

NOTICE 1883 OF 2003**NATIONAL DEPARTMENT OF AGRICULTURE****PUBLICATION OF DRAFT LIQUOR PRODUCTS AMENDMENT BILL, 2003
FOR COMMENT**

The draft Liquor Products Amendment Bill, 2003, is hereby published for comment.

Interested persons are hereby invited to furnish written comments and representations concerning the draft Bill within four weeks after publication hereof to the National Department of Agriculture at the following addresses:

- (a) if forwarded by post:

Head: Legal Services
National Department of Agriculture
Private Bag X250
PRETORIA
0001
(For attention: T A Maphoto)

- (b) if delivered by hand, be delivered to:

Head: Legal Services
National Department of Agriculture
Agriculture Building Room F-FF-15
20 Beatrix Street
Arcadia, PRETORIA
(For attention: T A Maphoto)

- (c) if sent by facsimile, be transmitted to:

Fax number: (012) 325 7391
(For attention: T A Maphoto)

- (d) if submitted by electronic mail, be transmitted in Ms Word 2000 format to:

hls@nda.agric.za

- (e) It is the incumbent upon the sender to ensure that such comments are received.

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REPUBLIC OF SOUTH AFRICA

DRAFT

**LIQUOR PRODUCTS
AMENDMENT BILL**

[B – 2002]

REPUBLIEK VAN SUID-AFRIKA

KONSEP

**WYSIGINGSWETSONTWERP OP
DRANKPRODUKTE**

[W – 2002]

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 amend and insert certain definitions; to provide for the reconstitution and renaming of the Wine and Spirit Board and to limit its area of responsibility; to provide for compulsory particulars on containers; to comply with the Republic's international obligations; to ensure the Act's compatibility with the Constitution and general legal principles; 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 –
 - (a) by the substitution for the definition of "board" of the following definition:

""[board] Authority' means the [Wine and Spirit Board] Wine and Brandy Origin Authority established by section 2;" and

- (b) by the substitution for the definition of "department" of the following definition:

"department" means the Department of **[Agricultural Economics and Marketing]** Agriculture in the national government;".

Amendment of section 2 of Act 60 of 1989, as amended by section 1 of Act 11 of 1993

2. Section 2 of the principal Act is hereby amended –

- (a) by the substitution for the title of the following title:

"Wine and [Spirit Board] Brandy Origin Authority";

- (b) by the substitution for subsection (1) of the following subsection:

"(1) (a) There is hereby established **[a board]** an Authority to be known as the Wine and **[Spirit Board]** Brandy Origin Authority, and which shall be a juristic person and the successor in law of the Wine and Spirit Board as it existed immediately prior to the amendment of this section under the Liquor Products Amendment Act, 2002.

(b) The Authority shall consist of not more than fourteen members.

(c) The main objective of the Authority shall be to administer the schemes established under section 14.

(d) A reference in any other law to the Wine and Spirit Board shall be construed to be a reference to the Authority.";

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

"(2) (a) The members of the **[board]** Authority shall be appointed by the Minister and shall consist of –

- (i) **[four persons nominated by the “Ko-operatiewe Wijnbouwers Vereniging van Zuid-Afrika, Beperkt”]** eight persons representative of participants to schemes nominated in accordance with the prescribed directions;
- (ii) **[four persons nominated by the Cape Wine and Spirit Institute]** a person determined by the Minister;
- (iii) not more than two officers of the department;
- (iv) not more than two persons nominated by the Agricultural Research Council by virtue of their involvement in oenological and viticultural research; and
- (v) a person determined by the Minister **[after consultation with the bodies mentioned in subparagraphs (i) and (ii)]** on the recommendation of the persons appointed in terms of subparagraph (i).”;

(d) by the deletion of paragraph (d) of subsection (2);

(e) by the substitution for paragraph (e) of subsection (2) of the following paragraph:

- "(e) If **[such body fail to submit the]** nominations **[concerned within the period determined in terms of paragraph (d)]** are not submitted in terms of paragraph (a)(i), the Minister may appoint such persons representative of participants to schemes as he or she may deem fit **[in the place of the persons required to be nominated by that body]."**;
- (f) by the substitution for subparagraph (i) of paragraph (a) of subsection (4) of the following subparagraph:
- "(i) in the case of an officer and the member and alternate member determined in terms of subsection 2(a)(ii), at the Minister's pleasure: and";
- (g) by the substitution for paragraph (b) of subsection (4) of the following paragraph:
- "(b) If a member or an alternate member of the **[board] Authority** ceases to hold office for any reason, the Minister **[may] shall [, subject to the provisions of subsection (2),]** appoint **[any] a person designated by the Authority in accordance with the prescribed directions**, in his or her place for the unexpired period of his or her term of office."
- (h) by the substitution for subparagraph (iv) of paragraph (a) of subsection (5) of the following subparagraph:
- "(iv) if, in the case of a member or an alternate member nominated **[by a body specified in subsection (2)(a)(i) or (ii), the body] in terms of subsection (2)(a)(i)**, **[concerned notifies the Director-General in writing that such member or alternate member shall no longer serve on the board as nominee of that body] he or she ceases to qualify as a**

representative of participants to schemes in terms of the prescribed directions.”;

- (i) by the substitution for paragraph (b) of subsection (6) of the following paragraph:

“(b) The members of the **[board] Authority** **[shall] may** at the first meeting of the **[board] Authority**, and thereafter whenever necessary, elect a **[vice-chairman] vice-chairperson** from among the members referred to in subsection (2)(a)(i), (ii), (iii) and (iv).”;

- (j) by the substitution for subsection (9) of the following subsection:

“(9) There may be paid to **[a member and an alternate member] the chairperson** of the **[board] Authority** and a member of a committee referred to in subsection (8) who are not in the full-time employment of the State, from the funds of the **[board] Authority** such **remuneration and allowances** as the **[Minister] Authority** may **[with the concurrence of the Minister of Finance]** determine in general or in any particular case.”;

- (k) by the substitution for paragraph (a) of subsection (10) of the following paragraph:

“(a) In addition to such functions as may be assigned to the **[board] Authority** by or under this Act or in terms of a scheme or under any other law, the **[board] Authority** may –”;

- (l) by the substitution for subparagraph (vi) of paragraph (a) of subsection (10) of the following subparagraph:

“(vi) from time to time make recommendations to the Minister concerning any matter to which **[this Act]** a scheme relates; and”;

(m) by the substitution for subparagraph (i) of paragraph (b) of subsection (10) of the following subparagraph:

“(i) persons appointed by the **[board]** Authority on such conditions and at such remuneration as the **[Minister]** Authority may **[with the concurrence of the Minister of Finance]** determine; and”.

Amendment of section 11 of Act 60 of 1989

3. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person shall sell any liquor product in a container, unless the applicable prescribed particulars are indicated in the prescribed manner on the label thereof, on such container and on the receptacle of such container.”.

Insertion of section 13 in Act 60 of 1989

4. The following section is hereby inserted in the principal Act after section 12:

"Prohibition on the use of geographical names

(13). (1) The Minister may, taking account of the Republic's international obligations, by notice in the Gazette prohibit the use of specified geographical names in connection with the sale or export of a specified liquor product on such conditions as may be specified in such notice.

(2) A prohibition issued in terms of subsection (1) shall also apply where the geographical name concerned -

(a) is used in conjunction with an indication of the true origin of the liquor product;

(b) is translated; or

(c) is accompanied by an expression such as "kind", "type", "style", "imitation" or a similar expression.

(3) The Minister may in such notice authorize the administering officer or, in the case of a liquor product derived from grapes, the Authority to exempt a person from the prohibition under the circumstances and conditions as may be specified in such notice."

Amendment of section 14 of Act 60 of 1989

5. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may on the recommendation of the **[board Authority]** by notice in the *Gazette* establish a scheme in respect of **[wine, brandy referred to in section 9(1)(a) or (b) of the Wine and Spirit Control Act, 1970 (Act No. 47 of 1970), or a grape-based liquor]** a liquor product derived from grapes, with a view to further regulating particular matters relating to the production and sale of such liquor products, including the granting of authorizations for the use of particulars referred to in section 11(3)(a) and (4) in connection with the sale of the said liquor products."

Amendment of section 15 of Act 60 of 1989

6. Section 15 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph (r) of subsection (1):

"(rA) provide for powers of entry, investigation, inspection, sampling and seizure."

Amendment of section 16 of Act 60 of 1989

7. Section 16 of the principal Act is hereby amended -
- (a) by the deletion of subparagraph (iv) of paragraph (b) of subsection (3); and
 - (b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) An import certificate shall be issued on the conditions determined by the administering officer [or, in the case of a product referred to in subsection (3)(b), the board]."

Amendment of section 17 of Act 60 or 1989

8. Section 17 of the principal Act is hereby amended -
- (a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) in the case of a liquor product derived from grapes and when required by regulation, the [board] Authority has in the prescribed manner found the product concerned to be suitable for export."; and

- (b) by the addition of the following subsection:

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

Substitution of section 18 of Act 60 of 1989

9. Section 18 of the principal Act is hereby substituted by the following section -

“Routine inspection and sampling

18. (1) The administering officer and a person acting under a delegation, authorization or instruction of the administering officer may, during business hours of the industry in question, in the case of routine inspections to monitor compliance with this Act, enter any place, premises or conveyance in or upon which any product, material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, bottled, removed, transported, exhibited or sold, and-

- (a) open any container found at or on the place, premises or conveyance which he or she believes on reasonable grounds contains any product, material, substance or other article to which this Act applies;
- (b) classify, grade, pack or mark any quantity of a liquor product in accordance with the prescribed requirements, or direct the owner or person in charge of that place, premises or conveyance to thus classify, grade, pack or mark such quantity;

- (c) inspect or test or cause to be tested any quantity of a liquor product;
 - (d) inspect or test or cause to be tested any quantity of a product, material, substance or other article which is used or suspected to be used at or in connection with the production, processing, treatment, preparation, classification, grading, packing, marking, labelling, keeping, bottling, removal, transporting, exhibition or sale of a liquor product;
 - (e) subject to subsection (2)(c), take such samples of such liquor product, product, material, substance or other article as he or she may deem necessary; and
 - (f) require the owner or custodian to produce for inspection, or for obtaining a copy or extract, any book, label or other document or paper with regard to the administration of this Act.
- (2) (a) The administering officer or other person referred to in subsection (1) may, when acting under that subsection, take with him or her such assistant, appliance, instrument or other tool as he or she may deem necessary for the purpose of that subsection.
- (b) The administering officer or other person referred to in subsection (1) may, when acting under subsection (1)(c) or (d), demand from the owner or custodian of the liquor product, product, material, substance or other article in question, any information or an explanation regarding that liquor product, product, material, substance or other article.

(c) Any sample taken under subsection (1)(e) shall -

(i) be taken in the presence of the person in charge of, or the owner or custodian of such liquor product, product, material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and a receipt of sampling in respect of each sample taken shall, on request, be issued to such person in charge, owner, custodian or witness, as the case may be;

(ii) if necessary, be packed and identified in such a manner as the nature thereof permits; and

(iii) as soon as possible after it has been taken, be submitted to a person, undertaking, body, institution, association, board or laboratory which is competent to test, inspect or analyse that sample.

(3) A person who enters upon any place, premises, or conveyance under this section shall show proof of his or her identity and authority when requested thereto by the person in charge of the place, premises or conveyance in question."

Substitution of section 19 of Act 60 of 1989

10. Section 19 of the principal Act is hereby substituted by the following section:

Powers of entry, investigation and seizure

19. (1) The administering officer and a person acting under a delegation, authorization or instruction of the administering officer may, on the authority of a warrant issued in terms of subsection (2), and for

purposes other than for the purpose of the application of section 18, at any time

- (a) enter any place, premises or conveyance in or upon which any product, material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded, packed, marked, labelled, kept, bottled, removed, transported, exhibited or sold;
- (b) perform any of the acts referred to in section 18 for such other purposes; and
- (c) seize any such product, material, substance or other article or any book, document or record relating thereto.

(2) A warrant referred to in subsection (1) shall be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the conveyance is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that a product, material, substance or other article mentioned in subsection (1), is in or upon such place, premises or conveyance and shall specify which of the acts mentioned in subsection (1) may be performed there under by the person to whom it is issued.

(3) A warrant issued in terms of this section shall be executed by day unless the person who issued the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or conveyance specified in such warrant shall be conducted with strict regard to decency and order, including -

- (a) a person's right to, respect for and protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(4) The administering officer or other person referred to in subsection (1) executing a warrant in terms of this section shall immediately before commencing with the execution -

- (a) identify himself or herself to the person in control of the place premises or conveyance, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent spot on the place, premises or conveyance; and
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(5) The administering officer or other person referred to in subsection (1) may without a warrant enter any place, premises or conveyance, pack, mark, inspect or test any quantity of a product, material, substance or other article referred to in subsection (1), and search for, seize, take samples of and remove any such product, material, substance or other article if -

- (a) the person who is competent to do so, consents to such action; or
- (b) he or she upon reasonable grounds believes that -

- (i) the required warrant would be issued to him or her in terms of subsection (2) if he or she were to apply for such warrant; and
- (ii) the delay caused by obtaining such warrant would defeat the object of such warrant.
- (6) (a) The administering officer or other person referred to in subsection (1) who may, on the authority of a warrant issued in terms of subsection (2), or under the provisions of subsection (5), enter and search any place, premises or conveyance, may use such force as may be reasonably necessary to overcome resistance to such entry or search.
- (b) No person may enter upon and search any place, premises or conveyance unless he or she has audibly demanded admission to the place, premises or conveyance and has notified the purpose of his or her entry, unless such person is upon reasonable ground of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.
- (7) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or conveyance in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search, if he or she is of the opinion that the article contains information necessary for and relevant to the investigation, may seize and remove that article for safe custody until a court of law that has jurisdiction has made a ruling on the question whether or not the information in question is privileged.

(8) A warrant issued in terms of this section may be issued on any day and shall be of force until -

(a) it is executed;

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;

(c) the expiry of one month from the date of its issue; or

(d) the purpose for which the warrant was issued, no longer exists.

whichever may occur first.

(9) If no criminal proceedings are instituted in connection with any product, material, substance, book, record, document or other article seized in terms of this section, or if it appears that such product, material, substance, book, record, document or other article is not required at the trial for purposes of evidence or an order of court, that product, material, substance, book, record, document or other article shall be returned to the person from whom it was seized."

Amendment of section 21 of Act 60 of 1989

11. Section 21 of the principal Act is hereby amended by the substitution for the title of the following title:

"[Secrecy] Confidentiality".

Amendment of section 23 of Act 60 of 1989

12. Section 23 of the principal Act is hereby amended -

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

"(c) contravenes or fails to comply with a condition, restriction, prohibition, reservation or direction imposed under section 10(4), 11(4), or 5(b), 13(1) or (3), 16(4) or (5), 17(4) or 28(3)(a);";

- (b) by the substitution for paragraph (e), (f), (g) and (h) of subsection (1) of the following paragraphs:

"(e) obstructs or hinders a person referred to in section 18 (1) or 19(1) in the exercise of his or her powers or the carrying out of his or her duties under this Act or a scheme;

(f) refuses or fails to render the reasonable assistance that a person referred to in section 18 (1) or 19(1) demands from him or her in terms of section 18(2)(b) or 19(1)(b) in the exercising of his or her powers or the carrying out of his or her duties under this Act or a scheme;

(g) refuses or fails 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) or 19(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 that is false or misleading, knowing that it is false or misleading;

(h) tampers with a sample taken in terms of section **[18(2)(e)]** 18(1)(e) or 19(1)(b), or the identification or seal of such sample;"; and

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

"(2) Any person who is convicted of an offence under this Act shall

- (a) on a first conviction of an offence referred to in paragraph (a), (c), (d), (e), (f) or (g) of subsection (1), be liable to a fine **[not exceeding R8 000]** or to imprisonment for a period not exceeding two years or to both that fine and that imprisonment;
- (b) on a second or subsequent conviction of an offence mentioned in paragraph (a), whether it be the same offence or some other offence mentioned in that paragraph, be liable to a fine **[not exceeding R16 000]** or to imprisonment for a period not exceeding four years or to both that fine and that imprisonment;
- (c) on a first conviction of an offence referred to in paragraph (b), (h), (i), (j), or (k) of subsection (1), be liable to a fine **[not exceeding R2 000]** or to imprisonment for a period not exceeding six months or to both that fine and that imprisonment; and
- (d) on a second or subsequent conviction of an offence mentioned in paragraph (c), whether it be the same offence or some other offence mentioned in that paragraph, be liable to a fine **[not exceeding R4 000]** or to imprisonment for a period not exceeding one year or to both that fine and that imprisonment;".

Substitution of section 26 of Act 60 of 1989

13. Section 26 of the principal Act is hereby substituted by the following section:

"International obligations

(26) The Minister may, if the Republic's international obligations so dictate, by notice in the *Gazette* declare, on such conditions as may be specified in such notice, any provision of this Act not applicable to any product with an alcohol content of more than one percent imported into the Republic for drinking purposes."

Amendment of section 27 of Act 60 of 1989

14. Section 27 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph (l) of subsection (1):

"(m) the circumstances or conditions under which the administering officer or the Authority, as the case may be, may allow for a relaxation of a requirement in terms of this Act or a scheme,"

Repeal of section 31 of Act 60 of 1989

15. Section 31 of the principal Act is hereby repealed.

General amendment to Act 60 of 1989

16. The principal Act is hereby amended -
- (a) by the substitution for the word "board" wherever it appears in the Act, of the word "Authority";

- (b) by the substitution for the words "chairman" and "vice-chairman" wherever they appear in the Act, of the words "chairperson" and "vice-chairperson" respectively; and
- (c) 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.

Short title

17. This Act shall be called the Liquor Products Amendment Act, 2002.