

MEMORANDUM

1. Purpose

This Bill gives effect to the intention to align activities, etc. of public entities where possible. The Free State Liquor Authority and the Free State Gambling and Racing Board are both regulatory authorities. Although the regulation of the respective industries are different, there are many other instances where a merging of the two entities would be beneficial, e.g. establishment of only one board, aligning compliance issues relating to police and inspectors and optimizing the use of available staff. Therefore, this Bill provides for the combined regulation of the gambling and liquor industries.

2. Chapter-by-chapter explanation

2.1 Chapter 1

Chapter 1 sets out the definitions, interpretation, objects and application of the Act. In view thereof that in both the liquor and gambling industries technical terms are utilized, it is important that detailed definitions and interpretational clauses be provided. The objects of the Act are the following:

- (1) in relation to liquor to -
 - (a) reduce the socio-economic and other costs of alcohol abuse by -
 - (i) implementing essential national norms and standards in the liquor industry as determined by the National Liquor Act;
 - (ii) regulating the micro-manufacturing and retail sale of liquor or methylated spirits; and
 - (iii) providing for public participation in the consideration of applications for registration; and
 - (b) promote the development of a responsible and sustainable liquor industry in a manner that facilitates -
 - (i) the entry of new participants into the industry;
 - (ii) diversity of ownership in the industry;
 - (iii) an ethos of social responsibility in the industry; and
 - (iv) local tourism and economic growth; and

- (2) in relation to gambling to -
- (a) implement national norms and standards in the gambling industry as determined by the National Gambling Act;
 - (b) ensure that –
 - (i) gambling activities are effectively regulated, licenced, controlled and policed;
 - (ii) members of the public who participate in any licenced gambling activity are protected;
 - (iii) society and the economy are protected against over-stimulation of the latent demand for gambling; and
 - (iv) the licensing of gambling activities is transparent, fair and equitable;
 - (c) generate revenue for the Province.

2.2 Chapter 2

This Chapter establishes the entity as a juristic person. It provides for the board through which the management and control of the entity will be conducted. This chapter deals with the composition, powers, functions and eligibility of board members. It furthermore determines the tenure of office to be not more than 3 years, renewable for a further 2 years and it also provides for termination of office. Amongst others, it empowers the board to appoint staff, which must include a suitably qualified chief executive officer and company secretary. In view of the importance of objectivity of this Authority, it specifically deals with position of trust by members, as well as staff members. Financial management of the board is made subject to the Public Finance Management Act and the Auditor General is appointed as the external auditor for this entity. In view of the fact that this board might be required to meet on a regular basis, the Bill makes provision for the appointment of committees which might be more practical than convening the whole board for each and every instance. Furthermore, in order to ensure that the board has power to summon persons to appear before it, section 20 regulates those powers and processes.

2.3 Chapter 3

This chapter applies only to liquor and methylated spirits and provides for the detail regarding regulation of the liquor industry. This regulation is similar to processes provided for in the Free State Liquor Act, 2007.

- 2.3.1 Part 1 of this chapter relates to the restriction to undertake micro-manufacturing or sale of liquor and methylated spirits without registration, as well as restrictions that are placed on a registrant, for example, the activities such person may carry out on the premises, issues relating to employment, advertisement and supply of liquor to minors or school going learners.
- 2.3.2 Part 2 of chapter 3 regulate the registration process. It, *inter alia*, includes some of the conditions of registration, the procedure for registration, the reports necessary for registration and the process how to deal with objections during a registration process. It furthermore also sets out how registration may be cancelled and provides that registration will lapse after 10 years.
- 2.3.3 Part 3 specifically regulates on-consumption and off-consumption registration. It provides for kinds of registration and specific conditions applicable to such types of registration, for example, clubs, taverns, liquor pub and liquor store. It also includes a provision regarding regulation of times of business.

2.4 Chapter 4

Chapter 4 applies to gambling and provides for the detail on regulation of the industry. This regulation is similar to processes provided for in the Free State Gambling and Racing Act, 1996.

- 2.4.1 Part 1 sets out the provisions regarding licencing of gambling. It, amongst others, determines that the board must take cognizance of the national norms and standards and recommendations made by the National Gambling and Wagering Board before granting any licence. It provides for disqualifications for licences and kinds of licences. Furthermore, it sets out the application procedures which include public hearings, investigations and police reports. It also provides for the suspension or revocation of any licence, as well as the transfer or amendment for a licence.
- 2.4.2 Part 2 provides for the conditions that may be applicable to a licence. Furthermore, it also regulates electronic monitoring system for gambling machines, the financial interest in a business of a licensee, suitability of third parties, as well as provisions on control of entities and the exclusion of persons. Various other provisions relating to credit, rules of games, assistance to customers, renewal of licences are also included.
- 2.4.3 Part 3 regulates employees of gambling businesses. According to this part, employees of gambling businesses must have certificates of approval. This part regulates the disqualifications, the register of employees, the duration of a certificate, renewals, etc.

2.5 Chapter 5

Chapter 5 regulates compliance issues of both liquor and gambling. It provides for the designation of police officers and inspectors. It also sets out the powers and functions of the inspectors. Furthermore, it provides for entry on premises with or without a warrant. It furthermore provides that the board may request the Minister of Justice to appoint inspectors as peace officers. It furthermore empowers the board to issue compliance notices and interim orders should it be necessary to request participants in the industries to comply with certain requests.

2.6 Chapter 6

2.6.1 In view thereof that various technical terms are used and could lead to problems regarding prosecution, it is necessary to provide for in detail certain prohibitions in part 1 of this chapter.

2.6.2 Part 2 regulates the offences, penalties, fines and forfeitures. It, *inter alia*, determines that a person who is found guilty of an offence in terms of this Act, is liable on conviction to a fine or imprisonment not exceeding 10 years, or to both a fine and such imprisonment. It also determines that a court convicting any person of such an offence may declare any proceeds thereof to be forfeited. Furthermore, the court may cancel the licence or registration issued in terms of this Act.

2.6.3 Part 3 regulates complaints and determines that an aggrieved person who could convince the responsible Member that he or she does not have the necessary financial means to approach the High Court for a review application could appeal to the responsible Member.

2.7 Chapter 7

Chapter 7 empowers the responsible Member to issue regulations, which include regulations subject to national norms and standards relating to international sport events. It also determines that such rules may differ from those generally applicable to applications and registrations in terms of this Act and regulations. It furthermore empowers the board to make rules not inconsistent with the provisions of the Act relating to the exercise of its powers and the performance of its functions.

2.8 Chapter 8

Chapter 8 provides for general provisions, which includes review of the decisions of the board in terms of the Promotion of Administrative Justice Act and the repeal of the Free State Gambling and Racing Act and the Free State Liquor Act. It also empowers the responsible Member, chief executive officer and the board to delegate certain powers.

Finally, it provides for transitional arrangements regarding transfer of assets, rights, liabilities and obligations, as well as staff. Furthermore, it provides for the continuation of regulations, proclamations and notices issued in terms of various legislation, as well as for continuation of licences and registrations issued in terms of the various Acts repealed by this Bill. In order to ensure that administrative matters can be concluded, it also provides that the reporting responsibilities of the accounting authorities of the Free State Gambling and Racing Board and the Free State Liquor Authority which have not yet been concluded when the Act takes affect, may be executed by the board established in terms of this Act.

The last section in the Act sets out the short title and commencement thereof.