

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. 31050 of 12 May 2008)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 22—2008]

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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 composition of the Wine and Spirit Board; to amend the requirements regarding wine; 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 provide for compliance with international obligations; and to extend the Minister's power to make regulations; 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 “**container**” of the following definition:

“‘**container**’ means a [**receptacle**] container with a capacity not exceeding [**5**] five litres;”;

(b) by the substitution for the definition of “**department**” of the following definition: 10

“‘**department**’ means the Department of [**Agricultural Economics and Marketing**] Agriculture;”;

(c) by the substitution for the definition of “**grapes**” of the following definition: 15

“‘**grapes**’ means fruit of plants of *Vitis* [**vinifera**];”;

(d) by the insertion after the definition of “**import certificate**” of the following definition:

“‘**international obligations**’ includes the Trade-Related Intellectual Property Rights or the Wine and Spirit Agreement;”.

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 subsection (2) of the following subsection:

“(2) (a) The board consists of—

- (i) at least eight members with the relevant knowledge, skills or expertise in viticulture, oenology, distilling, regulatory environment of the liquor industry, liquor production, food safety or microbiology; 5
- (ii) three officers of the Department nominated by the Department; 10
- (iii) one person nominated by the Agricultural Research Council; and
- (iv) one person designated by the Minister. 15

(b) The Minister shall appoint the members of the board contemplated in paragraph (a)(i) subject to paragraph (d), and shall designate one of the members of the board as chairperson.

(c) The Minister shall notify Parliament in writing of the appointment of the members of the board within 30 days after such an appointment. 15

(d) The process for the appointment of the members of the board 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 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); 20
- (ii) the Minister shall establish a selection committee consisting of at least four persons and designate a chairperson for the committee; and 25
- (iii) the selection committee shall, from the nominations submitted to it, compile a short-list of eligible candidates and submit its recommendation to the Minister for the appointment of members to the board.”; 30

(b) by the substitution for subsection (3) of the following subsection:

“(3) No person shall be appointed as a member **[or alternate member]** of the board—

- (a) unless he or she is a South African citizen permanently resident in the Republic; 35
- (b) if he or she is an unrehabilitated insolvent;
- (c) if he or she has more than once been convicted of an offence under this Act; or
- (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.”; 40

(c) by substitution for subsection (4) of the following subsection:

“(4) (a) A member **[or an alternate member]** of the board shall hold **[his]** office, subject to **[the provisions of]** subsection (5),[—

- (i) **in the case of an officer, at the Minister’s pleasure; and** 45
- (ii) **in any other case, for such period, but]** for a period not exceeding **[five years, as the Minister may determine at the time of appointment of that member or alternate member]** three years, and such member **[or alternate member]** shall after the expiration of **[the said]** such period, continue in office **[for a further period, but not exceeding three months,]**, until his or her successor has been appointed. 50

(b) If a member **[or an alternate member]** of the board ceases to hold office for any reason, the Minister may, subject to **[the provisions of]** subsection (2), appoint any person in his or her place for the unexpired period of his or her term of office. 55

(c) Any person whose term of office as a member **[or alternate member]** of the board has expired, shall be eligible for reappointment without complying with the process contemplated in subsection (2)(d).

(d) A member of the board may not serve than two consecutive terms.”; 60

- (d) by substitution for subsection (5) of the following subsection:
- “(5) (a) A member **[or an alternate member]** of the board shall vacate **[his]** office, if he or she—
- (i) **[if he becomes subject to any disability mentioned in]** becomes disqualified in terms of subsection (3); 5
 - (ii) **[if he]** becomes of unsound mind;
 - (iii) **[if, in the case of a member, he]** has been absent from more than two consecutive meetings of the board without the leave of the **[chairman]** chairperson
 - [(iv) if, in the case of a member or an alternate member nominated by a body specified in subsection (2)(a)(i), (ii) or (iv), the body 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].** 10
- (b) **[The]** Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may at any time remove a member **[or an alternate member]** of the board from **[his]** office if in the opinion of the Minister, sound reasons exist for doing so.”; 15
- (e) by the substitution for subsection (6) of the following subsection:
- “(6) **[(a) The member referred to in subsection (2)(a)(v) shall be the chairman of the board.]** 20
- (b) The members of the board shall at the first meeting of the board, and thereafter whenever necessary, elect a **[vice-chairman]** deputy chairperson from [among the members referred to in subsection (2)(a)(i), (ii), (iii) and (iv)] amongst themselves. 25
- (c) If both the **[chairman]** chairperson and the **[vice-chairman]** deputy chairperson are absent from a meeting of the board, the members present shall from **[among their number]** amongst themselves elect a **[person]** member to preside at **[that]** such meeting.”; and 30
- (f) by the substitution for subsection 9 of the following subsection: 30
- “(9) **[There may be paid to a member and an alternate member of the board and]** A member 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, shall be paid from the funds of the board such allowances as the Minister may, with the concurrence of the Minister of Finance, determine in general or in any particular case.” 35

Amendment of section 4 of Act 60 of 1989

3. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) No person shall sell or produce for sale any product— 40
- (a) with an alcohol content of more than one per cent for drinking purposes [,] ;
 - or
 - (b) in a powder form, which, combined with any substance or liquid, will have an alcohol content of more than one per cent and is intended for drinking purposes, 45
- unless that product is a liquor product.”.

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 be produced— 50
- (a) **[be produced from fresh]** from 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— 55
 - (i) the alcoholic fermentation, in accordance with generally accepted cellar practices, of the juice of **[such fresh]** grapes contemplated in paragraph (a) or the reconstituted juice obtained from a concentrate of the juice of such grapes or of a mixture of such juice and such reconstituted juice;
 - (ii) completing or terminating such alcoholic fermentation; or

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

Amendment of section 11 of Act 60 of 1989

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5. 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 prescribed particulars of such liquor product are indicated in the prescribed manner on the label **[thereof]** of such container and on the package of such container.”.

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Insertion of section 13A in Act 60 of 1989

6. The following section is hereby inserted in the principal Act before section 14:

“Restriction on use of geographical names

13A. (1) The Minister may, taking into account the Republic’s international obligations or agreements with other countries, by notice in the *Gazette*, restrict 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.

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

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- (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 any similar expression.”.

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Amendment of section 14 of Act 60 of 1989

7. 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]** authorisations for the use of particulars referred to in section 11(3)(a) and (4) in connection with the sale of the said liquor products.”.

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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 (3) for paragraph (a) of the following paragraph:

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“(a) Subject to **[the provisions of]** paragraph (b) and the international obligations of the Republic, an import certificate shall be issued only if—

- (i) the product concerned is wine, an alcoholic fruit beverage, a spirit, a grape-based liquor or a spirit-based liquor; and
- (ii) in the case of a product imported in the containers in which it is to be sold in the Republic, the **[labels]** particulars on those containers and on the package of such containers comply with the applicable requirements of this Act.”;

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

- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

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“(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

9. Section 17 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph: 5

“(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.”.

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

10. Section 23 of the principal Act is hereby amended 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] less than two years or to both [that] a fine and [that] such imprisonment; 15
- (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] less than four years or to both [that] a fine and [that] such imprisonment; 20
- (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] less than six months or to both [that] a fine and [that] such imprisonment; and 25
- (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] less than one year or to both [that] a fine and [that] such imprisonment.”. 30

Amendment of section 27 of Act 60 of 1989

11. Section 27 of the principal Act is hereby amended by the addition of the following paragraphs: 35

- “(m) the quantity and marking of tanks, casks and other receptacles used in the production and storage of liquor products;
- (n) the circumstances and 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.”. 40

Transitional provision

12. Any member of the board in office immediately prior to the commencement of this Act, shall remain in office until the appointment of the members of the board in terms of the Liquor Products Act, 1989 (Act No. 60 of 1989), as amended by this Act.

Short title and commencement 45

13. This Act is called the Liquor Products Amendment Act, 2008, and comes to operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LIQUOR PRODUCTS AMENDMENT BILL, 2008

1. BACKGROUND

The Liquor Products Amendment 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 alcoholic products for drinking purposes, the composition and properties for such products, the use of certain particulars in connection with the sale of such products, for the establishment of schemes and for control over the import and export of such products.

2. OBJECTS

The Bill seeks to—

- (a) amend the composition of the Wine and Spirit Board (hereinafter referred to as “the Board”) to ensure representivity of the entire industry;
- (b) formalise the custom that the Board, in advising the Minister on any aspect of the Act falling outside the ambit of schemes, first consults with interested parties;
- (c) make provision that products, intended to form alcohol after their sale to the consumer (e.g. by the addition of warm water to a prepared powder) also fall under the Act;
- (d) amend the requirements for wine to conform to international standards and trends. This includes the proposal that wine can be made from all grapes of the genus *Vitis*, not only from the species *vinifera* as is the case at present;
- (e) authorise that a prescribed requirement may also be required on an outer container (*box*) and on a liquor product’s primary container other than on the label. This is to enable the compulsory lot marking of containers to conform to international traceability standards and to help prevent and trace adulteration and fraudulent practices;
- (f) create the framework for compliance with the Republic’s international obligations in respect of geographical indications;
- (g) clarify that schemes, which are all administered by the Board, may only be established in respect of liquor products derived from grapes;
- (h) ensure that the importation of liquor products is subject to the Republic’s international obligations. This is to give effect to current (e.g. the Agreement between the European Community and the Republic of South Africa on Trade in Wine) and future international agreements;
- (i) make provision for regulations relating to the quantity and marking of receptacles used in the production and storage of liquor products. This proposed authorisation is for more effective application of the Act and to help prevent and trace adulteration and fraudulent practices; and
- (j) make provision for regulations to allow for a relaxation of a requirement of a regulation or a scheme so as to enable more flexible application of this legislation.

3. CONSULTATION

In-depth consultations with the Wine and Spirit Board and a representative wine industry working group took place. The draft Bill with an invite for comments was published in the *Government Gazette* of 25 November 2005. All comments received were incorporated to the satisfaction of both the commenting parties.

4. FINANCIAL IMPLICATION FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Agriculture 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 section 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.