

**Liquor Act 59 of 2003 (LA)
Read with the
Eastern Cape Liquor Act 10 of 2003
Free State Gambling and Liquor Act 6 of
2010
Gauteng Liquor Act 2 of 2003
KwaZulu-Natal Liquor Licensing Act 6 of
2010
Mpumalanga Liquor Licencing Act 5 of 2006
Northern Cape Liquor Act 2 of 2008
Western Cape Liquor Act 4 of 2008
(Provincial Liquor Acts)**

Topic: Liquor

IN A CALABASH

Introduction

The abuse and over-consumption of liquor products can lead to a variety of negative effects, including the breakdown of a family unit, unwanted pregnancies, foetal deformities, accidents as a result of persons driving under the influence of liquor and general disruption and nuisance.

Liquor products are taxed quite heavily. The manufacture and sale of these products need to be controlled in order to ensure that all taxes are correctly and timeously paid.

There are a series of liquor laws in South Africa which seek to regulate the manufacture, distribution and sale of liquor products.

The Liquor Act 59 of 2003 (LA) applies across the whole of South Africa and regulates the manufacture and wholesale sale of liquor products.

The Provincial Liquor Acts apply in the provinces of South Africa and seek to control the distribution and retail sale of liquor to consumers.

Objectives of the Acts

The National and Provincial Liquor Acts seek to reduce the socio-economic and other costs of alcohol abuse by setting national and provincial norms and standards in the liquor industry.

The regulation of the manufacture, wholesale and retail distribution and sale of liquor is done through a strictly controlled licensing regime.

These Acts seek to promote the development of a responsible and sustainable liquor industry in a manner that facilitates the entry of new participants into the industry, encourages diversity of ownership in the industry and establishes an ethos of social responsibility.

Application of the Acts and their implication to Tourism

The Acts apply to all persons who manufacture, label, market, advertise, distribute and sell liquor products in South Africa.

These acts apply specifically to a large number of role players who operate within the tourism industry including hotels, bars and restaurants, venue owners and people who offer tourism-related services like tours, accommodation leisure and entertainment.

Should any of these persons sell liquor products to their clients or patrons, this sale must be done under a specific liquor license.

Summary of the provisions of the Acts

Categories of registration and qualifications

There are various types of licenses available in respect of the manufacture, distribution and sale of liquor products.



The licenses available under the NLA are–

- manufacturer licenses; and
- distributor licenses.

The licenses available under the Provincial Liquor Acts are–

- hotel liquor licenses;
- restaurant liquor licenses;
- theatre liquor licenses;
- club liquor licenses;
- tavern liquor licenses;
- pool club licenses;

- dance hall liquor licenses;
- nightclub liquor licenses;
- pub liquor licenses;
- gaming premises liquor licenses;
- sorghum beer licenses;
- sports club liquor licenses;
- wholesale liquor licenses;
- micro manufacturer's licenses;
- grocer's wine licenses;
- liquor store licenses; and
- sorghum beer licenses (off-consumption)

Any license type must be applied for under the Provincial Liquor Act applicable where your operation is located in the prescribed manner and form.

Regulation of manufacture and wholesale distribution of liquor under the LA

A person must not manufacture or distribute liquor unless he or she holds a liquor license.

Anyone who wants to apply for a license to manufacture and/or distribute liquor must apply to the National Liquor Board for a license.

Regulation of the micro manufacture and distribution of liquor

A micro-manufacturer will require a license to manufacture and distribute the liquor to another manufacturer, distributor or retail seller, if and to the extent permitted by the conditions of registration.

Regulation of the retail sale of liquor under the Provincial Liquor Acts

A person must not distribute or sell liquor to a consumer from a retail outlet, unless the outlet holds a retail liquor license.

A liquor retailer must apply for a retail liquor license by submitting the required application to the provincial liquor board under the applicable Provincial Liquor Act.

When a person operates a retail liquor outlet, the Act applicable in the province where the liquor retail outlet is situated must be complied with.

The application for a retail liquor license will be made in accordance with that provincial liquor Act and submitted to the provincial liquor board which has been established in that province.

Disqualifications from applying for a license

Any person may apply for a liquor license, except a person who—

- is a minor at the date of submitting the application for registration;
- is an unrehabilitated insolvent;
- has been committed in terms of the Mental Health Act 18 of 1973 at the time of application;
- has been convicted of a contravention of any of the Liquor Acts within the three years immediately preceding the date of application; or
- has been convicted of an offence, the elements of which are inconsistent with the objects and purposes of the Acts.

Conditions of registration

Before a license is granted, the Minister must consider on receipt of any license application—

- the commitments made by the applicant in terms of black economic empowerment;
- the applicant's proposed contribution to combating alcohol abuse, including whether the applicant has subscribed to any industry code of conduct approved by the Minister; and
- the extent to which the proposed registration will materially restrict or promote—
 - o new entrants to the liquor industry;
 - o job creation within the liquor industry;
 - o diversity of ownership within the liquor industry;
 - o efficiency of operation of the liquor industry;
 - o exports; or
 - o competition within the liquor industry.

Before proposing any conditions on a registration, the Minister must consult the Competition Commission and publish a notice inviting public submissions concerning the application.

A license may be subject to prescribed conditions.

Certificate, validity and public notice of registration

Once registered, the license holder will be given a certificate of registration, the details of which will be recorded in the register.

A valid certificate of registration or a certified copy of it is sufficient proof that the registrant is registered.

Cancellation of registration



A registration may be cancelled under the following circumstances–

- if the registrant voluntarily applies for a cancellation;
- as a consequence of sequestration, winding-up or dissolution of the registrant;
- if the registrant becomes disqualified;
- if the registrant does not comply with a condition of registration;
- if the registrant repeatedly breaches the provisions of a variety of laws or repeatedly fails to meet a commitment;
- if the registrant does not comply with the provisions of the applicable Act; or
- if the registrant has been served a compliance notice and has failed to comply with it.

If the Minister has cancelled a registration, he or she must notify the former registrant in writing of–

- the cancellation;
- the reasons for the cancellation; and
- the date of cancellation.

National record of registrations

The Minister must establish and maintain a register of all persons who have been registered under the Acts including those whose registration has been transferred, altered or cancelled.

Registered activities from registered premises

Once a person has received a license to manufacture, distribute or sell liquor, registered activities may only be carried out from the registered premises and in accordance with the regulations or any applicable conditions of registration.

A registrant may only store liquor in registered premises and in accordance with the regulations or any applicable conditions of registration.

Transfer of registration

A license may be transferred to another person on application to the applicable Liquor Board and subject to the provisions of the applicable Liquor Act.

If two or more registered persons establish a joint venture to hold a category of registration that is different from the category held by either of them, a fresh application for registration must be filed in the name of the joint venture.

Prohibition of impotable substance

A person must not manufacture, sell or supply any substance under the name of any liquor or methylated spirits if that substance is not liquor or methylated spirits.

A person must not manufacture, sell or supply as liquor any impotable substance, add an impotable substance to liquor or sell or supply any liquor to which an impotable substance has been added.

Prohibitions regarding employment in liquor industry

Despite any law or agreement to the contrary, a registered person must not employ a person who has not yet attained the age of 16 in any activity relating to the manufacture or distribution of liquor or methylated spirits unless the employee is undergoing training or a learnership contemplated in the Skills Development Act 97 of 1998.

Despite any agreement to the contrary, an employer must not–

- supply liquor or methylated spirits to any person as an inducement to employment;
- supply liquor or methylated spirits to an employee as or in lieu of wages or remuneration;
- deduct from an employee's wages or remuneration any amount relating to the cost of liquor or methylated spirits supplied to the employee or to a person on behalf of the employee; or
- purchased by or on behalf of the employee.

Advertising restrictions

A person must not advertise any liquor in a false or misleading manner or in a manner intended to target or attract minors.

Prohibition of supply of liquor or methylated spirits to minor

A person must not sell or supply liquor to a minor.

A person must take reasonable measures to determine accurately whether or not a person is a minor before selling or supplying liquor or methylated spirits to that person.



WHAT HAPPENS IF YOU DO NOT COMPLY?

It is a criminal offence to contravene or fail to comply with the various provisions of the LA or the Provincial Liquor Acts or any condition of any liquor license or registration.

Any person who contravenes or fails to comply with a provision of the Acts will be liable on conviction to a fine not exceeding R500 000 or to imprisonment for a period not exceeding one year.

A court that has convicted a person of an offence must order the forfeiture to the State of any liquor manufactured, distributed or sold by that person which is contrary to the applicable Act or any license condition, and the liquor will be–

- destroyed at the cost of the person from whom it was seized; or

- sold to a registered person, in accordance with any law regulating disposal of forfeited goods.

The fact that a person issued instructions prohibiting an act or omission is not proof that all reasonable steps were taken to prevent such act or omission.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACTS

- Application for a license;
- Compliance with license conditions;
- No sale of liquor to minors;
- Responsible and honest liquor advertising content;
- Warning labels on all liquor labelling; and
- No employment of minors.

FURTHER INFORMATION

Regulators

Department of Health
Department of Trade and Industry
National Liquor Authority

Website

www.thedti.gov.za/business_regulation/nla_act.jsp