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IPHONDO LOMNTLA KOLONI

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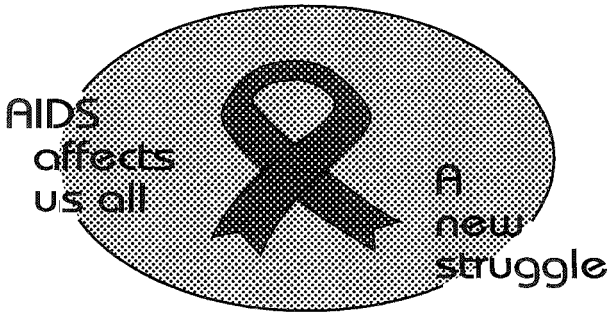

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PREMIER'S NOTICE

No. 9 **21 September 2010**

OFFICE OF THE PREMIER

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information.

No. 2 of 2010: Northern Cape Liquor Amendment Act, 2010

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.

ACT

To amend the Northern Cape Liquor Act, 2008, so as to substitute certain business hours; to insert special penalties for certain behaviour of licensees; to realign certain functions of municipalities regarding the certification of land usage; to create a less cumbersome procedure for the conversion of old liquor licences; and to provide for matters connected therewith.

BE IT ENACTED by the Northern Cape Provincial Legislature as follows:-

Amendment of section 17 of Act No. 2 of 2008

1. Section 17 of the Northern Cape Liquor Act, 2008 (Act No. 2 of 2008) (hereinafter referred to as the "Principal Act"), is hereby amended by –

(a) the substitution for subsection (4) of the following subsection:

"(4) The holder of a liquor license contemplated in subsection (1), may sell liquor on the licensed premises between 10:00 and **[24:00]** 02:00, Monday to Sunday and no liquor may be consumed on the licensed premises for a period of more than 30 minutes after **[24:00]** 02:00.";

(b) the substitution for paragraph (b) of subsection (5) of the following subsection:

"(b) between 08:00 and **[17:00]** 20:00 on a Saturday or a public holiday other than a closed day.";

(c) the addition of the following subsections:

"(8) The Board may, after conducting an investigation, determine more stringent business hours applicable to the holder of a liquor license contemplated in subsection (1) or (2), and must endorse the license concerned accordingly, if the complaint investigated relates to –

(a) the sale, supply or consumption of liquor on the licensed premises in terms of this Act at a time when the sale, supply or consumption of liquor on the licensed premises is not permitted in terms of this Act; or

(b) unlawful, obnoxious or rowdy behavior of patrons on or in the immediate proximity of the licensed premises.

(9) The provisions of subsection (8) do not derogate from any sanction the Board may impose in terms of section 36 and for the purpose of an investigation contemplated in subsection (8), the provisions of section 36(1)(a), read with the changes required by the context, apply.".

Amendment of section 20 of Act No. 2 of 2008

2. Section 20 of the Principal Act is hereby amended by –

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

"(g) documentary proof of any land usage restriction applicable to the premises concerned, or the absence of such restriction, originating from –

(i) the title deed of the land;

(ii) the founding conditions of a township or other subdivision of land;

(iii) a town planning scheme or other spatial planning document;

(iv) a law;

(v) any other source.";

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

"(3) The Board must, within 14 days after receipt of the application, forward a copy of the application to the municipality concerned for the attention of the ward councillor and ward committee for purposes of consultation with the community concerned.[**and the comments of the municipality must be forwarded to the Board within 30 days after the application was forwarded to the municipality**]"; and

(c) the addition of the following subsection:

"(4) The comments of the municipality contemplated in subsection (3), if any, detailing –

(a) health and safety considerations regarding the intended use of the erf; and

(b) any other matter the local municipality may deem necessary to be part of the report to enable the Board to make an informed decision regarding an application for a license,

must be forwarded to the Board within 30 days after the application was forwarded to the municipality.".

Amendment of section 22 of Act No. 2 of 2008

3. Section 22 of the Principal Act is hereby amended by –

(a) the substitution for the heading of the following heading:

"**Consideration of applications and fees**";

(b) the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) if the granting of the liquor license will not be against or contrary to **[the public interest]** =

(i) the permissible land usage of the premises concerned; or

(ii) public or community interest."; and

(c) the addition of the following subsections:

"(3) A fee payable to the Board in terms of this Act does not accrue to the Board, but to the Provincial Revenue Fund and must be received or collected, as the case may be, by the Department.

(4) The Department must issue a receipt for every payment received and forthwith provide the Board with a copy thereof.

(5) To enable the Department to receive or collect a fee contemplated in subsection (3), the Board must provide the Department with full particulars of –

(a) every liquor license already issued;

(b) every new liquor license issued;

(c) every liquor license that has lapsed;

(d) every liquor license that has been cancelled;

(e) every liquor license that has been transferred to another person; and

(f) every liquor license converted by the Board in terms of section 55.

(6) For the purpose of this section "**Department**" means the Department of the Northern Cape Provincial Government responsible for liquor matters.".

4. **Amendment of section 54 of Act No. 2 of 2008**

Section 54 of the Principal Act is hereby substituted by the following section:

"**Transitional arrangements**

54. Any application for the issuing of a license made before the commencement of this Act, is to be disposed of in terms of the Liquor Act, 1989 (Act No. 27 of 1989), as if that Act is still applicable, but –

(a) the Board must dispose, or further dispose of such application; and

(b) such license must be converted in the manner and within the period provided for in section 55.".

Amendment of section 55 of Act No. 2 of 2008

5. Section 55 of the Principal Act is hereby amended by –

(a) the substitution for subsections (3) and (4) of the following subsections:

"(3) If no such provision is made, the licensee must, within a period of [**6 months**] one year after the coming into operation of this Act, apply to the Board for the conversion of such license to a license of a kind provided for in section 16 nearest in description to the original license.

(4) An application for the conversion of a liquor license contemplated in subsection (2) or (3) must –

(a) be lodged with the Board by hand or by registered post on the prescribed form; and

(b) be accompanied by proof of payment of the prescribed fee over and above any annual fee payable on the existing license or the license after conversion thereof,

and for the purpose of such conversion, the provisions of sections 20(1)(g), 22(1)(a), (c) and (d) and 29 apply, read with the changes required by the context.";

(b) the insertion of subsections (5), (6), (7), (8) and (9) after subsection (4):

"(5) On receipt of an application for the conversion of a liquor license, the Board must consider the application and -

(a) approve the application; or

(b) subject to subsection (6), reserve its decision.

(6) If the Board reserves its decision, it must provide the applicant in writing with its reasons for not approving the application.

(7) The applicant may, within 30 days after being provided with the reasons contemplated in subsection (6), provide the Board with written representations dealing with the reasons.

(8) If representations are received within the period referred to in subsection (7), the Board must consider the representations and –

(a) approve the application; or

(b) refuse the application.

(9) If representations are not received within the period referred to in subsection (7), it shall be deemed that the Board has refused the application with effect from the day following the last day on which such representations must have been provided to the Board."; and

(c) the renumbering of the existing subsection (5) to subsection (10).

Short title

6. This Act is called the Northern Cape Liquor Amendment Act, 2010.

No. 9 **21 September 2010**

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vetdruk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Noord-Kaap Drankwet, 2008, ten einde sekere besigheidstye te vervang; om spesiale strawwe vir sekere handelinge van lisensiehouers in te voeg; om sekere werksaamhede van munisipaliteite aangaande die sertifisering van grondgebruik te herskik; om 'n minder moeisame proses vir omskakeling van ou dranklisensies te skep; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Provinsiale Wetgewer van die Noord-Kaap, soos volg:-

Wysiging van artikel 17 van Wet No. 2 van 2008

1. Artikel 17 van die Noord-Kaap Drankwet, 2008 (Wet No. 2 van 2008) (hierna die "Hoofwet" genoem), word hierby gewysig deur –

(a) subartikel (4) deur die volgende subartikel te vervang:

"(4) Die houer van 'n dranklisensie in subartikel (1) bedoel, kan drank op die gelisensieërde perseel tussen 10:00 en [**24:00**] 02:00, Maandag tot Sondag verkoop, en geen drank mag vir langer as 30 minute na [**24:00**] 02:00 op die gelisensieërde perseel verbruik word nie.";

(b) paragraaf (b) van subartikel (5) deur die volgende paragraaf te vervang:

"(b) tussen 08:00 en [**17:00**] 20:00 op 'n Saterdag of openbare vakansiedag wat nie 'n geslote dag is nie.";

(c) die byvoeging van die volgende subartikels:

"(8) Die Raad kan, nadat hy 'n ondersoek gehou het, strenger besigheidstye van toepassing op die houer van 'n dranklisensie in subartikel (1) of (2) bedoel bepaal, en die betrokke lisensie dienooreenkomstig endosseer, indien die klagte wat ondersoek word verband hou –

(a) met die verkoop, verskaffing of verbruik van drank op die gelisensieërde perseel kragtens hierdie Wet op 'n tyd wanneer die verkoop, verskaffing of verbruik van drank op die gelisensieërde perseel nie kragtens hierdie Wet toegelaat word nie; of

(b) met onregmatige, aanstootlike of oproerige gedrag van klante op of in die onmiddellike omgewing van die gelisensieërde perseel.

(9) Die bepalings van subartikel (8) doen nie afbreuk aan enige sanksie wat die Raad kragtens artikel 36 kan oplê nie en vir die doel van 'n ondersoek in subartikel (8) bedoel, geld die bepalings van artikel 36(1)(a), gelees met die veranderinge deur die samehang genoodsaak.".

Wysiging van artikel 20 van Wet No. 2 van 2008

2. Artikel 20 van die Hoofwet word hierby gewysig deur –

(a) paragraaf (g) van subartikel (1) deur die volgende paragraaf te vervang:

"(g) dokumentêre bewys van enige grondgebruikbeperking wat op die perseel van toepassing is, of die afwesigheid daarvan, uit hoofde van –

(i) die titelakte van die grond;

(ii) die stigtingsvoorwaardes van 'n dorp of ander onderverdeling van grond;

(iii) 'n dorpsaanlegskema of ander ruimtelike beplanningsdokument;

(iv) 'n wet;

(v) enige ander bron.";

(b) subartikel (3) deur die volgende subartikel te vervang:

"(3) Binne 14 dae na ontvangs van die aansoek verwys die Raad, vir aandag van die wyksraadslid en wykskomitee vir oorlegpleging met die betrokke gemeenskap, 'n afskrif van die aansoek na die betrokke munisipaliteit.[**en die kommentaar van die munisipaliteit moet, binne 30 dae nadat die aansoek na die munisipaliteit verwys is, na die Raad terugverwys word**]; en

(c) die byvoeging van die volgende subartikel:

"(4) Die kommentaar van die munisipaliteit in subartikel (3) bedoel, indien enige, wat handel met –

(a) gesondheids- en veiligheidsoorwegings rakende die voorgenome gebruik van die erf; en

(b) enige ander saak wat die plaaslike munisipaliteit nodig ag om deel uit te maak van die verslag ten einde die Raad in staat te stel om 'n ingeligte besluit oor die aansoek vir 'n lisensie te neem,

moet binne 30 dae nadat die aansoek na die munisipaliteit verwys is, na die Raad terugverwys word.".

Wysiging van artikel 22 van Wet No. 2 van 2008

3. Artikel 22 van die Hoofwet word hierby gewysig deur –

(a) die opskrif deur die volgende opskrif te vervang:

"**Oorweging van aansoeke en gelde**";

(b) paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:

"(d) of die toestaan van die lisensie nie teen of in stryd **[met die openbare belang]** sal wees –

(i) met die toelaatbare grondgebruik van die betrokke perseel nie; of

(ii) met openbare of gemeenskapsbelang nie."; en

(c) die byvoeging van die volgende subartikels:

"(3) Gelde betaalbaar aan die Raad kragtens hierdie Wet val nie die Raad toe nie, maar die Provinsiale Inkomstefonds en word, na gelang van die geval, deur die Departement ontvang of ingevorder.

(4) Die Departement reik 'n kwitansie uit vir elke betaling ontvang en voorsien sonder versuim 'n afskrif daarvan aan die Raad.

(5) Ten einde die Departement in staat te stel om gelde in subartikel (3) bedoel te ontvang of in te vorder, verskaf die Raad aan die Departement volle besonderhede van –

(a) elke dranklisensie reeds uitgereik;

(b) elke nuwe dranklisensie wat uitgereik word;

(c) elke dranklisensie wat verval het;

(d) elke dranklisensie wat gekanselleer is;

(e) elke dranklisensie wat na iemand anders oorgedra is; en

(f) elke dranklisensie deur die Raad kragtens artikel 55 omgeskakel.

(6) Vir die doel van hierdie artikel beteken "**Departement**", die Departement van die Noord-Kaapse Provinsiale Regering verantwoordelik vir drankaangeleenthede.".

Wysiging van artikel 54 van Wet No. 2 van 2008

4. Artikel 54 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Oorgangsbepalings**

54. 'n Aansoek vir die uitreiking van 'n lisensie gedoen voor die inwerkingtreding van hierdie Wet, moet kragtens die Drankwet, 1989 (Wet No. 27 van 1989), afgehandel word asof daardie Wet steeds geldend is, maar –

(a) die Raad moet so 'n aansoek afhandel, of verder afhandel; en

(b) so 'n lisensie moet omgeskakel word op die manier en binne die tydperk in artikel 55 voorsien.".

Wysiging van artikel 55 van Wet No. 2 van 2008

5. Artikel 55 van die Hoofwet word hierby gewysig deur –

(a) subartikels (3) en (4) deur die volgende subartikels te vervang:

"(3) Indien geen sodanige voorsiening gemaak word nie, moet die lisensiehouer binne 'n tydperk van [**6 maande**] een jaar nadat hierdie Wet in werking getree het, by die Raad aansoek doen vir die omskakeling van die lisensie na 'n lisensie van 'n soort in artikel 16 bedoel, naaste aan die omskrywing van die oorspronklike lisensie.

(4) 'n Aansoek vir die omskakeling van 'n dranklisensie in subartikel (2) of (3) bedoel moet –

(a) op die voorgeskrewe vorm by die Raad per hand of per geregistreerde pos ingedien word; en

(b) vergesel gaan van bewys van betaling van die voorgeskrewe geld bo en behalwe die jaargeld betaalbaar op die bestaande lisensie of die lisensie na omskakeling,

en vir die doel van die omskakeling, geld die bepalings van artikels 20(1)(g), 22(1)(a), (c) en (d) en 29, gelees met die veranderinge deur die samehang genoodsaak.";

(b) die invoeging van subartikels (5), (6), (7), (8) en (9) na subartikel (4):

"(5) By ontvangs van 'n aansoek vir die omskakeling van 'n dranklisensie, oorweeg die Raad die aansoek en -

(a) keur die aansoek goed; of

(b) behou sy besluit, behoudens subartikel (6) voor.

(6) As die Raad sy besluit voorbehou, verskaf hy aan die aansoeker skriftelik redes waarom hy nie die aansoek goedgekeur het nie.

(7) Die aansoeker kan, binne 30 dae nadat die redes in subartikel (6) bedoel aan hom of haar verskaf is, die Raad van skriftelike vertoë wat met die redes handel voorsien.

(8) As vertoë binne die tydperk in subartikel (7) genoem ontvang word, oorweeg die Raad die vertoë en –

(a) keur die aansoek goed; of

(b) weier die aansoek.

(9) As vertoë nie binne die tydperk in subartikel (7) genoem ontvang word nie, word dit geag dat die Raad die aansoek geweier het met ingang van die dag wat volg op die laaste dag waarop die vertoë aan die Raad voorsien kon word."; en

(c) die hernommering van die bestaande subartikel (5) na subartikel (10).

Kort titel

6. Hierdie Wet heet die Noord-Kaap Drankwysigingswet, 2010.

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