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THE PRESIDENCY

No. 960

12 August 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 7 of 2004: National Gambling Act, 2004.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

*(English text signed by the President.)
(Assented to 6 August 2004.)*

ACT

To provide for the co-ordination of concurrent national and provincial legislative competence over matters relating to casinos, racing, gambling and wagering, and to provide for the continued regulation of those matters; for that purpose to establish certain uniform norms and standards applicable to national and provincial regulation and licensing of certain gambling activities; to provide for the creation of additional uniform norms and standards applicable throughout the Republic; to retain the National Gambling Board; to establish the National Gambling Policy Council; to repeal the National Gambling Act, 1996; and to provide for matters incidental thereto.

PREAMBLE

CONSIDERING that the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), establishes that casinos, racing, gambling and wagering are matters of concurrent national and provincial legislative competence;

It is desirable to co-ordinate activities relating to the exercise of that concurrent competence within the national and provincial spheres of government;

It is desirable to establish certain uniform norms and standards, which will safeguard people participating in gambling and their communities against the adverse effect of gambling, applying generally throughout the Republic with regard to casinos, racing, gambling and wagering, so that—

- * gambling activities are effectively regulated, licenced, controlled and policed;
- * members of the public who participate in any licenced gambling activity are protected;
- * society and the economy are protected against over-stimulation of the latent demand for gambling; and
- * the licensing of gambling activities is transparent, fair and equitable;

It is expedient to establish certain national institutions, and to recognise the establishment of provincial institutions, which together will determine and administer national gambling policy in a co-operative, coherent and efficient manner.

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

INTERPRETATION AND APPLICATION

Definitions

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| 1. In this Act, unless the context indicates otherwise— | 20 |
| “ amusement game ” means a game that has a restricted prize, and that may be regulated and licensed in terms of provincial law contemplated in section 47; | |
| “ amusement machine ” means a machine or device on which an amusement game may be played and that may be regulated and licensed in terms of provincial law contemplated in section 47; | 25 |
| “ associate ” means— | |
| (a) an employer; | |
| (b) a co-shareholder of a private company contemplated in section 20 of the Companies Act, 1973 (Act No. 61 of 1973); | |
| (c) a co-member of a Close Corporation contemplated in section 2 of the Close Corporations Act, 1984 (Act No. 69 of 1984); and | 30 |
| (d) a person to whom one has granted or from whom one has received a general power of attorney; | |
| “ bingo ” means a game, including a game played in whole or in part by electronic means— | 35 |
| (a) that is played for consideration, using cards or other devices— | |
| (i) that are divided into spaces each of which bears a different number, picture or symbol; and | |
| (ii) with numbers, pictures or symbols arranged randomly such that each card or similar device contains a unique set of numbers, pictures or symbols; | 40 |
| (b) in which an operator or announcer calls or displays a series of numbers, pictures or symbols in random order and the players match each such number, picture or symbol on the card or device as it is called or displayed; and | |
| (c) in which the player who is first to match all the spaces on the card or device, or who matches a specified set of numbers, pictures or symbols on the card or device, wins a prize, | 45 |

or any other substantially similar game declared to be bingo in terms of section 6(4);

“**board**” means the National Gambling Board retained and constituted by Part B of Chapter 4;

“**bookmaker**” means a person who directly or indirectly lays fixed-odds bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers; 5

“**Cabinet**” means the body of the National Executive referred to in section 91 of the Constitution;

“**cash dispensing machine**” means an automatic teller machine or any similar device that dispenses cash to approved account holders or card holders; 10

“**casino**” means premises where gambling games are played, or are available to be played, but does not include premises in which—

- (a) only bingo and no other gambling game is played or available to be played;
- (b) only limited pay-out machines are available to be played; 15
- (c) limited pay-out machines are available to be played and bingo, but no other gambling game is played or available to be played; or
- (d) only social gambling is conducted in terms of a temporary license or provincial law;

“**Chief Executive Officer**” means the person appointed by the board in terms of section 73(1)(a); 20

“**consideration**” means—

- (a) money, merchandise, property, a cheque, a token, a ticket, electronic credit, credit, debit or an electronic chip, or similar object; or
 - (b) any other thing, undertaking, promise, agreement or assurance, 25
- regardless of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

“**contingency**” means an event or occurrence of which the outcome is uncertain or unknown to any person until it happens;

“**Council**” means the National Gambling Policy Council established by section 61; 30

“**designated area**”—

- (a) when used in relation to a site, means an area at that site in which any limited pay-out machine is authorised to be placed; and
- (b) when used in any other case, means an area within licensed premises where any gambling game is available to be played; 35

“**discounted price**” means a price charged by a licensee for any goods or services that is significantly below the prevailing fair market price for similar goods or services provided in the ordinary course of business by persons who are not licensees in terms of this Act or provincial law; 40

“**electronic agent**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

“**employment licence**” means a license permitting a person to work in the gambling industry within the Republic;

“**excluded person**” means a person who has been registered as such in terms of section 14 in order to be prevented from engaging in any gambling activity; 45

“**family member**” means a person’s—

- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption; 50

“**financial interest**” means—

- (a) a right or entitlement to share in profits or revenue;
- (b) a real right in respect of property of a company, corporation or business;
- (c) a real or personal right in property used by a company, corporation or business; or 55
- (d) a direct or indirect interest in the voting shares, or voting rights attached to shares, of a company or an interest in a close corporation;

- “**Financial Intelligence Centre Act**” means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and the regulations made in terms of that Act;
- “**fixed-odds bet**” means a bet on one or more contingencies in which odds are agreed at the time the bet is placed;
- “**gambling activity**” means any activity described as such in section 3; 5
- “**gambling device**” means equipment or any other thing that is used, or at the time of its manufacture was designed to be used, in determining the result of a gambling activity;
- “**gambling game**” means any activity described as such in section 5;
- “**gambling industry**” includes any matter regulated in terms of this Act, but does not include a regulatory authority; 10
- “**gambling machine**” means any mechanical, electrical, video, electronic, electro-mechanical or other device, contrivance, machine or software, other than an amusement machine, that—
- (a) is available to be played or operated upon payment of a consideration; and 15
- (b) may, as a result of playing or operating it, entitle the player or operator to a pay-out, or deliver a pay-out to the player or operator;
- “**informal bet**” means a bet, wager, undertaking, promise or agreement contemplated in section 4, between or among two or more persons, if— 20
- (a) none of the parties involved is a bookmaker or derives a significant portion of their livelihood from gambling; and
- (b) no person is paid a fee or derives any gain, other than winning the bet itself, from the activity;
- “**interactive game**” means a gambling game played or available to be played through the mechanism of an electronic agent accessed over the Internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of any such premises is authorised to make such a game available for play; 25
- “**interactive provider**” means a person licensed to make an interactive game available to be played;
- “**Internet**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); 30
- “**inspector**” means a person appointed in terms of section 76;
- “**license**” includes to register, approve or certify, in terms of any applicable provincial law;
- “**licensed**” when used in relation to— 35
- (a) a person, means to be in lawful possession of a valid licence, registration card or certificate issued to that person in terms of this Act or provincial law; or
- (b) a gambling activity, means that a valid licence has been issued, in terms of this Act or provincial legislation, to a licensee permitting the licensee to engage in or conduct that activity, or make that activity available for other persons to engage in it; 40
- “**licensed premises**” means specific premises that are named or described in a licence issued in terms of this Act or applicable provincial law;
- “**limited pay-out machine**” means a gambling machine with a restricted prize, described in section 26; 45
- “**manufacturer, supplier or maintenance provider**” means a person whose business is to import, manufacture, sell, lease, make available, distribute, maintain or repair a gambling device;
- “**Minister**” means the member of Cabinet responsible for the administration of this Act; 50
- “**minor**” means a person under the age of 18 years;
- “**national licence**” means a license issued in terms of this Act;
- “**open bet**” means—
- (a) a bet, other than a totalisator bet, taken by a bookmaker on one or more contingencies, in which no fixed-odds are agreed at the time the bet is placed; 55
- or
- (b) a bet in respect of which the payout is determined after the outcome of the contingency on which such a bet is struck became known, with reference to dividends generated by a totalisator;

- “**organ of state**” has the meaning set out in section 239 of the Constitution;
- “**partner**” means a person with whom one has entered into a partnership agreement with the intention of making a profit;
- “**person**” includes a partnership, association, trust, or a juristic person established by or in terms of any law; 5
- “**political office bearer**” means—
- (a) a member of the National Assembly, the National Council of Provinces or the Cabinet;
- (b) a member of a provincial legislature;
- (c) a member of a municipal council or local authority; 10
- (d) a diplomatic representative of the Republic who is not a member of the public service;
- (e) a member of a house, or council of traditional leaders; or
- (f) a national or provincial office bearer of a political party;
- “**premises**” includes land and any building, structure, vehicle, ship, boat, vessel, aircraft or container; 15
- “**prescribed**” means prescribed by regulation in terms of this Act;
- “**prohibited practice**” has the meaning assigned to it in the Competition Act, 1998 (Act No. 89 of 1998);
- “**provincial law**” means an Act of a provincial legislature concerning the regulation of casinos, gambling, racing or wagering and includes subordinate legislation made in terms of such Act; 20
- “**provincial licence**” means a licence issued by a provincial licensing authority in terms of applicable provincial laws;
- “**provincial licensing authority**” means a body established by provincial laws to regulate casinos, racing, gambling or wagering; 25
- “**public servant**” means a person employed within an organ of state or within a court, or a judicial officer;
- “**register of excluded persons**” means the register required to be maintained by the board in terms of section 14; 30
- “**regulatory authority**” means the board or a provincial licensing authority;
- “**restricted gambling activity**” means a gambling activity other than social gambling or an informal bet;
- “**route operator**” means a person who is licensed as such in terms of applicable provincial laws contemplated in section 18; 35
- “**site**” means premises licensed in terms of applicable provincial law for the placement of one or more limited pay-out gambling machines contemplated in section 18;
- “**site operator**” means a person who is licensed to operate a site in terms of applicable provincial laws contemplated in section 18; 40
- “**social gambling**” has the meaning, if any, set out in applicable provincial laws;
- “**South African Bureau of Standards**” means the entity of that name established in terms of section 2(1) of the Standards Act, 1993 (Act No. 29 of 1993);
- “**spouse**” means a person’s— 45
- (a) partner in a marriage;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;
- “**testing agent**” means a person licensed in terms of this Act to test and calibrate gambling machines or gambling devices; and 50
- “**this Act**” includes the schedule and regulations.

Application of Act

2. This Act does not apply to an activity that is regulated in terms of the Lotteries Act, 1997 (Act No. 57 of 1997).

CHAPTER 2

NATIONAL GAMBLING POLICY

*Part A**Gambling activities*

- Gambling activities generally** 5
3. An activity is a gambling activity if it involves—
- (a) placing or accepting a bet or wager in terms of section 4(1);
 - (b) placing or accepting a totalisator bet, in terms of section 4(2); or
 - (c) making available for play, or playing—
 - (i) bingo or another gambling game in terms of section 5; or 10
 - (ii) an amusement game, to the extent that applicable provincial laws require such games to be licensed.
- Bets and wagers**
4. (1) A person places or accepts a bet or wager when that person—
- (a) being a player, stakes money or anything of value on a fixed-odds bet, or an open bet, with a bookmaker on any contingency; or 15
 - (b) being a bookmaker—
 - (i) accepts a stake of money or anything of value on a fixed-odds bet, or an open bet, from a player on any contingency; or
 - (ii) stakes money or anything of value on a fixed-odds bet, or an open bet, with another bookmaker on any contingency; 20
 - (c) stakes or accepts a stake of money or anything of value with one or more other persons on any contingency; or
 - (d) expressly or implicitly undertakes, promises or agrees to do anything contemplated in paragraph (a), (b) or (c). 25
- (2) A person places or accepts a totalisator bet when that person stakes money or anything of value on the outcome of an event or combination of events by means of—
- (a) a system in which the total amount staked, after deductions provided for by law or by agreement, is divided among the persons who made winning bets in proportion to the amount staked by each of them in respect of a winning bet; 30
 - or
 - (b) any scheme, form or system of betting, whether mechanically operated or not, that is operated on similar principles.
- Gambling games**
5. (1) An activity is a gambling game if— 35
- (a) it meets the following criteria:

- (i) it is played upon payment of any consideration, with the chance that the person playing the game might become entitled to, or receive a pay-out; and
 - (ii) the result might be determined by the skill of the player, the element of chance, or both; or
 - (b) it is a bet or wager in terms of section 4(1), that is placed in a casino in relation to an activity that meets the criteria in paragraph (a).
- (2) Despite subsection (1), for all purposes of this Act, none of the following activities is a gambling game:
- (a) A bet or wager in terms of section 4(1), other than a bet or wager contemplated in subsection (1)(b).
 - (b) a totalisator bet in terms of section 4(2); or
 - (c) an amusement game.

Pay-out and opportunity to play further game

6. (1) Subject to subsection (2), a pay-out is any money, merchandise, property, a cheque, credit, electronic credit, a debit, a token, a ticket or anything else of value won by a player—
- (a) whether as a result of the skill of the player or operator, the application of the element of chance, or both; and
 - (b) regardless how the pay-out is made.
- (2) Neither of the following is a pay-out:
- (a) An opportunity to play a further game; or
 - (b) a prize given to a participant or team of participants in a sporting event in respect of the participant's or team's performance in that event.
- (3) The result of a gambling game—
- (a) is an opportunity to play a further game if the player is afforded the opportunity to continue without interruption playing the type of game—
 - (i) in respect of which the opportunity was won; and
 - (ii) on the machine on which the opportunity was won; but
 - (b) is not an opportunity to play a further game if the opportunity can in any manner, whether directly or indirectly, be—
 - (i) distributed or transferred to the person who has won such an opportunity or to any other person, or
 - (ii) converted into money, property, a cheque, credit or any other thing of value; or
 - (iii) converted in terms of any scheme, arrangement, system, plan or device prescribed in terms of subsection (4).
- (4) The Minister may by regulation made in accordance with section 87 declare—
- (a) that any scheme, arrangement, system or plan is not an opportunity to play a further game; or
 - (b) that any particular game that is substantially similar to bingo, as described in section 1, is bingo.

Part B

Prohibited gambling, restricted activities and status of gambling debt

Gambling in relation to illegal activities unlawful

7. Despite any other law, a person must not—
- (a) engage in, conduct or make available a gambling activity if the outcome of that activity depends directly, indirectly, partly or entirely on a contingency related to an event or activity that is itself unlawful in terms of any law;
 - (b) permit any gambling machine or device under the person's control to be used for the purposes of a gambling activity contemplated in paragraph (a);
 - (c) maintain or operate any premises, whether or not such premises are licensed premises, for the purposes of a gambling activity contemplated in paragraph (a); or

- (d) permit any premises under the person's control, whether or not such premises are licensed premises, to be used for the purposes of a gambling activity contemplated in paragraph (a).

Unlicensed gambling activities unlawful

8. Despite any other law, a person must not engage in, conduct or make available a gambling activity except— 5

- (a) a licensed gambling activity;
- (b) social gambling that is licensed or otherwise permitted in terms of any applicable provincial law; or
- (c) an informal bet, unless, in the circumstances, there are valid grounds to conclude that any of the parties to the bet intended to establish an enforceable contractual relationship when they staked, or accepted the stake of, money on that contingency. 10

Unlicensed dealing in machines and devices unlawful

9. (1) Despite any other law, a person must not— 15

- (a) import, manufacture, supply, sell, lease, make available, possess, store or alter a gambling machine or gambling device, or transport or maintain such a machine or device except to the extent contemplated in section 23(4), unless that person is authorised to do so in terms of this Act or applicable provincial law; 20
- (b) possess or make available for play a gambling machine or gambling device for use in a gambling activity unless registered ownership or possession of the machine or device has been transferred to that person in terms of section 23(6).

(2) The Minister, by regulation made in accordance with section 87, may prescribe categories of gambling machines or gambling devices that are exempt from the application of subsection (1). 25

Unlicensed use of premises unlawful

10. (1) Despite any other law, a person must not—

- (a) maintain or operate any premises for the purposes of a restricted gambling activity, unless that gambling activity in, on or from those premises has been authorised in terms of a licence under this Act or applicable provincial laws; 30
- (b) permit any premises under that person's control to be used for the purposes of a restricted gambling activity, unless that gambling activity in, on or from those premises has been authorised in terms of a licence under this Act or applicable provincial law; or 35
- (c) permit an individual in or on any premises under that person's control to engage in a restricted gambling activity, unless that gambling activity in, on or from those premises has been authorised in terms of a licence under this Act or applicable provincial law. 40

(2) A person must notify a provincial licensing authority and the board, if the person—

- (a) owns, maintains, operates or has control over any premises, or any gambling machine or device; and
- (b) believes, or has reason to believe, that those premises, or that gambling machine or device, is being, or has been, used without that person's permission for any purpose that is unlawful in terms of this section or section 7, 8 or 9. 45

Unauthorised interactive gaming unlawful

11. A person must not engage in or make available an interactive game except as authorised in terms of this Act or any other national law. 50

Protection of minors

- 12.** (1) A minor must not—
- (a) enter a designated area within any licensed premises;
 - (b) operate a gambling machine or gambling device;
 - (c) conduct or make available a gambling activity; 5
 - (d) engage in social gambling or a gambling activity other than an amusement game; or
 - (e) falsely claim to be 18 years of age or over, in order to—
 - (i) gain access to a designated area within licensed premises;
 - (ii) gain access to a gambling machine or gambling device; or 10
 - (iii) engage in, conduct or make available a gambling activity.
- (2) A person must not falsely claim that a minor is 18 years of age or over, in order for that minor to—
- (a) gain access to a designated area within licensed premises;
 - (b) gain access to a gambling machine or gambling device; or 15
 - (c) engage in, conduct or make available a gambling activity.
- (3) A licensee, licensed employee, or a person in control of licensed premises or a gambling machine or gambling device must not knowingly permit a minor to—
- (a) enter or remain in a designated area within such licensed premises;
 - (b) operate that gambling machine or gambling device; 20
 - (c) conduct or make available a gambling activity within such licensed premises; or
 - (d) engage in social gambling or a gambling activity, other than an amusement game, within such licensed premises.
- (4) A person referred to in subsection (3) must take reasonable measures to determine accurately whether or not a person is a minor, before permitting that person to do any thing contemplated in subsection (3)(a) to (d). 25

Restrictions on granting credit to gamblers

- 13.** A person licensed to make any gambling activity available to the public must not extend credit contrary to this Act, in the name of the licensee or a third party, to any person for the purposes of gambling. 30

Excluded persons

- 14.** (1) A person who wishes to be prevented from engaging in any gambling activity may register as an excluded person by submitting a notice to that effect in the prescribed manner and form at any time. 35
- (2) A person who registered as an excluded person in terms of subsection (1) may submit a notice in the prescribed manner and form to cancel that registration at any time.
- (3) A notice filed in terms of subsection (1) or (2) takes effect on a date determined in accordance with the regulations.
- (4) A person may apply to a court of competent jurisdiction for an order requiring the registration as an excluded person of— 40
- (a) a family member of the applicant;
 - (b) a person on whom the applicant is economically dependent in whole or in part;
 - (c) a person for whom the applicant is economically responsible in whole or in part; 45
 - (d) a person who is subject to an order of a competent court holding that person to be mentally deranged; or
 - (e) any other person—