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PREMIER'S NOTICES

OFFICE OF THE PREMIER

No. 4

18 March 2009

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information. This Act comes into operation on a date fixed by the Premier by Proclamation in the *Provincial Gazette*.

No. 2 of 2008 : Northern Cape Liquor Act, 2008

Northern Cape Liquor Act, 2008

ACT

To establish a liquor board for the Northern Cape Province; to provide for the retail and supply of liquor; to regulate the application for licenses; to provide for public notification and participation; to regulate applications for the granting of different kinds of licenses; to provide for the promotion of responsible consumption of liquor in the Northern Cape Province; to reduce the socio-economic problems emanating from alcohol abuse; and to provide for matters connected therewith.

BE IT ENACTED by the Northern Cape Provincial Legislature as follows:-

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CHAPTER 1

DEFINITIONS, OBJECTS AND APPLICATION OF THE ACT

Definitions

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

“**beer**” includes –

- (a) ale, cider and stout; and
- (b) any other fermented drink, other than sorghum beer –
 - (i) that is manufactured as or sold under the name of beer, ale, cider; or
 - (ii) that is declared to be “beer” under section 42(2)(a) of the National Liquor Act;

“**Board**” means the Provincial Liquor Board established in terms of section 6;

“**chairperson**” means the chairperson of the Board appointed in terms of section 7(3);

“**chief executive officer**” means the chief executive officer of the Board appointed in terms of section 12;

“**closed day**” means –

- (a) Sunday;
- (b) Good Friday; and
- (c) Christmas Day;

“**concoction**” means any fermented drink used as a substitute for liquor, which is unsafe for human consumption;

“**designated police officer**” means a police officer designated as such under section 37;

“**Head of Department**” means the Head of the Department responsible for liquor matters in the Northern Cape Provincial Government;

“**inspection**” includes inspection of any licensed premises during the hours the licensee is permitted by this Act to sell liquor on the premises;

“**inspector**” means a person designated as such in terms of section 42(1);

“**license**” means a license issued in terms of section 29(1);

“**licensed premises**” means premises licensed in terms of this Act;

“**licensee**” includes a juristic person;

“**liquor**” means –

- (a) “**liquor product**” as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989);
- (b) beer or sorghum beer;
- (c) any other substance or drink declared to be “**liquor**” under section 42(2)(a) of the National Liquor Act; or
- (d) any other beverage containing more than 2% alcohol by volume or weight;

“**methylated spirits**” means spirits denatured in accordance with any law on the denaturation or methylation of spirits or any other denatured, medicated, perfumed or otherwise treated spirit declared to be “**methylated spirit**” under any other law;

“**micro-manufacturer**” means a person licensed in terms of this Act to manufacture liquor at or below the threshold volume prescribed in terms of the National Liquor Act;

“**minor**” means a person under the age of 18 years;

“**municipality**” means a municipality contemplated in section 8, 9 or 10 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**National Liquor Act**” means the Liquor Act, 2003 (Act No. 59 of 2003) including regulations made under that Act;

“**organ of state**” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

“**police officer**” means a member of the police service;

“**police service**” means the national police service contemplated in section 205 of the Constitution of the Republic of South Africa, 1996;

“**Premier**” means the Premier of the Northern Cape Province elected in terms of section 128 of the Constitution of the Republic of South Africa, 1996;

“**premises**” includes any place, land, building or conveyance or any part thereof;

“**prescribed**” means prescribed by regulations published in the *Provincial Gazette*;

“**Province**” means the Province of the Northern Cape established by section 103(1) of the Constitution of the Republic of South Africa, 1996;

“**provincial commissioner**” means the person appointed in terms of section 207(3) of the Constitution of the Republic of South Africa, 1996, as the provincial commissioner of police for the Northern Cape Province;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**public holiday**” means a public holiday contemplated in the Public Holidays Act, 1994 (Act No. 36 of 1994);

“**responsible Member**” means the Member of the Executive Council of the Northern Cape Province responsible for liquor matters;

“**sell**” includes exchange, offer, display, deliver, supply, dispose of for sale or authorize, direct or allow a sale;

“**sorghum beer**” means a fermented drink manufactured from grain sorghum, millet or grain and includes “**traditional African beer**” as defined in section 1(1) of the National Liquor Act;

“**South African citizen**” means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);

“**spouse**” means a person’s –

- (a) partner in a marriage or civil union;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

“**supply**” with regard to any liquor or methylated spirits means to place a person in possession or control of that liquor or methylated spirits, respectively; and

“**this Act**” includes any regulation made, notice given or license issued in terms of this Act.

Objects of the Act

2. The objects of this Act are to regulate the liquor industry in the Province, promote responsible consumption of liquor and reduce the socio-economic problems emanating from abuse of alcohol and related matters by –

- (a) determining norms and standards for those involved in the liquor industry in the Province;
- (b) creating an environment for greater participation of communities by making them aware of a pending application through advertisement;
- (c) accommodating new entrants in the industry, thereby promoting the development and the diversification of ownership;
- (d) regulating retail sale and micro-manufacturing of liquor and methylated spirits in the Province;
- (e) considering land use planning as determined by municipal town planning schemes and other instruments of land use planning; and
- (f) regulating the consumption of liquor in public places.

Application of the Act

3. This Act provides for the regulation of the retail sale of liquor and methylated spirits, micro-manufacturing of liquor and methylated spirits and prohibits the brewing of concoctions within the Province.

Prohibitions

4. (1) No person may undertake –
- (a) the micro-manufacturing of liquor; or
 - (b) the retail sale of liquor,
- without being duly licensed to do so in terms of this Act.
- (2) No person may manufacture, sell, supply as liquor or beer or have in his or her possession a concoction.
- (3) No person may undertake –
- (a) the micro-manufacturing of methylated spirits; or
 - (b) the retail sale of methylated spirits,
- without the written permission of the Board.
- (4) A written permission contemplated in subsection (3) –
- (a) may be granted subject to the conditions determined by the Board; and
 - (b) may be withdrawn by the Board, should the Board, after investigating a complaint, or considering a report by an inspector, deem it expedient to do so.

- (5) Subject to the provisions of this Act or any other law -
- (a) the holder of an on-consumption liquor license may also sell or supply newspapers, light refreshments and smokers' requisites on the licensed premises, or conduct such other business thereon as the Board, on application, when granting the license concerned or at any time thereafter, approve subject to such conditions as the Board may think fit;
 - (b) the holder of a liquor store license 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 Board may by a notice in the *Provincial Gazette* declare to be articles normally used in or in connection with the serving of liquor, on the licensed premises;
 - (c) the holder of a license for the micro-manufacturing of liquor may also sell any product which has been produced or manufactured on land owned or lawfully occupied by him or her.
- (6) The Board may at any time by a like notice withdraw or amend any declaration made under subsection (5)(b).

Exemption

5. (1) The Principal of a tertiary educational institution for the training of persons in the catering services, may apply to the Board to declare that this Act, excluding the provisions as it may determine, does not apply to the sale of liquor in the restaurant of that institution.
- (2) A declaration made by the Board in terms of subsection (1) must be in writing and may not be made for a period of more than 12 months at a time.

CHAPTER 2

PROVINCIAL LIQUOR BOARD

Establishment of the Provincial Liquor Board

6. There is hereby established a juristic person to be known as the Provincial Liquor Board

Constitution of the Board

7. (1) The Board must consist of at least 7 members, being suitable natural persons appointed by the responsible Member, in the prescribed manner, of whom -
- (a) one member must be a qualified legal practitioner with at least 5 years' experience in a legal practice or in a practice related to the performance of services related to the administration of justice;

- (b) one member must be appointed by reason of his or her knowledge of, or experience in the liquor industry; and
 - (c) five members must represent the community in the Province, with due regard to women and disabled persons.
- (2) The –
- (a) chief executive officer;
 - (b) police officer, nominated from time to time by the provincial commissioner, to represent the police service;
 - (c) officer representing the Provincial Department of Economic Affairs;
 - (d) officer representing the Provincial Department of Social Services and Population Development,
- are entitled to be present and take part in the discussions at meetings of the Board, but are not members of the Board and may not vote at such meetings.
- (3) The responsible Member appoints a member of the Board as chairperson and another member as deputy chairperson.
- (4) The chairperson presides at all meetings of the Board and the deputy chairperson presides at meetings in the absence of the chairperson.

Powers and functions of the Board

8. The Board may –
- (a) advise the responsible Member on matters relating to liquor matters in the Province;
 - (b) consider and determine applications for licenses in such a manner and at such time and place as it may from time to time determine;
 - (c) make and enforce rules for the conduct of its proceedings, hearings and investigations;
 - (d) exercise the powers, perform the functions and carry out the duties specified by or in terms of this Act or assigned to it in terms of any other law;
 - (e) in consultation with the Head of Department, engage services of experts and persons engaged in the practice of any profession where it is deemed expedient; and
 - (f) exercise the further powers, perform the functions and carry out the duties as may be determined by the responsible Member from time to time.

Disqualification from being appointed to the Board

9. (1) No person may be appointed to serve as a member of the Board if such a person –
- (a) is not a South African citizen;
 - (b) is an unrehabilitated insolvent;
 - (c) is a mental health care user as defined in terms of section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002);
 - (d) has at any time been convicted, whether in the Republic of South Africa or elsewhere, of an offence mentioned in Schedule 1, 2 or 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (e) has at any time been removed from any office of trust on account of misconduct;
 - (f) has a direct or indirect financial interest in any liquor business or the spouse of such a person;
 - (g) has at any time contravened a provision of this Act or the National Liquor Act; or
 - (h) is not resident in the Province.
- (2) No person, knowing that he or she is subject to a disqualification contemplated in subsection (1), may accept an appointment to serve as a member of the Board, and must, if he or she becomes so disqualified while serving as a member of the Board, within a period of 14 days resign as member of the Board.

Term of office and remuneration of members of the Board

10. (1) A member of the Board may be appointed for a term not exceeding 3 years and may be reappointed at the lapse of the initial term.
- (2) No person may be appointed as a member of the Board for more than two terms.
- (3) A member of the Board must be paid such reasonable remuneration and allowances out of the funds of the Board as the responsible Member, in consultation with the Member of the Executive Council responsible for finance in the Province, may from time to time determine.
- (4) A member of the Board, who is in the full time employ of any organ of state, may not receive remuneration in terms of subsection (3).
- (5) Remuneration determined in terms of subsection (3) must be published in the *Provincial Gazette* by the responsible Member before it becomes effective.

Removal from office

11. (1) The responsible Member may, by written notice, remove any member from office –
- (a) on the grounds of misconduct or incompetence;
 - (b) if the member becomes subject to a disqualification contemplated in section 9(1);
 - (c) if the member is absent from more than two meetings of the Board in one year without sound reason, or, in the case of absence due to medical reasons, without presenting a valid medical certificate.
- (2) A decision to remove a member of the Board on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the responsible Member.
- (3) A notice contemplated in subsection (1) must state the reasons for the removal of the member.
- (4) The responsible Member may at any time disband the Board if he or she is, on reasonable grounds, convinced that the Board is not functioning properly or that it will be in the community's or public interest to do so.

Personnel and administration of the Board

12. (1) The responsible Member must subject to the provisions of subsection (6) appoint a chief executive officer to administer the affairs of the Board, to perform the functions required by this Act or any other law and to render a secretariat service to the Board.
- (2) The chief executive officer must administer the funds of the Board, appropriated by the Provincial Legislature, or secured from any other source and administer such funds in terms of the Public Finance Management Act.
- (3) The chief executive officer may, in consultation with the Board and the responsible Member, appoint such staff as may be required for the proper operation and functioning of the Board.
- (4) The chief executive officer must establish and maintain for the Province, a registry of persons, firms and premises required to be licensed in terms of this Act and of all contraventions of this Act or the National Liquor Act.
- (5) The responsible Member, with the concurrence of Provincial Treasury, may determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of staff and the chief executive officer.
- (6) The responsible Member must, before appointing a chief executive officer, make regulations regarding -
- (a) the disqualifications for appointment as chief executive officer;

- (b) the procedure to be followed when appointing a chief executive officer;
- (c) the term of office of the chief executive officer;
- (d) the employment contract and performance agreement of the chief executive officer; and
- (e) the removal from office of the chief executive officer.

Meetings and minutes of the Board

13. (1) Any meeting of the Board must be convened and held on such date and at the time and place as may be determined by the chairperson, but at least once every 3 months.
- (2) If the chairperson is absent or for any reason unable to exercise the powers or perform the functions vested in the office of chairperson, or when the office of chairperson is vacant, the deputy chairperson must act as chairperson.
- (3) If both the chairperson and the deputy chairperson are absent from any meeting of the Board, the members present must, from amongst themselves, elect a person to preside over such a meeting.
- (4) The quorum for a meeting of the Board is a majority of its members.
- (5) Each member present at a meeting has one vote on any matter before the Board, and in the event of a tie of votes, the chairperson has a casting vote.
- (6) Minutes of meetings of the Board must be compiled by the chief executive officer and must be circulated within 14 days after the meeting.
- (7) The adopted minutes must be signed by the chairperson and is deemed to be a true and correct record of the proceedings of the last meeting.
- (8) Minutes of the proceedings of the Board must be retained at the offices of the Board and must be open to the public for inspection.
- (9) Notwithstanding the provisions of subsection (1), the chairperson must, on request of the chief executive officer, convene an extraordinary meeting of the Board.
- (10) Any meeting of the Board is open to the public, but not the deliberations of the Board to resolve any matter.

Accounting responsibilities

14. The accounting responsibilities of the Board must be handled as provided for in the Public Finance Management Act.

Quarterly report

15. (1) The Board must prepare and submit quarterly reports to the Provincial Legislature through the responsible Member.
- (2) The Board must prepare and submit to the responsible Member through the Head of Department a budget containing estimates of the amounts required for working capital and for capital expenditure required during the next financial year.

CHAPTER 3

LICENSING PROCEDURE

Kinds of licenses

16. (1) A license may be granted for the supply and sale of liquor by –
- (a) a hotel;
 - (b) a restaurant;
 - (c) a wine-house;
 - (d) a theatre;
 - (e) a club;
 - (f) a sorghum beer drinking house;
 - (g) a tavern;
 - (h) a guest house;
 - (i) a nightclub;
 - (j) a gambling house; or
 - (k) a sportsclub,
- for consumption on the licensed premises.
- (2) A license may be granted for the supply and sale of liquor by –
- (a) a liquor store;
 - (b) a grocer selling wine; or
 - (c) a business selling sorghum beer,
- for consumption off the licensed premises.
- (3) A license may be granted for the micro-manufacturing of liquor.

- (4) An occasional license for the supply and sale of liquor may be granted.

Hours of business

17. (1) (a) The holder of a hotel liquor license must at all times maintain on the licensed premises a *bona fide* hotel at which accommodation and meals are regularly supplied to guests and may, subject to subsection (4), sell liquor on the licensed premises.
- (b) The holder of a restaurant liquor license must at all times maintain on the licensed premises a *bona fide* restaurant at which meals are regularly supplied to guests and may, subject to subsection (4), sell liquor on the licensed premises.
- (c) The holder of a wine-house liquor license must at all times maintain on the licensed premises a *bona fide* restaurant at which meals are regularly supplied to guests and may, subject to subsection (4), sell only wine on the licensed premises.
- (d) The holder of a theatre liquor license must at all times maintain on the licensed premises a *bona fide* theatre at which dramatic performances, plays, concerts or films are regularly presented or shown to the public and may, subject to subsection (4), sell liquor on the licensed premises immediately preceding performances or shows and during intervals.
- (e) The holder of a club liquor license must at all times maintain on the licensed premises a *bona fide* club in respect of which only its members are permitted to pay for facilities, liquor or refreshments supplied on the premises of the club and may, subject to subsection (4), sell liquor on the premises.
- (f) The holder of a sorghum beer drinking house liquor license may only sell sorghum beer procured from the holder of a license, issued under any law, for sorghum beer brewing and may, subject to subsection (4), sell the sorghum beer on the licensed premises.
- (g) The holder of a tavern liquor license may, subject to subsection (4), sell liquor and may sell food or serve meals on the licensed premises.
- (h) The holder of a guest house liquor license must at all times maintain on the licensed premises a *bona fide* guest house and may, subject to subsection (4), sell liquor to guests on the licensed premises.
- (i) The holder of a nightclub liquor license must at all times maintain on the licensed premises a *bona fide* nightclub at which performances are presented to the public and may, subject to subsection (4), sell liquor on the licensed premises.
- (j) The holder of a gambling house liquor license must, in terms of any law regulating gambling in the Province, be permitted to allow

- gambling activities on the licensed premises and may, subject to subsection (4), sell liquor on the licensed premises.
- (k) The holder of a sportsclub liquor license must at all times maintain on the licensed premises a *bona fide* sportsground on which public sports meetings are regularly held and may, subject to subsection (4), sell liquor on the licensed premises.
- (2) (a) The holder of a liquor store license may, subject to subsection (5), sell liquor for off-consumption on the licensed premises.
- (b) The holder of a grocer's wine license for off-consumption may, subject to subsection (5), sell only table wine on the licensed premises.
- (c) The holder of a sorghum beer license for off-consumption may, subject to subsection (5), sell only sorghum beer procured from a holder of a license, issued under any law, to produce such beer on the licensed premises.
- (3) The holder of a liquor license contemplated in subsection (1), must ensure that liquor sold thereunder is consumed on the licensed premises only, and the holder of a liquor license contemplated in subsection (2), must ensure that liquor sold thereunder is not consumed on the licensed premises.
- (4) The holder of a liquor license contemplated in subsection (1), may sell liquor on the licensed premises between 10:00 and 24:00, Monday to Sunday and no liquor may be consumed on the licensed premises for a period of more than 30 minutes after 24:00.
- (5) The holder of a liquor license contemplated in subsection (2), may, except on a closed day, sell liquor on the licensed premises –
- (a) between 08:00 and 20:00, Monday to Friday; and
- (b) between 08:00 and 17:00 on a Saturday or public holiday other than a closed day.
- (6) A licensee may carry out licensed activities only in or from licensed premises and in accordance with the provisions of this Act.
- (7) If the responsible Member is convinced that it will be in the public interest, he or she may, for the duration of a specific event, by notice in the *Provincial Gazette*, declare different hours of business than those referred to in subsection (4) or (5), but such declaration may not exceed a period of 30 days in any year starting on 1 January.

Occasional liquor licenses

18. (1) Subject to section 21, any person may, on the prescribed form and in the prescribed manner, apply for an occasional liquor licence.

- (2) An application for an occasional liquor license must be considered by the Board, and the Board must, within 14 days after receipt of the application –
- (a) refuse the application; or
 - (b) issue the license concerned, subject to any condition that the Board may determine.
- (3) An occasional liquor license is valid only for the duration of the function or event for which it was issued, but not for an occasion with a duration longer than 7 days and for more than a total of 30 days per year beginning on 1 January.

Minors

19. (1) No licensee or his or her employee, or any person on his or her behalf, may sell liquor to a person below the age of 18 years.
- (2) The owner, proprietor or employee of licensed premises must be reasonably convinced of the age of a person prior to selling liquor to such person.

Applications

20. (1) An application for a license must be lodged with the Board by registered post or by hand on the prescribed form, accompanied by –
- (a) a detailed written motivation in support of the license applied for;
 - (b) a detailed sketch plan, also indicating the size of the premises, approved by the relevant municipality;
 - (c) a detailed written description of the premises to which the application relates, together with photographs of the external and internal features of the premises;
 - (d) proof of publication of notices of the application in at least 1 newspaper circulating in the area, as well as publication in the *Provincial Gazette*;
 - (e) the full business address and location of the premises to which the application relates;
 - (f) proof of payment of the prescribed fee;
 - (g) a report from the municipality concerned detailing the –
 - (i) correct zoning of the erf concerned;
 - (ii) health and safety considerations regarding the intended use of the erf; and
 - (iii) any other matter the local municipality may deem necessary

to be part of the report to enable the Board to make an informed decision regarding an application for a license;

- (h) a memorandum detailing the applicant's proposed contribution to combating alcohol abuse in accordance with section 22(1)(b).
- (2) Within 14 days after receipt of the application, the Board must refer a copy of the application to a designated police officer who must, within 14 days, compile a report detailing such matters as may be prescribed or which ought, in the opinion of the designated police officer, to be taken into consideration in respect of the application concerned and such report must be made available to the applicant upon his or her written request.
- (3) The Board must, within 14 days after receipt of the application, forward a copy of the application to the municipality concerned for the attention of the ward councillor and ward committee for purposes of consultation with the community concerned and the comments of the municipality must be forwarded to the Board within 30 days after the application was forwarded to the municipality.

Disqualification to apply for licenses

21. No person may apply for a license in terms of this Act, if that person –
- (a) is a minor on the date of submitting the application for a license;
 - (b) was convicted to imprisonment, without the option of a fine, within 7 years preceding the date of submitting the application for a license for murder, rape, robbery, fraud, trade or possession of drugs, child abuse, an offence involving dishonesty or contravention of this Act, the National Liquor Act or the Liquor Act, 1989 (Act No. 27 of 1989);
 - (c) is an unrehabilitated insolvent;
 - (d) is a mental health care user as defined in the Mental Health Care Act, 2002 (Act No. 17 of 2002) at the time of the application.

Consideration of applications

22. (1) When dealing with an application, the Board must consider -
- (a) the location of the proposed premises in regard to its proximity to an institution of learning, a graveyard or a place of worship, where such trade may result in the interference with the business of such institution of learning, the sanctity of the graveyard or place of worship;
 - (b) the applicant's proposed contribution to combating alcohol abuse;
 - (c) the extent to which the approval of the application may prejudice the residents of an affected residential area;

- (d) if the granting of the license will not be against or contrary to the public interest.
- (2) An application fee and the annual renewal fee as stipulated in the regulations for the different categories of licenses in terms of this Act must be paid to the Board.

Nature of premises

23. Where groceries and other merchandise, as well as liquor other than table wine are sold in premises under one roof, the two activities must be completely separated from each other by a solid wall in which there is no door, window or other opening and the liquor section must have its own separate entrance, as well as a separate payment point.

Structural alterations

24. (1) A licensee may not effect any structural alteration, extension, addition or construction of, or to the licensed premises without the prior written consent of the Board.
- (2) An application for consent contemplated in subsection (1), must be made on the prescribed form and must be accompanied by any further information as the Board may require.
- (3) The application must be accompanied by plans approved by the municipality reflecting the proposed alterations to the premises.

Notices to appear

25. (1) The Board may cause any person, who is or may be affected by, or is concerned in the consideration of a particular matter, to be notified in the prescribed manner to be present at any meeting, at least 14 days prior to such meeting, stipulating the date, time and place of the meeting and the matter to be considered thereat.
- (2) A person who has received a notice in terms of subsection (1) may personally appear before the Board on the date and at the time and place set out in the notice or appoint any other person to so appear on his or her behalf.

Objections

26. (1) Any affected person or institution may lodge an objection to the granting of the license in terms of this Act with the Board within 21 days from the date of publication of the notices contemplated in section 20(1)(d).
- (2) An objection must fully state the reasons for such objection and must contain the full names of the person or institution objecting, together with the full address and contact details of such person or institution and must be accompanied by supporting documents, if applicable.

Response to objections

27. (1) Within 7 days after receipt of an objection lodged in terms of section 26(1), the Board must, by registered post, submit a copy of such objection to the applicant.
- (2) The applicant must, if he or she wishes to respond, within a period of 14 working days of receipt of the objection, in writing, lodge his or her response to the objection by submitting, by registered post, a copy thereof to the Board and the person who lodged the objection.
- (3) The Board must, within 21 days of receipt of the response contemplated in subsection (2), convene a meeting to consider any objections to the application in question, on such date, time and venue as determined by it.
- (4) Interested persons, including the applicant and any person who has lodged an objection to an application, must be afforded a reasonable opportunity to submit their cases and may be represented by any person of their choice.

Complaints

28. (1) A member of the community or any affected person may lodge a complaint with the Board against an existing licensed premises or institution.
- (2) The Board must convene a meeting to consider a complaint contemplated in subsection (1) within 14 days after receipt of such complaint.

License certification

29. (1) When the Board has approved an application, the Board must issue a license certificate stating the date on which the license was issued.
- (2) The certificate must detail the particulars of the licensee, business details, kind of license and the conditions of the license.
- (3) The license certificate becomes valid upon payment of the prescribed fee.
- (4) A valid license certificate or a certified copy of it, is sufficient proof that the licensee is licensed in terms of this Act.
- (5) The license will remain valid until –
- (a) it is cancelled in terms of this Act;
 - (b) the licensee voluntarily cancels the license; or
 - (c) the licensee fails to renew the license in time or it lapses for any other reason.

Transfer of license to other persons

30. (1) A license issued in terms of this Act may not be transferred to another person, unless –

- (a) an application is made to the Board accompanied by payment of the prescribed fee and in the prescribed manner on the prescribed form;
 - (b) the Board has considered and granted the application.
- (2) Before considering an application contemplated in subsection (1)(a), the Board must request a report from the designated police officer for consideration.
- (3) The Board may grant such an application only if the prospective holder concerned is not disqualified to hold a license in terms of this Act.
- (4) Upon granting an application for the transfer of a license, the Board -
- (a) issues a certificate of license to the transferee, who then becomes the licensee, with all rights and obligations of a licensee in terms of this Act; and
 - (b) cancels the original license.

Transfer of license to other premises

31. (1) A licensee may apply to the Board for the transfer of a license from one premises to another premises and for the purpose of such application, the provisions of sections 20, 22, 23, 25, 26, 27 and 29, read with the changes required by the context, apply.
- (2) The Board must consider the application for the transfer of a license to another premises and may grant or refuse the application.
- (3) Upon granting an application for the transfer of a license to another premises, a new license may be issued to the licensee by the Board.

Issuing of duplicate licenses

32. The Board may, upon an application by a licensee on the prescribed form and upon the payment of the prescribed fee and after obtaining a report by the designated police officer, issue a duplicate of a license by issuing another of the same kind in respect of the premises concerned.

Management

33. (1) A person, other than a natural person, may not conduct business under a license, unless a natural person who permanently resides in the Republic of South Africa and who is not disqualified in terms of section 21 to apply for a license, is appointed by him or her, in the prescribed manner, to manage and be responsible for its business.
- (2) A natural person who is the holder of a license may, in the prescribed manner, appoint another natural person who permanently resides in the Republic of South Africa and who is not disqualified in terms of section 21 to apply for a license, to manage and be responsible for the business to

which the first-mentioned license relates.

Reasons for decisions of the Board and appeals

34. (1) A person who has made any application, representation or objection in terms of this Act and who feels aggrieved by the decision of the Board in connection with the application, representation or objection, may apply in writing to the Board for reasons to be furnished for that decision.
- (2) Within 30 days after receipt of an application contemplated in subsection (1), the Board must furnish such reasons in writing to the applicant.
- (3) Within 21 days after receipt of the reasons contemplated in subsection (2), a person referred to in subsection (1) may, in writing, appeal to the responsible Member on the prescribed form and in the prescribed manner.
- (4) On receipt of the appeal the responsible Member must, within 14 days, appoint a practicing or retired attorney or advocate to consider and dispose of the appeal in the prescribed manner.
- (5) An application for an appeal must be accompanied by the prescribed fee.

Death, insolvency or incapability of a licensee

35. (1) In the event of the death of a licensee, the appointed administrator or executor of the deceased's estate becomes the holder of the license on behalf of the estate until the estate is wound-up, and –
- (a) continues to enjoy the rights, privileges and duties of a licensee on behalf of the estate;
- (b) must, within 30 days, appoint any person who is not disqualified in terms of this Act to hold such a license, to conduct business under the license.
- (2) If a licensee becomes insolvent, is placed under judicial management or is declared by a court of law to be incapable to manage his or her own affairs, his or her license automatically lapses.

Sanctions

36. (1) The Board, if it has reason to believe or has received a complaint that a licensee has not complied with, or has contravened the provisions of this Act, and has investigated the matter, may –
- (a) summon the licensee to appear before it to answer to the alleged non-compliance or transgressions;
- (b) set new conditions on the license upon the licensee being found to have transgressed a provision of this Act;
- (c) suspend the license upon the licensee being found to have transgressed a provision of this Act, until such transgression has

- been rectified by the licensee;
- (d) cancel the license holder's license upon the licensee being found guilty to have transgressed a provision of this Act;
 - (e) notify the licensee and the designated police officer, in writing of the reasons for the suspension or cancellation, as the case may be, and the date of such suspension or cancellation.
- (2) The affected party's rights derived from the license cease to exist upon suspension or cancellation of the license.

CHAPTER 4

LAW ENFORCEMENT

Designation of police officers for certain purposes

37. The provincial commissioner may, from time to time, designate any police officer to perform the functions of a designated police officer in terms of this Act.

Report on applications

38. A designated police officer must, in respect of every prescribed application made in terms of this Act, -
- (a) report to the Board on such matters as may be prescribed or which ought, in the opinion of that officer, to be taken into consideration in respect of the application concerned; and
 - (b) at the request of the Board, furnish information in connection with any matter contemplated in this Act.

Reports on certain holders and premises

39. (1) A designated police officer must, as soon as possible after it has come to his or her notice, submit to the Board a report -
- (a) on any failure by the holder of a license to discharge an obligation which is attached to the license concerned;
 - (b) if such a holder becomes disqualified or otherwise incompetent in terms of this Act to hold the license concerned;
 - (c) if he or she is of the opinion that alterations or repairs ought to be effected to any licensed premises to which a license relates;
 - (d) on any other matter which, in the opinion of that officer, ought to be brought to the notice of the Board.
- (2) When the holder of a license or a person who has been appointed in terms of section 33 to manage and be responsible for a business under a license, has been convicted of an offence in terms of either this Act or any other law or the common law and is sentenced to a fine of not less than R1000 or to imprisonment without the option of a fine, a designated police officer must submit to the chairperson a report on the conviction and the circumstances of the offence.

Investigation by police officer

40. When investigating an offence in terms of this Act, a police officer is vested with the powers regarding -
- (a) the entry (with or without force) of any premises;

- (b) the search of any premises, vehicle or container;
- (c) the seizure of any article;
- (d) the arrest or search of any person,

and is subject to the limitations in exercising these powers, as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Accessibility of licensed premises

41. A licensee or his or her agent or employee may -
- (a) refuse to admit any person, other than an inspector or designated police officer in the execution of his or her duties, to the licensed premises or any part thereof;
 - (b) refuse to sell or supply liquor to any person;
 - (c) request any person who is in any part of the licensed premises, to leave that part;
 - (d) request any person who is not a lodger on the licensed premises and who is in any part of the licensed premises reserved for lodgers, to leave that part;
 - (e) remove from the licensed premises any person who is drunk, violent or disorderly or whose presence on the licensed premises may subject the licensee to prosecution under this Act or any other law;
 - (f) request any police officer to remove or assist in removing from the licensed premises any person contemplated in paragraph (e) or to remove from the licensed premises any person who refuses or fails to comply with a request contemplated in paragraph (c) or (d).

Designation of inspectors

42. (1) The responsible Member may designate persons in the employ of the Province or the Board who shall be responsible for the administration of this Act in the Province as inspectors.
- (2) The responsible Member must issue to each inspector a certificate in the prescribed form stating that such person has been designated as an inspector.
- (3) A valid certificate issued in terms of subsection (2) is sufficient evidence of the authority of the inspector named on it and the bearer of such certificate must have it in his or her possession and, on request, produce it to any interested person when exercising any power or performing any duty in terms of or under this Act.

Powers and duties of inspectors

43. (1) An inspector may –
- (a) conduct inspections and monitor compliance with this Act;
 - (b) investigate complaints submitted to the Board;
 - (c) question any person in respect of any matter connected with this Act, which may be relevant to an inspection; or
 - (d) question any person whom the inspector reasonably believes may have information relevant to an inspection,
- and may, for the purpose of an inspection or investigation, enter any licensed premises during the hours that the licensee is permitted to do business in terms of the license.
- (2) An inspector may be accompanied during an inspection by a member of the South African Police Service or any other person reasonably required to assist in conducting the inspection and may perform the functions of a designated police officer in terms of sections 20 and 30 of this Act.
- (3) An inspector may, if he or she has reason to believe that any provision of this Act has not been complied with, issue a non-compliance notice, in the prescribed form, to the owner or person in control of the premises concerned and must forward a copy of the notice to the Board.
- (4) A non-compliance notice must set out the alleged non-compliance contemplated in subsection (3) and set out the steps to be taken and provide for a reasonable period within which such steps must be taken in order to comply with the provisions of this Act.
- (5) A compliance certificate may be issued to the owner or person in control of any premises if the Board, or inspector acting on behalf of the Board, is satisfied that the steps to rectify the non-compliance contemplated in subsection (3) and set out in the non-compliance notice has been taken.
- (6) For the purpose of performing a function referred to in subsection (1)(a), (b), (c) or (d), an inspector may apply to the relevant authority for a warrant to enter any land or premises.
- (7) When exercising a warrant contemplated in subsection (6), the inspector must act in accordance with the terms and conditions stipulated in the warrant.

Entry with a warrant

44. (1) An inspector may at any time enter any licensed or unlicensed premises if a magistrate has issued a warrant to enter or inspect such premises.
- (2) When executing a warrant contemplated in subsection (1), the inspector must act in accordance with the terms and conditions stipulated in the warrant.

Duty to produce documents, answer questions and assist inspectors

45. (1) No person may unreasonably refuse to provide a document or information that he or she is lawfully required to provide in terms of this Act or furnish false or misleading information to an inspector.
- (2) No person may refuse to grant access to premises, obstruct, interfere or hinder an inspector who is performing his or her duty in terms of this Act.
- (3) Subject to any person's right to remain silent as provided for in the Constitution of the Republic of South Africa, 1996, a person questioned by an inspector in the execution and administration of this Act, is obliged to answer any question so posed.

CHAPTER 5

OFFENCES AND PENALTIES

Offences in general

46. It is an offence –
- (a) to contravene any provision of this Act;
 - (b) for a licensee to contravene any condition of a license issued in terms of this Act;
 - (c) for an employer to supply liquor to a person in his or her employ as wages or remuneration or as a supplement therefore;
 - (d) to sell or supply liquor to a person who is drunk or from appearance seems to be drunk;
 - (e) to sell or supply liquor to a minor or employ a minor to sell or serve liquor;
 - (f) to fail to comply with a non-compliance notice issued in terms of this Act;
 - (g) for an owner, supervisor or manager of a licensed business, to allow violent or drunk and disorderly behaviour on the licensed premises;
 - (h) to consume any liquor, or to be drunk, in, on or at any public place, including, but not limited to, any road, street, lane, thoroughfare, square, park, market, shop, warehouse or garage to which members of the public has access;
 - (i) to fail to keep any record as prescribed by this Act;
 - (j) to unreasonably refuse to co-operate with an inspector, police officer or any other person so assigned by the Board in the execution of his or her duties by or in terms of this Act;

- (k) to unreasonably refuse to comply with a request by the Board to appear before it.

Offences regarding liquor trade

- 47. (1) It is an offence by a licensee -
 - (a) to keep the licensed premises open for the sale or consumption of liquor at a time when the sale, supply or consumption of liquor is not permitted in terms of this Act;
 - (b) to sell liquor at a place where the sale of liquor is not permitted in terms of this Act;
 - (c) contemplated in section 17(2), to deliver liquor to any person other than the holder of a liquor license issued in terms of this Act.
- (2) It is an offence -
 - (a) to micro-manufacture liquor in the Province other than under a license issued in terms of this Act or the National Liquor Act;
 - (b) not to keep the license issued in terms of this Act at all times on the licensed premises and displayed in a conspicuous place;
 - (c) to sell liquor otherwise than under a license issued in terms of this Act.

Penalties and forfeiture

- 48. (1) Any person who is found guilty of an offence in terms of this Act shall be liable on conviction to a fine or imprisonment not exceeding 10 years, or to both a fine and such imprisonment.
- (2) The license of a licensee convicted of an offence contemplated in section 46(e) or who pays an admission of guilt under that provision, shall lapse when so convicted or when such admission of guilt is paid, as the case may be.

Vicarious liability

- 49. The licensee shall be vicariously liable for the actions of the manager, agent or employee of the licensee, when carrying out the business of the licensee.

CHAPTER 6

GENERAL PROVISIONS

Storing of liquor

50. (1) The holder of a license must store his or her liquor on the licensed premises, unless the Board, on application, determines another or an additional place in the near vicinity of the licensed premises concerned, in which the liquor may be stored.
- (2) The holder of a license for the micro-manufacturing of liquor may, notwithstanding subsection (1), also store his or her liquor in any other place within the Province, determined by the Board.
- (3) A determination under subsection (1) or (2) is made subject to the conditions set out in such determination.
- (4) The Board may, at any time, amend any determination made under subsection or (2).

Regulations

51. (1) The responsible Member may make regulations regarding –
- (a) the applications made in terms of this Act to which or in connection with which objections or representations may be made by any person;
- (b) the form in which and the manner in which any application, objection, representations or complaint in terms of this Act is or are to be made;
- (c) the documents which are to be lodged in support of any application in terms of this Act, and the form in which and the manner in which those documents are to be lodged;
- (d) the lodging of replies to any objection or representations in terms of this Act;
- (e) the maximum number of licenses of or in which any person may be the holder or may have any interest;
- (f) the furnishing of any information for the purpose of any record or other document required to be kept by virtue of this Act;
- (g) the retention and destruction of any record or other document required to be kept or retained by virtue of this Act;
- (h) the payment of fees in respect of any application made in terms of this Act;
- (i) the payment of fees in respect of the issue of any license, including, in the case of any license other than an occasional license, the period

- within which such fees are to be paid;
- (j) the payment of fees in respect of the transfer to another person of any license, including the period within which such fees are to be paid;
 - (k) the payment of fees in respect of the transfer to other premises of any license, including the period within which such fees are to be paid;
 - (l) the payment of annual license fees in respect of any license;
 - (m) the duties of officers by virtue of this Act;
 - (n) the form of licenses, declarations, notices, consents, appointments, directions, determinations, approvals, authorities and other documents in terms of this Act;
 - (o) the empowerment of new entrants to the industry in respect of the retail sale and micro-manufacturing of liquor in the Province;
 - (p) any matter which in terms of this Act is required or permitted to be prescribed; and
 - (q) in general, any matter in respect of which he or she thinks it necessary or expedient to make regulations for achieving the objects of this Act, the generality of this paragraph not being limited by the preceding paragraphs.
- (2) Regulations contemplated in subsection (1), may not be promulgated by the responsible Member, unless previously published for public comment in the *Provincial Gazette*.
 - (3) Different regulations may be made under this section in respect of different kinds of licenses, licenses of the same kind having different common characteristics, different categories of persons or different areas.
 - (4) A regulation under this section regarding any fees or allowances must be made in consultation with the Member of the Executive Council responsible for finance in the Province.

Presumptions

- 52.(1) For the purpose of execution of this Act it is presumed that a birth certificate is *prima facie* evidence of a person's age.
- (2) Evidence that any person who does not hold a liquor license -
 - (a) had on or near his or her premises any signboard or notice purporting that he or she holds a license; or
 - (b) was in occupation or apparent occupation of premises fitted with a bar or similar place containing bottles, casks or vessels so displayed as to induce a

reasonable belief that liquor was sold or served therein; or

- (c) had on his or her premises more liquor than was reasonably required for the persons residing thereon; or
- (d) bought or acquired more liquor than was reasonably required for consumption by himself or herself, his or her household and persons *bona fide* employed by him or her,

is *prima facie* proof of the sale of liquor by such person.

- (3) Evidence that any person, other than the licensee, the proprietor or manager of the business to which the license relates, a member of the family or agent of such licensee, proprietor or manager, any person employed in connection with the carrying on of such a business or the auditor or a member of the staff of such auditor, was in any restricted portion of the licensed premises, at a time when the sale or supply of liquor to the public in such restricted portion was not authorised, is *prima facie* proof of a sale or supply of liquor to such a person by or on behalf of the licensee at that time.
- (4) Evidence that any liquor was supplied to any person upon the licensed premises by any member of the family of the licensee, or by the proprietor or the manager of the business to which the license relates or by any agent of the licensee or any person employed in connection with the carrying on of such business, is *prima facie* proof that such liquor was supplied by or on behalf of the licensee.
- (5) Evidence of consumption or intended consumption of liquor on licensed premises by some person other than the licensee, the proprietor or the manager of the business to which the license relates, a member of the family or the agent of such licensee, proprietor or manager, or any person employed in connection with the carrying on of such business, is *prima facie* proof that the liquor being consumed or about to be consumed was supplied by or on behalf of the licensee.
- (6) In any prosecution of any offence committed under this Act a document produced to or handed into the court by any police officer which purports to be a copy of a license or an authority issued under this Act, is *prima facie* proof of such license or authority, and any condition or restriction endorsed thereon is *prima facie* deemed to be a condition or restriction determined under this Act in respect of such license or authority.

Liability

- 53. The Northern Cape Provincial Government, any organ of state, the Board or any other person appointed in terms of this Act, for its administration and implementation, shall be liable for any loss or damages resulting from the execution of this Act, as determined in accordance with the provisions of the State Liability Act, 1957 (Act No. 20 of 1957).

Transitional arrangements

- 54. Any application for the issuing of a license made before the commencement of this Act, is to be disposed of in terms of the Liquor Act, 1989 (Act No. 27 of 1989), as if that Act is still applicable, but such license must be converted in the manner and

within the period provided for in section 55.

Conversion of existing licenses

55. (1) Notwithstanding the repeal of the Liquor Act, 1989 (Act No. 27 of 1989), upon the coming into operation of this Act, all licenses granted in terms of section 22(1)(b) of the first-mentioned Act shall, subject to subsections (2), (3), (4) and (5), remain valid as if that Act had not been repealed.
- (2) A licensee must, within a period of one year after the coming into operation of this Act, apply to the Board for the conversion of a license contemplated in subsection (1) to a license of the same description provided for in section 16.
- (3) If no such provision is made, the licensee must, within a period of 6 months after the coming into operation of this Act, apply to the Board for the conversion of such license to a license of a kind provided for in section 16 nearest in description to the original license.
- (4) For the purpose of an application for the conversion of a license contemplated in subsection (2) or (3) –
- (a) the provisions of sections 20, 22, 23, 25, 26, 27 and 29, read with the changes required by the context, apply; and
 - (b) the application must be accompanied by the prescribed fee, over and above any annual renewal fee payable on the existing or converted license.
- (5) A license contemplated in subsection (1) lapses if –
- (a) application for the conversion of such license is not made with the Board within the period referred to in subsection (2) or (3), as the case may be; or
 - (b) the Board refuses to grant the converted license.

Liquor policy

56. (1) The responsible Member may, after consultation with the Board, adopt a policy to determine norms and standards for those involved in the liquor industry in the Province.
- (2) A policy contemplated in subsection (1), may not be in conflict with this Act or any other law, and is binding on the Board, any applicant for a license or any licensee and may include –
- (a) the conditions subject to which all licenses or licenses of a certain category are issued;
 - (b) any measure to promote the responsible consumption of liquor;
 - (c) special measures to protect minors and expectant women;

- (d) measures to ensure that the peace in a residential area is not disturbed by excessive noise coming from a licensed drinking place; and
 - (e) any matter related to crime prevention.
- (3) A policy contemplated in subsection (1), or any amendment thereto, only becomes binding after publication thereof in the *Provincial Gazette*.

Supply of liquor free of charge solely for the purpose of tasting

57. (1) Permission may, on application made on the prescribed form, be given by the Board when granting a license, or at any time thereafter –
- (a) for the off-consumption of liquor; or
 - (b) for the micro-manufacturing of liquor,
- to the holder of such license to supply his or her liquor free of charge to a prospective client for consumption, solely for the purpose of tasting, in such place on the licensed or any adjoining or neighboring premises, to be set apart for that purpose, as the Board may determine.
- (2) The Board may give such permission subject to the conditions set out in the permission as the Board may impose.
- (3) If any condition subject to which a permission contemplated in subsection (1) was given is contravened by the licensee, the Board may withdraw such permission.

Controlling interests

58. (1) A licensee may not permit any other person to procure a controlling interest in the business to which the liquor license relates, unless the Board has, on application by the licensee, granted written permission that such a person may procure such an interest in that business.
- (2) The Board may not grant written permission under subsection (1) -
- (a) in the case of a business to which a club liquor license relates;
 - (b) where the person who is the subject of the application, is disqualified in terms of section 21 to hold a liquor license;
 - (c) if, in the opinion of the Board, the possibility exists that the granting of the application may cause a harmful monopolistic situation to arise or be aggravated in the liquor trade or a branch thereof.

Secondment of officers

59. The Head of Department may, for a period not exceeding 12 months after the coming into operation of this Act, in consultation with the responsible Member, second officers on the establishment of his or her department to the Board.

Delegation

60. (1) The Board may, subject to subsections (2), (3) and (4), in writing, delegate any of its powers, functions or duties in terms of this Act, to the chief executive officer.
- (2) The chief executive officer may, with the written permission of the Board, sub-delegate any power, function or duty delegated to him or her in terms of subsection (1), to any member of the staff contemplated in section 12(3).
- (3) A delegation or sub-delegation, as the case may be, may be withdrawn by the Board or the chief executive officer, respectively.
- (4) The Board may not delegate the power to grant a liquor license, to cancel or suspend a liquor license, to transfer a liquor license, to convert a liquor license or to give permission to a person to acquire a controlling interest in a business to which a liquor license relates.

Short title and commencement

61. (1) This Act is called the Northern Cape Liquor Act, 2008, and comes into effect on a date proclaimed by the Premier in the *Provincial Gazette*.
- (2) Different dates may be determined by the Premier in terms of subsection (1) with regard to coming into operation of the different provisions of this Act.