

PROVINCE OF WESTERN CAPE

**STANDING COMMITTEE AMENDMENTS
TO**

**WESTERN CAPE
LIQUOR BILL**

[B 2—2008]

(As agreed to by the Standing Committee on Finance and Economic Development)

[B 2A—2008]

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AMENDMENTS AGREED TO

WESTERN CAPE LIQUOR BILL
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INDEX

1. On page 2, in line 12, to omit “Term of office” and to substitute “Period of office of members of Board”.
2. On page 2, in line 27, to omit “Term of office” and to substitute “Period of office of members of Liquor Licensing Tribunal”.

Clause 3

1. On page 7, to omit Clause 3 and to substitute:
 3. (1) The Board consists of—
 - (a) six members who have appropriate knowledge of or experience in systems and processes for ensuring proper accountability, probity and openness in the conduct of the business of an organisation; and
 - (b) one member who has appropriate knowledge of or experience in dealing with the combating of the negative social consequences of the abuse of liquor,
 appointed on a part-time basis by the Minister in accordance with the prescribed procedure, after considering the recommendations of the standing committee.
 - (2) The prescribed procedure referred to in subsection (1) must provide for public participation in the nomination of candidates for appointment.
 - (3) The standing committee must make the recommendations referred to in subsection (1) after evaluating all candidates as to their suitability for appointment.
 - (4) The appointments to the Board must be made with race and gender sensitivity.
 - (5) The Minister must designate one of the members as Chairperson and another as Deputy Chairperson of the Board.
 - (6) The Deputy Chairperson acts as Chairperson of the Board when the Chairperson is absent or unable to act as Chairperson, and when both the Chairperson and Deputy Chairperson are absent or unable to act as Chairperson, the members present at the meeting must elect one of their number by majority vote to act as Chairperson at such meeting.
 - (7) Before being appointed a member of the Board, the candidate must submit an affidavit to the Minister in which such candidate declares that he or she—
 - (a) is eligible for such appointment; and
 - (b) is not disqualified from such appointment.
 - (8) The Provincial Cabinet or the Minister may, in consultation with the standing committee, at any time call for proof to its, or his or her satisfaction of the continued eligibility of any member or prospective member of the Board, or undertake or cause to be undertaken any investigation or enquiry in that regard.
 - (9) In addition to the members referred to in subsection (1), the Chief Executive Officer serves as an *ex officio* member of the Board, without any voting power.

Clause 6

1. On page 8, in line 17, to omit “**Term of office**” and to substitute:

Period of office of members of Board

2. On page 8, to omit Clause 6 and to substitute:

6. (1) A member of the Board holds office for such period, not exceeding four (4) years, as the Minister may determine at the time of that member’s appointment.

(2) The Minister may re-appoint a member of the Board in the prescribed manner for one other period, not exceeding four (4) years, as the Minister may determine at the time of that member’s re-appointment, after considering the recommendations of the standing committee.

Clause 7

1. On page 8, in line 33, to omit “Provincial Cabinet” and to substitute “Minister”.
2. On page 8, in line 34, to omit “Provincial Cabinet” and to substitute “Minister”.
3. On page 8, in line 35, to omit “it” and to substitute “he or she”.

Clause 8

1. On page 8, in line 39, to omit “Provincial Cabinet” and to substitute “Minister”.
2. On page 8, in line 40, to omit “3(1)” and to substitute “3”.

Clause 9

1. On page 9, from line 7, to omit paragraph (*m*) and to substitute:
 - (*m*) to conduct an ongoing study of and investigation into—
 - (i) the retail liquor trade and micro-manufacturing of liquor throughout the Province and elsewhere in order to ascertain whether there are any deficiencies in this Act and to discover any abuses or violations of the procedures contained in this Act; and
 - (ii) reducing the socio-economic and other costs associated with the abuse of liquor;

Clause 12

1. On page 9, in line 53, to omit “36(2)(b)” and to substitute “36(3)(b)”.

Clause 16

1. On page 10, in line 50, to omit “and who is”.
2. On page 11, in line 5, to omit “provincial” and to substitute “Provincial”.
3. On page 11, in line 8, after “Province” to insert “, appointed by the Board”.

Clause 17

1. On page 11, in line 36, to omit “less than twenty-one (21)” and to substitute “younger than twenty-five (25)”.

Clause 18

1. On page 11, in line 44, to omit “Term of office” and to substitute:

Period of office of members of Liquor Licensing Tribunal

2. On page 11, from line 45, to omit subclause (1) and to substitute:
 - (1) A member of the Liquor Licensing Tribunal holds office for such period, not exceeding five (5) years, as the Board may determine at the time of that member’s appointment.
3. On page 11, after line 47, to insert:
 - (2) The Board may re-appoint a member of the Liquor Licensing Tribunal in the prescribed manner for one other period, not exceeding five (5) years, as the Board may determine at the time of that member’s re-appointment.
 - (3) The re-appointment of a member referred to in section 16(1)(c) and (d) may only be done after consultation with the Minister responsible for local government in the Province, or the Provincial Commissioner of the South African Police Service and the Minister responsible for community safety in the Province, respectively.

Clause 20

1. On page 12, in lines 13 and 14, to omit “or on exemption referred to in section 89(14)”.

Clause 24

1. On page 14, in line 21, after “65” to omit “, 71 and 89(14)(b)” and to substitute “and 71”.

Clause 28

1. On page 15, after line 51, to insert:
 - (c) other money lawfully paid to and for the benefit of the Board.
2. On page 15, in line 52, to omit “Chief Executive Officer” and to substitute “Board”.
3. On page 15, from line 54, to omit subclauses (3), (4) and (5) and to substitute:
 - (3) The Board must, at least six months before the start of its financial year or another period determined by the Minister, submit to the Minister for approval—
 - (a) a budget of estimated revenue and expenditure for that financial year; and
 - (b) a business plan for the Board, containing measurable objectives, in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999).

(4) The Board may in any financial year make requests for additional funds to the Minister for inclusion in the adjustment estimates in accordance with the applicable legislation.

Clause 29

1. On page 16, in line 18, to omit “28(4)(a)” and to substitute “28(3)(b)”.
2. On page 16, after line 21, to insert:
 - (d) include a statement of the measures taken to monitor and address the social and other costs associated with the abuse of liquor as well as the number of licences granted during the previous financial year.

Clause 30

1. On page 16, from line 23, to omit Clause 30 and to substitute:
 - 30.** (1) The fees referred to in sections 46(2), 48(1) and (4), 63(2) and 65(16) must be paid into the Provincial Revenue Fund.
 - (2) The following moneys accrue to the Board—
 - (a) fines referred to in sections 20(3)(b)(v) and 82(2)(b);
 - (b) the penalty referred to in section 63(4); and
 - (c) fees referred to in sections 26(8), 36(1)(e), 38, 63(4), 64(1) and 65(9).
 - (3) The fees referred to in sections 36(5)(a)(i) and (b)(i) accrue to the municipality concerned.
 - (4) No amount contemplated by this section is refundable.

Clause 31

1. On page 16, from line 43, to omit subclauses (3) and (4), and to substitute:
 - (3) The budget of the fund must be included within the budget of the Board that must be submitted in accordance with the Public Finance Management Act, 1999.
 - (4) The Chief Executive Officer must, in consultation with the Board, the Minister and the Minister responsible for finance in the Province, open an account for the fund in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990).

Clause 32

1. On page 17, in line 9, to omit “89(14)” and to substitute “84(1) or (2)”.

Clause 33

1. On page 17, after line 23, to insert:
 - (f) a temporary liquor licence for the sale of liquor for consumption on or off the premises upon which liquor is sold.

Clause 34

1. On page 17, in line 36, to omit “resident” and to substitute “residents”.

Clause 35

1. On page 17, in line 44, to omit “sixty (60) months” and to substitute “five (5) years”.
2. On page 17, in line 47, to omit “sixty (60) months” and to substitute “five (5) years”.

Clause 36

1. On page 18, in line 16, after “date” to insert:

to the Board and the designated liquor officer in whose area of jurisdiction the proposed licensed premises are located
2. On page 18, in line 22, to omit “or not”.
3. On page 18, after line 24, to insert:

(2) No application for a licence may be advertised during the period of 1 December and 15 January of the following year.
4. On page 18, from line 42, to omit subclauses (3), (4) and (5).

Clause 37

1. On page 19, in lines 7 and 8, to omit “in at least two of the official languages”.
2. On page 19, from line 18, to omit subclause (4) and to substitute:

(4) The designated liquor officer in whose area of jurisdiction the proposed licensed premises are located must, within the prescribed period from the date of lodgement of an application, serve a copy of the application in the prescribed manner on the municipality concerned in order for it to—

 - (a) where section 36(1) applies—
 - (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application;
 - (ii) obtain the comment of the ward councillor;
 - (iii) comment on the application; and
 - (iv) allow for the consideration of the planning application in relation to the application for a liquor licence.
 - (b) where section 36(1)(c) does not apply—
 - (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application;
 - (ii) obtain comment of the ward councillor; and
 - (iii) comment on the application.

(5) The designated liquor officer in whose area of jurisdiction the proposed licensed premises are located must or the municipality may, within the prescribed time, give notice of the application to—

 - (a) neighbouring residents or such persons who in his, her or its judgement may be affected by, or have an interest in, the granting or refusal of the application; and

- (b) the community policing forum, if any, of the area in which the premises are located.

Clause 38

1. On page 19, in lines 39 and 40, to omit “of finding that an application complies with section 36(1)” and to substitute:

after an application referred to in section 36 has been lodged with it

Clause 39

1. On page 19, in line 48, to omit “either with the Board or the municipality” and to substitute:

with the Board and the designated liquor officer
2. On page 19, in lines 51 and 52, to omit “and the designated liquor officer”.
3. On page 20, in line 4, after “application” to insert “with the Board”.

Clause 40

1. On page 20, from line 7, to omit Clause 40 and to substitute:

40. (1) The municipality concerned must, within the prescribed period, forward to the Board the following—

 - (a) its decision in respect of the planning application referred to in section 36(1)(c); and
 - (b) information regarding the extent of the public participation process that was followed in respect of that application.

(2) The municipality concerned must, within the prescribed period, with regard to an application for a liquor licence, forward to the Board the following—

 - (a) the comments, if any, of the ward councillor;
 - (b) its comments, if any, on the application for a liquor licence; and
 - (c) any other document or article lodged with it in connection with the application for a liquor licence.

(3) The designated liquor officer concerned must, within the prescribed period, forward to the Board the following—

 - (a) his or her report referred to in section 73(7)(a); and
 - (b) any other document or article lodged with it in connection with the application for a liquor licence.

Clause 41

1. On page 20, from line 18, to omit subclause (1).

Clause 43

1. On page 21, in line 2, to omit “conditionally grant a licence and” and to substitute “, when conditionally granting a licence,”.

Clause 44

1. On page 21, in line 6, to omit “conditionally grant” and to substitute “, when conditionally granting”.

2. On page 21, in line 9, to omit “and” and to substitute “,”.

Clause 45

1. On page 21, in line 13, to omit “may conditionally grant a licence and” and to substitute:

must, when conditionally granting a licence,
2. On page 21, in line 16, to omit “may require” and to substitute “requires”.

Clause 46

1. On page 21, in lines 19 and 20, to omit “applicant in writing that the application has been granted” and to substitute:

—
 (a) applicant;
 (b) individual objectors;
 (c) the organiser of a petition, where the objections were made by means of a petition;
 (d) the municipality concerned; and
 (e) the designated liquor officer concerned,
 in writing of the decision of the Liquor Licensing Tribunal.
2. On page 21, in line 21, before the first “The” to insert:

Where the application has been granted,
3. On page 21, in line 22, after “subsection (1)” to insert:

, in as far as the notice applies to the granting of the application

Clause 48

1. On page 22, in line 2, to omit “eight” and to substitute “fourteen (14)”.

Clause 49

1. On page 22, in line 38, to omit “locked in such a manner as to render it” and substitute “rendered”.
2. On page 22, from line 40, to omit subclause (6).
3. On page 22, in line 51, after “(4)”, to omit “, (5) or (6)” and to substitute “or (5)”.

Clause 50

1. On page 23, after line 7, to insert:

(d) where the quantity of liquor being purchased is above the prescribed threshold, the purchaser must produce his or her identity document and proof of address, and provide contact details as prescribed.

Clause 51

1. On page 23, in line 32, after the second “of” to insert “a”.
2. On page 23, in line 35, to omit “purposes” and to substitute “purpose”.

Clause 54

1. On page 24, from line 41, to omit subclause (2) and to substitute:

(2) No person may give or supply liquor to a person under the age of eighteen (18) years or allow such a person in his or her care or under his or her supervision to consume liquor, except where it is given for the purpose of worship associated with the celebration of a religious observance: Provided that such an observance follows rules made by the appropriate public authorities.

Clause 59

1. On page 25, in line 49, after “businesses” to insert:

: Provided that the trading hours imposed by the Liquor Licensing Tribunal may not exceed the hours determined by the municipality by bylaw.
2. On page 25, from line 50, to omit subclause (2) and to substitute:

(2) A municipality may by bylaw determine different trading days and hours for licensed businesses selling liquor for consumption on the licensed premises and for those selling liquor for consumption off the licensed premises, but may not prescribe different trading days and hours for individual licensed businesses: Provided that the trading hours determined by the municipality may not exceed the trading hours set out in subsection (3)(a) and (b).

(3) (a) Subject to conditions imposed by the Liquor Licensing Tribunal in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (2), a licensee of premises on which liquor may be sold for consumption off the licensed premises may sell liquor on any day between 09:00 and 18:00.

(b) Subject to conditions imposed by the Liquor Licensing Tribunal in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (1), a licensee of premises on which liquor may be sold for consumption on the licensed premises may sell liquor on any day between 11:00 and 02:00 the next day.

(c) If the licensee has a licence for consumption of liquor both off and on the licensed premises, paragraph (a) applies in as far as the sale of liquor is for consumption off the licensed premises and paragraph (b) applies in as far as the sale is for consumption on the licensed premises.

(4) A licensee may at any time apply to the Liquor Licensing Tribunal to have his, her or its trading hours extended to a time later than the trading hours referred to in subsection (3): Provided that such extended time period imposed by the Liquor Licensing Tribunal may not exceed 20:00 the same day with regard to subsection (3)(a) and 04:00 the next day with regard to subsection (3)(b).

(5) The Liquor Licensing Tribunal may not grant an application referred to in subsection (4) unless it is satisfied on a balance of probabilities that the granting thereof—

- (a) is in the public interest; and
 - (b) does not prejudice—
 - (i) the residents of a residential area;
 - (ii) the residents of an institution for the aged or frail;
 - (iii) the learners of an educational institution who are under the age of eighteen (18) years;
 - (iv) the patients of an institution for drug or alcohol related dependencies; or
 - (v) the congregants of a religious institution located in the vicinity of the licensed premises concerned.
- (6) The Board must, within the prescribed period after granting or refusing an application made in terms of subsection (4), notify the applicant of the decision of the Liquor Licensing Tribunal.
- (7) Where the application has been granted, the applicant must pay the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (6) in as far as the notice applies to the granting of the application.

Clause 64

1. On page 27, after line 34, to insert:
 - (e) been the subject of a complaint received by a municipality,

Clause 68

1. On page 31, in line 40, to omit subclause (11).

Clause 84

1. On page 38, in line 17, after “application” to insert “in the prescribed manner”.
2. On page 38, after line 21, to insert:
 - (c) a person micro-manufacturing wine not for sale.

Clause 87

1. On page 39, in line 21, to omit “54, 55” and to substitute “54(6), 55(3)”.
2. On page 39, in line 24, to omit “49(8)” and to substitute “49(7)”.
3. On page 39, in line 24, to omit “59(3)” and to substitute “59(8)”.
4. On page 39, in line 32, to omit “23(12)” and to substitute “23(13)”.
5. On page 39, in line 32, after “79” to insert “, 80(1)”.
6. On page 39, in line 48, to omit “to (6)” and to substitute “, 49(5)”.
7. On page 39, in line 48, to omit “59” and to substitute “59(8)”.
8. On page 39, in line 54, to omit “liquor” and to substitute “item”.

Clause 89

1. On page 41, in line 15, to omit “five years” and to substitute “twelve (12) months”.
2. On page 41, in line 19, to omit “59(2)” and to substitute “59(3)”.
3. On page 41, in line 28 to omit “and (6) must within eighteen (18)” and to substitute “must within twelve (12)”.
4. On page 41, to omit subclause (14).

