

LIQUOR PRODUCTS ACT 60 OF 1989[/SAPL4]

[ASSENTED TO 17 MAY 1989] [DATE OF COMMENCEMENT: 1 JULY 1990]

(Afrikaans text signed by the State President)

as amended by

Liquor Products Amendment Act 11 of 1993

Regulations under this Act

REGULATIONS RELATING TO FEES  
RESERVATION WITH REGARD TO INDICATION OF ORIGIN OF GRAPES IN CONNECTION  
WITH SALE OF WINE

ACT

To provide for control over the sale and production for sale of certain alcoholic products, the composition and properties of such products and the use of certain particulars in connection with the sale of such products; for the establishment of schemes; for control over the import and export of certain alcoholic products; and for matters connected therewith.

[a60y1989s1]

**1. Definitions**

In this Act, unless the context otherwise indicates-

'administering officer' means the administering officer who has been designated under section 3;

'advertisement', in relation to a liquor product, means any written, illustrated, visual or other descriptive matter or oral statement, communication, representation or reference which is distributed among members of the public or otherwise brought to their notice, and which is or purports to be intended to promote the sale of a liquor product or to encourage the use thereof or otherwise to draw attention thereto; and 'advertise' has a corresponding meaning;

'alcohol content', in relation to any product, means a percentage of ethyl alcohol per volume of the product;

'alcoholic fruit beverage' means a product which complies with the requirements referred to in section 6;

'analyst' means a person designated under section 20 as an analyst or who is deemed to have been so designated;

'board' means the Wine and Spirit Board established by section 2;

'class designation'-

(a) in relation to wine, an alcoholic fruit 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

(c) 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;

'container' means a receptacle with a capacity not exceeding 5 litres;

'department' means the Department of Agricultural Economics and Marketing;

'Director-General' means the Director-General of the department;

'export certificate' means an export certificate referred to in section 17, or a document which is in terms of the said section deemed to be an export certificate;

'grape-based liquor' means a product which complies with the requirements referred to in section 8;

'grapes' means fruit of plants of *Vitis vinifera*;

'import certificate' means an import certificate referred to in section 16, or a document which is in terms of the said section deemed to be an import certificate;

'label', in relation to a container, means any printing or writing appearing on the container or attached thereto;

'liquor product' means-

- (a) wine;
- (b) an alcoholic fruit beverage;
- (c) a spirit;
- (d) a grape-based liquor;
- (e) a spirit-based liquor;
- (f) a specially authorized liquor; and

(g) 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;

'Minister' means the Minister of Agriculture;

'officer' means an officer as defined in section 1 of the Public Service Act, 1984 (Act 111 of 1984), and includes an employee as so defined;

'prescribed' means prescribed by regulation;

'regulation' means a regulation made under section 27;

'scheme' means a scheme which has been established under section 14;

'sell', includes agree to sell, or offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or to exchange or to dispose of in any way for any consideration; and 'sale' and 'sold' have corresponding meanings;

'specially authorized liquor' means a product in respect of which an authority which has been granted under section 10, or which is deemed to have been so granted, is in force;

'spirit' means a product which complies with the requirements referred to in section 7;

'spirit-based liquor' means a product which complies with the requirements referred to in section 9;

'this Act' includes the regulations;

'wine' means a product which complies with the requirements referred to in section 5.

[a60y1989s2]

## **2. Wine and Spirit Board**

(1) There is hereby established a board to be known as the Wine and Spirit Board, and which shall be a juristic person.

(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';

(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

[Sub-para. (iv) substituted by s. 1 (a) of Act 11 of 1993.]

(v) a person determined by the Minister after consultation with the bodies mentioned in subparagraphs (i) and (ii).

(b) The Minister shall, subject to the provisions of the relevant subparagraph, appoint an alternate member for each of the members referred to in subparagraphs (i), (ii), (iii) and (iv) of paragraph (a).

(c) An alternate member may in the absence of the member for whom he was so appointed, attend any meeting of the board, and act thereat in the place of that member.

(d) Whenever it becomes necessary, the Director-General shall request the bodies mentioned in subparagraphs (i), (ii) and (iv) of paragraph (a) in writing to submit the applicable nominations to him in writing within the period specified in the request.

[Para. (d) substituted by s. 1 (b) of Act 11 of 1993.]

(e) If such body fails to submit the nominations concerned within the period determined in terms of paragraph (d), the Minister may appoint such persons as he may deem fit in the place of the persons required to be nominated by that body.

(3) No person shall be appointed as a member or alternate member of the board-

(a) unless he is a South African citizen permanently resident in the Republic;

(b) if he is an unrehabilitated insolvent;

(c) if he has more than once been convicted of an offence under this Act; or

(d) if he has been convicted of any offence for which he has been sentenced to imprisonment without the option of a fine.

(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

(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 successor has been appointed.

(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 place for the unexpired period of his term of office.

(c) Any person whose term of office as a member or an alternate member of the board has expired, shall be eligible for reappointment.

(5) (a) A member or an alternate member of the board shall vacate his office-

(i) if he becomes subject to any disability mentioned in subsection (3);

(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; or

(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.

[Sub-para. (iv) substituted by s. 1 (c) of Act 11 of 1993.]

(b) 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.

(6) (a) The member referred to in subsection (2) (a) (v) shall be the chairman of the board.

(b) The members of the board shall at the first meeting of the board, and thereafter whenever necessary, elect a vice-chairman from among the members referred to in subsection (2) (a) (i), (ii), (iii) and (iv).

(c) If both the chairman and the vice-chairman are absent from a meeting of the board, the members present shall from among their number elect a person to preside at that meeting.

(7) (a) The first meeting of the board shall be held at a time and place determined by the chairman, and thereafter at such times and places as the board may from time to time determine.

(b) Notwithstanding the provisions of paragraph (a) the chairman of the board may at his discretion call a special meeting of the board at such time and place as he may determine, with a view to dealing with special or urgent matters, and he shall call a special meeting within 14 days of the date on which he has received a written request to this effect from the Minister or at least four members of the board.

(c) The majority of the members of the board shall constitute a quorum for a meeting of the board.

(d) The decision of the majority of the members of the board present at a meeting thereof shall constitute a decision of the board, and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(e) No decision taken by the board or act performed on the authority of the board shall be invalid merely by reason of a vacancy on the board or because a person who was not entitled to sit as a member, sat as such member at the time when the decision was taken or the act was authorized, if the decision was taken or act authorized by the majority of the members present at the time and who were entitled to sit as members of the board.

(8) (a) The board may, either from among its number or in such other manner determined by the board, appoint one or more committees to perform, subject to the directions of the board, such functions of the board as the board may determine, or to advise the board on any matter in respect of which a function is assigned to the board.

(b) The board may at any time dissolve or reconstitute such a committee.

(c) The Government Brandy Board referred to in section 8A of the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), as it exists immediately prior to the commencement of this section shall, as from the date of commencement of this section, be deemed to be a committee

appointed by the board in terms of paragraph (a), and shall from such date be known as the Brandy Evaluation Committee.

(d) The board shall not be divested of any function performed in terms of the provisions of this subsection by any committee of the board.

(e) Any decision of a committee may be withdrawn or amended by the board or referred back to such committee and shall, until it has been so withdrawn or amended, except for the purposes of this paragraph, be deemed to be a decision of the board.

(9) There may be paid to a member and an alternate 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, 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.

(10) (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, the board may-

(i) hire, purchase or otherwise acquire such movable or immovable property as the board may deem necessary for the performance of its functions, and may rent, sell or otherwise dispose of property so acquired;

(ii) from time to time raise money by way of loan for the purpose of performing its functions;

(iii) hypothecate its immovable property as security for a loan referred to in subparagraph (ii);

(iv) insure itself against any loss, damage, risk or liability which it may suffer or incur;

(v) enter into agreements for the performance of specific acts or functions or the rendering of specific services;

(vi) from time to time make recommendations to the Minister concerning any matter to which this Act relates; and

(vii) in general perform such acts as it may deem necessary or expedient for the efficient performance of its functions.

(b) The work incidental to the performance of the functions of the board shall be performed by-

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

(ii) persons with whom the board entered into agreements in terms of paragraph (a) (v).

(c) An agreement entered into under section 20 of the Wine, Other Fermented Beverages and Spirits Act, 1957, prior to the date of commencement of this section and in terms of which a person undertook to perform specified functions on behalf of the Wine and Spirit Board referred to in section 19

of the said Act shall, if still in force immediately prior to such date, be deemed to be an agreement under paragraph (a) (v) between the board and such person.

(11) (a) The funds of the board shall consist of-

- (i) money paid to the board in terms of this Act or a scheme; and
- (ii) money which accrues to the board from any other source.

(b) The board shall utilize its funds for the defrayal of the expenses incurred by the board in the performance of its functions.

(c) The board shall open an account with an institution registered as a bank in terms of the Banking Act, 1965 (Act 23 of 1965), and shall deposit in that account all money received in terms of paragraph (a).

(d) The board may invest any of its money not required for immediate use.

(12) (a) The financial year of the board shall terminate on such date in each year as the board may determine.

(b) The board shall-

(i) cause adequate records to be kept of money received or expended by it, and of its assets, liabilities and financial transactions; and

(ii) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with the appropriate particulars, money received and expenditure incurred by it during, and its assets and liabilities at the end of, the said financial year.

(c) The records and annual financial statements referred to in paragraph (b) shall be audited by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(13) (a) The board shall within six months of the end of each financial year submit to the Minister a copy of the audited annual financial statements referred to in subsection (12) (c), together with a report on the activities of the board during that financial year.

(b) Copies of the annual financial statements and of the report referred to in paragraph (a) shall-

- (i) be open to public inspection at the office of the board during office hours; and
- (ii) be obtainable from the board against payment of the amount determined therefor by the board.

[a60y1989s3]

### 3. Administering officer

(1) The Minister shall designate an officer in the department as administering officer, who shall, subject to the control and instructions of the Minister, exercise the powers and carry out the duties conferred or imposed upon the administering officer by or under this Act.

(2) (a) The administering officer may in writing delegate or transfer to any officer under his control any such power or duty, or in writing authorize any such officer to exercise such power or carry out such duty.

(b) Any decision made or order given by such officer may be withdrawn or amended by the administering officer and shall, until it has been so withdrawn or amended, except for the purposes of this paragraph, be deemed to have been made or given by the administering officer.

[a60y1989s4]

### 4. Restriction on sale of certain alcoholic products

(1) No person shall sell or produce for sale any product with an alcohol content of more than one per cent for drinking purposes, unless that product is a liquor product.

(2) The provisions of subsection (1) shall not apply to-

(a) beer and sorghum beer as defined in section 1 of the Liquor Act, 1989 (Act 27 of 1989); and

(b) medicine as defined in section 1 (1) of the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965).

[a60y1989s5]

### 5. Requirements regarding wine

(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; and

(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; and

(c) be produced in such a manner that it complies with the prescribed requirements for wine or a particular prescribed class thereof.



(2) Wine shall not contain a particular prescribed substance to a greater extent than that prescribed.

(3) No person shall, either before, during or after completion or termination of the alcoholic fermentation referred to in subsection (1) (b)-

(a) add to or remove from the juice of fresh grapes or the wine produced therefrom, 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.

[a60y1989s6]

## **6. Requirements regarding alcoholic fruit beverages**

(1) An alcoholic fruit beverage shall-

(a) be produced from the juice of fresh fruit that is in such a condition that alcoholic fermentation can occur therein without diluting that juice;

(b) except where expressly provided otherwise by regulation-

(i) be produced from the juice of a single kind of fruit only; and

(ii) not be produced from the juice of grapes;

(c) be produced by the alcoholic fermentation of such juice, or of reconstituted juice obtained from a concentrate of such juice, or of a mixture of such juice and such reconstituted juice;

(d) be produced by completing or terminating such alcoholic fermentation;

(e) be produced by the application of the prescribed production processes only; and

(f) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.

(2) An alcoholic fruit beverage shall not contain a particular prescribed substance to a greater extent than that prescribed.

(3) No person shall, either before, during or after completion or termination of the alcoholic fermentation referred to in subsection (1) (c)-

(a) add to or remove from the juice of fresh fruit or the alcoholic fruit beverage produced therefrom, 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.

[a60y1989s7]

## 7. Requirements regarding spirits

(1) A spirit shall-

(a) be produced by the distillation or redistillation, in accordance with the prescribed requirements, of a fermented vegetable article or the distillate obtained therefrom; and

(b) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.

(2) A spirit shall not contain a particular prescribed substance to a greater extent than that prescribed.

(3) No person shall-

(a) add to a spirit any substance other than a substance prescribed for this purpose; and

(b) so add a substance so prescribed, otherwise than in accordance with the prescribed manner or conditions.

[a60y1989s8]

## 8. Requirements regarding grape-based liquors

(1) A grape-based liquor shall-

(a) be produced from grapes of a prescribed cultivar of which the juice has undergone complete or partial alcoholic fermentation;

(b) be produced by treating such juice or fermented product in the prescribed manner, or by adding thereto or removing therefrom a prescribed substance; and

(c) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.

(2) A grape-based liquor shall not contain a particular prescribed substance to a greater extent than that prescribed.

(3) No person shall, either before, during or after completion or termination of the alcoholic fermentation referred to in subsection (1) (a)-

(a) add to or remove from the product from which a grape-based liquor is produced, or a substance added in terms of subsection (1) (b), or a grape-based liquor, 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.

[a60y1989s9]

## 9. Requirements regarding spirit-based liquors

(1) A spirit-based liquor shall-

(a) be produced by the treatment of a spirit in the prescribed manner, or by the addition of a prescribed substance to a spirit; and

(b) be produced in such a manner that it is of a prescribed class and complies with the prescribed requirements for the class concerned.

(2) A spirit-based liquor shall not contain a particular prescribed substance to a greater extent than that prescribed.

(3) No person shall-

(a) add to a spirit from which a spirit-based liquor is produced, or a substance added in terms of subsection (1) (a), or a spirit-based liquor, any substance other than a substance prescribed for this purpose; and

(b) so add a substance so prescribed, otherwise than in accordance with the prescribed manner or conditions.

[a60y1989s10]

## 10. Authorizations regarding certain alcoholic products

(1) The Minister may by notice in the Gazette grant authority that a person specified in such notice-

(a) may sell, or produce for sale, for drinking purposes, a sacramental beverage specified in such notice;

[Para. (a) substituted by s. 2 (a) of Act 11 of 1993.]

(b) may sell, or produce for sale, for drinking purposes, an alcoholic beverage obtained by the alcoholic fermentation of the juice of oranges together with cane-sugar; or

[Para. (b) substituted by s. 2 (a) of Act 11 of 1993.]

(c) may sell, or produce for sale, for drinking purposes, an alcoholic beverage obtained by the alcoholic fermentation of honey.

[Para. (c) added by s. 2 (b) of Act 11 of 1993.]

(2) An application for such authorization shall be made in the prescribed manner and be accompanied by the prescribed application fee.

(3) Such an authorization-

(a) shall, in the case of an alcoholic beverage referred to in subsection (1) (b) or (c) be granted only if-

(i) the person concerned is authorized in terms of a licence or authority issued or granted by or under the Liquor Act, 1989 (Act 27 of 1989), to sell liquor as defined in the said Act;

(ii) the person concerned is the successor in law of a person who was by notice under section 7 (2) (a) (ii) of the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), permitted to sell the alcoholic product concerned or to produce it for sale, or is the successor in law of the first-mentioned person; and

(iii) the predecessor in law to the person concerned has maintained the permission or authorization concerned as contemplated in subsection (6); and

[Para. (a) amended by s. 2 (c) of Act 11 of 1993.]

(b) shall be granted for the period specified in the notice concerned, and the continued validity thereof may be maintained as contemplated in subsection (6).

(4) A notice referred to in subsection (1) may contain conditions and restrictions regarding-

(a) the premises at which the alcoholic beverage concerned may be produced;

(b) the volume of the alcoholic beverage concerned that may be produced annually;

(c) the designation that shall apply as the class designation for the alcoholic beverage concerned;

(d) the alcohol content of the alcoholic beverage concerned;

(e) the processes which may or shall be applied in connection with the production of the alcoholic beverage concerned;

(f) the substances that may either before, during or after the production of the alcoholic beverage concerned, be added thereto or removed therefrom, and the manner in which and the conditions subject to which such substances may be so added or removed;

(g) the extent to which particular substances may occur in the alcoholic beverage concerned;

(h) supervision over the production of the alcoholic beverage concerned;

(i) the records that shall be kept and the returns that shall be furnished in connection with the production and sale of the alcoholic beverage concerned; and

(j) any other matter which the Minister may, subject to the provisions of this Act, deem necessary or expedient in order to attain the objects of this section, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(5) (a) Subject to the provisions of paragraph (b), a notice under section 7 (2) (a) of the Wine, Other Fermented Beverages and Spirits Act, 1957, in terms of which a person is permitted to sell or to produce for sale an alcoholic beverage specified in such notice, and which is in force immediately prior to the commencement of this section, shall be deemed to be a notice referred to in subsection (1).

(b) The validity of a permission granted in a notice referred to in paragraph (a) shall expire on a date 90 days after the date of commencement of this section, unless the person mentioned in such notice has before or on such date of expiry lodged a written application for the continuation of the validity thereof with the administering officer.

(6) A person authorized or deemed to be authorized in terms of this section, shall annually at the prescribed time and in the prescribed manner pay the amount prescribed in respect of the maintenance of that authority.

(7) (a) An authorization granted or deemed to be granted in terms of this section shall lapse if-

(i) the amount payable in terms of subsection (6) has not been paid as contemplated in that subsection; or

(ii) the licence or authority referred to in subsection (3) (a) in respect of the person concerned, has lapsed or has been withdrawn.

(b) If an authorization has lapsed as contemplated in paragraph (a), the Minister shall make it known by notice in the Gazette.

[a60y1989s11]

## **11. Use of certain particulars in connection with the sale of liquor products**

(1) No person shall sell any liquor product in a container, unless the prescribed particulars are indicated in the prescribed manner on the label thereof.

(2) No person shall in connection with the sale of a liquor product-

(a) use the word 'wine' or 'wyn', unless it forms part of a class designation for the liquor product concerned, or that liquor product is wine;

(b) use the word 'spirit' or 'spiritus', unless it forms part of a class designation for the liquor product concerned, or that liquor product is a spirit;

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

(d) use a class designation, or any word or expression that so resembles a class designation that it will deceive or is likely to deceive, unless it is the applicable class designation for the liquor product concerned;

(e) indicate the alcohol content of the liquor product concerned in any way other than by means of a percentage per volume; and

(f) use the name of any country, or a word or expression containing such name or partially consisting thereof, in a manner which indicates or purports to indicate that such liquor product is a product of a country other than the country of origin thereof.

(3) (a) Unless authorized thereto in terms of a scheme, no person shall use in connection with the sale of wine-

(i) the name under which an area or a piece of land or a portion of a piece of land is defined by virtue of provision included in a scheme in terms of section 15 (1) (d), or deemed in terms of section 15 (2) (a) to have been so defined;

(ii) the name under which an area in the Republic where viticulture is practised generally known, irrespective of whether the boundaries of such area can readily be determined or not;

(iii) the designation of any vine cultivar, or any word or expression that so resembles such designation that it will deceive or is likely to deceive;

(iv) any particulars that indicate or purport to indicate that the wine concerned was produced in a particular year or from grapes harvested in a particular year; and

(v) the word 'estate', 'landgoed', 'vineyard', 'wingerd', 'origin', 'oorsprong', 'vintage', 'oesjaar', 'superior' or 'superieur', or a translation of any of the said words in any language whatsoever, or any word or expression that so resembles any of the said words or a translation thereof that it will deceive or is likely to deceive.

(b) The Minister may, on the recommendation of the board, by notice in the Gazette publish lists of the names and designations referred to in paragraph (a) (ii) and (iii).

(c) The Minister may by notice in the Gazette declare the provisions of paragraph (a), or so many thereof as he may deem expedient in a particular case, applicable to a liquor product other than wine, or a particular class thereof.

(4) (a) The Minister may by notice in the Gazette prohibit or reserve, under such circumstances and on such conditions as may be set out in the notice, the use of any word, expression or representation in connection with the sale of a particular liquor product, or a particular class thereof.

(b) A notice published in terms of section 4 or 10 of the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), and in force immediately prior to the date of commencement of this section, shall be deemed to be a notice referred to in paragraph (a).

(5) Notwithstanding anything to the contrary contained in this section, the Minister may by regulation-

(a) prescribe the words or expressions that are permissible additions to or transformations of specified class designations of particular liquor products; and

(b) grant exemption, under such circumstances and subject to such conditions as may be prescribed, from a prohibition referred to in subsection (2) or (3).

(6) The provisions of this section shall not be construed as restricting the use of-

(a) a trade mark as defined in section 2 (1) of the Trade Marks Act, 1963 (Act 62 of 1963), which is used or is intended for use in connection with the sale of a liquor product;

(b) the name of a company as defined in section 1 (1) of the Companies Act, 1973 (Act 61 of 1973);

(c) the name of a co-operative society as defined in section 1 of the Wine and Spirit Control Act, 1970 (Act 47 of 1970); or

(d) the name of a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act 69 of 1984),

that was registered, used or established on the date of commencement of this section, except if the word 'estate', 'landgoed', 'vineyard' or 'wingerd' is contained in, or forms part of, such trade mark or name.

(7) The board and the administering officer shall for the purposes of any proceedings in terms of any applicable law, be deemed to be an interested party who may lawfully lodge an objection against the continued registration, or an application for the registration of, a trade mark or name referred to in subsection (6) in so far as such objection relates to any word, expression or other particulars referred to in subsection (2), (3) or (4).

[a60y1989s12]

## **12. Prohibition of false or misleading descriptions for liquor products**

(1) No person shall use any name, word, expression, reference, particulars or indication in any manner, either by itself or in coherence with any other verbal, written, printed, illustrated or visual material, in connection with the sale of a liquor product in a manner that conveys or creates or is likely to convey or create a false or misleading impression as to the nature, substance, quality, composition or other properties, or the class, cultivar, origin, age, identity, or manner or place of production, of the liquor product.

(2) If-

(a) the administering officer or the board, as the case may be, is of the opinion that a person has contravened the provisions of subsection (1); and

(b) such person has declared himself prepared thereto in writing,

the administering officer or the board, as the case may be, may refer the alleged contravention for investigation and decision to an appeal board referred to in section 22.

[a60y1989s13] 13 .....

[S. 13 repealed by s. 3 of Act 11 of 1993.]

[a60y1989s14]

#### **14. Establishment of schemes**

(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 47 of 1970), or a grape-based liquor, 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.

(2) The provisions of different schemes may differ to such extent as the Minister may determine on the recommendation of the board.

(3) A scheme so established shall be administered by the board.

[a60y1989s15]

#### **15. Provisions of schemes**

(1) A scheme may-

- (a) set out the objects of the scheme;
- (b) indicate the liquor product or class of liquor product to which the scheme applies;
- (c) indicate the particulars referred to in section 11 (3) (a) and (4) of which the use in connection with the sale of a liquor product may be authorized in terms of such scheme;
- (d) provide authority for the defining of areas and pieces of land and portions of pieces of land under particular names, for the amendment or withdrawal of such definitions, and for the imposition of conditions applicable to any such definition, withdrawal or amendment;
- (e) indicate the requirements to be complied with before an authorization referred to in paragraph (c) may be granted;
- (f) contain directives regarding the raw materials to be used in connection with the production of the liquor product or class of liquor product concerned, the place or time of production and the composition thereof;
- (g) provide for the applications to be made, the notices to be furnished, the approvals to be obtained and the records to be kept in connection with the processes applied during the production of the liquor product or class of liquor product concerned;



(h) contain directives relating to the addition of substances to, the removal of substances from and the application of processes to the liquor product or class of liquor product concerned, whether before, during or after the production thereof;

(i) indicate the requirements and conditions to be complied with during the production of the liquor product or class of liquor product concerned;

(j) set out the circumstances and conditions under which a person may terminate his participation in such scheme;

(k) provide for the control to which the liquor product or class of liquor product concerned shall be subject before an authorization referred to in paragraph (c) may be granted;

(l) indicate the type of container in which the liquor product or class of liquor product concerned shall or may be contained, as well as the maximum capacity of such containers;

(m) indicate the requirements relating to the labels on and the labelling of such containers, including the approval of labels;

(n) provide that an authorization referred to in paragraph (c), in respect of a particular quantity of the liquor product or class of liquor product concerned may be refused if the board is satisfied that-

(i) any other provision of such scheme has not been complied with in respect of such quantity; or

(ii) such quantity does not comply with the quality standards determined by the board;

(o) require that a seal or other mark determined by the board for this purpose shall, in a manner determined by the board, be affixed to or indicated on every container of the liquor product or class of liquor product concerned, or on a specified label on any such container;

(p) determine the fees, levies or charges payable in respect of services rendered or approvals required in terms of such scheme, or authorize the board to determine such fees, levies or charges;

(q) determine that the rendering of any service in terms of such scheme may be refused to a person who is indebted to the board in any amount in respect of fees, levies or charges referred to in paragraph (p);

(r) determine that any person who refuses or fails to comply with any provision of such scheme or a condition determined thereunder, may be fully or partially excluded by the board from further participation in such scheme;

(s) provide generally for any other matter which, subject to the provisions of this Act, in the opinion of the Minister is necessary or expedient in order to further or better achieve the objects of such scheme, the generality of the power conferred by this paragraph not being limited by the preceding paragraphs of this subsection.

(2) (a) The definition of a particular area or piece of land under a particular name in terms of section 22 of the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), and which is in force immediately prior to the repeal of that section, shall remain in force, and shall, if it is in force immediately prior to the establishment of a scheme for wine, when such a scheme for wine is established, be deemed to be the definition of that area or piece of land by virtue of provision included in such scheme in terms of subsection (1) (d).

(b) Any other act performed in terms of regulations under the Wine, Other Fermented Beverages and Spirits Act, 1957, with regard to wine and in respect of which an authority referred to in subsection (1) (c) could have been granted if a scheme for wine was established before the act concerned was performed, shall on the repeal of the empowering provision in respect of such regulations remain in force, and shall, when such scheme for wine is established, be deemed to be an act performed in terms of the relevant scheme.

[a60y1989s16]

## **16. Restriction on the importation of certain alcoholic products**

(1) (a) No person shall import any product with an alcohol content of more than one per cent into the Republic for drinking purposes, except on the authority of an import certificate issued by the administering officer.

(b) The provisions of paragraph (a) shall not apply to-

- (i) beer, sorghum beer and medicine referred to in section 4 (2);
- (ii) a product referred to in that paragraph that is imported by or for a Head of State, or by or for a diplomatic or other foreign representative referred to in Item 406.00 of Schedule 4 of the Customs and Excise Act, 1964 (Act 91 of 1964); and
- (iii) a product referred to in that paragraph that is imported for a prescribed purpose, or of which a consignment does not exceed the prescribed volume.

(2) An application for an import certificate shall be made in the prescribed manner, and the prescribed application fee shall be payable in respect thereof.

(3) (a) Subject to the provisions of paragraph (b), 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 on those containers comply with the applicable requirements of this Act.

(b) An import certificate may also be issued in respect of a product other than a product referred to in paragraph (a) (i) if-

- (i) that product does not contain a particular prescribed substance to a greater extent than prescribed;

- (ii) that product is imported in the fully labelled containers in which it is to be sold in the Republic;
  - (iii) the labels on those containers comply with the applicable requirements of this Act;
- and
- (iv) the board recommends that the application for the import certificate concerned be granted.

(4) (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.

(b) The further disposal of a product that is imported in bulk shall be subject to compliance with the prescribed directions.

(5) (a) A product that is imported into the Republic contrary to the provisions of subsection (1) or a condition determined under subsection (4) (a), or in respect of which the prescribed directions referred to in subsection (4) (b) have not been complied with, shall, at the option of the importer thereof-

- (i) at the expense of such importer be removed by him from the Republic within such period as the administering officer may determine;
- (ii) with the approval of the administering officer and subject to such conditions as he may determine, be treated or dealt with so that the product concerned thereafter complies with the applicable provisions of this Act; or
- (iii) be forfeited to the State, and thereafter be destroyed.

(b) If an importer fails to remove such product from the Republic within the period determined in terms of paragraph (a) (i), or to comply with a condition determined in terms of paragraph (a) (ii), that product shall be forfeited to the State, and thereafter be destroyed.

(c) The State may recover any expenses incurred by it in connection with the destruction of a product in terms of paragraph (a) (iii) or (b) from the importer concerned.

(6) A certificate of removal issued in terms of section 27A of the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), and in force immediately prior to the date of commencement of this section, shall be deemed to be an import certificate which has been issued in terms of this section.

[a60y1989s17]

## **17. Restriction on the exportation of liquor products**

(1) (a) No person shall export any product with an alcohol content of more than one percent for drinking purposes, except on the authority of an export certificate issued by the administering officer.

(b) The provisions of paragraph (a) shall not apply to-

- (i) beer, sorghum beer and medicine referred to in section 4 (2); and

(ii) a liquor product exported for a prescribed purpose or to a prescribed country, or of which a consignment does not exceed the prescribed volume.

(2) An application for an export certificate shall be made in the prescribed manner, and the prescribed application fee shall be payable in respect thereof.

(3) An export certificate shall only be issued if-

(a) the product concerned is a liquor product or, in the case of another product, the exporter thereof satisfies the administering officer that such other product may be sold for drinking purposes in the country to which it is to be exported; and

(b) when required by regulation, the board has in the prescribed manner found the product concerned to be suitable for export.

(4) The export of a product on the authority of an export certificate shall be subject to compliance with the prescribed directions.

(5) An export certificate issued in terms of the regulations made under the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), and which is in force immediately prior to the date of commencement of this section, shall be deemed to be an export certificate issued in terms of this section.

[a60y1989s18]

## **18. Powers of entry, investigation and sampling**

(1) (a) The administering officer and an officer acting under a delegation or direction of the administering officer may, whenever he deems it necessary in the exercising or carrying out by him of any power or duty which is granted to or imposed upon the administering officer by or under this Act, at any reasonable time without prior notice enter upon any place, premises or conveyance.

(b) The provisions of paragraph (a) shall in connection with the exercise of a function conferred on the board by or under this Act or in terms of a scheme, apply mutatis mutandis to-

(i) a person employed by the board;

(ii) any person with whom the board has entered into an agreement in terms of section 2 (10) (a) (v); and

(iii) any person employed by a person referred to in subparagraph (ii).

(c) A person who enters upon any place, premises or conveyance in terms of this subsection shall show proof of his identity and authority when requested thereto by the person in charge of the place, premises or conveyance concerned.

(2) A person referred to in subsection (1) may, when acting under that subsection-

(a) take with him such assistants, appliances, instruments, tools or other things as he may deem necessary for the relevant purpose;

(b) demand from the owner or person in charge of the place, premises or conveyance concerned all reasonable assistance that such person may deem necessary in order to enable him to exercise, carry out or perform his powers, duties or functions in connection with that place, premises or conveyance;

(c) examine or test any liquor product, material substance or other article in respect of which this Act or a scheme applies and which is, or which is suspected to be, produced, processed, treated, prepared, graded, classified, packed, marked, labelled, held, bottled, removed, transported, exhibited or sold there;

(d) inspect the operations or processes in connection with any action referred to in paragraph (c), and demand from the owner or custodian of the liquor product, material, substance or other article concerned, or from the person supervising such operations or processes, any information or an explanation regarding the operation, process, liquor product, material, substance or other article concerned;

(e) take such samples of the liquor product, material, substance or other article concerned as he may deem necessary, and for such purpose open any container in which that liquor product, material, substance or other article is contained; and

(f) examine and make copies of or take extracts from any book or document in respect of which he on reasonable grounds suspects that it relates to such product, material, substance or other article, irrespective of whether it is kept on or at the place, premises or conveyance concerned or at any other place, and demand from the owner or custodian of such book or document an explanation of any record or entry therein.

(3) The provisions of subsection (2) (d) and (f) shall not be construed as authorizing a person referred to in subsection (1) to demand information by which he may acquire knowledge of any secret formula for the production or blending of a liquor product.

(4) A sample taken in terms of subsection (2) (e) shall with the least possible delay be submitted to an analyst for testing, examination or analysis.

(5) A person referred to in subsection (1) shall in respect of each sample taken of a liquor product contained in a labelled container, issue a receipt of sampling to the custodian of the liquor product concerned.

[a60y1989s19]

## **19. Seizures**

(1) A person referred to in section 18 (1) may at any reasonable time and in any manner deemed fit by him, without prior notice to any person, seize any liquor product, material, substance or other article, or any book or document, that-

(a) is concerned or is on reasonable grounds believed by him to be concerned in the commission or suspected commission of any offence under this Act;

(b) may afford evidence of the commission or suspected commission of any such offence; or

(c) is intended or is on reasonable grounds believed by him to be intended to be used in the commission of any such offence.

(2) Such person may remove any quantity of a liquor product, material, substance or other article, or any book or document, so seized, from the place, premises or conveyance where he seized it, or leave it thereon and, if he deems it necessary, attach such identification mark or seal as he may deem necessary on such liquor product, material, substance or other article or the container thereof, or on such book or document.

(3) (a) The administering officer or the board, as the case may be, may-

(i) grant authority that a liquor product, material, substance or other article seized in terms of subsection (1), may within the period and in the manner specified in such authorization, be treated or dealt with;

(ii) if the said officer or the board is satisfied that the cause for the seizure concerned has been removed by such treatment or action, return the liquor product, material, substance or other article to the person from whom it was seized.

(b) If no criminal proceedings are instituted in connection with a liquor product, material, substance or other article seized in terms of subsection (1), or if it appears that such liquor product, material, substance or other article is not required at the trial for purposes of evidence or an order of court, that liquor product, material, substance or other article shall be returned to the person from which it was seized.

[a60y1989s20]

## **20. Analysis of samples**

(1) (a) The Director-General may designate a person qualified by technical training, possessing adequate knowledge, skill and experience, and having adequate facilities at his disposal, as an analyst for the purposes of the provisions of this Act or a scheme.

(b) The designation of a person as an analyst in terms of section 28 of the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957), shall, if in force immediately prior to the date of commencement of this section, be deemed to have been done in terms of paragraph (a).

(2) Each sample submitted to an analyst in terms of section 18 (4) shall be tested, examined or analysed by him in accordance with the prescribed methods.

(3) An analyst shall-

(a) record the results of such test, examination or analysis on a certificate determined for this purpose by the administering officer or the board, as the case may be; and

(b) furnish the original of such certificate to the person referred to in section 18 (1) by whom the sample concerned was taken.

(4) No person shall use a certificate referred to in subsection (3), or any results recorded on such certificate, in any manner whatsoever for the purposes of any advertisement.

[a60y1989s21]

## **21. Secrecy**

(1) No person shall, except for the purpose of the performance of his functions under this Act or a scheme, or for the purpose of legal proceedings under this Act, or when required to do so by any competent court or under any law, or with the written consent of the Minister, disclose to any other person any information acquired by him in the performance of his functions under this Act or a scheme and which relates to the business or affairs of any person, or use such information for self-gain or for the benefit or his employer.

(2) No person shall, except with the written consent of the Minister, give access to any person other than a person referred to in section 18 (1) or a person entitled thereto in terms of any law, to any records or registers kept in terms of this Act or a scheme.

[a60y1989s22]

## **22. Appeals**

(1) Any person whose interests are affected by any decision or direction of the administering officer or the board under this Act or a scheme, may appeal against such a decision or direction to an appeal board appointed by the Director-General for this purpose.

(2) Such appeal shall be lodged in the prescribed manner within the prescribed period, and the prescribed amount shall be payable in respect thereof.

(3) (a) An appeal board referred to in subsection (1), shall consist of-

(i) a person appointed by reason of his knowledge of the law, and who shall act as chairman of the appeal board; and

(ii) two persons respectively nominated in the prescribed manner by the appellant and the administering officer or the board, as the case may be.

(b) An appellant, a person employed by the appellant, the administering officer, an officer performing his functions under the control of the administering officer, a member or an alternate member of the board, a member of a committee of the board and a person referred to in section 2 (10) (b) shall not be appointed as a member of an appeal board.

(4) All the members of an appeal board shall constitute a quorum for any meeting of the appeal board, and a decision of the majority of the members thereof shall be a decision of the appeal board.

(5) There may be paid to a member of an appeal board who is not in the full-time employment of the State, from moneys appropriated by Parliament for this purpose, such remuneration or allowances as may be determined by the Minister, with the concurrence of the Minister of Finance, in general or in any particular case.

(6) Such appeal board may-

- (a) confirm, set aside or amend the decision or direction which is the subject of the appeal;
- (b) refer the relevant matter back to the board or the administering officer for reconsideration; or
- (c) make such order in connection therewith as it may deem fit.

(7) The administering officer or the board, as the case may be, shall be bound by a decision of an appeal board.

(8) The decision of an appeal board together with the reasons therefor shall be in writing, and copies thereof shall be furnished to the Director-General, the appellant and the administering officer or the board, as the case may be.

(9) If a decision or direction which is the subject of an appeal-

- (a) is set aside, the amount referred to in subsection (2) (a) shall be refunded to the appellant concerned;
- (b) is amended, or is referred back to the administering officer or the board for reconsideration, such portion of the amount referred to in subsection (2) (a) as the appeal board concerned may determine, shall be refunded to the appellant concerned.

[a60y1989s23]

### **23. Offences and penalties**

(1) Any person who-

- (a) contravenes or fails to comply with a provision of section 4 (1), 5 (3) (a), 6 (3) (a), 7 (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), 7 (3) (b), 8 (3) (b), 9 (3) (b) or 20 (4);

[Para. (b) substituted by s. 4 of Act 11 of 1993.]

- (c) contravenes or fails to comply with a condition, restriction, prohibition, reservation or direction imposed under section 10 (4), 11 (4) or (5) (b), 16 (4) or (5), 17 (4) or 28 (3) (a);
- (d) after his application for participation in a scheme has been approved, refuses or fails to comply with the provisions of that scheme or a condition determined in terms thereof;
- (e) obstructs or hinders a person referred to in section 18 (1) in the exercise of his powers or the carrying out of his 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) demands from him in terms of section 18 (2) (b) in the exercising of his powers or the carrying out of his 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 ability to a question lawfully demanded from or put to him by a person referred to in section 18 (1) in the exercising of his powers or the carrying out of his duties under this Act or a scheme, or furnishes information, an explanation or an answer to such person which is false or misleading, knowing that it is false or misleading;

(h) tampers with a sample taken in terms of section 18 (2) (e), or the identification or seal of such sample;

(i) sells, removes or tampers with a liquor product, material, substance or other article, or a book or document seized in terms of section 19, or tampers with an identification mark or other seal attached thereto in terms of that section;

(j) falsely holds himself out to be an analyst;

(k) effects any unauthorized alteration, deletion or entry on any certificate which has been issued in terms of this Act,

shall be guilty of an offence.

(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 R8000 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.

[a60y1989s24]

## **24. Presumptions and evidence**

In any prosecution under this Act-

(a) it shall be presumed, unless the contrary is proved, that the applicable provisions of this Act or a scheme apply to the product in respect of which the offence concerned has allegedly been committed;

(b) any quantity of a liquor product, material, substance or other article in or upon any place, premises or conveyance when a sample thereof is taken in accordance with the provisions of this Act shall, unless the contrary is proved, be deemed to be of the same composition as that sample, and to possess in all other respects the same properties as that sample;

(c) a certificate referred to in section 20 (3) in which the result of a test, examination or analysis carried out in terms of section 20 (2) is recorded, and which purports to be signed by the analyst who carried out that test, examination or analysis, shall be accepted as prima facie proof of the facts mentioned therein;

(d) any statement or entry contained in any book or document kept by any person or the manager, agent or employee of such person, or found in or upon any place or premises occupied by, or any vehicle used in the business of, such person, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his work as manager or in the course of his agency or employment; and

(e) it shall be presumed, unless the contrary is proved, that a permit, authorization, consent, approval, certificate or other document has not been issued, given or granted to any person who in terms of this Act or a scheme is required to be in possession thereof.

[a60y1989s25]

## **25. Forfeitures**

The court convicting any person of an offence under this Act shall, when requested thereto by the public prosecutor, in addition to any other penalty imposed in respect of that offence, order that a relevant quantity of a liquor product, material, substance or other article which is the subject of the charge against such person, be forfeited to the State, after which the property so forfeited shall be destroyed.

[a60y1989s26]

## **26. Vicarious liability**

(1) When a manager, representative, agent, employee or member of the family of a person (in this section called the principal) does or omits to do any act, and it would be an offence under this Act for the principal to do or omit to do such act himself, that principal shall be deemed himself to have done or omitted to do the act, unless he satisfied the court that-

(a) he neither connived at nor permitted the act or omission by the manager, representative, agent, employee or member concerned;

(b) he took all reasonable steps to prevent the act or omission; and

(c) an act or omission, whether lawful or unlawful, of the nature charged, on no condition or under no circumstance fell within the scope of the authority or employment of the manager, representative, agent, employee or member concerned,

and the fact that such principal issued instructions whereby an act or omission of that nature is prohibited, shall in itself not be sufficient proof that he took all reasonable steps to prevent the act or omission.

(2) When a principal is by virtue of subsection (1) liable for an act or omission by a manager, representative, agent, employee or member of his family, that manager, representative, agent, employee or member shall also be liable therefor as if he were the principal concerned.

(3) The provisions of subsection (2) shall not release a manager, representative, agent, employee or member contemplated in that subsection from any other liability which he may have incurred apart from the liability which he shares with the principal concerned.

(4) In the application of this section in any prosecution, evidence that any article was at the time of the act or omission charged, in the possession or under the custody, supervision, control or care of any manager, representative, agent, employee or member of the family of the principal, shall be prima facie proof that the principal concerned is the owner of the article concerned.

[a60y1989s27]

## **27. Regulations**

(1) The Minister may make regulations regarding-

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) control of the receipt, keeping and use of particular substances which are or may be used, or shall not be used, in connection with the production of liquor products, at premises where the liquor products are produced;
- (c) the designation of a person charged with the application of this Act, and regarding different such designations in relation to different provisions of this Act;
- (d) processes which shall or may be applied in the production of liquor products;
- (e) requirements for raw materials that may be used in or in connection with the production of a liquor product, and control which is to be exercised over such raw materials;
- (f) methods and procedures in connection with the taking of samples;
- (g) the registration of particulars in respect of persons for the purposes of section 11 (1);
- (h) the procedure at proceedings of an appeal board referred to in section 22;
- (i) prohibited practices in connection with the indication of particulars on containers in which liquor products are sold, and in connection with the use of certain particulars in connection with the sale of liquor products;

(j) the keeping of records and the furnishing of returns in connection with the production and sale of liquor products;

(k) the fees payable in respect of anything done under this Act, or which is required to be so done;

(l) the permissible tolerances with regard to prescribed requirements, specifications or other directions,

and, generally, with regard to any matter which he considers it necessary or expedient to prescribe in order to achieve or to promote the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Different regulations which differ in the respects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under this section, in relation to different areas in the Republic of different liquor products or classes thereof.

(3) A regulation may for any contravention thereof or failure to comply therewith, prescribe a penalty which shall not exceed a fine of R2 000 or imprisonment for a period of six months or both that fine and that imprisonment.

(4) A regulation prescribing fees shall be made with the concurrence of the Minister of Finance.

[a60y1989s28]

## **28. Discretionary powers**

(1) When the administering officer or the board considers any application or request made under or by virtue of this Act or a scheme, he or the board may make any investigation or inquiry in connection therewith which may be deemed necessary, and for the purposes of such investigation or inquiry demand that such documents, information or samples as may be specified, be submitted to him or the board.

(2) Whenever a regulation or a scheme specifies any period within which anything is to be done or performed, the administering officer or the board, as the case may be, may extend the period concerned, either before or after the period has expired.

(3) Any approval, authorization or consent given or granted under or by virtue of this Act or a scheme may, except where expressly provided otherwise-

(a) be made subject to such conditions as the administering officer or the board, as the case may be, may in each case determine; and

(b) be amended or withdrawn by the administering officer or the board, as the case may be, if he deems it expedient.

(4) If the administering officer or the board, by virtue of a power vested in him or the board by or under this Act or a scheme-

(a) refuses to approve an application or a request which was submitted to him in writing; or

(b) amends or withdraws an approval, authorization or consent as contemplated in subsection (3) (b),

he shall notify the applicant concerned in writing of his decision and of the grounds on which it is based.

[a60y1989s29]

## **29. Delegation of powers**

(1) The Minister may, subject to such conditions as he may impose, in writing delegate any power conferred on him by this Act, excluding a power referred to in sections 14 and 27, to an officer employed by the department, but shall not be divested of any power so delegated and may set aside or amend any decision of the delegate made in the exercise of such a power.

(2) The Director-General may, subject to such conditions as he may impose, in writing delegate any power conferred on him by this Act to an officer employed by the department, but shall not be divested of any power so delegated and may set aside or amend any decision of the delegate made in the exercise of such a power.

[a60y1989s30]

## **30. Defects in form**

A defect in the form of any document which in terms of any law is required to be executed in a particular manner, or in a document issued in terms of this Act or a scheme, shall, if the document substantially complies with the applicable legal requirements, not render unlawful any administrative act performed in terms of this Act or a scheme in respect of the matter to which such document relates, and shall not be a ground for exception to any legal procedure which may be taken in respect of such matter.

[a60y1989s31]

## **31. Limitation of liability**

No person, including the State, shall be liable in respect of anything done or omitted in good faith in the exercise of a power or the carrying out of a duty or the performance of a function under or by virtue of this Act or a scheme, or in the rendering of any service in terms of this Act or a scheme, or in respect of anything that may result therefrom.

[a60y1989s32]

## **32. Repeal and amendment of laws**

Subject to the provisions of sections 2 (8) (c) and (10) (c), 10 (5) (a), 11 (4) (b), 15 (2), 16 (6), 17 (5) and 20 (1) (b), the laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

[a60y1989s33]

### 33. Short title and commencement

(1) This Act shall be called the Liquor Products Act, 1989, 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. section

#### Schedule

##### LAWS REPEALED OR AMENDED

(Section 32)

[Schedule amended by s. 58D of Act 47 of 1970.]

[NOTE: The Schedule was amended by s 8 of the Wine and Spirit Control Amendment Act 25 of 1998, a provision which will be put into operation by proclamation.]

No and year of law	Short title	Extent of repeal or amendment	
Act 14 of 1921	Restriction on the Importation of Wine and Spirits Act, 1921		The repeal of the whole.
Act 25 of 1957	Wine, Other Fermented Beverages and Spirits Act, 1957		The repeal of the whole.
Act 91 of 1964	Customs and Excise Act, 1964	1. The amendment of section 1-	
	(a)	by the deletion in subsection (1) of the definition of 'Government Brandy Board';	
	and		
	(b)	by the insertion in subsection (1) after the definition of 'vehicle' of the following definition:	
		'Wine and Spirit Board' means the board referred to in section 2 of the Liquor Products Act, 1989.	
		2. The amendment of section 30 by the substitution in subsection (1) for the expression 'Government Brandy Board', where it appears in the words preceding the proviso, of the expression 'Wine and Spirit Board'.	
Act 50 of 1966	Wine, Spirits and Vinegar Amendment Act, 1966		The repeal of the whole.
Act 30 of 1968	Wine, Other Fermented Beverages and Spirits Amendment Act, 1968		The repeal of the whole.
Act 47 of 1970	.....	.....	
Act 62 of 1970	Wine, Other Fermented Beverages and Spirits Amendment Act, 1970		The repeal of the whole.
Act 62 of 1972	Wine, Other Fermented Beverages and Spirits Amendment Act, 1972		The repeal of the whole.
Act 75 of 1974	Wine, Other Fermented Beverages and Spirits Amendment Act, 1974		The repeal of the whole.
Act 68 of 1976	Wine, Other Fermented Beverage and Spirits Amendment Act, 1976		The repeal of the whole.
Act 7 of 1980	Wine, Other Fermented Beverages and Spirits Amendment Act, 1980		The repeal of the whole.
Act 87 of 1980	Wine and Spirits Amendment Act, 1980		The repeal of sections 13 and 14.
Act 63 of 1984	Wine and Spirits Amendment Act, inclusive.		The repeal of sections 6 to 10, 1984

Act 97 of 1986      Transfer of Powers and Duties of the State President Act, 1986      The repeal in the First Schedule of the item relating to the restriction on the Importation of Wine and Spirits Act (Act 14 of 1921), and in the Second Schedule of the item relating to the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act 25 of 1957).

Act 36 of 1988      Wine and Spirit Amendment Act, 1988      The repeal of sections 12 and 13.

Act 27 of 1989      Liquor Act, 1989      1. The amendment of section 2-

(a) by the insertion of the following definition before the definition of 'beer':

' "alcoholic fruit beverage" means-

(a) an alcoholic fruit beverage as defined in section 1 of the Liquor Products

Act, 1989; and

(b) a specially authorized liquor as defined in section 1 of the Liquor Products Act, 1989, obtained by the alcoholic fermentation of the juice of oranges together with cane-sugar;';

(b) by the substitution for the definition of 'brandy' of the following definition:

' "brandy" means the spirit which complies with the requirements prescribed by or under the Liquor Products Act, 1989, for the class of spirit manufactured or sold under the name of brandy;';

(c) by the amendment of the definition of 'liquor'-

(i) by the substitution for paragraph (a) of the following paragraph:

'(a) any beer or sorghum beer;' and

(ii) by the substitution for paragraph (b) of the following paragraph:

(b) 'any liquor product as defined in section 1 of the Liquor Products

Act, 1989;';

(d) by the deletion of the definition of 'other fermented beverage';

(e) by the substitution for the definition of 'spirit' of the following definition:

' "spirit" means a spirit and a spirit-based liquor, as defined in section 1 of the Liquor Products Act, 1989;';

(f) by the substitution for the definition of 'wine' of the following definition:

' "wine" means wine as defined in Section 1 of the Liquor Products Act, 1989.'.

2. The amendment of section 3-

(a) by the substitution in Paragraph (j) of subsection (1) for the words preceding

Subparagraph (i), of the following words:

'a person who bona fide engages in viticulture, with regard to the sale of wine or brandy which-'; and

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

'(l) a person referred to in a notice Under section 10 of the Liquor Products Act, 1989, with regard to the sale of any sacramental beverage under such a notice;'

3. The amendment of section 49 by the substitution for paragraph (a) of the following paragraph:

'(a) under a name given or a description contained in the Liquor Products Act, 1989, the regulations made thereunder or any other law, which does not as to its constituents comply with the requirements of the Act or the said regulations or other law;'

4. The amendment of section 59-

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

'(b) 'estate' means an estate defined under that section, or in terms of a scheme established under section 14 of the Liquor Products Act, 1989;'

'(c) 'table wine' means wine containing not more than 14 percent by volume of alcohol and sold under the name of the estate concerned;'

(c) by the deletion of paragraph (d) of subsection (2).

5. The amendment of section 88 by the substitution for subsection (2) of the following subsection:

'(2) In the application of subsection (1) "table wine" means wine containing not more than 14 per cent by volume of alcohol.'

6. The amendment of section 91 by the substitution for the words preceding paragraph (a) of the following words:

'The holder of a wine farmer's licence shall not sell liquor other than wine which-'

7. The amendment of section 101-

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

'(b) where he manufactures any alcoholic fruit beverage, only sell such beverage which has been manufactured from fruit produced on such land, or from fruit or the juice thereof purchased or otherwise procured by the holder or such a member, or from the juice of oranges together with cane-sugar,;' and

(b) by the deletion of subsection (2).

[SAPL5][a11y1993]

### **LIQUOR PRODUCTS AMENDMENT ACT 11 OF 1993[/SAPL5]**

[ASSENTED TO 26 FEBRUARY 1993] [DATE OF COMMENCEMENT: 10 MARCH 1993]

(English text signed by the State President)

#### **ACT**

To amend the Liquor Products Act, 1989, to provide for the appointment, as members of the Wine and Spirit Board, of two persons nominated by the Agricultural Research Council, instead of two officers; to sanction the production and sale of an alcoholic beverage obtained by the alcoholic fermentation of honey; and to abolish the requirement that specimens of labels affixed to containers be filed with the administering officer; and to provide for matters connected therewith.

1 Amends section 2 of the Liquor Products Act 60 of 1989, as follows: paragraph (a) substitutes subsection (2) (a) (iv); paragraph (b) substitutes subsection (2) (d); and paragraph (c) substitutes subsection (5) (a) (iv).

2 Amends section 10 of the Liquor Products Act 60 of 1989, as follows: paragraph (a) substitutes subsection (1) (a) and (b); paragraph (b) adds subsection (1) (c); and paragraph (c) substitutes in subsection (3) (a) the words preceding subparagraph (i).

3 Repeals section 13 of the Liquor Products Act 60 of 1989.

4 Amends section 23 (1) of the Liquor Products Act 60 of 1989 by substituting paragraph (b).

5 Short title

This Act shall be called the Liquor Products Amendment Act, 1993.