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Summary of the Liquor Products Amendment Act, 2021¹

The Liquor Products Amendment Act, 2021² (Act No. 8 of 2021) was assented to by the President on September 2, 2021, and published in the Government Gazette on September 17, 2021. This Act amends the original Liquor Products Act of 1989.

The primary objectives and key changes introduced by this Amendment Act include:

- **Definition Changes:**
 - It inserts new definitions for "*Authority*," which refers to the Wine Certification Authority, "*beer*," and "*other fermented beverage*".
 - It defines "*beer*" and "*other fermented beverage*" as products meeting specific requirements outlined in new sections 6A and 6C respectively.
 - The definition of "*class designation*" is amended to include beer, traditional African beer, and other fermented beverages, in addition to wine, alcoholic fruit beverages, spirits, grape-based liquors, and spirit-based liquors.
 - The definition of "*liquor product*" has been expanded to explicitly list wine, an alcoholic fruit beverage, beer, traditional African beer, other fermented beverage, a spirit, a grape-based liquor, a spirit-based liquor, and any other liquor for which an import certificate has been issued.
 - The definition of "*officer*" has been updated to align with the Public Service Act, 1994, replacing the reference to the 1984 Act.
 - The definition of "*analyst*" has been updated to mean a person or institution designated under section 20.
 - The definitions of "*board*," "*container*," and "*specially authorised liquor*" have been deleted.
 - "*Traditional African beer*" is defined as a product meeting the requirements of section 6B.
 - The "*department*" is now specified as the Department of Agriculture, Forestry and Fisheries.
- **Renaming and Reconstitution of the Wine and Spirit Board:**
 - The Act provides for the **renaming and reconstitution of the Wine and Spirit Board**.
 - The **Wine and Spirit Board** established by the principal Act is dissolved.
 - A new entity called the **Wine Certification Authority** is established as a **juristic person**.

¹ Source: Google NotebookLM

² Source: <https://www.gov.za/documents/acts/liquor-products-amendment-act-8-2021-english-afrikaans-17-sep-2021>

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- The Authority consists of 10 persons with relevant knowledge (viticulture, oenology, distilling, regulatory environment of the liquor industry, liquor production, food safety, or microbiology) representing scheme participants (with two representatives for workers if the scheme deals with ethical trading standards), three officers from the department, one person nominated by the Agricultural Research Council, and one person designated by the Minister.
 - The Minister appoints the members and designates the chairperson. Parliament must be notified of appointments within 30 days.
 - The appointment process involves the Minister inviting nominations via Gazette and national newspapers, establishing a selection committee, and the committee submitting a shortlist to the Minister.
 - Members hold office for a maximum of three years but continue until a successor is appointed. Reappointment is possible without repeating the full nomination process.
 - **Disqualifications** for membership include not being a South African citizen permanently resident in the Republic, being an unrehabilitated insolvent, or having been convicted of certain offenses. Members vacate office if they become disqualified, of unsound mind, or are absent from more than two consecutive meetings without leave. The Minister may remove a member for sound reasons.
 - The Authority can appoint committees and has powers to acquire/dispose of property, raise loans, insure itself, enter agreements, and make recommendations to the Minister.
 - Its funds consist of money paid to it under the Act or a scheme, and other accrued money, which must be deposited into a bank account and utilised for its functions. The Authority must keep financial records and submit audited annual financial statements and an activity report to the Minister.
- **Requirements for Beer, Traditional African Beer, and Other Fermented Beverages:**
 - New sections 6A, 6B, and 6C are inserted to provide specific requirements for these product types.
 - **Beer** must be produced by alcoholic fermentation of wort from starch and sugar-containing raw materials, flavoured with hops or hop products (unless regulated otherwise), and at least 35% of fermentable extract must come from malted barley or wheat. It must meet prescribed class requirements and not exceed prescribed levels of certain substances. Adding or removing unauthorized substances or in an unprescribed manner is prohibited.

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- **Traditional African Beer** must be produced by alcoholic fermentation of malted or unmalted grain of sorghum, maize, finger millet, or pearl millet. It must be in a state of alcoholic fermentation or not have it arrested, contain at least 4% solids from the grain, and not contain or be flavoured with hops. If in powder form, it must comprise not more than three parts by mass of milled sorghum or maize malt and at least seven parts by mass of milled, precooked maize or unmalted sorghum grain or meal. It must also meet prescribed class requirements and substance limits, and unauthorised additions/removals are prohibited.
- **Other Fermented Beverages** must be produced by alcoholic fermentation of a prescribed substance in a prescribed manner and meet prescribed class requirements and substance limits. Unauthorised additions/removals are prohibited.
- **Alcohol Content Threshold:** The general alcohol content threshold for products sold or produced for drinking purposes, or powders that will achieve this when combined with liquid, has been **reduced from more than 1% to more than 0.5%**. The Minister may grant exemptions under certain conditions.
- **Import and Export Provisions:**
 - The Act reiterates that importing or exporting products with an alcohol content of more than 0.5% for drinking purposes requires an import or export certificate, respectively, issued by the administering officer.
 - The Minister is empowered to **designate a juristic person, body, or institution to exercise the powers and carry out duties related to export certificates**.
 - The exemption for "*beer, sorghum beer and medicine*" from import/export certificate requirements has been simplified to just "*medicine*".
- **Inspection and Seizure Powers:**
 - An administering officer or delegated officer may enter any place, premises, or conveyance, including a private dwelling (with consent or warrant), or a business premise without a dwelling, without prior notice at any reasonable time, to exercise powers or duties under the Act.
 - They must show proof of identity and authority and state the purpose of entry.
 - The Act details procedures for obtaining a warrant to enter private dwellings if entry is refused or expected to be refused. An officer can also enter a private dwelling without a warrant if they reasonably believe a

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warrant would be issued and delay would defeat the purpose of investigation.

- Officers can seize liquor products, materials, substances, articles, books, or documents believed to be involved in an offense or intended for such use, or which may provide evidence of an offense.
 - Seized items, at the option of the person from whom they were seized, may be directed by the administering officer or Authority to be destroyed by and at the expense of that person within a reasonable period. Failure to do so results in forfeiture to the State and destruction, with the State recovering expenses.
- **Offences and Penalties:** The Act expands the list of contraventions that constitute offenses, including new sections related to beer, traditional African beer, and other fermented beverages. The maximum penalty for contravening regulations has been **increased from a fine of R2,000 or 6 months imprisonment to a fine or 12 months imprisonment or both.**
 - **Legal Presumptions:** The Act modifies legal presumptions, stating that in the absence of evidence to the contrary that raises a reasonable doubt, certain facts (e.g., applicability of the Act, composition of samples, truth of statements in documents, lack of permits) will be presumed.
 - **Vicarious Liability:** If an employee or agent commits an act or omission that would be an offense for the principal, the principal is deemed to have committed it unless they can satisfy the court of a "reasonable possibility" that they did not connive at or permit the act, took all reasonable steps to prevent it, and the act was outside the scope of the employee's authority.
 - **Regulation-Making Powers:** The Minister's power to make regulations is extended to include provisions for the calibration, gauging, and marking of tanks, the **compulsory registration of producers, blenders, or fillers of liquor products**, and standards for container types and packaging, including minimum and maximum capacities. Regulations must be tabled in Parliament for consideration.
 - **Gender-Equal Terminology:** The Act replaces gender-specific terms like "*chairman*," "*vice-chairman*," "*he*," "*his*," and "*him*" with gender-neutral alternatives like "*chairperson*," "*vice-chairperson*," "*he or she*," "*his or her*," and "*him or her*" throughout the principal Act.

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- **Other Laws Amended:** The Act also amends the Customs and Excise Act, 1964, and the Liquor Act, 1989 (Act No. 27 of 1989), and the Liquor Act, 2003 (Act No. 59 of 2003) to align with these changes, including updating definitions for "*alcoholic fruit beverage*," "*beer*," and "*sorghum beer*" (now traditional African beer), and "*liquor*". For instance, "*sorghum beer*" is now referred to as "*traditional African beer*".