

CHAPTER 14:24

TRADITIONAL BEER ACT

Acts 25/1984, 8/1988 (s. 164), 22/2001 (s. 4).

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AN ACT to regulate and control the brewing, sale, supply and possession of traditional beer; to provide for the disposition of certain moneys derived from the sale of liquor; to impose a levy on brewers of traditional beer; to authorize the sale of refreshments; and to provide for matters incidental to or connected with the foregoing.

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Traditional Beer Act [*Chapter 14:24*].

2 Interpretation

(1) In this Act—

“brew” includes the making of any liquid drink or powder referred to in the definition of “traditional beer”;

“commercial brewer” means the holder of a commercial brewers permit;

“commercial brewers permit” means a commercial brewers permit issued in terms of section *seven*;

“controlled liquor licence” means a beer-hall liquor licence or bar liquor licence held in terms of the Liquor Act [*Chapter 14:12*] by a person who is not a local authority and who employs fifty or more persons on the land where the licensed premises concerned are situated;

“controlled liquor moneys” means the moneys referred to in subsection (1) of section *ten*;

“employers permit” means an employers permit issued in terms of section *eight*;

“exporters permit” means an exporters permit issued in terms of section *nine*;

“general permit” means a general permit issued in terms of section *eight*;

“inspector” means a person designated to be an inspector in terms of section *fourteen*;

“levy” means the levy referred to in subsection (1) of section *eleven*;

“liquor” means—

- (a) any spirit (including methylated and plain spirits), wine or beer (including traditional beer);
- (b) any fermented, distilled, spirituous or malted liquor not mentioned in paragraph (a) containing more than two comma seven five *per centum* of absolute alcohol;
- (c) any drink with which anything defined as liquor in paragraph (a) or (b) has been mixed; but does not include spirituous or distilled perfume, perfumery, medicated spirit or medicated wine;

“local authority” means—

- (a) a municipal council, town council, local board or rural district council; or
- (b) any other authority declared in terms of subsection (3) to be a local authority for the purposes of this Act;

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“permit” means a commercial brewers permit, an employers permit, an exporters permit or a general permit;

“refreshments” means—

- (a) all articles of food, confectionery, beverages or mineral waters such as are ordinarily sold in a restaurant; or
- (b) newspapers, periodicals, books or post-cards; or
- (c) manufactured tobaccos, matches, pipes or other smokers’ requisites;

“sell” includes—

- (a) keeping, exposing, offering or possessing for sale;
- (b) bartering or exchanging;
- (c) supplying free of charge at any place at which an entrance fee is charged or at which a collection is made for any entertainment given there;

“supply” means to dispose of otherwise than by sale;

“traditional beer” means—

- (a) the alcoholic drink which is brewed from grain and is commonly known as *utshwala*, *doro* or *whawha*; or
- (b) any potable opaque liquid containing more than one comma seven *per centum* of ethyl alcohol by volume at fifteen degrees celsius, which—
 - (i) is derived by the fermentation of a mash of cereal, grain or vegetables or of grain or vegetable products, with or without additives; and
 - (ii) contains, per one hundred millilitres, not less than two grams of the water-insoluble mash, or the water-insoluble residue of the mash, from which it is derived;

or

- (c) any intoxicating drink or powder declared to be traditional beer in terms of subsection (2).

(2) The Minister may, by statutory instrument, declare—

(a) any intoxicating drink which, in his opinion, is substantially similar to traditional beer; or
(b) any powder which, in his opinion, when mixed with water, with or without the addition of yeast, forms a drink which is substantially similar to traditional beer;

as defined in paragraph (a) or (b) of the definition of “traditional beer” in subsection (1) to be traditional beer for the purposes of this Act and may, in like manner, amend or revoke any such declaration.

(3) The Minister may, by statutory instrument—

- (a) declare any person, other than a local authority, to be a local authority for the purposes of this Act;
- (b) specify the area of jurisdiction of such local authority; and may, in like manner, amend or revoke any such declaration or specification.

3 Act to bind State

This Act shall bind the State.

PART II

CONTROL OF TRADITIONAL BEER

4 Control of brewing, selling, supplying or possessing traditional beer

(1) No person shall brew traditional beer—

- (a) unless he is authorized in terms of this Act to brew such beer; or
(b) except in terms of a permit issued in terms of this Act to brew such beer.

(2) Save as may be authorized in terms of the Liquor Act [*Chapter 14:12*], no person shall sell traditional beer—

- (a) unless he is authorized in terms of this Act to sell such beer; or
(b) except in terms of a permit issued in terms of this Act to sell such beer.

(3) Save as may be authorized in terms of the Liquor Act [*Chapter 14:12*], no person shall supply traditional beer—

- (a) unless he is authorized in terms of this Act to supply such beer; or
(b) except in terms of a permit issued in terms of this Act to supply such beer.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

PART III

AUTHORITY TO BREW, SELL OR SUPPLY TRADITIONAL BEER

5 Authority to brew, sell or supply traditional beer to service personnel

(1) The Commissioner of Police, the Commander of any branch of the Defence Forces or the Director of Prisons may, subject to such conditions as he may impose, authorize any person to do one or more or all of the following—

- (a) brew traditional beer;
- (b) sell traditional beer to members of and employees in the Police Force, the Defence Forces or the Prison Service, their families and their *bona fide* guests;
- (c) supply traditional beer to persons referred to in paragraph (b); for consumption within the precincts of any police, defence force or prison establishment.

(2) Any person who is authorized to sell traditional beer in terms of subsection (1) may, subject to any conditions imposed by the person granting the authority, sell refreshments in or on the premises in which he sells traditional beer, and shall not be required to hold a licence under the Shop Licences Act [*Chapter 14:17*] in respect of such sales.

6 Domestic brewing and supply of traditional beer

Subject to such conditions as may be prescribed, a person of or over the age of eighteen years may brew and supply traditional beer in such quantity as is reasonable for the domestic and social needs of himself and his family.

PART IV

PERMITS TO BREW, SELL OR SUPPLY TRADITIONAL BEER

7 Commercial brewers permits

(1) The Minister may issue a commercial brewers permit to any person and, after affording the holder thereof an opportunity of making such representations in the matter as he may wish, may by notice in writing to the holder thereof, revoke or suspend such permit.

(2) A commercial brewers permit shall be subject to—

(a) such conditions as may be prescribed; and

(b)

such conditions, not being inconsistent with any conditions referred to in paragraph (a), as may be imposed thereon by the Minister at the time of the issue thereof or at any other time.

(3) Subject to this section and to any conditions referred to in subsection (2) which are applicable, a commercial brewers permit shall authorize the holder thereof to do one or more or all of the following— (a) brew traditional beer;

(b) sell traditional beer for export;

(c) supply traditional beer for export;

(d) sell traditional beer to any person authorized or permitted in terms of this Act or the Liquor Act [*Chapter 14:12*] to sell or supply such beer;

(e) supply traditional beer to any person referred to in paragraph (d).

8 Employers and general permits

(1) A local authority may, in respect of the area under its jurisdiction issue—

(a) otherwise than in respect of any stand, plot or premises used for residential, industrial or commercial purposes, to any employer, an employers permit;

(b) to any person, a general permit; and may, by notice in writing to the holder thereof, revoke or suspend any such permit:

Provided that the local authority shall, if so directed by the Minister, revoke or suspend any such permit.

(2) In respect of any area which is not under the jurisdiction of a local authority the Minister may issue employers permits and general permits and may, by notice in writing to the holder thereof, revoke or suspend any such permit.

(3) An employers permit and a general permit shall be subject to—

(a) such conditions as may be prescribed; and

(b) such other conditions, not being inconsistent with any condition referred to in paragraph (a), as may be imposed thereon by the local authority concerned or the Minister, as the case may be, at the time of the issue thereof or at any other time.

(4) Subject to any conditions referred to in subsection (3) which are applicable, an employers permit shall permit an employer to authorize one or more of his employees to— (a) brew and sell traditional beer; or

(b) sell traditional beer; whichever may be specified in the permit, to his other employees, their families and *bona fide* guests and visitors for consumption by them.

(5) Subject to any conditions referred to in subsection (3) which are applicable, a general permit shall permit the holder thereof to—

(a) brew and supply traditional beer; or

(b) supply traditional beer; whichever may be specified in the permit— (i) as rations, free of charge; or

(ii) for consumption at ceremonial or other special social occasions not involving the payment of any entrance fee and where no charge is made for traditional beer consumed.

(6) A local authority may charge such fees as may be prescribed for the issue of any employers permit or general permit.

(7) Any person who is aggrieved by the refusal to issue a permit or by the revocation or suspension of any permit or by the imposition of any condition upon a permit by a local authority in terms of this section may, within thirty days of the refusal, revocation, suspension or imposition of the condition concerned, as the case may be, appeal in writing to the Minister:

Provided that no such appeal shall lie against a revocation or suspension of any permit which was directed to be made by the Minister.

(8) Upon an appeal made to him in terms of subsection (7) the Minister may— (a) confirm the decision of the local authority concerned; or (b) direct the local authority concerned to—

(i) issue a permit; or

(ii) cancel the revocation or suspension; or

(iii) withdraw the condition appealed against or impose any other condition;

and the local authority shall comply with such direction.

9 Exporters permits

(1) The Minister may issue an exporters permit to any person and may, by notice in writing to the holder thereof, revoke or suspend such permit.

(2) An exporters permit shall be subject to— (a) such conditions as may be prescribed; and such conditions, not being inconsistent with any condition referred to in paragraph (a), as may be imposed thereon by the Minister at the time of the issue thereof or at any other time.

(b)

(3) Subject to any conditions referred to in subsection (2) which are applicable, an exporters permit shall permit the holder thereof to sell or supply traditional beer for export.

PART V

FINANCIAL

10 Accounting and disposal of controlled liquor moneys

(1) Subject to this section, all moneys received by— (a)
the holder of a controlled liquor licence; or

(b) a local authority; in
respect of—

(i) the sale of liquor; or

(ii) any levy; or

(iii) the sale of any article or commodity from a beer-hall; or

(iv) any concession exercisable within a beer-hall; or

(v) the disposal of assets purchased with any moneys referred to in this subsection; or

(vi) interest or other income arising from the investment of moneys referred to in this
subsection; or

(vii) fees for the issue of permits in terms of this Act; shall be held by the holder or
local authority concerned in a separate fund for which separate banking and other accounts shall be kept
and maintained.

(2) Controlled liquor moneys held by a local authority in a fund referred to in subsection (1) shall not form part of the general revenues of the local authority.

(3) Controlled liquor moneys shall, subject to subsections (4) and (6), be applied only to such purposes as may from time to time be prescribed, and if any such moneys are expended otherwise than for such purposes, the Minister may cause action to be brought in any court of competent jurisdiction to recover such moneys.

(4) The Minister may, after consultation with the local authority concerned, direct a local authority to pay to any of its housing accounts established in terms of section 301 of the Urban Councils Act [*Chapter 29:15*] such portion as the Minister may direct of the annual amount of controlled liquor moneys available for expenditure by the local authority concerned after provision is made for any amount expended or to be expended on the brewing, purchasing, distributing, selling or supplying of traditional beer, liquor or refreshments by the local authority in terms of this Act, and any moneys so paid shall be accounted for separately in the account concerned and shall be expended, in accordance with a proposal approved by the Minister in terms of section 205 of the Urban Councils Act [*Chapter 29:15*] or section 86 of the Rural District Councils Act [*Chapter 29:13*], as the case may be, only upon the erection of housing and other capital works within the area to which the proposal relates.

(5) The Minister may cause action to be brought in any court of competent jurisdiction to recover from any local authority any moneys which it has failed to pay or to apply in accordance with a direction given in terms of subsection (4), or which it has applied contrary to the provisions of that subsection.

(6) Controlled liquor moneys not immediately required for any purpose referred to in subsection (3) shall be held or invested in such manner as may be prescribed.

(7) Any moneys recovered by the Minister in terms of subsection (3) or (5) shall be used by him for the purposes to which those moneys could or should have been applied by the local authority or holder concerned.

11 Payment of levy by brewers

(1) Subject to this section, a commercial brewer shall pay a levy on all traditional beer sold by him at such rate as may from time to time be prescribed: Provided that—

(i) where any sale of traditional beer is cancelled, no levy shall be paid in respect thereof and any levy so paid shall be refunded if the commercial brewer, not later than six months after such payment, applies therefor;

(ii) no levy shall be payable in respect of traditional beer brewed or sold by a local authority in the area under its jurisdiction.

(2) So much of the levy as relates to traditional beer which is sold in the area which is— (a)
under the jurisdiction of a local authority, shall be paid to that local authority;

(b) outside the area under the jurisdiction of a local authority, shall be paid to the Minister for the credit of the fund referred to in subsection (3) and shall thereafter be held, accounted for and applied in accordance with subsections (3), (4) and (5).

(3) Whenever moneys have been paid to the Minister in terms of paragraph (b) of subsection (2), he shall—

(b)

(a) hold the moneys in a separate fund which shall not form part of the Consolidated Revenue Fund; keep separate accounts of such moneys;

(c) subject to subsection (5), apply moneys in the fund held by him in terms of paragraph (a) to the making of grants to local authorities or to such purposes as he considers desirable.

(4) Moneys in a fund referred to in paragraph (a) of subsection (3) not immediately required by the Minister for the purposes of paragraph (c) of that subsection shall be invested in securities issued by the State or in such other manner as the Minister, with the approval of the Minister responsible for finance, may determine.

(5) Any charges or expenses incurred by the State or any employee thereof in the administration of the fund referred to in paragraph (a) of subsection (3) shall be a charge on that fund and shall be paid into the Consolidated Revenue Fund.

(6) A commercial brewer by whom the levy referred to in paragraph (b) of subsection (2) is payable shall keep such records and submit such returns relating to traditional beer sold by him as may from time to time be prescribed.

(7) Any amount of levy payable shall be a debt due to the local authority or the Minister to whom it is so payable and, notwithstanding anything to the contrary in any law relating to magistrates courts, may be recovered in the court of the magistrate having jurisdiction in respect of the person by whom the levy is payable:

Provided that the recovery of the levy shall not preclude any prosecution from taking place in connection with the non-payment or misapplication of the levy.

PART VI

GENERAL

12 Other licences under Chapter 14:17 not required

A person authorized or permitted to sell traditional beer in terms of this Act shall not be required to take out a licence under the Shop Licences Act [*Chapter 14:17*] in respect of the sale of traditional beer sold in terms of such authority or permit.

13 Minister to be furnished with reports, etc.

(1) The Minister may from time to time require any person who is or who has at any time been authorized or permitted in terms of this Act to brew, sell or supply traditional beer to furnish accounts, books, statistics and other documents and such other information as he may deem necessary for the effective discharge of his duties and responsibilities in terms of this Act, and such person shall comply with any such requirement.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

14 Designation of inspectors

(1) The Minister may, subject to the laws relating to the Public Service, designate persons to be inspectors for the purpose of exercising such functions as are imposed upon inspectors in terms of this Act.

(2) A person employed by a local authority may, with the consent of the local authority, be designated in terms of subsection (1) as an inspector for the area under the jurisdiction of the local authority.

15 Powers of inspectors

(1) An inspector may at all reasonable times—

(a) demand the production for inspection by him of any accounts of controlled liquor moneys required to be kept and maintained in terms of the Act;

(b) enter any business premises of any person who is required to keep and maintain accounts of controlled liquor moneys in terms of this Act and examine and take extracts of such account:

Provided that an inspector shall not enter any premises in terms of this paragraph without the consent of the occupier unless there are reasonable grounds for believing that the entry is necessary for the prevention, investigation or detection of any contravention of this Act;

(c) demand the production for inspection by him of any permit, document or record given, issued or kept, as the case may be, in terms of this Act.

(2) Every brewer of traditional beer who is liable to pay the levy shall, at the request of an inspector—

(a) produce for inspection any records required to be kept and maintained by such brewer in terms of this Act; and

(b) allow such inspector to make extracts from or take copies of records referred to in paragraph (a).

(3) Any person who—

(a) resists, hinders or obstructs an inspector in the performance of his functions in terms of this section;

or

(b)

(b) fails or refuses, without just cause, to comply with a request of an inspector in terms of subsection (2); shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

16 Right of policemen to demand production of authorities and permits

(1) Any police officer may call upon any person, with regard to whom there are reasonable grounds for believing that such person is doing or has done anything for which in terms of this Act an authority or permit is required, to produce for inspection—

- (a) the relevant permit; or
- (b) evidence of the relevant authority or permit.

(2) Any person who—

- (a) resists, hinders or obstructs a police officer in the performance of his functions in terms of this section; or
- (b) fails or refuses, without just cause, to produce a permit or evidence when called upon to do so in terms of subsection (1);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

17 Evidence and presumptions

In any prosecution for a contravention of any provision of this Act—

- (a) the nature of the substance which forms the basis of the charge may be proved by any reliable evidence, including the evidence of a reliable witness to the effect that he is familiar with traditional beer and is satisfied, after tasting the substance or sample thereof before the court, that it is traditional beer:

Provided that, where the court is satisfied that for any good and sufficient reason any substance or sample thereof cannot be produced, and evidence of a reliable witness is given to the effect that he is familiar with traditional beer and is satisfied, having previously tasted the substance or sample in question, that it was traditional beer, such evidence shall be sufficient evidence of the nature of that substance or sample;

- (b) where it is proved that the person charged had in his possession or under his control more traditional beer than was reasonably required for consumption by himself, his family and his *bona fide* guests or visitors, such evidence shall be *prima facie* proof of the sale of such traditional beer by the person charged.

18 General offences

(1) Any person who, with intent to deceive—

- (a) uses for any purposes whatsoever any permit or other document issued in terms of this Act or for any purpose of this Act, which is not his own; or
- (b) alters, defaces, destroys or mutilates any permit or other document issued in terms of this Act or for any purpose of this Act; or
- (c) makes a false entry or statement in any account, register, record, return, note or other document required to be kept and maintained or required to be submitted in terms of this Act; shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who contravenes or fails to comply with any condition imposed upon the doing of anything authorized or permitted by or in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

(3) Any person who sells or supplies traditional beer to any person who is drunk shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

19 Regulations

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the conditions under which traditional beer may be brewed, sold, supplied or possessed;
- (b) conferring upon any person in charge of any place or premises at which traditional beer is sold or supplied a discretion to exclude or eject persons of a class whose presence or entry thereto would, in the opinion of such person, be likely to lead to a breach of the peace or other disorderly conduct;

- (c) the methods by which traditional beer shall be brewed or packaged and the composition and analysis thereof;
 - (d) the operation of accounts in relation to controlled liquor moneys and the form such accounts shall take;
 - (e) the form of permits to be issued in terms of this Act;
 - (f) the form and manner in which appeals or applications for permits in terms of this Act shall be made;
 - (g) the particulars and form of returns required to be submitted in terms of sections *eleven* and *thirteen* and the persons to whom, and the manner in which, such returns shall be submitted;
 - (h) the fees which may or are required to be charged in terms of this Act by a local authority for any permit issued by it in terms of this Act and the manner and time of payment thereof; (i) the rate of the levy and the manner and time of payment thereof; (j) the records of permits issued which shall be kept by any person.
- (3) Without derogation from the generality of the conditions which may be prescribed for the purposes of paragraph (a) of subsection (2), such conditions may relate to—
- (a) the situation, accommodation, quality of service, facilities, appointments, structure, layout, management and control of the premises in which traditional beer is brewed, sold, supplied or possessed;
 - (b) the places and areas in or at which and the times during which and the days on which traditional beer may be brewed, sold, supplied or possessed;
 - (c) the quantities in which traditional beer may be brewed, sold, supplied or possessed.
- (4) Regulations made in terms of subsection (1) may provide penalties for contravention thereof, but no such penalty shall exceed a fine of level six or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]