

NOTICE 1272 OF 2005**DEPARTMENT OF AGRICULTURE****PUBLICATION OF LIQUOR PRODUCTS AMENDMENT BILL FOR COMMENTS.**

I, Angela Thokozile Didiza, Minister of Agriculture hereby publish the Liquor Products Amendment Bill, 2005, for comment by the general public. Comments must be submitted in writing within 30 days of publication of this notice to:

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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 definitions and to amend and delete others; to provide for the reconstitution of the Wine and Spirit Board; to amend the requirements regarding wine; to provide for the requirements regarding other fermented beverages; to repeal the provision in respect of the authorizations regarding certain alcoholic products; to extend the particulars required in connection with the sale of liquor products in containers; to empower the Minister to prohibit the use of geographical names under certain circumstances; to make other provisions for the establishment of schemes; to curtail the board's power regarding the import and export of liquor products; to empower the Minister to designate a person to issue export certificates; to provide for international obligations; 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 –
 - (a) **by** the substitution for the definition of "class designation" of the following definition:

"class designation" –

- (a) in relation to wine, an alcoholic fruit beverage, an other fermented beverage, a spirit, a grape-based liquor or a spirit-based liquor, means the prescribed designation for a class thereof;
- (b) **[in relation to a specially authorized liquor, means the designation specified in a notice published under section 10; and]** 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;";

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

"department" means the Department responsible for [of Agricultural Economics and :i agriculture in the national government];";

- (c) by the substitution for the definition of "grapes" of the following definition:

"grapes" means fruit of plants of *Vitis [vinifera]*;";

- (d) by the substitution for the definition of "liquor product" of the following definition:

"liquor product" means –

- (a) wine;
- (b) an alcoholic fruit beverage;
- (c) an other fermented beverage;
- (d) a spirit;
- (e) a grape-based liquor;
- (9) a spirit-based liquor;

- (g) **[a specially authorized liquor; and]** any liquor other than a product mentioned in paragraph (a), (b), (c), (d), (e), or (f), in respect of which an import certificate has been issued;"
- (e) by the substitution for the definition of "Minister" of the following definition:
- "Minister' means the Minister [of Agriculture] responsible for agriculture in the national government;"
- (9) by the insertion after the definition of "officer" of the following definition:
- "other fermented beverage' means a product which complies with the requirements referred to in section 6A;"; and
- (g) by the deletion of the definition of "specially authorized liquor".

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

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

- (a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
- "(2) (a) The members of the board 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];**

- (iii) 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).”;
- (b) by the deletion of paragraph (d) of subsection (2);
- (c) 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].”;
- (d) by the substitution for subparagraph (ii) of paragraph (a) of subsection **(4)** of the following subparagraph:
- "(ii) in any other case, for [such period, but not exceeding] five years, [as the Minister may determine at the time of appointment of that member or alternate member] and such member or alternate member shall after the expiration of the said period continue in office for a further period, but not exceeding three months, until his or her successor has been appointed.”;

- (e) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

"(b) If a member or an alternate member of the board 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 board in accordance with the prescribed directions, in his or her place for the unexpired period of his or her term of office.";

- (9) 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 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.";

- (g) 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 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 such remuneration and allowances as the **[Minister] board** may **[with the concurrence of the Minister of Finance]** determine in general or in any particular case.";

- (h) 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 by or under this Act or in terms of a scheme or under any other law or international agreement, the board may –"; and

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

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

Amendment of section 4 of Act 60 of 1989

3. Section 4 of the principal Act is hereby amended by the deletion of paragraph (a) of subsection (2).

Amendment of section 5 of Act 60 of 1989

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

"(1) Wine shall –

- (a) be produced from **[fresh]** grapes of a prescribed cultivar **[that are in such a condition that, after having been pressed, alcoholic fermentation can occur in the undiluted juice thereof];**

(b) be produced by –

- (i) the alcoholic fermentation, in accordance with generally accepted cellar practices, of the juice of such **[fresh]** grapes or of reconstituted iuice obtained from a concentrate of the iuice of such grapes or of a mixture of such iuice and such reconstituted juice;

- (ii) completing or terminating such alcoholic fermentation; or
 - (iii) the addition of a prescribed spirit derived from grapes, to such **[the] juice or such fermenting or fermented iuice [of such fresh grapes];** and
- (c) be produced in such a manner that it complies with the prescribed requirements for wine or a particular prescribed class thereof."

Insertion of section 6A in Act 60 of 1989

5. The following section is hereby inserted in the principal Act after section 6:

"Requirements regarding other fermented beverages

6A. (1) An other fermented beverage shall –

- (a) be produced by the alcoholic fermentation in the prescribed manner of a prescribed substance;
- (b) be produced by the application of the prescribed production processes only;
- (c) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned;
- (d) not be produced from grapes; and
- (e) not be wine, an alcoholic fruit beverage, a spirit, a **grape-based** liquor or a spirit-based liquor.

- (2) An 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, any substance other than a substance prescribed for this purpose; and

(b) so add or remove a substance so prescribed, 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 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.”; and

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

“(c) use the word or expression “alcoholic fruit beverage”, “alkoholiese vrugtedrank”, “grape-based liquor”, “druifbasisdrank”, “spirit-based liquor” or “spiritusbasisdrank”, [**“specially authorized liquor” or “spesiaal gemagtigde drank”**], unless it forms part of a class designation for the liquor product concerned;”.

Insertion of section 13 in Act 60 of 1989

8. 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 board 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

9. 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 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 16 of Act 60 of 1989

10. Section 16 of the principal Act is hereby amended -

- (a) by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

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

- (b) by the substitution for subparagraph (i) of paragraph (a) of subsection (3) of the following subparagraph:

"(i) the product concerned is wine, an alcoholic fruit beverage, an other fermented beverage, a spirit, a grape-based liquor or a spirit-based liquor; and";

- (c) by the deletion of subparagraph (iv) of paragraph (b) of subsection (3); and

- (d) 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 of 1989

11. Section 17 of the principal Act is hereby amended -

- (a) by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

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

- (b) 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 has in the prescribed manner found the product concerned to be suitable for export."; and

- (c) 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."

Amendment of section 23 of Act 60 of 1989, as amended by section 4 of Act 11 of 1993

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

- (a) by the substitution for paragraphs (a), (b) and (c) of subsection (1) of the following paragraphs:

- "(a) contravenes or fails to comply with a provision of section 4(1), 5(3)(a), 6(3)(a), 6A(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);
- (b) contravenes or fails to comply with a provision of section 5(3)(b), 6(3)(b), 6A(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)]**, **1 [4]**, or 5(b), 13(1) or (3), 16(4) or (5), 17(4) or 28(3)(a);" and
- (b) 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), **(9)** 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

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 paragraphs after paragraph (l) of subsection (1):

“(m) the gauging and marking of tanks, casks and other receptacles used in the production and storage of liquor products;

(n) the circumstances or conditions under which the administering officer or the board, as the case may be, may allow for a relaxation of a requirement in terms of a regulation or a scheme.”.

General amendment to Act 60 of 1989

15. The principal Act is hereby amended -

- (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; and
- (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.

Transitional provision

16. Members of the board in office immediately prior to the commencement of the Liquor Products Amendment Act, 2005, shall remain in office until the appointment of members of the board under this Act as amended by the provisions of the Liquor Products Amendment Act, 2005.

Short title and commencement

17. (1) This Act shall be called the Liquor Products Amendment Act, 2005, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.