anders blyk;

“plaaslike komitee” ‘n komitee van die Drankowerheid wat vir elke distriks- en metropolitaanse munisipaliteit in die provinsie ingestel is ingevolge artikel 27;

“provinsie” die provinsie KwaZulu-Natal ingevolge artikel 103 van die Grondwet;

“Provinsiale Wetgewer” die Wetgewer van die provinsie KwaZulu-Natal;

“regulasie” of **“regulasies”** ‘n regulasie of regulasies ingevolge hierdie Wet uitgevaardig;

“restaurant” enige perseel waar etes wat op die perseel voorberei word, verskaf word en waar die verkoop van drank vir gebruik op die perseel bykomend is;

“spesiale geleentheid” ‘n geleentheid georganiseer by ‘n gespesifiseerde plek vir ‘n gespesifiseerde tydsduur;

“sportterrein” ‘n plek waar sportbyeenkomste, wedstryde of ontspanningsaktiwiteite gehou word;

“staatsamptenaar” ‘n staatsamptenaar soos omskryf in artikel 1 van die Staatsdienswet, 1994 (Proklamasie 103 van 1994), en sluit ‘n munisipale werknemer in;

“teater” enige perseel waar dramatiese opvoerings, toneelstukke, konserte, vertonings of films gereeld aan die publiek vertoon of gebied word;

“tradisionele Afrikabier” ‘n gegiste vloeistof –

(a) gemaak deur –

(i) die gisting van mout, ongemoute graan of meel van die graankosse sorghum, mielie, vinger- of pêlkanariesaad, met niks meer nie as vyf persent suiker by gewig relatief tot die gekombineerde gewig van al die mout, graan of graankosbestanddele; of

(ii) kombinerings van tradisionele Afrikabierpoeier met water;

- (b) met geen byvoeging van etielalkohol nie;
- (c) met 'n alkoholinhoud wat nie 3,5 persent per volume oorskry nie;
- (d) in 'n toestand van gisting, of waarvan die gisting nie gestaak is nie; en
- (e) wat nie hop bevat of daarmee gegeur is of enige produk wat uit hop ontstaan het nie;

"tradisionele Afrikabierpoeier" 'n droë produk –

- (a) bestaande uit –
 - (i) volgens massa nie meer as drie dele van gemaalde sorghum of mieliemout; en
 - (ii) volgens massa nie minder nie as sewe dele van gemaalde voorafgekookte mielie of sorghum ongemoute graan of meel; en
- (b) wat –
 - (i) geen suiker wat uit enige bron ontstaan het, bevat nie;
 - (ii) geen hop of produkte wat uit hop ontstaan het, bevat nie of daarmee gegeur is nie; en
 - (iii) aktiewe droë gis wat bygevoeg is as 'n verwerkingshulpmiddel, mag bevat;

"verantwoordelike lid van die Uitvoerende Raad" die Lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir dranklisensiering;

"verskaffing" met betrekking tot enige kleinhandelverkope van drank, om 'n persoon in besit of beheer van daardie drank te plaas;

"versprei" om drank te koop aan te bied, of om drank aan 'n lisensiehouer te verkoop;

"verspreider" 'n persoon wat as sodanig gelisensieer is ingevolge die Drankwet, 2003 (Wet No. 59 van 2003); en

"voorgeskryf" deur regulasie voorgeskryf, en **"voorskryf"** het 'n ooreenstemmende betekenis.

Oogmerke van Wet**2. Die oogmerke van hierdie Wet is –**

- (a) om voorsiening te maak vir die regulering van die mikrovervaardiging en die kleinhandelverkope van drank;
- (b) om voorsiening te maak vir meganismes wat gemik is op die vermindering van die sosio-ekonomiese en ander gevolge van alkoholmisbruik;
- (c) om voorsiening te maak vir openbare deelname by die oorweging van aansoeke om registrasie;
- (d) om die ontwikkeling van 'n verantwoordelike en volhoubare kleinhandel- en mikrovervaardigingsdrankbedryf te bevorder op 'n wyse wat die volgende fasiliteer –
 - (i) die toegang van nuwe deelnemers tot die bedryf;
 - (ii) diversiteit van eienaarskap in die bedryf; en
 - (iii) 'n etos van sosiale verantwoordelikheid in die bedryf .

Vrystellings**3. Hierdie Wet is nie van toepassing nie op –**

- (a) 'n beampte soos omskryf in artikel 1(1) van die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), in die uitoefening van sy of haar funksies;
- (b) 'n balju of enige ander beampte van 'n hof wat handel kragtens 'n bevel van 'n hof;
- (c) 'n regter of landdros wat in die uitvoering van sy of haar funksies optree;
- (d) 'n persoon, met betrekking tot die verkoop van enige alkoholiese of gedistilleerde reukwerk of geneeskundige toebereide spiritus, welke reukwerk of spiritus nie brandspiritus is nie; en
- (e) die vervaardiger van lekkers wat volgens massa hoogstens twee persent alkohol bevat, met betrekking tot die verkoop van daardie lekkers aan 'n lisensiehouer.

Funksies van verantwoordelike lid van die Uitvoerende Raad**4. Die verantwoordelike lid van die Uitvoerende Raad –**

- (a) binne 12 maande na die inwerkingtreding van hierdie Wet –
 - (i) provinsiale beleid en norme en standaarde aangaande die

- kleinhandel drankbedryf en die mikrovervaardiging van drank ontwikkel;
- (ii) riglyne vir die afhandeling van werksaamhede in die Drankowerheid en plaaslike komitees in- en vasstel;
- (b) 'n maatskaplike verantwoordelikeheidsprogram met betrekking tot alkoholverbruik instel; en
- (c) dié ander funksies verrig wat aan hom of haar kragtens hierdie Wet opgelê is.

HOOFSTUK 2 KWAZULU-NATAL DRANKOWERHEID

Instelling van Drankowerheid

5.(1) 'n Regspersoon bekend as die KwaZulu-Natal Drankowerheid word hierby ingestel.

(2) Die Drankowerheid is 'n provinsiale openbare entiteit onderhewig aan die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

(3) Die Drankowerheid is die rekenpligtige owerheid, soos bedoel in artikel 49(2)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

Oogmerke van Drankowerheid

6. Die oogmerke van die Drankowerheid is om –

- (a) dranklisensie-aansoeke in die provinsie te oorweeg, toe te staan of af te keur;
- (b) lisensies ingevolge hoofstuk 6 van hierdie Wet uit te reik;
- (c) toeganklikheid van dranklisensies in die provinsie te verhoog;
- (d) 'n eenvormige, regverdige, billike en deursigtige proses in die uitreiking van dranklisensies te verseker;
- (e) met die verantwoordelike lid van die Uitvoerende Raad, die Departement, munisipaliteite en die drankbedryf in die provinsie saam te werk ten einde nasionale en provinsiale drankbeleid en norme en standaarde te implementeer en te bevorder; en
- (f) inisiatiewe te implementeer en te bevorder wat die oogmerke van die Wet aanspreek soos voorsien in artikel 2(b) en (d).

Bevoegdheids, pligte en funksies van Drankowerheid**7.(1) Die Drankowerheid moet –**

- (a) aansoeke om dranklisensiëring oorweeg en verwerk ingevolge hoofstuk 6 van hierdie Wet;
- (b) dranklisensie-aansoeke bedoel in paragraaf (a) weier of toestaan;
- (c) die verantwoordelike lid van die Uitvoerende Raad adviseer oor enige aangeleentheid deur die verantwoordelike lid van die Uitvoerende Raad na die Drankowerheid verwys;
- (d) enige saak wat direk of indirek verband hou met die drankbedryf in die provinsie ondersoek en aanbevelings daarvoor aan die verantwoordelike lid van die Uitvoerende Raad maak;
- (e) die verantwoordelike lid van die Uitvoerende Raad adviseer met betrekking tot die ontwikkeling van 'n maatskaplike verantwoordelikhedsprogram ten opsigte van alkoholverbruik en die implementering daarvan;
- (f) die verantwoordelike lid van die Uitvoerende Raad bystaan om beleid te formuleer en om norme en standaarde in te stel betreffende enige aangeleentheid ten opsigte van die drankbedryf in die provinsie;
- (g) deelneem aan programme wat gemik is op die bevordering van 'n verantwoordelike en volhoubare kleinhandel- en mikrovervaardigingsdrankbedryf in die provinsie;
- (h) die ontwikkelingsprogramme wat gemik is op die vermindering van die sosio-ekonomiese en ander gevolge van alkoholmisbruik inisieer en daaraan deelneem;
- (i) die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer met betrekking tot die ontwikkeling van 'n program ten einde aan die oogmerke van die Wet vermeld in artikel 2 te voldoen;
- (j) binne die raamwerk van nasionale en provinsiale drankbeleid, die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer met betrekking tot die advisering en leidinggewing van –
 - (i) plaaslike komitees;
 - (ii) die besigheidseenheid binne die departement verantwoordelik vir kleinbesigheidsontwikkeling; en
 - (iii) belanghebbendes in die drankbedryf, gebruikers en organisasies of instellings wie se werksaamhede of oogmerke 'n invloed op en verband hou met die

drankbedryf in die provinsie; en

(k) dié ander funksies uitoefen wat ingevolge hierdie Wet aan hom opgelê word.

(2) Die Drankowerheid kan, na sy oorweging van enige ander aangeleentheid bedoel in hierdie Wet –

(a) 'n lisensie wat die onderwerp is van 'n betrokke verslag, klagte of beswaar, of enige reg of voorreg wat daarmee verband hou, vir 'n onbepaalde tyd of vir sodanige tydperk deur hom bepaal, opskort of vanaf sodanige datum as deur hom bepaal, onttrek;

(b) die betrokke lisensie onderhewig verklaar aan sodanige voorwaardes of verdere voorwaardes deur hom na goeddunke opgelê;

(c) die opskorting intrek van die betrokke lisensie of van enige reg of voorreg wat daarmee verband hou, met onmiddellike effek of vanaf sodanige datum deur hom bepaal, onderhewig aan sodanige voorwaardes deur hom na goeddunke opgelê; of

(d) 'n uitgereikte lisensie terugtrek en kanselleer waar daar 'n skending van die lisensievoorwaardes was;

(e) die hoof- uitvoerende beampte magtig om 'n lisensie te hernu voor die datum van verstryking daarvan indien die inspekteur bevestig dat daar voldoen is aan die vereistes soos voorgeskryf en vermeld in artikel 64, tensy dit gekanselleer of oorgegee is en ooreenkomstig die bepalings van artikel 64 is;

(f) enige aansoek deur 'n lisensiehouer toestaan of weier om 'n lisensie van een persoon na 'n ander oor te dra ingevolge artikel 74, of 'n lisensie van een gelisensieerde perseel na 'n ander perseel oor te dra ingevolge artikel 75, binne die provinsie; of

(g) enige sodanige ander stappe doen as wat toepaslik geag word.

Samestelling van Drankowerheid

8.(1) Die Drankowerheid bestaan uit –

(a) nie meer nie as vyf lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en

(b) die hoof- uitvoerende beampte, *ex officio*, soos bedoel in artikel 22.

(2) Die lede bedoel in subartikel (1) moet insluit –

- (a) twee persone wat toegelaat word as prokureurs of advokate met ten minste vyf jaar ondervinding in die regsprofessie of regspleging;
 - (b) een persoon met kennis en ondervinding op die terrein van welsyn, sosio-ekonomiese ontwikkeling of maatskaplike dienste of gesondheid;
 - (c) een persoon met kennis en ondervinding in die drankbedryf en nie aktief daarby betrokke of met 'n finansiële belang daarin nie, synde direk of indirek; en
 - (d) een lid van die Suid-Afrikaanse Polisie met die rang van luitenant-kolonel of hoër, benoem deur die Luitenant-generaal van die Polisie.
- (3) By aanstelling van lede op die Drankowerheid, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat historiese ongelykhede aangespreek word.
- (4) Die verantwoordelike lid van die Uitvoerende Raad moet –
- (a) een lid van die Drankowerheid aanstel as voorsitter van die Drankowerheid; en
 - (b) een lid van die Drankowerheid aanstel as die adjunkvoorsitter van die Drankowerheid.
- (5) Die verantwoordelike lid van die Uitvoerende Raad moet by 'n kennisgewing in twee koerante met wye sirkulasie in die provinsie en enige ander metode om die grootste aantal inwoners van die provinsie te bereik, enige belanghebbende partye in die provinsie vra om kandidate vir aanstelling op die Drankowerheid te benoem, binne 21 dae na die datum van publikasie van vermeldde kennisgewing.
- (6) Die uitnodiging om benoemings soos voorgeskryf, moet die –
- (a) benoemingsprosedure;
 - (b) vereistes vir benoemings wat mag insluit –
 - (i) die volle name van die benoemde, sy of haar adres en die *curriculum vitae* van sodanige persoon saam met 'n skriftelike motivering vir die benoeming deur die benoemer; en
 - (ii) 'n plegtige verklaring deur die benoemde waarin hy of sy verklaar dat hy of sy nie onbevoeg is ingevolge artikel 9 nie: Met dien verstande dat indien die benoemde aan 'n misdryf bedoel in artikel 9(1)(f) skuldig bevind is, sodanige benoemde 'n plegtige verklaring moet aflê waarin hy of sy

volle besonderhede van enige skuldigbevinding openbaar en verklaar dat hy of sy nie onbevoeg is ingevolge enige van die ander bepalings van artikel 9 nie; en

(c) die sluitingsdatum vir die benoemings, spesifiseer.

(7) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings oorweeg wat in reaksie op die kennisgewing ingedien is, en kan 'n keurkomitee van minstens vier senior departementele beamptes aanstel om alle benoemings te hersien en aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad te maak aangaande die kandidate vir aanstelling op die Drankowerheid.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone aangestel op die Drankowerheid in die *Koerant* en in ten minste twee koerante met wye sirkulasie in die provinsie laat publiseer, onmiddellik nadat sodanige persone skriftelik in kennis gestel is van hul aanstelling op die Drankowerheid.

(9) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede van die Drankowerheid die Uitvoerende Raad en die Portefeuljekomitee in kennis stel van die name van die aangestelde lede asook hul aanstellingstermyn.

(10) Die verantwoordelike lid van die Uitvoerende Raad kan 'n beampte binne die Departement aanstel as sy of haar verteenwoordiger wie se funksies en pligte voorgeskryf mag word, wat –

(a) skakeling tussen die verantwoordelike lid van die Uitvoerende Raad en die Drankowerheid moet fasiliteer;

(b) van tyd tot tyd aan die verantwoordelike lid van die Uitvoerende Raad moet verslag doen aangaande aangeleenthede wat toepaslike geag word; en

(c) vergaderings van die Drankowerheid kan bywoon en deelneem aan besprekings, maar nie die reg het om te stem wanneer 'n beslissing van die Drankowerheid geneem word nie.

(11) Hierdie artikel is, met die nodige veranderings, van toepassing op die vul van 'n

vakature op die Drankowerheid.

Onbevoegdheid vir aanstelling op Drankowerheid

9. 'n Persoon is onbevoeg vir aanstelling op die Drankowerheid of om op die Drankowerheid te bly indien daardie persoon –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof geestelik siek verklaar is;
- (c) 'n direkte of indirekte belang in enige kontrak met die Drankowerheid het en versuim om sy of haar belang en die aard daarvan te verklaar soos deur hierdie Wet vereis;
- (d) 'n persoon onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp verwyder is as gevolg van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind en gevangenisstraf opgelê is sonder die keuse van 'n boete: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad 'n vonnis mag kondoneer indien sodanige benoemde, op 'n wyse wat ooreenstem met artikel 106(1)(e) van die Grondwet, volle besonderhede van die misdryf in 'n beëdigde verklaring verklaar: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel vyf jaar nadat die vonnis voltooi is, eindig;
- (g) versuim om 'n belang te verklaar ooreenkomstig artikel 11 of verrigtinge van die Drankowerheid bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos in die vermelde artikel bedoel;
- (h) 'n staatsdiensamptenaar is;
- (i) 'n openbare ampsdraer is; of
- (j) nie 'n burger van die Republiek en woonagtig in die provinsie is nie.

Verklaring van finansiële of ander belange van lede van Drankowerheid

10.(1) 'n Persoon wat benoem is om op die Drankowerheid te dien ingevolge artikel 8 moet, binne 10 dae na die benoeming, 'n skriftelike verklaring by die verantwoordelike lid van die Uitvoerende Raad indien van alle direkte of indirekte belange in enige maatskappy, beslote korporasie en of enige ander besigheidsbelange.

(2) Enige versuim deur 'n benoemde om finansiële en ander belange ingevolge subartikel (1) te verklaar, maak sodanige benoemde ingevolge artikel 9 onbevoeg vir aanstelling op die Drankowerheid.

(3) Elke lid van die Drankowerheid moet, by ampstaanvaarding en aan die begin van elke finansiële jaar van die Drankowerheid, 'n skriftelike verklaring van sy of haar direkte of indirekte belang in enige maatskappy, beslote korporasie of ander besigheidsbelange indien.

(4) Indien 'n lid van die Drankowerheid te eniger tyd gedurende sy of haar ampstermyn as 'n lid van die Drankowerheid 'n belang in enige maatskappy, beslote korporasie of ander besigheidsbelange bekom, moet hy of sy binne 10 dae na die datum van verkryging van sodanige belang, 'n skriftelike verklaring by die verantwoordelike lid van die Uitvoerende Raad indien.

(5) Enige versuim deur die lid om sy of haar belange soos bedoel in subartikels (3) en (4) te verklaar, lei tot die beëindiging van die aanstelling van sodanige lid ingevolge artikel 13(2).

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n opgedateerde register van die belange van lede van die Drankowerheid soos ingevolge hierdie artikel verklaar, byhou.

Versuim om finansiële of ander belange deur lid van Drankowerheid te verklaar

11.(1) 'n Lid van die Drankowerheid wat versuim om 'n verklaring beoog in artikel 10 te doen, kan, onderhewig aan subartikel (2), onbevoeg verklaar word om op die Drankowerheid te bly.

(2) Die verantwoordelike lid van die Uitvoerende Raad moet, wanneer hy of sy daarvan bewus raak dat 'n lid van die Drankowerheid versuim het om aan die bepalings van artikel 10 te voldoen, die aangeleentheid ondersoek en toepaslike dissiplinêre stappe oorweeg.

Ampstermyn en heraanstelling van lid van Drankowerheid

12.(1) 'n Lid word op die Drankowerheid aangestel vir 'n tydperk van drie jaar of vir so 'n korter tydperk soos wat die verantwoordelike lid van die Uitvoerende Raad mag bepaal.

(2) 'n Lid van die Drankowerheid kan vir een bykomende termyn heraanstelling word by die verstryking van sy of haar ampstermyn.

Vakatures, ontslag en bedanking uit amp van lede van Drankowerheid

13.(1) 'n Lid van die Drankowerheid moet sy of haar amp ontruim indien hy of sy onbevoeg raak soos bedoel in artikel 9.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat 'n geleentheid aan die lid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar mening, daar grondige, afdoende en regverdigbare redes is om dit te doen.

(3) 'n Lid moet sy of haar amp ontruim indien hy of sy sonder vooraf toestemming van die Drankowerheid afwesig is van twee opeenvolgende vergaderings van die Drankowerheid waarvoor redelike kennis persoonlik of per pos aan daardie lid gegee is .

(4) 'n Lid kan uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad van die bedankingskennisgewing kan afsien.

(5) Wanneer 'n vakature op die Drankowerheid ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 8, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstermyn van die lid in wie se plek sodanige persoon aangestel is.

(6) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan subartikel

(2), die aanstelling van al of sommige van die lede van die Drankowerheid beëindig.

(7) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdhede ingevolge subartikel (6) uitoefen, kan hy of sy, ondanks die prosedure vir die aanstelling van die lede van die Drankowerheid soos in artikel 8 uiteengesit, maar onderhewig aan subartikels (2) en (3) van artikel 8, persone aanstel om as lede van die Drankowerheid op 'n tussentydse basis te dien: Met dien verstande dat –

(a) die persone aangestel om die lede te vervang wie se aanstelling ingevolge subartikel (6) beëindig is, mag nie op die Drankowerheid aanbly vir 'n tydperk van meer as 90 dae na die datum van hul aanstelling nie; en

(b) die verantwoordelike lid van die Uitvoerende Raad, moet, onderhewig aan artikel 8, die permanente lede van die Drankowerheid binne 90 dae na die aanstelling bedoel in paragraaf (a) van hierdie subartikel aanstel.

Tydlike skorsing van lid van Drankowerheid

14.(1) Die verantwoordelike lid van die Uitvoerende Raad kan, na toepassing van die tersaaklike reëls van natuurlike geregtigheid, 'n lid met volle besoldiging skors indien –

(a) die lid na bewering 'n ernstige misdryf gepleeg het; en

(b) die verantwoordelike lid van die Uitvoerende Raad redelikerwys glo dat die teenwoordigheid van sodanige lid op die Drankowerheid enige ondersoek en navraag aangaande die beweerde wangedrag in gevaar mag stel, of die welstand of veiligheid van enige persoon of staatseiendom in gevaar mag plaas: Met dien verstande dat hierdie soort skorsing 'n voorsorgmaatreël is, wat nie 'n bevinding uitmaak nie.

(2) Indien 'n lid as voorsorgmaatreël geskors word soos bedoel in subartikel (1), moet die verantwoordelike lid van die Uitvoerende Raad die ondersoek binne 60 dae na die inwerkingtreedingsdatum van sodanige opskorting hou.

Vergaderings en prosedures by vergaderings van Drankowerheid

15.(1) Die verantwoordelike lid van die Uitvoerende Raad of sy of haar gemagtigde afgevaardigde of verteenwoordiger moet die eerste vergadering van die Drankowerheid belê.

(2) Die Drankowerheid moet daarna so gereeld vergader as wat nodig is, op dié plekke en tye wat die Drankowerheid mag bepaal.

(3) Elke lid van die Drankowerheid moet skriftelik van elke vergadering in kennis gestel word, ten minste 14 dae voor dié vergadering, en dié kennisgewing moet 'n agenda vir die voorgestelde vergadering bevat.

(4) Indien beide die voorsitter en die adjunkvoorsitter afwesig is van enige vergadering van die Drankowerheid, mag die vergadering nie voortgaan nie.

(5) Die voorsitter kan 'n spesiale vergadering van die Drankowerheid belê en hy of sy moet dit doen na 'n skriftelik versoek van twee derdes van die lede van die Drankowerheid.

(6) 'n Kennisgewing wat 'n spesiale vergadering belê, moet skriftelik geskied en moet die datum, tyd en plek van die vergadering uiteensit en die agenda wat daar behandel gaan word.

(7) 'n Korum vir 'n vergadering van die Drankowerheid is 'n gewone meerderheid van sy lede.

(8) Enige besluit van die Drankowerheid moet deur 'n meerderheidstem van die lede teenwoordig by enige vergadering van die Drankowerheid geneem word en, in die geval van 'n staking van stemme ten opsigte van enige aangeleentheid, het die lid wat op die betrokke vergadering voorsit die beslissende stem bykomend tot sy of haar gewone stem as 'n lid van die Drankowerheid

(9) Die verrigtinge van al die vergaderings van die Drankowerheid moet behoorlik genotuleer word en deur alle lede teenwoordig bevestig word as 'n ware weerspieëling van die vergadering se beraadslaging en beslissings en deur die voorsitter tydens daardie vergadering geteken word.

(10) Die voorsitter moet besluit oor kwessies van orde of prosedure: Met dien verstande dat, indien enige lid teen so 'n besluit beswaar aanteken, die kwessie tot stemming gebring moet word en is die meerderheidstem van die lede finaal en bindend vir die Drankowerheid.

(11) 'n Lid van die Drankowerheid mag nie stem nie of op enige wyse deelneem aan die verrigtinge van enige vergadering van die Drankowerheid nie, ook nie teenwoordig wees op die perseel waar sodanige vergadering gehou word nie indien, met betrekking tot enige aangeleentheid voor die Drankowerheid, sodanige lid enige belang het wat, redelikerwys beskou, hom of haar verhinder om sy of haar funksies as lid van die Drankowerheid op 'n regverdige, onbevooroordeelde en gepaste wyse te verrig nie.

(12)(a) Onderhewig aan paragraaf (b), is alle vergaderings van die Drankowerheid oopgestel vir die publiek.

(b) Die beraadslaging en stemming deur die Drankowerheid oor enige aangeleentheid moet plaasvind ter uitsluiting van die publiek.

Instelling van komitees om Drankowerheid by te staan

16. (1) Die Drankowerheid kan komitees instel, bestaande uit een of meer van sy lede –

- (a) waarheen spesifieke sake of aangeleenthede met betrekking tot die bevoegdhede en funksies van die Drankowerheid bedoel in artikel 7 verwys mag word vir oorweging, ondersoek en verslag aan die Drankowerheid;
- (b) om hom by te staan in die uitoefening of verrigting van enige van die bevoegdhede of funksies van die Drankowerheid bedoel in artikel 7; of
- (c) om navraag of navorsing te doen oor enige aangeleentheid wat onder die Drankowerheid se jurisdiksie ingevolge hierdie Wet val.

(2) Wanneer 'n komitee bedoel in subartikel (1) ingestel word, moet die Drankowerheid –

- (a) die verwysingsterme van sodanige komitee bepaal, insluitend, maar nie beperk nie tot, hetsy sodanige komitee verder voortbestaan nadat hy die taak of take voltooi het wat deur die Drankowerheid aan hom toegewys is of nie; en
- (b) 'n voorsitter en adjunkvoorsitter aanstel van sodanige komitee wat lede van die

Drankowerheid moet wees en aan die vereistes voldoen soos voorgeskryf in artikel 8(2)(a).

(3) Die Drankowerheid kan, te eniger tyd, die bestaan van 'n komitee of enige mandaat wat aan 'n komitee gegee is, beëindig, ongeag of sodanige komitee die taak of take voltooi het wat deur die Drankowerheid aan hom toegewys is.

(4) Die kworum van 'n komitee is 'n eenvoudige meerderheid van die persone wat op sodanige komitee aangestel is.

(5) Besluite van 'n komitee moet geneem word deur 'n meerderheid van die lede teenwoordig by 'n vergadering en, in die geval van 'n staking van stemme, het die voorsitter van die komitee buiten 'n gewone stem ook 'n beslissende stem.

(6) Die komitee moet reël dat notules van sy vergaderings gehou word en sodanige notules sal, onderhewig aan die bepalings van artikel 15, op die voorgeskrewe wyse vir die publiek toeganklik wees.

(7) 'n Lid van die komitee wat nie 'n lid van die Drankowerheid is nie, moet sodanige besoldiging en toelae uit die fondse van die Drankowerheid betaal word, soos deur die Drankowerheid bepaal.

Onttrekking van lid van vergaderings en verrigtinge van Drankowerheid

17.(1) 'n Lid van die Drankowerheid moet hom- of haarself onttrek van 'n aangeleentheid wat deur die Drankowerheid ondersoek, oorweeg of oor gestem word indien een of meer van die volgende plaasvind –

- (a) indien hy of sy 'n direkte of indirekte belang in die aangeleentheid het; of
- (b) indien daar 'n moontlikheid is dat 'n direkte of indirekte belang in die aangeleentheid mag ontstaan.

(2) Indien dit op enige stadium gedurende die loop van enige verrigtinge voor die Drankowerheid blyk dat 'n lid wat by daardie vergadering teenwoordig is, 'n belang bedoel in subartikel (1) het of mag hê, moet sodanige lid onmiddellik die aard van sy of haar belang verklaar en die vergadering verlaat.

(3) Enige verklaring wat gemaak is ingevolge subartikel (1) moet in die notule van die betrokke vergadering aangeteken word.

(4) Indien dit gevolglik blyk dat die Drankowerheid 'n besluit geneem het oor 'n aangeleentheid ten opsigte waarvan 'n lid versuim het om 'n belang bedoel in subartikel (1) te verklaar, is sodanige besluit deur die Drankowerheid ongeldig.

(5) Vir die doel van hierdie artikel sluit "**indirekte belang**" in, maar is nie beperk nie tot, 'n belang wat gehou word deur enige lid se –

(a) sakevennoot, medewerker of werkgewer, buiten die staat;

(b) eggenoot, genoot in 'n gewoontehuwelik of persoon met wie sodanige lid saamleef of leef asof hulle getroud is; of

(c) kind, ouer of broer of suster.

Besoldiging van lede van Drankowerheid

18.(1) 'n Lid van die Drankowerheid kan uit die fondse van die Drankowerheid sodanige besoldiging en toelaes betaal word as deur die verantwoordelike lid van die Uitvoerende Raad bepaal in oorleg met die lid van die Uitvoerende Raad vir finansies.

(2)(a) 'n Lid van die Drankowerheid en 'n persoon wat vir die Drankowerheid gekoöpteer is, kan met betrekking tot sy of haar funksies as 'n lid of gekoöpteerde lid, vergoeding uit die fondse van die Drankowerheid ontvang vir redelike werklike reis-en-verblyf-uitgawes genoodsaak deur die werklike bywoning van 'n vergadering van die Drankowerheid.

(b) Die hoof- uitvoerende beampte moet prosedures, met inbegrip van beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis-en-verblyf-uitgawes soos bedoel in paragraaf (a).

Kundige en ander bystand

19.(1) Die Drankowerheid kan sodanige kundiges of ander persone aanstel as diensleweraars soos nodig blyk te wees met die oog daarop om die Drankowerheid in die uitvoering en uitoefening van sy bevoegdhede, funksies en pligte by te staan.

(2) Die terme, voorwaardes en gelde wat toepaslik is tot enige kundige of persoon aangestel kragtens subartikel(1), en die werk wat uitgevoer moet word of dienste wat gelewer moet word, sal deur die Drankowerheid bepaal word en ingesluit word in 'n geskrewe ooreenkoms wat vir daardie doel tussen die Drankowerheid en die betrokke kundige of persoon aangegaan is.

(3) Die kundiges of ander persone wat aangestel is kragtens subartikel (1) sal nie geregtig wees om te stem oor enige besluit wat deur die Drankowerheid geneem is nie.

Vertroulikheid

20.(1) Lede van die Drankowerheid, personeel van die Drankowerheid, komitee-lede, konsultante of enige ander persoon geassosieer met die Drankowerheid ingevolge hierdie Wet, mag geen inligting, dokumente of rekords openbaar maak wat aan die Drankowerheid behoort nie, buiten –

(a) aan enige persoon wat dit vereis vir die verrigting van sy of haar funksies ingevolge hierdie Wet of enige ander soortgelyke wet van krag in die Republiek van Suid-Afrika;

(b) aan enige ander persoon ingevolge 'n bevel van 'n bevoegde hof of kragtens hierdie Wet of enige ander Wet; of

(c) met die toestemming van die Drankowerheid, 'n ander staatsagentskap met wetstoepassingsbevoegdhede of met bevoegdhede om die Drankbedryf te reguleer, in welke geval sodanige agentskap stappe moet doen om die vertroulikheid van die betrokke inligting, dokumente of rekords te verseker, by gebreke waarvan die Drankowerheid enige toestemming toegestaan ingevolge hierdie paragraaf kan terugtrek.

(2) Nieteenstaande die bepalings van subartikel (1), word die Drankowerheid nie verbied om enige inligting of statistiek aangaande drank in die algemeen te openbaar nie, indien sodanige inligting of statistiek nie verwys na of verband hou met besigheidsaangeleenthede van enige aansoeker om 'n lisensie of permit, of enige ander persoon wat daarmee verband hou of 'n persoon wat verhoë aan die Drankowerheid gerig het kragtens hierdie Wet nie.

Delegering van bevoegdhede, pligte en funksies

21.(1) Die Drankowerheid kan op die voorgeskrewe wyse, onderhewig aan sodanige voorwaardes as wat hy nodig ag –

(a) die volgende bevoegdhede en funksies aan die Hoof- Uitvoerende Beampte uitreik:

- (i) om 'n dranklisensie toe te staan soos bedoel in hoofstuk 6, om voorwaardes aangaande die uitreiking van sodanig lisensie op te lê en om enige voorwaarde te wysig, vervang of terug te trek;
- (ii) om 'n aansoek om 'n dranklisensie te weier soos bedoel in hoofstuk 6, met redes, onderhewig aan die bepalings van die Wet op Administratiewe Geregtigheid, 2000 (Wet No. 3 van 2000);
- (iii) om 'n aansoek deur 'n lisensiehouer om sy of haar gelisensieerde perseel na 'n ander perseel in die provinsie te verskuif, toe te staan of te weier;
- (iv) om 'n aansoek deur 'n lisensiehouer vir die oordrag van sy of haar lisensie na 'n ander persoon in die provinsie oor te dra, toe te staan of te weier;
- (v) om 'n lisensie terug te trek na oorweging van die meriete van die skending van die lisensievoorwaardes deur die Drankowerheid;
- (vi) om persone aan te stel om die Drankowerheid en die Hoof- Uitvoerende Beampte by te staan;
- (vii) om 'n bestuur aan te stel of weier om aan te stel ingevolge artikel 77, om voorwaardes oor sodanige aanstelling op te lê en om enige sodanige voorwaarde te wysig, vervang of terug te trek;

(b) die bevoegdhede, funksies en verpligtinge van die Drankowerheid bedoel in hierdie Wet aan 'n komitee ingestel ingevolge artikel 16, 'n werknemer, of enige ander persoon of liggaam delegeer.

(2) Enige delegasie ingevolge subartikel (1) weerhou nie die Drankowerheid daarvan om self sodanige bevoegdheid uit te oefen of sodanige plig uit te voer of funksie te verrig nie.

HOOFSTUK 3

HOOF- UITVOERENDE BEAMPTTE EN ANDER
PERSONEEL VAN KWAZULU-NATAL DRANKOWERHEID**Aanstelling van hoof- uitvoerende beampte van KwaZulu-Natal Drankowerheid**

22.(1) Die Drankowerheid in oorleg met die verantwoordelike lid van die Uitvoerende Raad moet 'n geskikte en gepaste persoon as die hoof- uitvoerende beampte van die Drankowerheid vir 'n tydperk van vyf jaar aanstel.

(2) Die hoof- uitvoerende beampte is 'n *ex officio*-lid van die Drankowerheid sonder stembevoegdhede.

(3) Die hoof- uitvoerende beampte is verkiesbaar vir heraanstelling.

(4)(a) Die aanstelling van die hoof- uitvoerende beampte is onderhewig aan die sluiting van 'n skriftelike prestasie-ooreenkoms tussen daardie persoon en die Drankowerheid of sy of haar behoorlik gemagtigde verteenwoordiger.

(b) Die Drankowerheid of sy of haar behoorlik gemagtigde verteenwoordiger en die hoof- uitvoerende beampte kan, skriftelik en by ooreenkoms, die prestasie-ooreenkoms wysig.

(5) Die Drankowerheid in oorleg met die verantwoordelike lid van die Uitvoerende Raad kan die hoof- uitvoerende beampte se dienste in ooreenstemming met toepaslike emplojerings- en arbeidsreg beëindig.

(6) Die hoof- uitvoerende beampte ontvang die besoldiging en toelaes wat die Drankowerheid in oorleg met die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende raad vir finansies bepaal.

(7) Artikels 10 en 11 is, met die nodige veranderings, op die hoof- uitvoerende beampte van toepassing, behalwe dat die hoof- uitvoerende beampte sy of haar belange of botsings van belange aan die Drankowerheid moet bekend maak.

Funksies van hoof- uitvoerende beampte

23.(1) Die hoof- uitvoerende beampte is verantwoordelik vir –

- (a) die finansiële en administratiewe bestuur van die KwaZulu-Natal Drankowerheid, behoudens die opdrag van die Drankowerheid;
- (b) die samestelling van 'n sake- en finansiële plan en verslae kragtens die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), vir goedkeuring deur die verantwoordelike lid van die Uitvoerende Raad of sy of haar behoorlik gemagtigde verteenwoordiger;
- (c) die aanstelling van personeellede van die Drankowerheid vermeld in artikel 24(1); en
- (d) die beheer van, en uitoefening van dissipline oor, personeellede van die Drankowerheid.
- (2) Met betrekking tot lisensie-aansoeke moet die hoof- uitvoerende beampte –
- (a) nadat 'n aansoek om 'n lisensie of permit deur die Drankowerheid of aangewese komitee toegestaan is, 'n lisensiesertifikaat of permit in die aansoeker se naam op die voorgeskrewe vorm uitreik;
- (b) 'n register op 'n behoorlike en gepaste wyse hou en in stand hou ten opsigte van alle besluite van die Drankowerheid ten opsigte van sodanige aansoeke;
- (c) binne 60 dae na die einde van elke kalenderjaar die rekord van lisensies of permitte publiseer waarin die name uiteengesit word van alle persone –
- (i) aan wie lisensies of permitte tot op die laaste dag van die betrokke jaar uitgereik is;
- (ii) wie se lisensies of permitte gedurende die betrokke jaar gekanselleer is;
- (iii) wat vrywillig oorgegee het, of finaal gesekwestreer, gelikwideer of ontbind is gedurende die betrokke jaar; en
- (iv) aan wie 'n lisensie of permit in die betrokke jaar geweier is;
- (d) 'n katalogus in kronologiese volgorde byhou van al die Drankowerheid se besluite, en moet, na vyf jaar, reël dat dié besluite in die provinsiale argiewe bewaar word; en
- (e) alle ander funksies en pligte wat van die hoof- uitvoerende beampte ingevolge hierdie Wet vereis word, uitvoer.
- (3) 'n Lisensiesertifikaat of permit uitgereik ingevolge subartikel (2) moet –
- (a) 'n lisensie- of permitnommer;
- (b) die datum waarop die aansoeker se naam in die register aangeteken is;

- (c) die vaste adres van die perseel ten opsigte waarvan lisensie of permit toegestaan is;
 - (d) die voorwaardes waaronder die lisensie of permit toegestaan is;
 - (e) die handelsure en -dae van toepassing op die lisensie of permit; en
 - (f) die lisensie- of permitkategorie,
- insluit.

(4) Indien die hoof- uitvoerende beampte om enige rede nie in staat is om enige van sy of haar funksies te verrig nie, moet die Drankowerheid in oorleg met die verantwoordelike lid van die Uitvoerende Raad skriftelik 'n ander persoon as waarnemende hoof- uitvoerende beampte aanstel totdat die hoof- uitvoerende beampte in staat is om daardie funksies te hervat.

Personeel van Drankowerheid

24.(1) Die hoof- uitvoerende beampte moet personeellede vir die Drankowerheid aanstel om die administratiewe, sekretariële en ander werk bybehorend tot die uitoefening van die funksies van die Drankowerheid, subkomitees van die Drankowerheid en die plaaslike komitees te doen.

(2) Die hoof- uitvoerende beampte kan, behoudens goedkeuring deur die Drankowerheid, 'n personeellid as die Registrateur van die Drankowerheid aanwys.

(3) Die hoof- uitvoerende beampte kan die funksies bedoel in artikel 20(2), aan die Registrateur van die Drankowerheid delegeer.

(4) Die Drankowerheid moet in oorleg met die verantwoordelike lid van die Uitvoerende Raad en die lid van die Uitvoerende Raad vir finansies –

- (a) 'n menslike hulpbronbeleid vir die Drankowerheid bepaal; en
- (b) die besoldiging en diensvoorwaardes van die hoof- uitvoerende beampte en die ander personeellede van die Drankowerheid bepaal.

(5) Die Drankowerheid moet, in oorleg met die hoof- uitvoerende beampte, 'n gedragskode bepaal wat op al die personeellede van die Drankowerheid van toepassing is en beregbaar vir die doel van dissiplinêre optrede om die volgende te verseker –

- (a) nakoming van toepaslike reg;
- (b) die effektiewe, doeltreffende en ekonomiese gebruik van die Drankowerheid se fondse en hulpbronne;
- (c) die bevordering en handhawing van hoë etiese standaarde;
- (d) die voorkoming van belangebotsings behalwe dié in artikel 23 bedoel;
- (e) die beskerming van vertroulike inligting wat in die Drankowerheid se besit is; en
- (f) professionele, eerlike, onpartydige, regverdigde, etiese en billike diens.

Sekondering van personeel aan Drankowerheid

25. Die Drankowerheid kan die dienste gebruik van persone wat van die staatsdiens gesekondeer of oorgeplaas is in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

Botsing van belange

26.(1) 'n Personeellid van die Drankowerheid moet by aanstelling 'n skriftelike verklaring by die Drankowerheid indien waarin verklaar word of daardie lid enige direkte of indirekte belang, finansieel of andersins, het wat –

- (a) 'n belangebotsing mag uitmaak met betrekking tot sy of haar funksies as 'n lid of personeellid van die Owerheid; of
- (b) redelikerwys verwag kan word om die Owerheid in die uitoefening van sy funksies te kompromitteer.

(2) Indien enige personeellid van die Drankowerheid 'n belang verkry in subartikel (1) vermeld, moet hy of sy onmiddellik dié feit skriftelik aan die Drankowerheid verklaar.

(3) 'n Personeellid van die Drankowerheid mag nie teenwoordig wees by, of deelneem aan, die bespreking van of neem van 'n besluit oor enige aangeleentheid voor die Drankowerheid waarin daardie lid 'n belang gemeld in subartikel (1) het nie.

(4) 'n Personeellid van die Drankowerheid mag nie sy of haar posisie of voorregte, of vertroulike inligting wat as 'n personeellid van die Drankowerheid verkry is vir persoonlike gewin gebruik nie of om 'n ander persoon onbehoorlik te bevoordeel nie.

(5) 'n Personeellid van die Drankowerheid wat versuim of weier om aan subartikels (1), (2), (3) of (4) te voldoen, is aan dissiplinêre maatreëls onderhewig ingevolge toepaslike emplojerings- en arbeidsreg, en die Wet op die Bestuur van Openbare Finansies, 1999 (Wet No. 1 van 1999).

(6) Die Drankowerheid moet 'n register byhou van die belange van personeellede wat ingevolge subartikel (1) verklaar is en dié register van tyd tot tyd bywerk.

HOOFSTUK 4 BEFONDSING EN FINANSIËLE BESTUUR VAN DRANKOWERHEID

Fondse van Drankowerheid

27.(1) Die fondse van die Drankowerheid bestaan uit –

- (a) geld wat deur die Wetgewer aan die departement bewillig is; en
- (b) geld wat die Drankowerheid toeval uit enige ander wettige bron met inbegrip van geld wat ingevolge hierdie Wet betaal is.

(2) Die Drankowerheid moet sy fondse gebruik om koste te dek met betrekking tot die vervulling van sy pligte en funksies en die uitoefening van sy bevoegdhede kragtens hierdie Wet.

(3) Die hoof- uitvoerende beampte moet, in oorleg met die Drankowerheid –

- (a) 'n rekening in die naam van die KwaZulu-Natal Drankowerheid open by 'n instelling wat kragtens die Bankwet, 1990 (Wet No. 94 van 1990) as bank geregistreer is; en
- (b) alle geld wat ingevolge subartikel (1) ontvang is, daarin stort.

Finansiële bestuur

28.(1) Die hoof- uitvoerende beampte moet volledige en gepaste rekeningboeke hou en al die nodige aantekening wat daarmee in verband staan.

(2) Die hoof- uitvoerende beampte moet verseker dat die Drankowerheid se jaarlikse begroting, korporatiewe planne, jaarverslae en geouditeerde finansiële state voorberei en ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) by die Departement ingedien word.

(3) Die hoof- uitvoerende beampte moet, binne drie maande voor die einde van elke finansiële jaar, die volgende aan die Drankowerheid vir goedkeuring indien:

- (a) 'n besigheidsplan vir die Drankowerheid wat meetbare doelwitte bevat; en
- (b) 'n staat van die Drankowerheid se geprojekteerde inkomste en uitgawes ten opsigte van die volgende drie finansiële jaar.

(4) In enige finansiële jaar moet die hoof- uitvoerende beampte aanvullende state van die Drankowerheid se geprojekteerde inkomste en uitgawes vir daardie finansiële jaar aan die Drankowerheid vir goedkeuring voorlê.

(5) Die Drankowerheid mag geen finansiële verpligting bokant sy goedgekeurde begroting en opgehoopte reserwes aangaan nie.

(6) Waar die Drankowerheid teenstrydig met die advies bedoel in subartikel (5) optree, moet die hoof- uitvoerende beampte, binne 'n redelike tyd, die verantwoordelike lid van die Uitvoerende Raad in kennis stel.

Oudit en jaarverslag

29.(1) Die Ouditeur-generaal moet die finansiële state van die Drankowerheid ouditeer.

(2)(a) Die hoof- uitvoerende beampte moet namens die Drankowerheid, binne vyf maande na die einde van 'n boekjaar, 'n verslag oor die werksaamhede van die Drankowerheid gedurende 'n finansiële jaar in die Provinsiale Wetgewer ter tafel lê.

(b) Binne vyf maande na die tertafellegging van die verslag, moet 'n afvaardiging bestaande uit die voorsitter van die Drankowerheid en ten minste twee ander lede van die Drankowerheid die betrokke Portefeuljekomitee oor die jaarverslag inlig.

(3) Die verslag moet –

- (a) 'n balansstaat en 'n inkomste-en-uitgawestaat bevat wat deur die Ouditeur-generaal gesertifiseer is;
- (b) meld tot watter die mate die Drankowerheid sy oogmerke vermeld in artikel 2 en die meetbare doelwitte soos uiteengesit in sy besigheidsplan gedurende die betrokke finansiële jaar bereik of bevorder het; en
- (c) betrokke prestasie-inligting betreffende die ekonomiese, doeltreffende en effektiewe aanwending van hulpbronne en spesifiek 'n vergelyking tussen beplande en werklike prestasie-aanwysers soos in die besigheidsplan uiteengesit, bevat.

HOOFSTUK 5 PLAASLIKE KOMITEES

Instelling van plaaslike komitees

30.(1) Die verantwoordelike lid van die Uitvoerende Raad moet, vir die gebied van 'n distriks- of metropolitaanse munisipaliteit in die provinsie, en binne 180 dae na verordening van hierdie Wet, 'n plaaslike komitee van die Drankowerheid instel by kennisgewing in die *Koerant*.

(2) 'n Plaaslike komitee bedoel in subartikel (1) is nie 'n regspersoon nie.

Bevoegdhede en funksies van plaaslike komitees

31.(1) 'n Plaaslike komitee moet alle aansoeke om lisensies gedoen ingevolge artikel 41, hanteer en oorweeg ooreenkomstig die bepalings van artikels 42 tot 46.

(2) 'n Plaaslike komitee moet aanbevelings aan die Drankowerheid maak met betrekking tot alle aansoeke ingevolge subartikel (1) onmiddellik na oorweging van die aansoeke.

(3) 'n Plaaslike komitee kan die Drankowerheid adviseer of 'n verslag of aanbeveling aan die Drankowerheid maak aangaande enige aangeleentheid wat deur die Drankowerheid na hom verwys is vir oorweging en voortspruitend uit die toepassing van hierdie Wet.

(4) 'n Plaaslike komitee moet sodanige ander funksies verrig as wat ingevolge hierdie

Wet aan hom toegewys is.

Samestelling van plaaslike komitees

32.(1) Elke plaaslike komitee bestaan uit sewe lede, wat geskikte en gepaste persone is, deur die verantwoordelike lid van die Uitvoerende Raad aangestel.

(2) Die komitee bedoel in subartikel (1) moet –

(a) een persoon wat oor 'n regs kwalifikasie beskik, met ten minste vyf jaar ondervinding in die regsprofessie of regspleging;

(b) een persoon wat 'n georganiseerde handels- en bedryfsliggaam verteenwoordig wat kennis het van die drankbedryf maar geen direkte belang binne die drankbedryf het nie, vir die gebied waarvoor die plaaslike komitee ingestel is;

(c) 'n verteenwoordiger van die munisipaliteit in wie se gebied die plaaslike komitee ingestel is, synde 'n werknemer van die betrokke munisipaliteit wat ervaring het, of in beheer is van, dorpsbeplanning of soortgelyke funksies binne die munisipaliteit;

(d) twee verteenwoordigers aangestel uit die gemeenskap in die gebied van die plaaslike komitee, aangestel op grond van sy of haar kennis op die terrein van welsyn of sosio-ekonomiese ontwikkeling of maatskaplike dienste of gesondheid;

(e) 'n lid van die gemeenskapspolisieringsforum van binne die distrik van die betrokke plaaslike komitee, benoem deur die KwaZulu-Natal Provinsiale Sekretaris van die gemeenskapspolisieringsforum;

(f) 'n raadslid verkies deur die betrokke distriks- of metropolitaanse munisipaliteit; en

(g) 'n lid van die Suid-Afrikaanse Polisie diens vanaf die Suid-Afrikaanse Polisie diensgroep binne die distrik van die betrokke plaaslike gemeenskap,

insluit.

(3) Die Drankowerheid moet 'n sekretaris aan 'n plaaslike komitee sekondeer.

(4) Die sekretaris bedoel in subartikel (2) het geen stemreg nie.

(5) 'n Persoon kan nie aangestel word as 'n lid van die plaaslike komitee nie indien daardie persoon –

(a) nie 'n Suid-Afrikaanse burger en woonagtig in die provinsie is nie;