

REPUBLIC OF SOUTH AFRICA

LIQUOR PRODUCTS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 40110 of 1 July 2016)
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B 10—2016]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Liquor Products Act, 1989, so as to insert certain definitions and to amend and delete others; to provide for the renaming and reconstitution of the Wine and Spirit Board and to limit its powers; to provide for requirements regarding beer, traditional African beer and other fermented beverages; to repeal a provision in respect of the authorisations regarding certain alcoholic products; to empower the Minister to designate a person to issue export certificates; to align certain provisions with the Constitution; to extend the Minister's power to make regulations; to provide gender-equal terminology; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 60 of 1989

1. Section 1 of the Liquor Products Act, 1989 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the substitution for the definition of “analyst” of the following definition:
 “ **‘analyst’** means a person or institution designated under section 20 as an analyst **[or who is deemed to have been so designated]**;”;
 - (b) by the insertion after the definition of “analyst” of the following definitions:
 “ **‘Authority’** means the Wine Certification Authority established in terms of section 2; 10
 ‘beer’ means a product which meets the requirements referred to in section 6A;”;
 - (c) by the deletion of the definition of “board”;
 - (d) by the substitution for the definition of “class designation” of the following definition: 15
 “ **‘class designation’**—
 (a) in relation to wine, an alcoholic fruit beverage, beer, traditional African beer, other fermented beverage, a spirit, a grape-based liquor or a spirit-based liquor, means the prescribed designation or prescribed permissible alternative designation for a class thereof; 20
 and

- (b) **[in relation to a specially authorised liquor, means the designation specified in a notice published under section 10; and**
- (c) in relation to any other liquor product in respect of which an import certificate has been issued, means the designation specified in such import certificate;”;
- (e) by the deletion of the definition of “container”;
- (f) by the substitution for the definition of “department” of the following definition:
 “**‘department’** means the Department of Agriculture, Forestry and Fisheries;”;
- (g) by the substitution for the definition of “liquor product” of the following definition:
 “**‘liquor product’** means—
 (a) wine;
 (b) an alcoholic fruit beverage;
 (c) beer;
 (d) traditional African beer;
 (e) other fermented beverage;
 (f) a spirit;
 (g) a grape-based liquor;
 (h) a spirit-based liquor; and
 (i) any liquor other than a product mentioned in paragraph (a), (b), (c), (d), (e), (f), (g) or (h), in respect of which an import certificate has been issued;”;
- (h) by the substitution for the definition of “Minister” by the following definition:
 “**‘Minister’** means the Minister of Agriculture, Forestry and Fisheries;”;
- (i) by the substitution for the definition of “officer” of the following definition:
 “**‘officer’** means an **[officer]** employee as defined in section 1 of the Public Service Act, **[1984 (Act No. 111 of 1984)]** 1994 (Proclamation No. 103 of 1994)[, **and includes an employee as so defined;**”;
- (j) by the insertion after the definition of “officer” of the following definition:
 “**‘other fermented beverage’** means a product which meets the requirements referred to in section 6C;”;
- (k) by the deletion of the definition of “specially authorized liquor”; and
- (l) by the insertion after the definition of “this Act” of the following definition:
 “**‘traditional African beer’** means a product which meets the requirements referred to in section 6C;”.

Substitution of section 2 of Act 60 of 1989

2. The following section is hereby substituted for section 2 of the principal Act:

“Wine Certification Authority

2. (1) There is hereby established an Authority to be known as the Wine Certification Authority, which shall be a juristic person.

(2) (a) The Authority consists of—

- (i) 10 persons with the relevant knowledge, skills or expertise in viticulture, oenology, distilling, regulatory environment of the liquor industry, liquor production, food safety or microbiology, representing the participants to the schemes established under section 14: Provided that if a scheme deals with ethical trading standards, two of those persons shall be representatives of workers of participants to schemes;
- (ii) three officers of the department nominated by the department;
- (iii) one person nominated by the Agricultural Research Council; and
- (iv) one person designated by the Minister.

(b) The Minister shall appoint the members of the Authority and shall designate one of the members of the Authority as chairperson.

(c) The Minister shall notify Parliament in writing of the appointment of the members of the Authority within 30 days after such appointment.

(d) The process for the appointment of the members of the Authority shall be as follows:

- (i) The Minister shall, by notice in the *Gazette* and in any national newspaper circulating in every province of the Republic, invite persons, stakeholders and the liquor industry to submit to the Minister, within a period mentioned in the notice, the names of persons who comply with the criteria referred to in paragraph (a)(i); 5
- (ii) the Minister shall establish a selection committee consisting of at least four persons and designate a chairperson for the committee; and
- (iii) the selection committee shall, from the nominations submitted to it, compile a shortlist of eligible candidates and submit its recommendation to the Minister for the appointment of members to the Authority. 10
- (3) No person shall be appointed as a member of the Authority—
- (a) unless he or she is a South African citizen permanently resident in the Republic;
- (b) if he or she is an unrehabilitated insolvent;
- (c) if he or she has been convicted of an offence under this Act; or 15
- (d) if he or she has been convicted of any offence for which he or she has been sentenced to imprisonment without the option of a fine.
- (4) (a) A member of the Authority shall hold office, subject to subsection (5), for a period not exceeding three years, and such member shall after the expiration of such period, continue in office until his or her successor has been appointed. 20
- (b) If a member of the Authority ceases to hold office for any reason, the Minister may appoint any person in his or her place for the unexpired period of his or her term of office.
- (c) Any person whose term of office as a member of the Authority has expired, shall immediately thereafter be eligible for reappointment without complying with the process contemplated in subsection (2)(d). 25
- (5) (a) A member of the Authority shall vacate office if he or she—
- (i) becomes disqualified in terms of subsection (3);
- (ii) becomes of unsound mind; 30
- (iii) has been absent for more than two consecutive meetings of the Authority without the leave of the chairperson.
- (b) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may, at any time, remove a member of the Authority from office if, in the opinion of the Minister, sound reasons exist for doing so; 35
- (6) (a) The members of the Authority shall at the first meeting of the Authority, and thereafter whenever necessary, elect a deputy chairperson from amongst themselves.
- (b) If both the chairperson and the deputy chairperson are absent from a meeting of the Authority, the members present shall from amongst themselves elect a member to preside at such meeting. 40
- (7) (a) The first meeting of the Authority shall be held at a time and place determined by the chairperson, and thereafter at such times and places as the Authority may from time to time determine. 45
- (b) Notwithstanding the provisions of paragraph (a), the chairperson may at his or her discretion call a special meeting of the Authority at such time and place as he or she may determine, with a view to dealing with special or urgent matters, and he or she shall call a special meeting within 14 days of the date on which he or she has received a written request to this effect from the Minister or at least four members of the Authority. 50
- (c) The majority of the members of the Authority shall constitute a quorum for a meeting of the Authority.
- (d) The decision of the majority of the members of the Authority present at a quorate meeting shall constitute a decision of the Authority, and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote. 55
- (e) No decision taken by the Authority or act performed on the authority of the Authority shall be invalid merely by reason of a vacancy on the Authority or because a person who was not entitled to sit as a member, sat as such member at the time when the decision was taken or the act was authorised, if such decision was taken or act authorised by a majority of the 60

members present at the time and who were entitled to sit as members of the Authority.

(8) (a) The Authority may, either from among its number or in such other manner determined by the Authority, appoint one or more committees to perform, subject to the directions of the Authority, such functions of the Authority as the Authority may determine, or to advise the Authority on any matter in respect of which a function is assigned to the Authority.

(b) The Authority may at any time dissolve or reconstitute a committee contemplated in paragraph (a).

(c) The Authority shall not be divested of any function performed in terms of the provisions of this subsection by any committee of the Authority.

(d) Any decision of a committee may be withdrawn or amended by the Authority or referred back to such committee and shall, until it has been so withdrawn or amended, except for the purposes of this paragraph, be deemed to be a decision of the Authority.

(9) A member of the Authority and a member of a committee referred to in subsection (8) who are not in the full-time employment of the State, may be paid from the funds of the Authority such allowances as the Authority may, with the concurrence of the Minister, determine in general or in any particular case.

(10) (a) In addition to such functions as may be assigned to the Authority by or under this Act or in terms of a scheme or under any other law, the Authority may—

- (i) hire, purchase or otherwise acquire such movable or immovable property as the Authority may deem necessary for the performance of its functions, and may rent, sell or otherwise dispose of property so acquired;
- (ii) from time to time raise money by way of loan for the purpose of performing its functions;
- (iii) hypothecate its immovable property as security for a loan referred to in subparagraph (ii);
- (iv) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (v) enter into agreements for the performance of specific acts or functions or the rendering of specific services;
- (vi) from time to time make recommendations to the Minister concerning any matter to which a scheme relates; and
- (vii) in general, perform such acts as it may deem necessary or expedient for the efficient performance of its functions.

(b) The work incidental to the performance of the functions of the Authority shall be performed by—

- (i) persons appointed by the Authority on such conditions and at such remuneration as the Authority may determine; and
- (ii) persons with whom the Authority entered into agreements in terms of paragraph (a)(v).

(11) (a) The funds of the Authority shall consist of—

- (i) money paid to the Authority in terms of this Act or a scheme; and
- (ii) money which accrues to the Authority from any other source.

(b) The Authority shall utilise its funds for the defrayal of the expenses incurred by the Authority in the performance of its functions.

(c) The Authority shall open an account with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), and shall deposit in that account all money received in terms of paragraph (a).

(d) The Authority may invest any of its money not required for immediate use.

(12) (a) The financial year of the Authority shall end on such date in each year as the Authority may determine.

(b) The Authority shall—

- (i) cause adequate records to be kept of money received or expended by it, and of its assets, liabilities and financial transactions; and
- (ii) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared

showing, with the appropriate particulars, money received and expenditure incurred by it during, and its assets and liabilities at the end of, the said financial year.

- (c) The records and annual financial statements referred to in paragraph (b) shall be audited by a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005). 5

(13) (a) The Authority shall, within six months at the end of each financial year, submit to the Minister a copy of the audited annual financial statements referred to in subsection (12)(c), together with a report on the activities of the Authority during that financial year. 10

(b) Copies of the annual financial statements and of the report referred to in paragraph (a) shall—

- (i) be open to public inspection at the office of the Authority during office hours; and
 (ii) be obtainable from the Authority against payment of the amount as may be determined by the Authority.”. 15

Amendment of section 4 of Act 60 of 1989

3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 20
 “(1) No person shall sell or produce for sale any product—
 (a) with an alcohol content of more than **[one] 0.5** per cent for drinking purposes; or
 (b) including but not limited to a powder form, which, combined with any substance or liquid, will have an alcohol content of more than **[one] 0.5** per cent and is intended for drinking purposes, 25
 unless that product is a liquor product.”;
 (b) by the insertion of the following subsection after subsection (1):
 “(1A) The Minister may grant exemption, under such circumstances and subject to such conditions as he or she may prescribe, from a prohibition referred to in subsection (1)(b).”; and 30
 (c) by the deletion of paragraph (a) of subsection (2).

Amendment of section 6 of Act 60 of 1989

4. Section 6 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

- “(a) add to or remove from the juice [of fresh fruit], reconstituted juice, mixture of juice and reconstituted juice or the alcoholic fruit beverage produced therefrom, any substance other than a substance prescribed for this purpose; and” 35

Insertion of sections 6A, 6B and 6C in Act 60 of 1989

5. The following sections are hereby inserted in the principal Act after section 6: 40

“Requirements regarding beer

6A. (1) Beer shall—

- (a) be produced by the alcoholic fermentation of wort prepared from starch and sugar containing raw materials with or without the addition of potable water; 45
 (b) except where expressly provided otherwise by regulation—
 (i) be flavoured with hops or hop products;
 (ii) be produced in such a manner that at least 35 per cent of the fermentable extract of the wort is derived from malted barley or malted wheat; and 50
 (c) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.
 (2) Beer shall not contain a particular prescribed substance to a greater extent than that prescribed.

- (3) No person shall, either before, during or after the alcoholic fermentation referred to in subsection (1)(a)—
- (a) add to or remove from the water, wort, raw materials or the beer produced therefrom or the hops or hop products, any substance other than a substance prescribed for this purpose; and
- (b) add or remove a substance prescribed under paragraph (a), otherwise than in accordance with the prescribed manner or conditions.

Requirements regarding traditional African beer

- 6B.** (1) Traditional African beer shall—
- (a) (i) be produced by the alcoholic fermentation of malted grain of sorghum, maize, finger millet or pearl millet, or unmalted grain or meal of sorghum, maize, finger millet or pearl millet;
- (ii) be in a state of alcoholic fermentation, or not have its alcoholic fermentation arrested;
- (iii) contain at least four per cent solids derived from the grain or meal referred to in subparagraph (i); and
- (iv) not contain or be flavoured with hops or any product derived from hops;
- (b) be a powder, which—
- (i) comprises not more than three parts by mass of milled sorghum or maize malt;
- (ii) comprises not less than seven parts by mass of milled, precooked maize or unmalted sorghum grain or meal; and
- (iii) does not contain or is not flavoured with hops or any product derived from hops; and
- (c) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.
- (2) Traditional African beer shall not contain a particular prescribed substance to a greater extent than that prescribed.
- (3) No person shall, either before, during or after the production of a traditional African beer—
- (a) add to or remove from the raw materials, in processed form or not, or the traditional African beer produced therefrom, any substance other than a substance prescribed for this purpose; and
- (b) add or remove a substance prescribed under paragraph (a), otherwise than in accordance with the prescribed manner or conditions.

Requirements regarding other fermented beverages

- 6C.** (1) Other fermented beverage shall—
- (a) be produced by alcoholic fermentation in the prescribed manner of a prescribed substance; and
- (b) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.
- (2) Other fermented beverage shall not contain a particular prescribed substance to a greater extent than that prescribed.
- (3) No person shall, either before, during or after the alcoholic fermentation referred to in subsection (1)(a)—
- (a) add to or remove from the prescribed substance referred to in that paragraph or the other fermented beverage produced therefrom, any substance other than a substance prescribed for this purpose; and
- (b) add or remove a substance prescribed under paragraph (a), otherwise than in accordance with the prescribed manner or conditions.”.

Repeal of section 10 of Act 60 of 1989

6. Section 10 of the principal Act is hereby repealed.

Amendment of section 11 of Act 60 of 1989

7. Section 11 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) use the word or expression “beer”, “bier”, “traditional African beer”, “tradisionele Afrikabier”, “alcoholic fruit beverage”, “alkoholiese vrugtedrank”, “grape-based liquor”, “druifbasisdrank”, “spirit-based liquor”, “spiritusbasisdrank”, [“specially authorized liquor” or “spesiaal gemagtigde drank”], “other fermented beverage” or “ander gegiste drank” unless it forms part of a class designation for the liquor product concerned;”; and

(b) by the deletion of paragraph (b) of subsection (4).

Amendment of section 16 of Act 60 of 1989

8. Section 16 of the principal Act is hereby amended—

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

“(a) No person shall import any product with an alcohol content of more than **[one]** 0.5 per cent into the Republic for drinking purposes, except on the authority of an import certificate issued by the administering officer.”;

(b) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:

“(i) **[beer, sorghum beer and]** medicine referred to in section 4(2);”;

(c) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

“(i) the product concerned is wine, beer, traditional African beer, an alcoholic fruit beverage, other fermented beverages, a spirit, a grape-based liquor or a spirit-based liquor; and”.

Amendment of section 17 of Act 60 of 1989

9. Section 17 of the principal Act is hereby amended—

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

“(a) No person shall export any product with an alcohol content of more than **[one]** 0.5 per cent for drinking purposes, except on the authority of an export certificate issued by the administering officer.”;

(b) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:

“(i) **[beer, sorghum beer and]** medicine referred to in section 4(2); and”;

(c) by the addition of the following subsection:

“(6) Notwithstanding the provisions of this section, the Minister may designate a juristic person, body of persons or institution to exercise the powers and carry out the duties referred to in this section, subject to the control and instructions of the administering officer.”.

Amendment of section 18 of Act 60 of 1989

10. Section 18 of the principal Act is hereby amended—

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

“(a) The administering officer and an officer acting under a delegation or direction of the administering officer may, **[whenever he deems it necessary]** in the exercising or carrying out by him or her of any power or duty which is granted to or imposed upon the administering officer by or under this Act, at any reasonable time and without prior notice, enter upon any place, premises or conveyance—

- (i) including a private dwelling, with the consent of the owner or person in charge of the place, premises or conveyance;
- (ii) excluding a private dwelling, from which a person conducts or is on reasonable grounds suspected of conducting business falling under the provisions of this Act or a scheme;
- (iii) which is a private dwelling, under authority of a warrant issued in terms of paragraph (d) or without a warrant in terms of paragraph (e).”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) A person who enters upon any place, premises or conveyance in terms of this subsection shall show proof of his identity and authority **[when requested thereto by the person in charge of the place, premises or conveyance concerned]** and inform the person in charge of the place, premises or conveyance concerned of the purpose of the entry.”; and
- (c) by the addition in subsection (1) of the following paragraphs:
- “(d) Where on application to a magistrate it appears to such magistrate from information on oath or affirmation that there are reasonable grounds to believe that—
- (i) the conditions for entry described in subsection (1)(a)(ii) exist in relation to a private dwelling;
- (ii) entry to that private dwelling is necessary for any purpose relating to the administration or enforcement of this Act; and
- (iii) entry to the private dwelling has been refused or that entry thereto will be refused,
- that magistrate may issue a warrant authorising the person named therein to enter that private dwelling subject to such conditions as may be specified in the warrant.
- (e) If a person referred to in subsection (1) believes on reasonable grounds that—
- (i) a warrant would be issued to him or her under paragraph (d) if he or she applies for such a warrant; and
- (ii) a delay in obtaining such warrant would defeat the object of the entry or investigation,
- he or she may without a warrant enter such private dwelling for any purpose relating to the administration or enforcement of this Act.”.

Amendment of section 19 of Act 60 of 1989

11. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) A person referred to in section 18(1) may **[at any reasonable time and in any manner deemed fit by him, without prior notice to any person]**, upon entry of the place, premises or conveyance in terms of that section, seize any liquor product, material, substance or other article, or any book or document, that—
- (a) is concerned or is on reasonable grounds believed by him or her to be concerned in the commission or suspected commission of any offence under this Act;
- (b) may afford evidence of the commission or suspected commission of any such offence; or
- (c) is intended or is on reasonable grounds believed by him or her to be intended to be used in the commission of any such offence.”.

Amendment of section 20 of Act 60 of 1989

12. Section 20 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) The Director-General may designate an institution having adequate facilities and suitably qualified, skilled and experienced personnel, as an analyst for the purposes of the provisions of this Act or a scheme.”; and

- (b) by the substitution for subsection (2) of the following subsection:
 “(2) Each sample submitted to an analyst in terms of section 18(4) shall be tested, examined or analysed **[by him]** in accordance with the prescribed methods.”.

Amendment of section 23 of Act 60 of 1989

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13. Section 23 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b), (c) and (g) of the following paragraphs, respectively:

- “(a) contravenes or fails to comply with a provision of section 4(1), 5(3)(a), 6(3)(a), 6A(3)(a), 6B(3)(a), 6C(3)(a), 7(3)(a), 8(3)(a), 9(3)(a), 11(1), (2) or (3), 12(1), 16(1)(a), 17(1)(a) or 21(1) or (2); 10
- (b) contravenes or fails to comply with a provision of section 5(3)(b), 6(3)(b), 6A(3)(b), 6B(3)(b), 6C(3)(b), 7(3)(b), 8(3)(b), 9(3)(b) or 20(4);
- (c) contravenes or fails to comply with a condition, restriction, prohibition, reservation or direction imposed under section **[10(4),]** 11(4) or (5)(b), 13A(1), 16(4) or (5), 17(4) or 28(3)(a); 15
- (g) refuses or fails without sufficient cause to furnish information or give an explanation or to answer to the best of his or her ability to a question lawfully demanded from or put to him or her by a person referred to in section 18(1) in the exercising of his or her powers or the carrying out of his or her duties under this Act or a scheme, or furnishes information, an explanation or an answer to such person which is false or misleading, knowing that it is false or misleading;” 20

Amendment of section 24 of Act 60 of 1989

14. Section 24 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b), (d) and (e) of the following paragraphs, respectively: 25

- “(a) it shall be presumed, **[unless the contrary is proved]** in the absence of evidence to the contrary that raises a reasonable doubt, that the applicable provisions of this Act or a scheme apply to the product in respect of which the offence concerned has allegedly been committed;
- (b) any quantity of a liquor product, material, substance or other article in or upon any place, premises or conveyance when a sample thereof is taken in accordance with the provisions of this Act shall, **[unless the contrary is proved]** in the absence of evidence to the contrary that raises a reasonable doubt, be deemed to be of the same composition as that sample, and to possess in all other respects the same properties as that sample; 30 35
- (d) any statement or entry contained in any book or document kept by any person or the manager, agent or employee of such person, or found in or upon any place or premises occupied by, or any vehicle used in the business of, such person, shall be admissible in evidence against him or her as an admission of the facts set forth in that statement or entry, unless **[it is proved]** evidence to the contrary that raises a reasonable doubt is adduced that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his or her work as manager or in the course of his or her agency or employment; and 40
- (e) it shall be presumed, **[unless the contrary is proved]** in the absence of evidence to the contrary that raises a reasonable doubt, that a permit, authorization, consent, approval, certificate or other document has not been issued, given or granted to any person who in terms of this Act or a scheme is required to be in possession thereof.” 45

Amendment of section 26 of Act 60 of 1989

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15. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) When a manager, representative, agent, employee or member of the family of a person (in this section called the principal) does or omits to do any act, and it would be an offence under this Act for the principal to do or omit to do such act 55

himself or herself, that principal shall be deemed himself or herself to have done or omitted to do the act, unless he or she satisfies the court that there is a reasonable possibility that—

- (a) he or she neither connived at nor permitted the act or omission by the manager, representative, agent, employee or member concerned; 5
 - (b) he or she took all reasonable steps to prevent the act or omission; and
 - (c) an act or omission, whether lawful or unlawful, of the nature charged, on no condition or under no circumstance fell within the scope of the authority or employment of the manager, representative, agent, employee or member concerned, 10
- and the fact that such principal issued instructions whereby an act or omission of that nature is prohibited, shall in itself not **[be sufficient proof]** constitute a reasonable possibility that he or she took all reasonable steps to prevent the act or omission.”.

Amendment of section 27 of Act 60 of 1989 15

16. Section 27 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (m) of the following paragraph:
 - “(m) the **[quantity]** calibration, gauging and marking of tanks, casks and other receptacles used in the production and storage of liquor products;” 20
- (b) by the addition in subsection (1) of the following paragraphs:
 - “(o) the compulsory registration of persons as producers, blenders or fillers of liquor products; 25
 - (p) standards for and the type of container and packaging in which a liquor product or class of liquor product shall or may be contained or sold, as well as the minimum or maximum capacity of such a container;” and
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) A regulation may for any contravention thereof or failure to comply therewith, prescribe a penalty **[which shall not exceed]** of a fine **[of R2 000]** or imprisonment for a period of **[six]** 12 months or both that fine and that imprisonment.”. 30

General amendment to Act 60 of 1989

17. The principal Act is hereby amended— 35

- (a) by the substitution for the words “chairman” and “vice-chairman”, wherever they appear in the Act, of the words “chairperson” and “vice-chairperson”, respectively;
- (b) by the substitution for the words “he”, “his”, “him” and “himself”, wherever they appear in the Act, of the words “he or she”, “his or her”, “him or her” and “himself or herself”, respectively; and 40
- (c) by the substitution for the word “board”, wherever it appears in the Act, of the word “Authority”.

Transitional provisions

18. (1) The Wine and Spirit Board established by section 2 of the principal Act is hereby dissolved. 45

(2) The members of the Wine and Spirit Board in office immediately prior to the commencement of this Act shall become members of the Wine Certification Authority established in terms of section 2 of the principal Act as amended by this Act and must be regarded as having been appointed to the Wine Certification Authority in terms of that section. 50

(3) The members contemplated in subsection (2) hold office for the unexpired period of office of such members or until the appointment of members of the Authority in terms of section 2 of the principal Act, whichever is the later.

Amendment of laws

19. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

Short title and commencement

20. This Act is called the Liquor Products Amendment Act, 2016, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 5

Schedule

LAWS AMENDED

(Section 19)

Act No. and year	Short Title	Extent of repeal or amendment
91 of 1964	Customs and Excise Act, 1964	<p>1. The amendment of section 1 by the deletion in subsection (1) of the definition of “Wine and Spirit Board”.</p> <p>2. The substitution for section 30 of the following section:</p> <p>“30. Control of the use of spirits for certain purposes [(1) No person shall use spirits, distilled from the product of the vine, in the manufacture of alcoholic beverages unless such spirits have been certified by the Wine and Spirit Board to be suitable for use as aforesaid: Provided that if the Board declines to certify any spirits as suitable for such use as aforesaid, the manufacturer may redistil such spirits or treat the same by any method approved by the Board, and thereafter the Board may certify the spirits as suitable for use in the manufacture of alcoholic beverages.</p> <p>(2) The blending of brandy [in terms of section 9 (1) (b) of the Wine and Spirits Control Act, 1970 (Act No. 47 of 1970),] and the production from spirits of any other beverage or any other non-excisable goods shall be subject to such supervision by an officer as the Commissioner may in each case consider necessary.</p> <p>[(3) The provisions of sub-section (1) shall not apply to an agricultural distiller or a wine-grower who manufactures alcoholic beverages under the provisions of this Act for his private use.]”.</p>
27 of 1989	Liquor Act, 1989	<p>1. The amendment of section 1—</p> <p>(a) by the substitution for paragraph (b) of the definition of “alcoholic fruit beverage” of the following paragraph:</p> <p>“(b) [a specially authorized liquor] an other fermented beverage as defined in section 1 of the Liquor Products Act, 1989, obtained by the alcoholic fermentation of the juice of oranges together with cane sugar;”;</p> <p>(b) by the substitution for the definition of “beer” of the following definition:</p> <p>“‘beer’ means beer as defined in section 1 of the Liquor Products Act, 1989, but does not include sorghum beer;” and</p>

Act No. and year	Short Title	Extent of repeal or amendment
		<p>(c) by the substitution for the definition of “sorghum beer” of the following definition:</p> <p>“ ‘sorghum beer’ means—</p> <p>(a) [the drink generally known as sorghum beer and commonly manufactured from grain sorghum, millet or other grain] traditional African beer as defined in section 1 of the Liquor Products Act, 1989; or</p> <p>(b) any other fermented liquor declared to be sorghum beer under subsection (2)(c);”.</p>
59 of 2003	Liquor Act, 2003	<p>1. The amendment of section 1—</p> <p>(a) by the deletion of the definition of “beer”;</p> <p>(b) by the substitution for the definition of “liquor” of the following definition:</p> <p>“ ‘liquor’ means—</p> <p>(a) a liquor product, as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989); or</p> <p>(b) [beer or traditional African beer; or</p> <p>(c)] any other substance or drink declared to be liquor under section 42(2)(a);”;</p> <p>(c) by the deletion of the definition of “traditional African beer”; and</p> <p>(d) by the deletion of the definition of “traditional African beer powder”.</p> <p>2. The substitution in section 42(2)(a) for subparagraph (i) of the following subparagraph:</p> <p>“(i) declaring any substance or fermented drink to be [beer] liquor [traditional African beer] or an imposable substance; or”.</p> <p>3. The deletion of item 8 of Schedule 1.</p>

MEMORANDUM ON THE OBJECTS OF THE LIQUOR PRODUCTS AMENDMENT BILL, 2016

1. BACKGROUND AND OBJECTS

- 1.1 The Liquor Products Amendment Bill (“the Bill”) seeks to amend the Liquor Products Act, 1989 (Act No. 60 of 1989) (hereinafter referred to as “the Act”). The Act provides for control over the sale and production for sale of certain alcoholic products, the composition and properties of such products and the use of certain particulars in connection with the sale of such products.
- 1.2 Various deficiencies in the Act which necessitated the amendments were identified; some key deficiencies are listed below:
 - (i) A loophole exists in the Liquor Act, 2003 (Act No. 27 of 2003), which allows any liquor product labelled as beer or ale to be manufactured and sold. This has led to the proliferation and uncontrolled sale of sugar fermented beverages and other concoctions.
 - (ii) Although the Wine and Spirit Board was established to administer the Wine of Origin Scheme that relates to certified wine, the control of vintage, cultivar and origin label claims, as well as the Scheme for integrated Production of Wine, which deals with sustainability claims, it has advisory powers that relate to all liquor products. The advisory function of the Board to the Minister of Agriculture, Forestry and Fisheries (the Minister) should only relate to schemes administered by the Board (e.g. schemes that are limited to liquor products derived from grapes). The Minister may consult with any party or role-player regarding any type of liquor product and therefore the Board should not have advisory functions with regard to liquor products that are outside its scope of responsibility. The name of the Wine and Spirit Board is also misleading in respect of the actual functions of the Board, as the Board does not deal with spirits.
 - (iii) Payment of allowances to Board members is mandatory in terms of the Act, which has a huge financial implication for the Board because of the number of committee members on the various committees of the Board. The renaming of the board and the payment of allowances to board members need to be addressed under the Act.
 - (iv) The scope of the Act currently only relates to liquor products with an alcohol percentage of more than 1% vol. The Act is therefore not aligned with other international and national legislation, e.g. the Foodstuffs, Cosmetics and Disinfectants Act, which deals with foodstuffs with an alcohol content up to 0.5% vol. A grey area exists relating to products with an alcohol content between 0.5 and 1.0% vol, which falls outside the scope of both sets of legislation and therefore remain unregulated.
 - (v) Currently alcohol fruit beverage can only be made from the juice of fresh fruit. The use of concentrate or reconstituted juice is not allowed. The definition of an alcohol fruit beverage is therefore amended to allow the use of reconstituted juice.
 - (vi) Severe limitations apply to specially authorised liquors like mead (honey beverage), sacramental alcoholic beverage, orange juice, and cane sugar fermented alcoholic beverage. Only producers that are historically qualified to produce these specially authorised liquors are currently allowed to produce these products. The total volume of production per annum is also restricted, which is an additional limitation that does not apply to other types of liquor products. These requirements exclude any new entrants to the market and also places unnecessary limitations on currently authorised producers.

- (vii) The State Law Advisers have identified certain provisions pertaining to powers of entry, investigation, sampling, seizures, presumptions and evidence that must be aligned with the Constitution. The Act is silent on the conditions of entry to a private dwelling and under which circumstances a warrant must be obtained for entry to a premise from which a person conducts or is suspected of conducting business falling under the Act.
- (viii) Export control of liquor products is currently the sole responsibility of the Department of Agriculture, Forestry and Fisheries (the Department). The Act does not allow the Minister the power or discretion to outsource control over the exportation of liquor products, for instance in circumstances where there is a lack of resources, skills, etc. The requirements of the Act are therefore not in line with the requirements of the Agricultural Product Standards Act, which allows the Minister to outsource export control to a designated assignee.
- (ix) The Act prescribes that the DG must designate a person qualified by technical training and possessing adequate knowledge and skills as an analyst for the purposes of the provisions of the Act. In practice, however, the Department has multiple laboratories that assist with the various types of analyses required in terms of the Act. Personnel change constantly and if these changes are not notified or not notified in time, then designations are still in process whilst analyses continue on a daily basis. Logistically therefore, compliance with this requirement remains a constraint and non-compliance can become problematic in court cases, for instance if the official designation of the analyst was requested and it was done after the fact.
- (x) A mistake was made when the Act was amended in 2010. The term “gauging” of tanks was amended to “quantity” by mistake. Gauging of tanks is necessary to determine the volume of wine that has been pumped into a specific tank. This is necessary to ensure that wine volumes are not “stretched” by adding water, which is not a legal practice. Gauging of tanks is required to ensure proper control over the winemaking process.
- (xi) There is currently no requirement in the Act for the registration of persons as producers, blenders or fillers of liquor products. Therefore, currently only the seller of the liquor products takes responsibility for the content of the liquor product concerned. The bottler of the product has no responsibility towards the product and is also not traceable in the production chain. This amendment aims to rectify the shortcoming by ensuring compulsory registration of bottlers. The powers of the Minister to make regulations regarding packaging standards and type of containers need to be defined separately. Currently packaging regulations exist, but they need to be clearly defined under section 27.
- (xii) The Act does not make use of gender equal terminology and therefore this shortcoming needs to be addressed throughout the Act.
- (xiii) The inclusion of a definition for beer, traditional African beer and other fermented beverages will require that the definitions in other Acts (e.g. the Liquor Act, 2003) be amended in line with the definitions as captured in the Bill.
- (xiv) References to other Acts must be updated and outdated provisions deleted.

1.3 The Bill seeks to amend the Act in order to address the deficiencies highlighted above.

2. BODIES CONSULTED

Between 2009 and 2012 the Department undertook a legislative review process of the Act. The Liquor Products Advisory Forum (LPAF) was established by the then DDG: Agricultural, Production, Health & Food Safety (Dr ME Mogajane) of the Department, to drive the review process of the Act and to ensure proper consultation with the role-players throughout the amendment process. The first meeting of the LPAF took place on 1 August 2009 and since then a series of meetings and subgroup sessions took place. Consultations have been ongoing. The Wine and Spirit Board was briefed on a monthly basis on progress and was consulted to provide inputs. On 8 June 2012, a notice inviting public comments on the draft Liquor Products Amendment Bill was published in *Gazette* No. 35424 and comments were received.

Below is the list of stakeholders consulted:

- Department of Health, Department of Trade & Industry (National Liquor Authority), Customs and Excise and South African Police Service;
- Provincial Liquor Boards, Provincial Departments of Agriculture (Elsenburg);
- Wine and Spirit Board, Agricultural Research Institution (ARC—Nietvoorbij), University of Stellenbosch;
- Wines of South Africa (WOSA — DTI registered export council);
- Industry Groups;
- SAB;
- Heineken;
- Amstel;
- Namibian Breweries;
- Sedibeng Breweries;
- Diageo;
- United National Breweries;
- Tiger Brands;
- SALBA (South African Liquor Brandowners Association), representing:
 - Distell;
 - Brandhouse;
 - Pernod Ricard;
 - KWV;
 - DGB;
 - Constellation;
 - Graham Beck Wines;
 - Jonkheer;
 - Mooiuitsig;

- Baarsma;
- Cape Classic Exports;
- First Cape;
- Halewood International;
- Historic Wines;
- Origin Wines;
- Paarl Wine;
- SMC Brands;
- Spier Wines;
- The Company of Wine People;
- The Really Great Brand Company;
- Vinimark;
- Wine Cellars South Africa (WCSA), representing 62 wine cellars;
- VinPro, representing around 5 000 wine grape farmers;
- BevTec;
- EPASA (Ethanol Producers Association of South Africa);
- South African Microbrewers Association and Guild (SAMBAG);
- NCP Alcohols;
- Ale Manufacturers Association;
- Mitchell's Brewery;
- Jack Black Premium Beer.

3. IMPLICATIONS FOR STATE

The inclusion of a definition for beer, traditional African beer and other fermented beverages under the scope of the Act will ensure that a clear definition exists for these products and that the loophole under the Liquor Act will be addressed. The Department of Health will no longer have to evaluate the labels of these types of liquor products, as the composition, labelling, export and import certification will become the responsibility of Department. The South African Police Service will have certainty that these products are indeed covered by legislation and will be able to act and prosecute when the Act is contravened, in contrast with the current situation where "ale" is sold unregulated. This will be beneficial to the consumers of these types of products, as there is no government department that is currently regulating the composition, food safety and quality of ale or beer. Additional to the existing technical infrastructure of the Directorate: Inspection Services, the amendment of the Liquor Products Act and the inclusion of beer, traditional African beer and other fermented beverages under the scope of the Act, will require the appointment of four additional inspectors to their current post establishment. Additional chemicals and consumables will also be required by the Wine and Spirit laboratory of National Analytical Services to enable them to perform the chemical analyses required to verify quality, food safety and certification compliance.

4. FINANCIAL IMPLICATIONS

The amendment of the Act will have financial implications for the Department, in that it will require the appointment of four additional inspectors to their current post establishment. Additional chemicals and consumables will also be required by the Wine and Spirit laboratory of National Analytical Services to enable them to perform the chemical analyses required to verify quality, food safety and certification compliance.

The financial implications are outlined below:

Item	Cost
Additional personnel capacity: Four Inspectors	R760 000
Additional chemicals and resources required for chemical analyses (Laboratories of National Analytical Services)	R230 000
Total	R990 000

These funds will have to be secured in addition to the existing MTEF allocation.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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