

TABLE OF CONTENTS

| | | |
|--------------|---|----------|
| I. | INTRODUCTION | 2 |
| II. | WHAT CONSTITUTES A SAFE DRINKING ENVIRONMENT? | 3 |
| III. | LEGISLATIVE CONTROL OF ALCOHOL USE | 7 |
| IV. | HOW CAN SAFE DRINKING ENVIRONMENTS BE CREATED IN SOUTH AFRICA? | |
| V. | COMMUNITY PARTICIPATION IN CREATING SAFE DRINKING ENVIRONMENTS | 8 |
| VI. | SOUTH AFRICAN CASE LAW | x |
| VII. | INTERNATIONAL LIQUOR POLICIES: CASE STUDIES | x |
| VIII. | CONCLUSION | x |

ANNEXURES

| | | |
|-----------|---|----------|
| 1. | DETAILED SUMMARIES OF MAJOR LEGISLATION | x |
| 2. | STATUS OF PENDING PROVINCIAL LEGISLATION | x |
| 3. | SAMPLE BYLAWS ON LIQUOR TRADING HOURS | x |

I. INTRODUCTION

This report sets out to outline and analyse the current approach towards alcohol consumption and regulation taken in South Africa by liquor authorities, the police, the legal profession, health professionals and the education system. It compares current practices with those used in other jurisdictions, with the aim of improving the legislation and surrounding measures currently in effect.

The question how best to regulate and reduce alcohol consumption is a live question in South Africa. Both levels of alcohol consumption and alcohol-related crime are extremely high in the country. It is estimated that the annual per capital consumption of alcohol in South Africa is between 10.3 and 12.4 litres, the higher amount reflecting an estimate of the amount of homebrewed alcohol produced.¹ These figures are based on averages in respect of the entire population. But as much as 45% of men and 70% of women in the Eastern African Region, which includes South Africa, abstain from alcohol.² Thus, consumption of per alcohol per drinker is estimated to be approximately 16.7 litres per year, which is much higher than the global average.³ Recent reports suggest that alcohol plays a role in a large number of deaths in South Africa each year. For instance, it is estimated that it accounted for 7.0% of all deaths in 2000, making it the third highest contributor to death and disability after only sexually-transmitted diseases and interpersonal violence.⁴ Given that the latter two causes of harm are themselves often fuelled by alcohol, this figure is in all likelihood much higher.

These figures suggest that reform is imperative to lower the amount of alcohol consumed, and to decrease the rate of alcohol-related violence and illness.

(i) Structure of the report

This report is divided into a number of chapters, which offer critiques of the South African system as well as recommendations for improvement. Part II. What Constitutes a Safe Drinking Environment describes measures intended to reduce alcohol-related crime and accidents and to ensure the safety of both those who consume alcohol, and the members of the broader community. Part III. Legislative Control of Alcohol Use describes the regulatory framework that governs alcohol manufacturing and distribution in South Africa.

Part IV. How Can Safe Drinking Environments be Created in South Africa? describes the regulatory framework in greater detail and proposes suggested reforms to improve the current system. Part V. Community Participation in Creating Safe Drinking

¹ J. Rehm, R. Room, M. Monteiro, G. Gmel, K. Graham, N. Rehn, C.T. Sempos, U. Frick & D. Jernigan, (2004). "Alcohol". In M. Ezatti, A.D. Lopez, A. Rogers, & C.J.L. Murray, (Eds.)

Comparative Quantification of health risks: Global and regional burden of disease attributable to selected risk factors, vol. 1. (Geneva: World Health Organisation), pp. 959-1108.

² World Health Organisation, *The World Health Report 2002* (2002). (Geneva: WHO)

³ J. Rehm, N. Rehn, R. Room, M. Monteiro, G. Gmel, J. Jernigan & U. Frick, The global distribution of average volume of alcohol consumption and patterns of drinking. *European Addiction Research*, 9, (2003), pp. 147-156

⁴ M. Schneider, R. Norman, C.D.H. Parry, A. Plüddemann, & D. Bradshaw. Estimating the burden of disease attributable to alcohol in South Africa in 2000. *South African Medical Journal*, 97 (2007), pp. 664-672

Environments sets out the ways that the general public is able to participate in the law-making process, as well as methods of raising consciousness regarding the harmful effects of excessive alcohol consumption, Part VI. South African Case Law outlines the approach of South African courts to the enforcement and interpretation of the nation's liquor statutes, while Part VII. Foreign Liquor Policies: Case Studies compares regulatory frameworks and legal enforcement in a number of African, North American, and European countries.

II. WHAT CONSTITUTES A SAFE DRINKING ENVIRONMENT?

A. INTRODUCTION

The term ‘safe drinking environment’ is not a term of art and there is no universal standard or agreed definition of what it constitutes. Regulating ‘drinking environments’ in the narrow sense – that is, the places in which alcohol is sold and consumed – is considered a critical part of a broader harm reduction strategy.⁵ However, a proper strategy will also encompass measures which are ‘environmental’ in a wider sense: that is, they address the “context within which alcohol is marketed, distributed and consumed in a society”.⁶

Many of the measures described below could feasibly be implemented through legislation. Others (e.g. increased provision of public transport) may not be appropriate matters for straightforward government regulation. Laws themselves will be of little use unless they are properly enforced: this may require greater financial commitments from provincial or municipal authorities. Education and training of servers and establishment owners – as well as the general public, and young people in particular – should also accompany any legislative intervention.

B. MEASURES DESIGNED TO ENSURE THE SAFETY OF DRINKERS

In order to create a safe drinking environment, restrictions may be placed on the availability of alcohol. These restrictions might be direct (e.g. prohibiting the sale of alcohol to under-18s) or indirect (e.g. encouraging the provision of food at venues where alcohol is served). Such restrictions may take several forms:⁷

1. Restrictions on who can sell alcohol
 - a. **Liquor licences system:** only authorised vendors may sell alcohol. Vendors must obtain permission (licences) from local authorities.
 - i. In turn, this allows authorities to set limits on **outlet density** (e.g. no more than five licensed premises on the same street) and **location** (e.g. no licensed premises near schools or playgrounds).
 - b. **Restricted hours:** alcohol must not be sold at certain times of the day or week.
2. Restrictions on who can buy alcohol
 - a. Direct restrictions
 - i. **Age limits:** persons under a certain age cannot buy alcohol.
 - ii. **Refusal to serve intoxicated patrons:** bartenders and servers must refuse to sell alcohol to patrons who are already obviously intoxicated or aggressive.

⁵ World Health Organisation, *Global Status Report: Alcohol Policy* (2004)

⁶ C. Parry & S. Dewing, *A Public Health Approach to Addressing Alcohol-Related Crime in South Africa* (2006) 5(1) AFRICAN JOURNAL OF DRUG AND ALCOHOL STUDIES 41 at 46

⁷ International Center for Alcohol Policies, *ICAP Blue Book* (2009); World Health Organisation, *Global Status Report: Alcohol Policy* (2004); National Alcohol Strategy Working Group, *Reducing Alcohol-Related Harm in Canada* (2007)

- b. Indirect restrictions
 - i. **Minimum prices:** all premises must charge at least a specified minimum amount for certain types of drink, and special offers may be restricted or limited in duration. Effective minimum prices may be created by imposing a high rate of tax on alcohol.
 - ii. **Availability of non-alcoholic beverages:** affordable non-alcoholic alternatives must be made available wherever alcoholic drinks are served or sold.
 - iii. **Availability of food:** food must be made available wherever alcoholic drinks are served.
 - iv. **Limits on container size:** in South Africa beer is often sold in 750ml bottles, encouraging consumers to think of one bottle as ‘one drink’ or ‘one serving’.⁸ This makes it difficult for drinkers accurately to assess their alcohol intake and may contribute to excessive alcohol consumption. Limits on container size might serve to reduce intake.
 - v. **Provision of information about sensible drinking:** licensed premises must provide information about the alcohol content of drinks (e.g. on menus, posters or beer mats) and the maximum recommended alcohol intake. This might work well in the context of a broader public information campaign (*see below*).

Premises or venues which sell alcohol may be required to take certain steps to ensure the safety of patrons:⁹

1. **Security personnel:** venues at which alcohol is consumed must provide a certain minimum number of door staff, ‘bouncers’ or security personnel to maintain order.
2. **Maximum number of patrons:** licensed premises must not allow more than a certain number of customers to enter at any one time. Capacity depends on the size of the venue and the number of security personnel present. “Crowding increases the chance of accidental contact and alcohol affects the ability of individuals to deal appropriately with this contact...Crowding also increases anonymity and reduces a sense of accountability.”¹⁰
3. **Prohibition of weapons:** firearms and weapons must not be carried into premises where alcohol is sold. To enforce this, the use of random searches or metal detectors at the door may be necessary.
4. **Prohibition of glass:** licensed premises must serve drinks only in receptacles made of plastic or toughened (tempered) glass, which do not produce sharp shards when broken.
5. **Proper lighting:** “lighting can reduce crime and disorder by facilitating surveillance, decreasing perceptions of anonymity and deterring loitering.”¹¹

⁸ C. Parry & S. Dewing, *A Public Health Approach to Addressing Alcohol-Related Crime in South Africa* (2006) 5(1) AFRICAN JOURNAL OF DRUG AND ALCOHOL STUDIES 41

⁹ New York City Police Dept., *Best Practices For Nightlife Establishments* (2007); BBC News, *Clubs take glass out of Glasgow* (5 February 2006); Responsible Hospitality Institute, *Planning, Managing and Policing Hospitality Zones: A Practical Guide* (2006)

¹⁰ S. Doherty & A. Roche, *Alcohol and Licensed Premises: Best Practice in Policing* (2003) p. 25

¹¹ *Ibid.*, p. 28

6. **Proper ventilation:** “poor ventilation and inefficient air-conditioning... exacerbate physical discomfort, which heightens irritation and leads to increased alcohol consumption.”¹²
7. **Design of premises:** licensed premises should be designed with the safety of patrons in mind. The layout should allow for proper monitoring of the venue by security personnel; it should allow for unobstructed access to toilets and exits; and it should minimise the risk of patrons injuring themselves on furniture or other obstacles, bearing in mind that intoxicated customers may lack balance and co-ordination.
8. **Product quality:** licensed premises must source alcoholic drinks from reputable (or authorised) vendors and manufacturers. They must not brew their own alcoholic drinks. Home-brewed drinks may be unacceptably high in alcohol or (at worst) poisonous.
9. **Responsible Beverage Services (RBS) Programmes:** staff of licensed premises should be given training to identify high risk situations, reduce heavy consumption and ensure patron safety. If reinforced by changes in serving policies and supported by local police, RBS training can reduce high risk drinking. Staff training in techniques for managing problem behaviour may serve to reduce aggression and violence in licensed premises.¹³

C. MEASURES DESIGNED TO ENSURE THE SAFETY OF BOTH DRINKERS AND THE GENERAL PUBLIC

Particularly in areas where there is a high concentration of licensed premises (e.g. town centres), measures may have to be taken to protect the general public from some of the adverse effects of alcohol consumption.¹⁴

1. **Increased police presence:** excessive consumption of alcohol frequently causes aggression and violent crime. A visible and increased police presence in certain areas or at certain times (e.g. at closing time in town centres) may deter crime and allow the police quickly to tackle incidents before they escalate.
 - a. In conjunction with this, **increased surveillance** through CCTV monitoring may help to deter crime and identify offenders.
 - b. **Improved communication** between licensed premises and the police can alert the police to potential trouble-spots. Communication amongst premises in the same vicinity can alert door staff to difficult customers before they arrive.
2. **Public transport:** intoxicated patrons create a serious public danger if they attempt to drive home. Good public transport links can alleviate the problem of drinking and driving. An efficient public transport system can also help to disperse patrons at closing time, so as to prevent loitering and crowding in the streets outside venues.

¹² *Ibid.*

¹³ Babor *et al.*, *Alcohol: No Ordinary Commodity – Research and public policy* (Oxford: Oxford University Press, 2003)

¹⁴ P. Anderson & B. Baumberg, *Alcohol in Europe: A Public Health Perspective* (2006); European Forum for Responsible Drinking, *Guidelines to Develop Designated Driver Campaigns* (2007)

3. **Designated driver schemes:** in order to reduce drinking and driving, parties or groups must be encouraged to designate one person as the driver. That person should then abstain from alcohol.
4. **Breath testing:** police officers must have the power to conduct breath tests randomly and/or at checkpoints. Drivers involved in accidents must give a specimen of breath or blood.
5. **Staggered closing times:** if a number of licensed premises are located within a short distance of each other, the closing hours of each establishment must be slightly different so as to prevent a large number of intoxicated patrons spilling out into the streets or public areas at once.
6. **Alcohol-free zones:** by controlling liquor licences, authorities can restrict the sale and supply of alcohol in a particular area. They must also go a step further and prohibit the consumption or carrying of alcoholic drinks in a designated zone.
7. **Road design:** sidewalks, pedestrian crossings, and night lighting should be designed to maximize visibility in order to reduce alcohol-related accidents. Reflective clothing should be promoted to pedestrians.

On a national level, the provision of information to the general public is an important feature of any harm-reduction strategy:

1. **Restrictions on alcohol advertising:** alcohol advertisements must not be targeted at minors, lest they encourage or glamorise underage drinking. (Advertisements not specifically targeted at, but still likely to influence, minors, may also be prohibited.) Advertisements must also carry information about the risks of excessive drinking.
2. **Public information campaigns:** educational messages can take various forms. They can be incorporated into the school curriculum; broadcast on television; printed in news publications; printed on posters, both in public places and in licensed premises; and printed on beer mats, bottle labels and other places likely to attract the attention of drinkers. The content of the message itself can vary: it could promote a simple, standardised measurement system to help drinkers assess their alcohol intake; it could alert at-risk groups (e.g. pregnant women) to particular dangers of alcohol; or it could raise awareness of penalties for alcohol-related crimes such as drink driving.

III. LEGISLATIVE CONTROL OF ALCOHOL USE

The liquor industry in South Africa is governed by an overlapping regulatory framework. There are two national liquor acts currently in force: the Liquor Act 59 of 2003 and the Liquor Act 27 of 1989. In addition, there is the Liquor Products Act 60 of 1989, which aims to control the quality and safety of alcoholic beverages.

Insofar as macro-manufacturing and distribution of liquor are concerned, the Liquor Act, 2003 applies in all provinces. In respect of micro-manufacturing, retail sale and consumption of liquor, the provinces are governed either by their own provincial legislation or by the Liquor Act, 1989.

The Liquor Act, 2003 repeals the provisions of the Liquor Act, 1989 relating to micro-manufacturing, retail sale and consumption of liquor only in those provinces that have promulgated their own provincial liquor legislation. At the time of writing, only the Eastern Cape and Gauteng have done so. The Liquor Act, 1989 therefore remains in force in the seven other provinces. The status of the pending provincial legislation, and the conditions that must be met for the repeal of the 1989 Act, are discussed in more detail in Annexure 2. The provinces are currently governed by the following Acts (but note that the 2003 Act now regulates macro-manufacturing and distribution in all provinces, regardless of the state of provincial legislation):

| Province | Acts Governing |
|-----------------|------------------------------------|
| Eastern Cape | Eastern Cape Liquor Act 10 of 2003 |
| Free State | National Liquor Act 27 of 1989 |
| Gauteng | Gauteng Liquor Act 2 of 2003 |
| KwaZulu-Natal | National Liquor Act 27 of 1989 |
| Limpopo | National Liquor Act 27 of 1989 |
| Mpumalanga | National Liquor Act 27 of 1989 |
| North West | National Liquor Act 27 of 1989 |
| Northern Cape | National Liquor Act 27 of 1989 |
| Western Cape | National Liquor Act 27 of 1989 |

The Liquor Act, 2003 regulates the licensure of alcohol manufacturers (except micro-manufacturers) and distributors in Gauteng and the Eastern Cape.

The Gauteng Liquor Act, 2003 and the Eastern Cape Liquor Act, 2003 regulate micro-manufacturers and provide for the licensure of alcohol retailers in their respective provinces. The local liquor boards created by these Acts supplement the statutory provisions with additional restrictions on local matters such as hours of sale and manner of distribution (on or off-site consumption).

The Liquor Act, 1989 regulates the licensure of alcohol manufacture, sale, and distribution at the national, provincial, and local level in those provinces where it applies. Hours of sale throughout the seven provinces in which it applies are determined by the Act.

Both of the national Acts set the minimum drinking age at 18 years. Unlike its 1989 counterpart, the Liquor Act, 2003 also prohibits any manner of advertising intended to

target or attract minors.

The Liquor Products Act 60 of 1989, which applies in all the provinces, regulates and controls product quality in the alcohol industry. Strict limitations govern the manufacture, composition and alcoholic concentration of wine, alcoholic fruit beverages, spirits, grape-based liquors and spirit-based liquors.

The various pieces of legislation described above constitute the attempts of the national and provincial governments to create a safe drinking environment. There are many elements to these attempts and it would unnecessarily burden this report to consider them thoroughly here. For detailed, chapter-by-chapter summaries of the major statutes, please see Annexure 1. To the extent that particular provisions of legislation are relevant to the sections that follow, they will be discussed in more detail below.

IV. HOW CAN SAFE DRINKING ENVIRONMENTS BE CREATED IN SOUTH AFRICA?

National and provincial legislation in South Africa currently implements some of the measures, outlined in Section II above, in order to promote a safe drinking environment. In many respects, however, South African law is lacking.

The following section describes some of the ways in which the law could be amended so as to better ensure the safety of both drinkers and the general public, with a particular focus on the goal of reducing alcohol-related violence.

A. LIQUOR LICENCES

(i) The problem: unlicensed premises

National and provincial legislation provides for a reasonably comprehensive system of liquor licences throughout South Africa. In this regard, see Annexure 1 below.

Whatever the theory, it is clear that in practice a huge number of establishments at which alcohol is sold or consumed are not in fact licensed. These unlicensed premises tend to be shebeens and taverns.¹⁵ In the Western Cape, there are around 7,250 licensed premises, with a further 18 - 20,000 unlicensed drinking establishments.¹⁶ In the Free State, police have identified 1,884 unlicensed premises (compared to 6,410 licensed ones), though it is likely that many more operate under the radar.¹⁷ Other provinces did not respond to requests for information. The DTI estimates that there are 200,000 – 220,000 illegal shebeens and outlets around the country.¹⁸

This may well be the most fundamental problem faced in any attempt to tackle the problem of alcohol-related harm. It is significant not simply because of its scale, but because without an adequate system of liquor licences enforcement of all the other regulations relating to alcohol becomes very difficult. Unlicensed premises are unregulated premises: if local authorities have no record of an establishment's existence, they will be less likely to inspect the premises and check for non-compliance with other statutory requirements.

It is likely that several factors contribute to the problem of unlicensed premises:

- **Lack of enforcement:** it may be that the police and the liquor board inspectors do not adequately enforce licensing laws, perhaps because they lack the capacity to do so. Senior police officers in Gauteng have complained that the SAPS lacks the resources and personnel to enforce licensing laws properly –

¹⁵ Sustainable Livelihood Consultants, *A Rapid Assessment of the Potential Socio-Economic Impact of the Western Cape Liquor Act* (2009) p. 12

¹⁶ Correspondence with Raybin Windvogel, Director of Liquor Regulation in the Western Cape (23-25 June 2009)

¹⁷ Correspondence with Modise Mofokeng, Free State Dept. of Tourism, Environmental and Economic Affairs (30 June 2009)

¹⁸ Gauteng Dept. of Community Safety, *Report of the Service Evaluation and Research Directorate on Licensing, Selling and Abuse of Alcohol* (undated) p. 2

the SAPS cannot even cover all of the licensed premises, let alone unlicensed ones.¹⁹

- **Lack of information:** it may be that some shebeen and tavern owners are unaware of the law, and do not understand that they must apply for licences in order to serve alcohol.
- **Expense:** non-refundable application fees are generally payable by all licence applicants. In Gauteng, these fees range from R750 – R2500.²⁰ Applicants may incur additional expenses in compiling their application (e.g. drawing up a floor plan and printing colour photographs of the establishment).²¹ Applicants who elect to employ the services of a lawyer or other professional will have to pay extra fees. These costs add up, and may deter owners from filing an application in the first place.
- **Complexity:** some of those applicants who attempt to file the application without professional assistance may find the procedures unduly complicated. Generally, applicants must fill in a number of forms and take various steps (e.g. serving notice to nearby educational institutions) in order to complete the application.²²

(ii) The problem: inadequate community involvement

Licence (or registration) application procedures vary between provinces. (The 2003 national Act deals only with licences for macro-manufacturers and distributors, not for retail sale. It is discussed in more detail in section V below.)

Under the 1989 Act, meetings of the provincial liquor boards are open to the public.²³ Applicants must give notice of licence applications in the Government Gazette. Once the application has been lodged with the Magistrate, members of the public have 28 days in which to file objections to (or representations in support of) the licence application.²⁴

In Gauteng, applicants must give notice of liquor licence applications in at least two newspapers, in the Provincial Gazette, and by means of a notice posted on the premises. The notice must record whether there are any educational institutions or places of worship within 1km of the proposed licensed premises. Any person may then lodge an objection within 21 days of publication. The applicant then has seven days to respond to objections. The Liquor Board may convene a hearing to consider objections. Liquor Board meetings are open to the public.²⁵

In the Eastern Cape, applicants must serve notice of licence applications upon local ward committees and any educational institutions or places of worship within 500m of the premises. The ward committee has 30 days to consult the community and submit a

¹⁹ *Ibid.*, p. 5

²⁰ Sched. 1, *Regulations in terms of s 141 of the Gauteng Liquor Act, 2003*, No. 3, 1 November 2004 (Gauteng Gazette No. 481)

²¹ See e.g. *Gauteng Liquor Act, 2003* s 23

²² See e.g. *Regulations in terms of s 69 of the Eastern Cape Liquor Act, 2003*, No. 17, 28 May 2004 (Eastern Cape Gazette No. 1159)

²³ *Liquor Act, 1989* s 14

²⁴ *Regulations under s 182 of the Liquor Act, 1989*, No. R1405, 1 June 1992 (Gazette No. 13997)

²⁵ *Gauteng Liquor Act, 2003* ss 11, 23-27

report. Upon receiving an application, the Liquor Board must publish a notice in the Provincial Gazette and invite written representations from the public. Members of the public have 28 days after the application is lodged (21 days after the latest date of publication in the Gazette) to file objections.²⁶ Liquor Board meetings are open to the public.²⁷

The Western Cape Liquor Act, 2008 requires that notice of licence applications must be given by the Board in the Provincial Gazette (in all three official languages of the province) and also in a local community newspaper. The applicant must affix a notice to the premises, also in three languages. The Board must also serve a copy on the relevant municipality so that the ward committee can comment. Representations may be made in writing by 'a person who has an interest in the granting or refusal of an application'. Meetings of the Liquor Licensing Tribunal are open to the public.²⁸

The Free State Liquor Act, 2007 also requires that notice of applications be published in a local newspaper as well as the Provincial Gazette. Members of the public then have 21 days in which to lodge objections. As in Gauteng, the applicant has a chance to respond and the Liquor Authority may convene a hearing to consider objections. The Act does not seem to require that sittings of the Authority be open to the public.

It must be recalled that neither the Western Cape Liquor Act nor the Free State Liquor Act is yet in force and the above principles will only apply when the Acts are brought into force Proclamation. Once again, the reader is referred to Annexure 2, for more detail in this regard.

From this sample it is clear that the various provinces go to different lengths to ensure public participation in the licence application process. Different provinces are deficient in different respects. For example, the Eastern Cape Regulations do not require that notice of applications be published in local newspapers. As a result, local community members may not be aware of applications in their area. The Western Cape Act does not specifically require that notice be given to nearby educational establishments or places of worship. The Gauteng Act does not require that notices be published in multiple languages. The Regulations under the 1989 Act omit most of these requirements.

Liquor licensing is a matter for the provinces (at least as far as retail sale is concerned), so the national government cannot mandate that specific application procedures be followed. However, public participation could be enhanced if the provinces would consider amending their Liquor Acts to follow a standard model, one which drew together all the best parts of the current statutes (e.g. the Western Cape's language requirement, Gauteng's newspaper publication requirement, etc.).

(iii) The problem: unlicensed manufacturers

The quality of liquor products in South Africa is tightly controlled. Regulations set forth under the Liquor Products Act of 1989 and the National Liquor Act of 2003

²⁶ Regs. 2-5, *Regulations in terms of s 69 of the Eastern Cape Liquor Act, 2003*, No. 17, 28 May 2004 (Eastern Cape Gazette No. 1159)

²⁷ Eastern Cape Liquor Act, 2003 s 22

²⁸ Western Cape Liquor Act, 2008 ss 23, 36-39

cover every conceivable aspect of liquor production, distribution, labeling, and sale to ensure the purity and consistency of the product on the shelf.

Curiously, control of the quality of beer and sorghum beer is not extensively contemplated by either set of regulations. Traditional beer is defined under Schedule I of the National Liquor Act of 2003 and the Minister is given the power to regulate the beer production and sale, but current regulations set forth no limits on the quality of the beer produced. Indeed the Liquor Products Act of 1989 makes mention of beer only for the purposes of exempting it from its requirements, and neither of the Liquor Acts (1989 or 2003) set any maximum alcoholic content limits on the drink. Likewise, there are no labeling restrictions on beer.

These holes in the regulatory framework are worrying when one considers that a full quarter of the absolute alcohol consumed in South Africa is in the form of sorghum beer.²⁹ Sorghum beer, often made simply by mixing water with a sorghum and yeast powder, is easily fermented at home. Indeed, one study claims that 70% of all the sorghum beer consumed in South Africa may be made at home.³⁰

A great proportion of the liquor consumption in South Africa is then illegal and unregulated. The regulations that exist are strict and tightly crafted, but they do not (and cannot) reach the inside of the home. South Africans may be assured of the quality of the liquor they purchase from authorized, licensed dealers, but illegal manufacturers still account for a worrying large—and unsafe—proportion of the alcohol intake in South Africa.

Community responses to alcohol problems often take the form of an uprising against the local illegal alcohol manufacturers or dealers. Such an intervention is only effective if it mobilizes popular support, usually of women in communities where a large percentage of men are regular and heavy consumers of illicit alcohol. Such movements can sometimes stimulate law enforcers to act but rarely create long-term benefits. Normally the community action subsides over time and illicit manufacturers return to their trade because the broader factors that determine supply and demand of illicit alcohol were not addressed.

(iv) Recommendations

A number of possibilities exist to standardize license granting practices and ensure that liquor licenses are distributed fairly:

- The police and the liquor boards must co-ordinate and intensify their efforts to identify and shut down unlicensed premises.
- National and provincial governments should seek to educate shebeen and tavern owners of their legal responsibilities, and explain clearly how the licence application process works.

²⁹ “A Public Health Approach to Addressing Alcohol Related-Crime in South Africa,” Charles D.H. Parry and Sarah Dewing, *African Journal of Drug & Alcohol Studies*, 5(1), 2006, pg. 50.

³⁰ “A Rapid Assessment of the Potential Socio-Economic Impact of the Western Cape Liquor Act,” Sustainable Livelihood Consultants, 15 April 2009, pg. 33.

- The application process should be simplified as far as possible. Liquor boards should consider providing clear step-by-step instructions in a variety of languages to potential applicants. Liquor boards may also need to provide a telephone hotline or dedicated staff member to assist applicants with enquiries.
- Application fees should be kept to a minimum to encourage individuals to apply for a license.
- Guidelines should be established to govern the meaning of ambiguous criteria currently used to determine who should be granted a liquor license. Terms such as “good character” and “in the public interest” should be defined and elaborated on.
- Given that the 1989 Act does not give communities much opportunity to participate in the licence application process, it is imperative that the seven provincial liquor acts be brought into force.
- The provinces should consider amending their respective statutes and bills to ensure that
 - notice of all licence applications is given in local newspapers as well as Gazettes;
 - notices are affixed to the proposed licensed premises;
 - notice is given specifically to nearby educational institutions and places of worship;
 - notices are published in multiple languages;
 - liquor board hearings are open to the public; and
 - representations regarding licence applications may be made by all members of the public, not merely those whom the board deems to be interested parties.

B. RESTRICTED HOURS

(i) The problems: inconsistency and lack of clarity

The national Liquor Act, 2003 does not set trading hours for licensed premises because the issue is left to the provinces. The Eastern Cape Liquor Act, the Gauteng Liquor Act and (in all other provinces) the Liquor Act 1989 make provision for the restriction of the hours or days during which alcohol may be sold.

The Liquor Act 1989 sets specific closing times for many different types of establishment. Most venues may only sell alcohol between 10am and 2am, with certain exceptions for establishments such as hotels and theatres.³¹ Premises which sell liquor for consumption off-premises must generally observe shorter hours. These hours apply to the seven provinces in which the 2003 Act is not yet in force. Once all provinces come under the ambit of the 2003 Act, the standard trading hours set out in the 1989 Act will cease to apply.

In the Eastern Cape, trading hours are set by municipal authorities and published in the provincial gazettes.³² The Eastern Cape Liquor Act itself does not require that trading hours be published in the Provincial Gazette, but since municipal councils

³¹ Liquor Act, 1989 ss. 53-72, 77-104

³² Eastern Cape Liquor Act, 2003 s. 42(b)

typically regulate the hours through by-laws and since the publication of by-laws is mandated by s 162 of the Constitution, trading hours will generally be published.

In Gauteng, trading hours are set for the province by the appropriate MEC by way of regulations.³³ As with all provincial regulations, these must be ‘accessible to the public’ – in practice this means that they are published in the Provincial Gazette.³⁴

Unlike the Gauteng and Eastern Cape statutes, the Western Cape Liquor Act, 2008, which is not yet in force, does specify maximum trading hours for licensed premises (9am – 6pm if alcohol is sold for consumption off-premises, 11am – 2am for consumption on premises). Municipalities are free to set trading hours for different types of licensed premises, provided they remain within this range.³⁵ Licensees may apply to the Liquor Licensing Tribunal for special permission to extend closing hours to 8pm (off-premises consumption) or 4am (on-premises).

The Mpumalanga Licensing Act, 2006, which is also not yet in force, is less clear. Trading hours are ‘subject to the prescribed requirements’ and ‘regulatory framework’, but must be determined ‘in accordance with the recommendation made by the Municipality concerned.’³⁶ Until the Act comes into force it remains uncertain whether hours will be set by regulation (as in Gauteng), by municipalities (as in the Eastern Cape) or by some combination of the two (as in the Western Cape).

It is difficult to draw comparisons between liquor trading hours around the world, because in many countries hours are set at the local, rather than national, level.³⁷ There is some evidence to suggest that rates of alcohol-related harm rise when hours are extended and fall when hours are shortened.³⁸ In England and Wales, radical legislation was passed in 2003 allowing premises to apply for 24-hour licenses.³⁹ It was hoped that this would decrease binge-drinking and rates of alcohol-related violence by ‘spreading out’ drinking over a longer period of time, but a government review of the policy in 2008 found that it had no significant impact on crime rates.⁴⁰

There are several potential difficulties with the current system. First, in some provinces, the power to restrict hours is left entirely in the hands of municipal authorities, which may not be well-placed to conduct extensive research into international best practices. Second, as seen in the examples attached (*Annexure 3*), differences between municipalities are often small and arbitrary. These inconsistencies can easily create misunderstandings amongst customers and licence-holders. This confusion may be exacerbated by the fact that municipal councils and provincial executives are not obligated to publish trading hours anywhere except the appropriate Provincial Gazette.

³³ Gauteng Liquor Act, 2003 s 141

³⁴ Constitution s 140(3)

³⁵ Western Cape Liquor Act, 2008 s 59

³⁶ Mpumalanga Licensing Act, 2006 s 46

³⁷ World Health Organisation, *Global Status Report: Alcohol Policy* (2004) p. 24

³⁸ T. Chikritzhs & T. Stockwell, *Impact of later trading hours for Australian public houses (hotels) on levels of violence* (2002) JOURNAL OF STUDIES ON ALCOHOL 63(5)

³⁹ Licensing Act, 2003

⁴⁰ Dept. of Media, Culture and Sport, *Evaluation of the Impact of the Licensing Act, 2003* (March 2008); The Guardian, *Government admits ‘mixed results’ from 24-hour licensing* (4 March 2008)

On the other hand, allowing municipal councils to determine hours may in fact be a wise strategy, since it lets municipal authorities respond to local problems, or circumstances specific to their area.

In short, it is not possible to provide recommended trading hours with any authority given the lack of consistency within the provinces. While there are various reasons for this, some of which may be important, the current situation does not lend itself to much clarity.

(ii) The problem: uniform closing hours

In areas with a high concentration of licensed premises, problems may arise if several premises close at precisely the same time: intoxicated patrons may spill out onto the streets, congregating there. Alcohol can stimulate aggression and a large number of intoxicated persons gathered in a small area may be a recipe for trouble.⁴¹

Varying licensing hours between different establishments may be a viable solution. However, it disadvantages economically those premises which have shorter hours. This could be mitigated to some extent by sharing the burden between venues – so the bar which is forced to close earlier on Saturdays may be allowed to remain open later on Fridays. A second problem is that, unless a ‘last entry’ time is set, customers may simply move from one establishment to another when the first venue closes (sometimes known as ‘bar hopping’), possibly resulting in crowds gathering just before closing time in the premises with the longest hours.

To avoid both of these problems, licensing hours could be extended dramatically across the board, so as to give premises greater freedom to choose their own liquor trading hours. However, as noted above, 24-hour licensing in the UK did not have a significant impact on crime rates; besides which, extending licensing hours is directly at odds with the scientific evidence which suggests that longer hours lead to higher rates of alcohol-related harm.⁴²

Instead, licensed premises could be encouraged to remain open for different periods of time after they stop serving drinks. There are different ways of achieving this. One possibility, suggested by an interest group in the Republic of Ireland, is that different types of establishment be ordered to stay open for different periods of time. For example, venues with a nightclub licence must stay open for an hour after they stop serving alcohol; venues with a pub licence must stay open for half an hour after they stop serving; and so on.⁴³ However, this would be difficult to implement in South Africa, because not all of the provincial acts distinguish between different types of on-premises licence (i.e. between shebeens, nightclubs, pubs etc.). Moreover, dictating hours (other than licensing hours) might constitute undue interference with the economic interests of licensees. Finally, it would be of little help in areas with a large number of similar premises – e.g. if there are three nightclubs in one street, identical mandatory closing hours would not address the problem of crowding.

⁴¹ S. Doherty & A. Roche, *Alcohol and Licensed Premises: Best Practice in Policing* (2003) p. 27

⁴² *Supra* at fn. 22 [Chikrizh]

⁴³ http://www.giveusthenight.org/index2.php?option=com_content&do_pdf=1&id=13

A more targeted solution would require or encourage licensees in the same area to collaborate in staggering their closing hours. However, it may be difficult to reach or maintain agreement if some parties are economically disadvantaged.⁴⁴ In areas with a high density of licensed premises, municipal authorities may have to intervene.

The benefits of staggering closing times remain unclear. Though they may prevent a dangerous and volatile build-up of intoxicated persons on the streets, the evidence is inconclusive.⁴⁵ They are also difficult to enforce. If liquor boards or local authorities attempt to set or vary closing hours, they must unequally interfere with the economic interests of individual licensees. If licensing hours are extended across the board in the hope that the free market will dictate closing times, overall alcohol consumption may rise. If businesses are merely encouraged to collaborate, agreements may never be reached or enforced.

In the light of these difficulties, perhaps staggered closing times should only be considered in areas where it is clear that there is a high level of violence, crime and disorder at closing time. This would provide some justification for disadvantaging particular business-owners. In other areas, licensees could simply be encouraged to co-operate and collaborate – with the implicit threat that failure to agree may result in the imposition of a solution by the liquor board.

(iii) Recommendations

- The Gauteng and the Eastern Cape provincial legislatures should consider standardising trading hours throughout each province. If they prefer to leave these decisions in the hands of municipal authorities, which can better respond to local circumstances, they should at least consider imposing an upper limit (i.e. a specific hour after which alcohol may not be sold).
- Regardless of which body sets trading hours, those hours should be well-publicised. Authorities should be obligated to announce trading hours, or any changes thereto, in the local press as well as in the relevant Provincial Gazette.
- Where there are several licensed premises concentrated in a small area, and where there is a history of disorder or violence at closing time, liquor boards should consider varying licensing hours between different establishments so as to ‘stagger’ closing times. Legislation may have to be amended to allow liquor boards to set times for last entry, in order to prevent ‘bar hopping’.
- Where there are several licensed premises concentrated in a small area, but no particular history of disorder or violence, licensees should merely be encouraged to collaborate in the design of staggered closing times.

C. AGE LIMITS

According to s 10 of the Liquor Act 2003 and s 45 of the Liquor Act 1989, alcohol may not be sold or supplied to anyone under the age of 18. This is more or less consonant with other countries: WHO figures show that two-thirds of African

⁴⁴ S. Doherty & A. Roche, *Alcohol and Licensed Premises: Best Practice in Policing* (2003) p. 30, and see sources cited therein

⁴⁵ Center for Problem-Oriented Policing, *Assaults In And Around Bars* (2006), available at: <http://www.popcenter.org/problems/assaultsinbars/3>

countries limit alcohol sales to persons aged over 17 or 18, and equivalent age restrictions apply in around 60% of countries worldwide.⁴⁶

Under the 2003 Act, exceptions may be made for a parent, guardian or person administering a religious sacrament, who may supply a minor with a moderate amount of alcohol to be consumed under supervision. There is no significant evidence to suggest that these provisions are abused. In fact, some scientific literature highlights the benefits of introducing children to alcohol under parental supervision: this can remove the idea of alcohol as a taboo, and allow parents to educate their children and lead by example.⁴⁷

It is a criminal offence to fail to take reasonable steps to ascertain whether a customer is a minor before selling or supplying alcohol.⁴⁸ There does not appear to be an equivalent provision in the 1989 Act; however, it is still an offence to serve alcohol to minors⁴⁹ and *bona fide* mistake of fact is no defence.⁵⁰ It seems that liability may attach to both servers and employers, depending on the circumstances.⁵¹ It is also an offence for a minor to misrepresent his age, or for someone else to make false claims about a minor's age to induce the sale or supply of alcohol.⁵² These provisions are sensible and comprehensive.

(i) The problem: employment of minors

Under the 2003 Act, minors may legally be employed in the manufacture or distribution of alcohol. However, distribution is distinct from retail sale, and there are separate provisions criminalising the supply of alcohol by minors.⁵³ So long as minors are not permitted to sell or supply alcohol this anomaly does not seem to present any significant risk to minors.

However, the 1989 Act makes an exception for the family members of managers or licence-holders, who may be employed in licensed premises regardless of age.⁵⁴ This is problematic, since it exposes minors to environments in which alcohol is readily available and consumed, giving them easy access to liquor. This also endangers patrons: minors working in bars may be less able to spot signs of trouble, less able to identify drunk patrons, have less knowledge of applicable laws and regulations, and be less capable of enforcing them. This problem will persist until all provinces bring their respective liquor statutes into force, and come under the ambit of the 2003 Act.

(ii) Recommendations

⁴⁶ World Health Organisation, *Global Status Report: Alcohol Policy* (2004)

⁴⁷ J. Brook et. al. *The impact of personality, family, and environmental factors*, (2001) JOURNAL OF BEHAVIOURAL MEDICINE; Ellickson & Hays, *Antecedents of drinking among young adolescents with different alcohol use histories* (1991) JOURNAL OF STUDIES ON ALCOHOL 52

⁴⁸ Liquor Act, 2003, s 10

⁴⁹ Liquor Act, 1989 s 45

⁵⁰ Liquor Act, 1989 s 175

⁵¹ Liquor Act, 2003, s 36; Liquor Act, 1989, ss 165 and 166

⁵² Liquor Act, 2003 s 10; Liquor Act, 1989 s 154(1)(h)

⁵³ Liquor Act, 2003 s 10(6); Liquor Act, 1989 s 44

⁵⁴ Liquor Act, 1989 s 44(2)

- The 2003 Act will eliminate the possibility of minor family members of licensees or managers working in licensed premises, which is possible under the 1989 Act. No specific reform is necessary, but it is imperative that the seven pending provincial Liquor Acts be brought into force.

D. REFUSAL TO SERVE INTOXICATED PATRONS

(i) The problem: intoxicated patrons

Refusing to serve a customer who already appears to be intoxicated is an easy way of preventing excessive consumption of alcohol. The national Liquor Act, 2003 does not make it an offence to serve intoxicated patrons, or allow them to remain on the premises. This is left to the provincial statutes.

The Gauteng Liquor Act, 2003 makes it a criminal offence to ‘allow drunkenness or licentious conduct on the licensed premises’ and to ‘sell or supply liquor to an intoxicated person’.⁵⁵ The Eastern Cape Liquor Act, 2003 also makes it an offence to serve alcohol to intoxicated persons⁵⁶ or to allow violent or drunk and disorderly behaviour on the premises.⁵⁷ The Mpumalanga Liquor Licensing Act, 2006 makes it an offence to serve any person who is ‘violent, drunk or disorderly’ but does not seem to hold licensees liable for disorderly conduct on the premises.⁵⁸ The Free State Liquor Act, 2007 states that it is an offence to sell or supply liquor to a drunk person, or to allow a drunk person to remain on the premises.⁵⁹ The Western Cape Liquor Act, 2008 contains a virtually identical provision.⁶⁰ The Northern Cape Liquor Act, 2008 contains similar rules.⁶¹

(ii) Recommendations

- Since the Liquor Act, 2003 does not make it an offence to serve intoxicated patrons, all of the pending provincial bills must contain a provision to this effect.
- The Mpumalanga Liquor Licensing Act, 2006 should be amended to hold licensees responsible for drunk or disorderly conduct on the premises.

E. MINIMUM PRICES

There is “robust” evidence to support the basic economic principle that when alcohol prices rise, consumption goes down; and when alcohol prices fall, consumption goes up.⁶² Controlling price is therefore an effective way of preventing excessive

⁵⁵ Gauteng Liquor Act

⁵⁶ Eastern Cape Liquor Act, 2003 s. 38(b)

⁵⁷ Eastern Cape Liquor Act, 2003 s. 59(c)

⁵⁸ Mpumalanga Liquor Licensing Act, 2006 s 44(b)

⁵⁹ Free State Liquor Act, 2007 s 71(3)(b)

⁶⁰ Western Cape Liquor Act, 2008 s 76

⁶¹ Northern Cape Liquor Act, 2008 s 46

⁶² World Health Organisation, *Global Status Report: Alcohol Policy* (2004) p. 41

consumption. Taxes levied on alcohol can also generate revenue that can be spent on mitigating the social harms caused by excessive drinking.

Having reviewed evidence from the WHO, the Academy of Medical Sciences and the European Commission, three experts concluded as follows:

The unanimous conclusion of the evidence reviewed is that the most effective means of reducing consumption and alcohol-related harm is to tackle price. If this is mediated through excise duty, it has the added benefit of increasing income to the government for other effective interventions. Furthermore, the burden of increased taxation is directly proportional to levels of consumption; according to the Pareto principle, another useful concept from marketing theory, 80% of sales of any product are to the 20% of people who consume the most.⁶³

(i) The problem: low prices

None of the national or provincial statutes makes any provision for governmental regulation of retail prices. However, the same effect could be achieved by raising excise tax on alcohol, which is clearly within the power of the national government. There is some evidence that taxes on alcohol in South Africa fall below international averages⁶⁴ but direct comparisons are difficult to draw because of variations in general sales tax or VAT rates. The issue is further complicated by the fact that tax policies must take into account the need to protect domestic agricultural industries, such as wine-making in South Africa. Finally, the WHO has found that there is “no significant correlation” between relative alcohol prices and taxation rates.⁶⁵ This is not quite the same as saying that tax increases will not be reflected in higher beverage prices within a particular country, but it does cast doubt on the strength of the connection. The WHO nevertheless recommends tax increases as an “effective” and “easy to implement” way of reducing liquor consumption.⁶⁶ Excise taxes can be used to raise revenue that can then be spent on other measures to reduce alcohol-related harm.

Taxes may also be adjusted between various types of drink in order to drive consumers towards lower-alcohol alternatives: e.g. an especially high tax is levied on spirits in Switzerland.

The South African government’s policy is to maintain taxes of 23% on wine products, 33% on malt beer and 43% on spirits.⁶⁷

According to a 2004 survey of 112 countries conducted by the WHO, the average rate of alcohol-specific beer tax is around 23.6%. The highest percentage recorded in the

⁶³ N. Sheron et. al., *An evidence-based alcohol policy* (2008) 57 GUT – INTERNATIONAL JOURNAL OF GASTROENTEROLOGY AND HEPATOLOGY 1341

⁶⁴ C. Parry & S. Dewing, *A Public Health Approach to Addressing Alcohol-Related Crime in South Africa* (2006) 5(1) AFRICAN JOURNAL OF DRUG AND ALCOHOL STUDIES 41 at 50

⁶⁵ World Health Organisation, *Global Status Report: Alcohol Policy* (2004) p. 55

⁶⁶ *Ibid.*, p. 57

⁶⁷ Mail & Guardian, *Sin Taxes To Go Up Again, As Usual* (19 February 2008)

survey was Iceland with 64% and the lowest was Guinea with 2%. For wine, the average rate is around 22%, but the standard deviation is higher (meaning that there is greater variation around the world.) South Africa is therefore in line with the international average. Many wine-producing European countries set very low (or no) taxes on wine. South Africa's tax on spirits is also moderate, with the average tax on spirits internationally being 41.2%.⁶⁸ These numbers suggest that there is room to increase South Africa's rates of excise tax.

The obvious problem is that higher taxes may simply drive alcohol production 'underground'. This could be particularly problematic in South Africa, where home brewing is already prevalent.⁶⁹ Any tax increases would therefore need to be accompanied with sound compliance rules and regulatory measures, e.g. issuing tax stamps to place on bottle labels.

As an alternative to, or in conjunction with, raising taxes, legislation could also be introduced to limit or prohibit special offers on drinks (e.g. 'happy hours' or two-for-one deals). In 2003 the Republic of Ireland passed a law which stated:

A licensee shall not supply intoxicating liquor on the licensed premises at a reduced price during a limited period on any day.

There is some evidence that this has helped to reduce binge drinking. Since 2002, the percentage of drinkers who reported having 6 or more 'standard drinks' in one sitting has fallen from 34% to 17% amongst women and 54% to 38% amongst men.⁷⁰ This may be compared to the UK, where no such ban is in place: overall levels of binge drinking remained relatively stable between 1998 and 2006.⁷¹ However, this is not conclusive evidence of the law's success.

This sort of measure is less potent than a general increase in prices or taxes – no additional revenue is raised by the government, and retailers may respond to the ban by lowering prices while keeping them consistent throughout the day – but it may be effective in combating binge drinking.

(ii) Recommendations

- The national government should consider raising excise taxes on alcohol in order to deter excessive consumption and raise revenue to support other measures targeted at reducing alcohol-related harm.
- The provincial governments should consider banning time-limited promotional sales of liquor (i.e. 'happy hours') in order to combat the problem of binge drinking.

⁶⁸ World Health Organisation, *Global Status Report: Alcohol Policy* (2004) p. 52

⁶⁹ Sustainable Livelihood Consultants, *A Rapid Assessment of the Potential Socio-Economic Impact of the Western Cape Liquor Act* (2009)

⁷⁰ Dept. of Health and Children, *Study of Lifestyle, Attitudes and Nutrition in Ireland* (2008) pp. 81-82; the Report notes that figures must be viewed with some caution, because reporting methods changed between 2002 and 2007.

⁷¹ L. Smith & D. Foxcroft, *Drinking in the UK: An Exploration of Trends* (2009), available at: <http://www.jrf.org.uk/publications/drinking-in-the-uk>

F. LIMITS ON CONTAINER SIZE

(i) The problem: large ‘servings’ of liquor

The sale of alcohol in large containers can mislead or confuse drinkers – they may wrongly assume that one glass, can or bottle of liquor constitutes one ‘serving’ or one ‘standard drink’ (which in South Africa generally means a drink containing 12g of alcohol).⁷² A 750ml bottle of beer, commonly sold in South Africa, in fact contains approximately 2.2 ‘standard drinks’.⁷³ The use of large containers therefore makes it more difficult for people to keep track of their alcohol consumption.

Serving drinks in larger containers may also encourage people to drink more in a single sitting, particularly if those containers offer better value for money than smaller containers.

Setting maximum sizes for containers is, however, less simple than it sounds. It is impossible to verify whether alcohol purchased for consumption off-premises will be shared amongst several people or consumed over several sittings, and on that basis preventing the sale of large bottles for consumption elsewhere may unfairly restrict trade. However, U.S. federal law sets a maximum size for cans containing alcoholic drinks (355ml), presumably on the basis that cans are generally consumed by a single person and cannot be resealed.⁷⁴ By itself, this is not immensely helpful, because a customer who wants to drink more can simply buy a (larger) bottle.

When alcohol is purchased for consumption on the premises, it may be easier to set and enforce limits on container size. However, size limits may still prevent the sale of pitchers of beer, bottles of wine etc to be shared amongst groups. Despite extensive research, it remains unclear how other jurisdictions deal with this problem. It seems that container size limits are legally mandated in very few places around the world. The U.S. state of Alabama has a law which states:

All beer, except draft or keg beer, sold by retailers must be sold or dispensed in bottles, cans or other containers not to exceed one pint or 16 ounces [473ml].⁷⁵

However, this appears to be unique amongst the U.S. states. Florida prohibits the sale of ‘malt beverages in individual containers’ between the sizes of 32 ounces (946ml) and 1 gallon (3785ml), but containers above or below these limits are acceptable.⁷⁶ The provenance of these statutes is unclear, though there is speculation that they were originally enacted as protectionist measures (to benefit local beer producers). In May 2009, Alabama repealed a law restricting the alcohol content in beer to 6%, suggesting that the state is moving in the direction of lifting such strict alcohol laws.

⁷² Industry Association for Responsible Alcohol Use (South Africa); available at <http://www.ara.co.za/viewpoints/alcohol-facts-and-tips-on-responsible-serving>

⁷³ C. Parry & S. Dewing, *A Public Health Approach to Addressing Alcohol-Related Crime in South Africa* (2006) 5(1) AFRICAN JOURNAL OF DRUG AND ALCOHOL STUDIES 41 at 51

⁷⁴ 27 Code of Federal Regulations Ch. 1 §5.47a

⁷⁵ Code of Alabama, §28-3A-23(g)

⁷⁶ Florida Stat. § 563.06(6)

In South Africa, the Liquor Products Act, 1989 gives the Minister of Agriculture power to set maximum sizes for containers for particular liquor products or classes of liquor product.⁷⁷ This power has been exercised to limit the size of wine containers, but the limits (three litres for sparkling wine, five litres for scaled enlargements of traditional corked bottles, and two litres for other wines) were obviously not designed with the goal of preventing excessive alcohol consumption in mind.⁷⁸ The limits are producer- and distributor-oriented, rather than consumer-oriented.

In 2007, measures were taken to prohibit the sale of ‘papsakke’ (cheap, low-quality wine sold in five-litre foil bags).⁷⁹ However, the law addressed the type, rather than the volume, of containers: liquor products now have to be sold in ‘self-supporting’ containers (i.e. ones which retain their original shape when empty).⁸⁰ Five-litre containers are still permissible.

Setting limits on container size would be complicated, and in the absence of comparative examples it is not clear if there is any way around the fundamental problem: limiting container sizes prevents patrons from buying larger quantities of beer, wine or spirits to share. Moreover, no research appears to have been conducted on the effect of size limits upon drinking habits.

If the fundamental problem is that container sizes mislead drinkers, then this might be remedied by publicising more widely the notion of a ‘standard drink’, and compelling manufacturers to note the alcohol content (in terms of the number of ‘standard drinks’) on the side of every bottle or can. Currently, labels on liquor products must display the actual percentage of alcohol by volume;⁸¹ consumers might find it easier to understand a label which shows the number of ‘standard drinks’ in a container. In conjunction with a public information campaign, this might help customers to assess more accurately how much they are drinking.

The UK Department of Health promotes a system of ‘units’: one standard drink (in the UK, a drink containing 10g of alcohol) is one ‘unit’, and recommended limits are prescribed for men and women.⁸² However, figures from 2006⁸³ and 2008 do not show much improvement in public awareness of the limits.⁸⁴ Labelling of ‘units’ on liquor product containers is still voluntary and it has been estimated that 43% of containers do not contain all relevant information.⁸⁵ The British Medical Association has called for legislation to make unit labelling mandatory, arguing that prominent labels on every container will help consumers to avoid excessive consumption of alcohol.⁸⁶

⁷⁷ Liquor Products Act, 1989 s. 15(1)(l)

⁷⁸ Reg. 21, *Wine of Origin Scheme*, No. R1434, 29 June 1990 (Gazette No. 12558)

⁷⁹ The Citizen, *Ban on cheap wine in ‘papsakke’* (18 September 2007)

⁸⁰ *Amendment to Regulations under the Liquor Products Act, 1989*, No. R846, 14 September 2007 (Gazette No. 30276)

⁸¹ Reg. 36, *Regulations under the Liquor Products Act, 1989*, No. R1433, 29 June 1990 (Gazette No. 12558)

⁸² http://www.dh.gov.uk/en/News/Recentstories/DH_084904

⁸³ BBC News, *Public unclear over safe drinking* (3 February 2006)

⁸⁴ BBC News, *Drinkers ‘ignorant’ about alcohol* (19 May 2008)

⁸⁵ Medical News Today, *BMA Scotland Calls For Compulsory Labelling Of Alcoholic Drinks* (3 October 2008)

⁸⁶ *Ibid.*

However, it is important to note that labelling by itself is insufficient. Members of the public must be made aware of what the ‘standard drink’ measurement means in practice. In other words, labelling requirements should be accompanied by a public information campaign to make drinkers aware of the recommended limits and the dangers of exceeding those limits.⁸⁷

(ii) Recommendations

- Restrict the alcohol content of beer and wine, e.g. maximum of 5.5% alcohol content in beer.
- Restrict the size of single beer, wine, and spirits containers, e.g. maximum of 350 ml for beer cans.
- Manufacturers of alcoholic drinks should be compelled to include on all container labels the number of ‘standard drinks’ in the container, as well as the percentage of alcohol by volume.
- New labelling requirements should be accompanied by a public information campaign to make drinkers aware of recommended limits on alcohol consumption, measured in terms of the number of ‘standard drinks’.

G. AVAILABILITY OF FOOD AND NON-ALCOHOLIC ALTERNATIVES

Food slows the absorption of alcohol.⁸⁸ Interspersing non-alcoholic beverages between alcoholic drinks can help to reduce the overall amount of alcohol consumed in one sitting. Making available food or non-alcoholic drinks available may therefore help to prevent excessive drinking and drunkenness.

(i) The problem: unavailability of food and non-alcoholic beverages

National and provincial legislation generally makes provision for different types of liquor licences. For example, the Gauteng Liquor Act, 2003 allows for restaurant liquor licences, hotel liquor licences, nightclub liquor licences etc. Some of these licences (e.g. the restaurant licence) mandate that alcohol only be served with meals. Others (e.g. the tavern licence) require that food be available to customers. Still others (e.g. the theatre licence) do not require that food be provided. None of the licences specifically requires that non-alcoholic alternative beverages be made available.

It would be relatively simple for most premises to serve non-alcoholic drinks. Most probably do so already, so it is not clear if legislative reform would have any impact. This is not a question on which statistical data is readily available.

However, it seems unduly restrictive to require that all licensed premises make food available to customers: at certain types of venue, this will be deeply impractical, and

⁸⁷ T. Stockwell et. al., *A test of the proposal to label containers of alcoholic drink with alcohol content in standard drinks* (1991) HEALTH PROMOTION INTERNATIONAL 6

⁸⁸ http://www.intox.com/about_alcohol.asp

would require a substantial financial investment (redesigning facilities, employing kitchen staff etc.) which may not see good returns.

However, provincial liquor boards might consider limiting the number of licences granted to premises which do not serve food. They might also consider redefining licence categories so that pubs, taverns and other ‘general’ drinking establishments are required to provide food (at least, light snacks, which would not require kitchen facilities). The Gauteng Liquor Act already does this: pub licences, nightclub licences and tavern licences cannot be granted unless the establishment serves food. However, not all of the provincial acts are this strict.

(ii) Recommendations

- Provincial legislatures should consider amending liquor laws to require, as a condition of all liquor licences, that premises provide non-alcoholic alternative drinks.
- Provincial legislatures should consider amending liquor laws to require, as a condition of liquor licences granted to bars, pubs, taverns, shebeens and other ‘general’ drinking establishments, that premises provide food (at the very least, light snacks).
- Provincial liquor boards should take into consideration the availability of food on the premises when deciding whether to grant a liquor licence to applicants.

H. PRODUCT QUALITY

The manufacture, distribution, and sale of alcohol in South Africa are strictly controlled by various Acts and regulations. The Liquor Products Act of 1989 covers the alcohol industry in every province, while the National Liquor Act of 1989 only to those provinces that have yet to promulgate their own provincial alcohol legislation. The National Liquor Act of 2003 applies to Gauteng and the Western Cape.

(i) National Liquor Act and the Liquor Products Act of 1989

The National Liquor Act 27 of 1989 makes no provision for the control of the quality of alcoholic products as manufactured, distributed, or sold. Section 182 of the Act grants the Minister of Trade and Industry powers to make regulations touching all aspects of the application process. These regulations were promulgated in 1992.⁸⁹

The Liquor Products Act 60 of 1989, which followed the National Liquor Act, directly regulates quality control in the alcohol industry. Strict limitations govern the manufacture, composition, and alcoholic concentration of wine (s 5), fruit beverages (s 6), spirits (s 7), grape-based liquors (s 8), and spirit-based liquors (s 9). These restrictions focus on two areas: uniformity of manufacture and purity of content. Each class of liquor is defined and categorized by a certain manufacturing process, and the addition of any other substances alien to this process is strictly prohibited. The Act restricts the manner and content of alcoholic labeling. Each class of liquor may only be labeled as a member of the particular class to which it belongs (s 11), and labels may not indicate or imply that a liquor is a member of a different class (s 12).

⁸⁹ GN R1405 in GG 13997 of 1 June 1992, with effect from 8 June 1992. Available at: http://www.capegateway.gov.za/Text/2006/5/regulations_s182_liquoract1989.pdf.

Beer and sorghum beer are explicitly exempted from these restrictions by s 4 of the Act. The precise composition of beer and the manufacturing process distinguishing it are not outlined. Neither is beer covered by the subsequent regulations put forth by the Minister of Agriculture under s 27.⁹⁰ The regulations precisely define the acceptable ingredients in every class of liquor and the manufacturing processes which must be used to create them. The content of labels is further restricted in the regulations.

(ii) The National Liquor Act of 2003

The National Liquor Act 59 of 2003 endows the Minister of Trade and Industry with broad powers to regulate the manufacture and distribution of alcohol. Under s 4 of the Act, the Minister must set the maximum quantity of liquor a manufacturer may produce (the “threshold volume”). Section 5 grants the Minister the power to declare “any substance” to be a methylated spirit and to regulate all aspects of the “denaturation, odourisation, colouring, and rendering impotable” of that substance. The manufacture, sale, or supply of any non-liquor or non-methylated spirits as any form of alcoholic drink is prohibited, as is the addition to alcoholic beverages of any substance which is “unsafe for human consumption.”

Pursuant to provisions of this Act, the Minister in 2004 set forth regulations controlling the manufacture and sale of liquor.⁹¹ Unlike the regulations made under the Liquor Act of 1989, these regulations contemplate beer and “traditional [sorghum] beer”. The regulations cap the allowable production of micro-manufacturers at various levels according to the alcohol content of their products. Beer producers are allowed to produce the most (100 million litres per year) while distillers of spirits must produce the least (2 million litres per year). Spirits of different categories may not be mixed and sold, and the sale of more than two litres of a spirit to an individual at one time is proscribed. The regulations do not outline precisely what qualifies as “beer” or “traditional beer”.

I. ALCOHOL-FREE ZONES

(i) The problem: high levels of alcohol-related harm in particular areas

Alcohol-free zones may be created in practice by strictly controlling the location of licensed premises, so that no liquor is sold in a particular area (e.g. near a school). However, some states around the world create formal zones within which alcohol may not be consumed or even carried.

In England and Wales, the Criminal Justice and Police Act, 2001 allows local authorities to designate certain public places as alcohol-free zones, if they are satisfied that there has been a high level of alcohol-related nuisance or disorder in that area.⁹² Police then have the power to confiscate any intoxicating drinks in unsealed

⁹⁰ GN R1433 in *GG* 12558 of 29 June 1990, with effect from 1 July 1992.

⁹¹ GN R980 in *GG* 26689 of 17 August 2004, with effect from 13 August 2004. Available at:

http://www.capegateway.gov.za/Text/2004/9/liquor_regs_2004.pdf.

⁹² Criminal Justice and Police Act, 2001 ss 12-13

containers. Oxford – a small city with a large student population – is a good example, with much of the city centre designated as an alcohol-free zone.⁹³

Most states in the USA also have some form of ‘open-container’ law, prohibiting the possession of open liquor containers in public places. Most states extend these laws to vehicles. Research conducted by the National Highway Traffic Safety Administration has shown that states which prohibit the possession and consumption of alcoholic beverages in motor vehicles typically have lower proportions of alcohol-involved fatal crashes.⁹⁴

In South Africa, alcohol-free zones have been created on some of the beaches around Cape Town. Municipal councils have the power to issue by-laws governing shore zones under the Seashore Act 21 of 1935. Law enforcement officials have praised the measures.⁹⁵

Whereas U.S. states prefer a blanket ban on open containers in public areas, the system in England and Wales allows local authorities to target particularly troublesome areas. This system may be preferable in South Africa, since the introduction of a sudden blanket ban could create widespread discontent and make enforcement difficult.

However, the U.S. prohibition of open containers in motor vehicles – which has no counterpart in the UK – seems, in the light of the evidence, to be a sensible measure.

(ii) Recommendations

- Municipal authorities should be given power to designate particular areas as ‘alcohol-free zones’ if they are satisfied that there has been a high level of alcohol-related harm or violence in that area. The law should be amended to give police the power to confiscate alcoholic beverages in unsealed containers within those zones.
- Following the U.S. model, the law should be amended to prohibit the carrying of unsealed alcoholic beverages in private motor vehicles.

J. POLICING

(i) The problem: ineffective enforcement of existing legislation

It is difficult to police shebeens, because raids can create conflict between civilians and the police. Additionally, the benefits of a raid are often of brief duration because the shebeen may be re-opened in another location.⁹⁶ There is an on-going issue regarding lack of co-ordination between the liquor board, shebeens & the South African Police Service (SAPS). The liquor board does not consult with the SAPS on

⁹³ Oxford Mail, *Alcohol-free zones help police tackle disorder* (14 December 2002)

⁹⁴ NHTSA, *Evaluation of the Effects of Open Container Laws* (March 2002), available at: http://www.nhtsa.dot.gov/people/injury/research/OpenContainer/evaluation_effects.htm

⁹⁵ Pretoria News, *Beach booze ban pays off* (27 December 2007)

⁹⁶ J. Steinberg, “Sector policing that works: A case study of the West Rand” *South African Crime Quarterly*, No. 11 (March 2005).

the licensing process, on their database of license-holding liquor outlets, or on individuals who have applied for licenses or those whose licences have been revoked.

There is a perception within the SAPS that it is not supported by other actors that are responsible for fighting against illegal alcohol. Interviews with the SAPS reveal that the SAPS feels that it does not receive necessary information from departments such as the Gauteng Department of Finance and Economic Affairs, the Liquor Board and the Department of Justice.⁹⁷

(i) Recommendations

- The Department of Community Safety should interact with all the provinces, the Department of Finance and Economic Affairs and the management of the Liquor Board to coordinate responses to alcohol-related issues.
- It may be appropriate for police and community police forums to play a role in the local committees' assessment of whether to grant liquor licenses. The SAPS and community police forums (CPF) can contribute their knowledge of crime patterns in a given area to determine whether a licence should be granted.
- Applicants for liquor licenses should be required to place a notice of their application in the Community Service Centre of the nearest police station to the area in which the alcohol would be sold.
- A Task Team could be developed to coordinate a response to the issue. The Team would consist of the SAPS, the Department of Community Safety, the Department of Justice, and the Department of Social Development and the Liquor Board.

K. BREATH TESTING, PUBLIC TRANSPORT AND DESIGNATED DRIVER SCHEMES

(i) The problem: drink driving

Drink driving is a serious problem in South Africa. The International Centre for Alcohol Policies estimates that in South Africa, 31% of non-fatally injured drivers are intoxicated.⁹⁸ The National Injury Mortality Surveillance System reports from 2003-2005,⁹⁹ compiled by the Medical Research Council of South Africa, suggest that alcohol plays a role in 50-53% of all road accident deaths. The WHO puts the proportion of road traffic deaths attributable to alcohol at 60%.¹⁰⁰ Whether the real figure is closer to 50% or 60%, it is still amongst the highest in the world. It compares to a rate of about 20% in the European Union¹⁰¹ and 32% in the United States.¹⁰²

⁹⁷ *Ibid.*

⁹⁸ International Center for Alcohol Policies, *Drinking and Driving: Key Facts and Issues*, available at: <http://www.icap.org/PolicyIssues/DrinkingandDriving/KeyFactsandIssues/tabid/132/Default.aspx>

⁹⁹ Available at <http://www.sahealthinfo.org/violence/nimss.htm>

¹⁰⁰ World Health Organisation, *Global Status Report on Road Safety* (2009)

¹⁰¹ Bloomberg News, *Drunk-Driving Deaths Fall in Germany, Rise in Britain and Spain* (April 17 2007)

¹⁰² National Highway Traffic Safety Administration, *Traffic Safety Facts 2006: Alcohol-Impaired Driving* (2006), available at: <http://www-nrd.nhtsa.dot.gov/Pubs/810801.PDF>

Public transport in South Africa is notoriously weak. This, combined with the fact that some urban areas are difficult or dangerous to navigate on foot, undoubtedly contributes to the problem of drink driving. Clearly, however, this is not a problem that can be fixed by simple legislative reform: it requires massive investment in infrastructure, and policy commitments from national and provincial governments.

The law already gives the police power to conduct breath tests under s 65 of the National Road Traffic Act 93 of 1996. No person may refuse to give a specimen of blood or breath.¹⁰³ The BAC (Blood Alcohol Concentration) limit is 0.05% (0.02% for professional drivers), which is in line with the majority of countries worldwide.¹⁰⁴ The BrAC (Breath Alcohol Content) limit is 0.24mg/l (0.1mg/l for professional drivers). Drink driving is punishable by a fine or prison sentence of up to six years.¹⁰⁵ The driver's licence will also be suspended for six months for a first offence, five years for a second offence, and ten years for any subsequent offences.¹⁰⁶ If the driver does not hold a licence at the time that the offence is committed, he is disqualified from obtaining one for the same periods of time.

There is nothing obviously deficient in South African drink driving laws. However, the presence of unusually high levels of drink driving suggests that South Africa may need to go further than other countries to address the problem. There are two dimensions to this: legislative reform and enforcement.

In terms of changing the law, South Africa could implement a 'zero tolerance' provision for drinking and driving, as exists in several other countries (e.g. the Czech Republic and Hungary).¹⁰⁷ The BAC limit could be reduced from 0.05% to 0%. One current problem might be that drinkers have difficulty gauging their own levels of intoxication – they do not know when they have exceeded the legal limit. Implementing a zero tolerance policy would make it clear to drivers that they cannot drink at all if they plan to drive afterwards. Research has found that laws establishing lower BAC limits (0 – 0.02%) can reduce the number of crashes involving young people by 4 – 24%.¹⁰⁸ However, given the lack of public transport in South Africa, this sort of policy would undoubtedly be unpopular, since it would mean that the many people who rely on cars to travel to and from pubs, bars and clubs could not drink alcohol at all when going out.

Enforcement is also an important element of any drink driving strategy. The impact of breath testing depends largely on public perception of levels of enforcement.¹⁰⁹ If drivers believe that there is a low risk of being caught, they are more likely to drive whilst intoxicated, regardless of the severity of punishments. Using the media to publicise anti-drink driving campaigns can help to increase the perceived level of risk and thus deter drink driving, though of course high levels of actual enforcement are also crucial.¹¹⁰

¹⁰³ National Road Traffic Act, 1996 s 65(9)

¹⁰⁴ http://www.drinkdriving.org/worldwide_drink_driving_limits.php

¹⁰⁵ National Road Traffic Act, 1996 s 89

¹⁰⁶ National Road Traffic Act, 1996 s 35

¹⁰⁷ <http://www.icap.org/table/BACLimitsWorldwide>

¹⁰⁸ World Health Organisation, *Global Status Report on Road Safety* (2009) p. 21

¹⁰⁹ D. Zaal, *Traffic Law Enforcement: A Review of the Literature* (1994) p. 9

¹¹⁰ *Ibid.* at p. 10, and see sources cited therein

The evidence conclusively shows that random breath testing is significantly more effective at deterring drink-driving than breath testing at roadblocks or checkpoints.¹¹¹ (South African law does currently allow for random breath testing, so no reform is necessary.) It is well-documented that random breath testing has been hugely successful in Australia: in New South Wales, it resulted in a 22% decrease in fatal accidents and a 36% fall in alcohol-related fatal accidents.¹¹² It showed similar success in Tasmania. The intensity of enforcement plays a significant role: when random breath testing was introduced in Victoria in 1976 its impact was limited. However, when testing rates rose from one in twenty drivers to almost one in two, alcohol-related fatalities fell by 40% and overall road accident fatalities by 30%.¹¹³

Stricter enforcement of drink driving laws, coupled with an amplified public information campaign, may therefore help to alleviate the problem of drink driving. However, these are not problems of law.

In the light of the problems with public transport, national and local authorities might instead encourage groups of drinkers to appoint a 'designated driver', who will then abstain from alcohol and take responsibility for driving the rest of the group home safely. Designated driver schemes cannot usually be written into the law: direct enforcement is highly impractical. (How do authorities determine the members of a 'group'? How do they verify that the group does not have alternative transport arrangements?) However, they can be enforced indirectly through random breath tests. Moreover, legislative measures can be taken to support the scheme: at least one U.S. state has passed a law prohibiting bars from denying service to designated drivers.¹¹⁴ This law targets the common practice in bars of prohibiting people from remaining in the bar if they choose not to consume alcohol. Evidence of the success of designated driver schemes is limited,¹¹⁵ but some studies suggest that designated drivers do indeed consume less alcohol.¹¹⁶ On the other hand, people who know that they have a designated driver to take them home may drink more than they otherwise would.¹¹⁷

Responsible drinking may be encouraged by enacting laws that allow servers of alcohol to be held liable if a patron or customer becomes intoxicated and causes damages to himself, to other people or to property.

In the United States, 'dram shop laws' are specific statutes that address liability issues for liquor licence holders. These statutes provide a basis for third parties to file suit against servers for injuries and fatalities resulting from liquor law violations. For example, §2.02 of the Texas Alcoholic Beverage Code states:

¹¹¹ *Ibid.* at p. 38

¹¹² *Ibid.* at p. 40, and see sources cited therein

¹¹³ *Ibid.*

¹¹⁴ St. Petersburg Times, *Designated Driver Law Gets First Test* (24 January 2008)

¹¹⁵ S.M. Ditter et. al., *Effectiveness of Designated Driver Programs for Reducing Alcohol-Impaired Driving: A Systematic Review* (2005) 28 AMERICAN JOURNAL OF PREVENTIVE MEDICINE

¹¹⁶ J. Lange et. al., *Experimental testing of designated drivers cues* (2000)

¹¹⁷ W.M. Harding & B. D. Caudill, *Does the use of designated drivers promote excessive alcohol consumption?* (1997)

Providing, selling, or serving an alcoholic beverage may be made the basis of a statutory cause of action...upon proof that: at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.¹¹⁸

In Missouri, serving liquor to a 'visibly intoxicated person' gives rise to an action for personal injury or death. 'Visibly intoxicated' is defined as follows:

...a person is "visibly intoxicated" when inebriated to such an extent that the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction.¹¹⁹

In Canada, although the majority of server liability cases have involved bars, restaurants or other licensed commercial establishments, a 1996 Alberta decision held that server liability laws could also be interpreted to impose a duty on non-commercial hosts of private social occasions.¹²⁰ Such hosts had a duty to take reasonable steps to prevent injury to third parties by inebriated guests, especially teenage guests.

The effectiveness of such laws in reducing alcohol-related problems is disputed. Some U.S. states that do not impose server liability (e.g. Michigan) have drink-driving fatality rates below the U.S. national average. Other states that have strict 'dram shop' laws (e.g. Illinois) have drink-driving fatality rates above the average.¹²¹ However, such raw data is inconclusive, since differences between states are influenced by a multitude of factors. At least one study has found that 'dram shop' laws may reduce drink-driving fatalities.¹²²

South Africa currently has no counterpart to these laws. However, it is already an offence to serve liquor to an intoxicated person (*see above*). Attaching civil liability as well as criminal penalties could impress upon licence holders the importance of 'responsible hospitality' and help to prevent excessive consumption of alcohol. It is currently possible, in terms of South African common law, to hold a person liable if his negligent conduct causes damage to others. So, theoretically, a person who negligently causes damage while drunk or, alternatively, who negligently facilitates another person causing damage while drunk, could be held liable for the damage caused. While it is relatively straightforward to hold a person liable for damage caused while drunk (particularly in the context of road accidents) in terms of the

¹¹⁸ Missouri Stat. 537.053

¹¹⁹ *Ibid.*

¹²⁰ www.hc-sc.gc.ca

¹²¹ <http://www.alcoholalert.com/drunk-driving-statistics-2005.html>

¹²² F. J. Chaloupka et. al., *Alcohol control policies and motor vehicle fatalities* (1993) 22 JOURNAL OF LEGAL STUDIES 161

common law of delict,¹²³ it is less so in the case of a person whose negligence facilitates the causing of damage by a drunk person (for instance, by allowing that person to drink too much). However, both remain possibilities. For the same of clarity, it may well be preferable for legislation to deal with these issues.

(ii) Recommendations

- National and local authorities should promote the use of designated drivers, and support the scheme by implementing random breath testing on as wide a scale as possible.
- Increased enforcement (through random breath testing) should be combined with a public information campaign to make drivers aware that there is a real risk they will be caught if they exceed the legal BAC limit.
- The government should consider lowering the BAC limit to 0 – 0.02%, thus making it clear to drivers that they cannot drink any alcohol at all if they plan to drive afterwards.
- The government should consider imposing some form of server liability to share the burden of preventing alcohol-related harm with licence holders.

L. ADVERTISING OF ALCOHOL

(i) The problem: alcohol advertising influences young people

Much of the literature on alcohol advertising focuses on the effects of marketing upon young people. Adult customers are assumed to be mature enough to make their own decisions about drinking. There is certainly room to dispute this premise – perhaps advertising does contribute to excessive drinking amongst adults – but most of the available research seems to concentrate on children.

¹²³ The law of delict, known as the law of torts in most other common-law jurisdictions, is the law concerning civil, as opposed to criminal, liability for damage that is wrongfully or negligently caused. In order for a person to be held liable in terms of the law of delict it is traditional said that four elements must be satisfied: the person's conduct must be "wrongful"; the person's conduct must be "negligent; and the person's conduct must have caused damages to another. The last phrase is ordinarily treated as two elements: "causation" and "damage". The expression of liability requiring the satisfaction or establishment of four elements is more for conceptual or teaching purposes (ie, to explain to students that, before a person may be held liable, four elements must be satisfied). It is more important, rather than focusing on elements, to understand the entire law of delict as amounting to one proposition: a person whose wrongful and negligent conduct causes harm or damage to another, will be held liable and obliged to pay damages sufficient to compensate the victim for his or her loss. It is, of course, not so simple and the complexity resides in the need to establish wrongfulness. Entire textbooks have been filled with discussions of what constitutes wrongful conduct in South Africa law. Sometimes the answer may be simple (for instance, punching or hitting another), but sometimes it may be very complex (for instance, determining whether a person who walks past a swimming pool and, witnessing a drowning child, simply walks on). Furthermore, although a certain event may seem, to a lay person, to have been the obvious cause of harm, it may not be so obvious to the law of delict. Indeed, whole textbooks have been filled too with discussions of what constitutes causation from both a factual and legal perspective. In short, it is possible to envisage situations in which a sober person is held liable for the harm caused by a drunk person, but it is certainly impossible to state any generally applicable rules. As in most facets of the law of delict, the answer to this question must be determined on the facts of each case.

The evidence overwhelmingly suggests that exposure to alcohol advertising makes adolescents more likely to drink.¹²⁴ Seven longitudinal studies have shown that alcohol advertisements increase drinking amongst young people. There have been no longitudinal studies which show the converse.¹²⁵ Young people are especially vulnerable to alcohol advertisements. “There can be little doubt that alcohol advertisements are related to positive attitudes and beliefs about alcohol amongst young people.”¹²⁶

The Liquor Act, 2003 prohibits the advertising of liquor ‘in a manner intended to target or attract minors’.¹²⁷ Neither the Act itself nor the Regulations made under it provide any further guidance. However, members of the ARA (the Association for Responsible Alcohol Use) subscribe to a voluntary code of conduct.¹²⁸ Most of the major South African alcohol producers are ARA members. The code contains the following provisions:

4. Commercial communication may not be directed at persons under the age of 18 years, and no one associated with the act of drinking in commercial communication may be younger than 25. Persons under the age of 18 may be depicted where it would be usual for them to appear, e.g. in family scenes or in background crowds, but it may not, in any way, be suggested that they have or are about to consume alcohol beverages.

5. Commercial communication may not employ images or icons that have unique appeal to children.

The code also prohibits sexually suggestive alcohol advertising, adverts which encourage or feature risky behaviour or excessive drinking, etc. The code has been adopted by the ASA (Advertising Standards Authority of South Africa), rendering it applicable to ASA members as well as ARA members. Disputes are referred to an independent arbitrator. It is generally believed that the code is being followed.¹²⁹

In May 2009, an amendment to the National Road Traffic Regulations¹³⁰ made it illegal to display ‘any directional sign displaying or depicting the sale of liquor products visible on a public road’. As originally proposed, the amendment banned ‘advertisements’ – the reference to ‘directional signs’ may be an attempt to exclude branded delivery vehicles from the regulations. This does not seem to have come into force yet.

¹²⁴ P. Anderson, *The impact of alcohol advertising: ELSA project report* (2007), available at http://ec.europa.eu/health/ph_determinants/life_style/alcohol/Forum/docs/alcohol_lib10_en.pdf, and see sources cited therein

¹²⁵ P. Anderson, *Reducing the harm caused by alcohol: a co-ordinated European response* (November 2007), available at <http://www.rcplondon.ac.uk/event/ArchiveEvent/slides/4.PeterAnderson.pdf>

¹²⁶ P. Anderson, *The impact of alcohol advertising: ELSA project report* (2007) p. 43

¹²⁷ Liquor Act 2003, s 9(1)

¹²⁸ ARA Code of Commercial Communication, available at: <http://ara.co.za/self-regulation/>

¹²⁹ International Centre for Alcohol Policies, *Self-Regulation of Beverage Alcohol Advertising* (January 2001)

¹³⁰ No. R589, 27 May 2009 (Gazette No. 32258)

This type of self-regulation is not unique to South Africa. In a survey of 119 countries, the International Centre for Alcohol Policies found that 17 use self-regulation mechanisms to control alcohol advertising, compared to 45 which use statutory regulation and 21 which use a combination of the two. (In a purely technical sense, South Africa might now be said to use a combination of statutory regulation and self-regulation, since s 9 of the Liquor Act, 2003 prohibits advertising to minors. Realistically, however, a solitary provision can hardly count as ‘statutory regulation’.)

There is no solid evidence of the effectiveness (or lack thereof) of self-regulation. Industry associations such as the ARA tend to be heavily in favour of self-regulation. Advantages often cited include efficiency, flexibility, and the relative technical expertise of the industry groups which draft codes of conduct.¹³¹ On the other hand, there is no guarantee that industry groups will act for the public benefit: it is conceivable that they will be concerned solely or primarily with maximising profits. Self-regulatory schemes can usually only apply very limited sanctions to those who violate the code, which may be insufficient as a deterrent.

Though the ARA code prohibits advertising ‘directed’ at minors, and the Liquor Act, 2003 bans advertising ‘intended to target or attract minors’, this fails to take account of the subtlety of modern marketing. Whether an advertisement influences young people’s attitudes is a complex question. Young viewers respond well to elements of humour, story, character and music in alcohol advertisements.¹³² However, it may be difficult to prove that a humorous advert was ‘directed’ at, or ‘intended to target or attract’, minors, even if that was its effect in practice. Moreover, aside from the Road Traffic Regulations mentioned above, there is no provision of law or of the code which prohibits alcohol advertising in places where children are likely to see it.

In the light of the lack of evidence regarding the effectiveness of self-regulation, it is difficult to make concrete recommendations. However, the possibilities for reform run along a spectrum as follows:

1. **Complete ban on alcohol advertising:** this would be simpler to enforce than a partial ban, because there would be no room to dispute its interpretation (e.g. no arguments about what ‘targets’ minors and what does not). In Sweden, almost all alcohol advertising was banned, except at the point of sale and in trade journals, though this ban was subsequently held to be incompatible with European law.¹³³
 - a. Given the prevalence of alcohol advertising in South Africa, a sudden ban would undoubtedly meet with significant industry resistance, and might have serious economic implications for the alcohol industry since it would prevent it from marketing its products to non-vulnerable adult customers.
 - b. Moreover, one review of the scientific literature has suggested that bans on advertising do not have a statistically significant effect on overall alcohol consumption (though they may make consumers switch

¹³¹ P. Anderson, *The impact of alcohol advertising: ELSA project report* (2007) p. 51

¹³² *Ibid.* at p. 40

¹³³ Institute of Alcohol Studies, Alcohol and Advertising Factsheet, available at: <http://www.ias.org.uk/resources/factsheets/advertising.pdf>

from one type of beverage to another).¹³⁴ However, the review did not appear to consider specifically the effect of the ban on underage drinkers.

2. **Tighter statutory control of alcohol advertising:** currently, s 9 of the Liquor Act, 2003 is the only statutory provision restricting alcohol advertising. This part of the Act could be expanded to more tightly regulate the marketing of liquor products. In France, the *loi Evin* prohibits alcohol advertising on television, in cinemas, or through sponsorship of sports and cultural events. Health warnings must be included on advertisements, and ‘lifestyle’ advertisements are banned: advertisements may only refer to product quality (e.g. origin, composition or means of production). Decisions on whether an advertisement violates the *loi* are made by the courts. Alcohol consumption in France has fallen since the law was passed,¹³⁵ but this may not be attributable to the law itself, since there has been a general pattern of decline since the 1960s.¹³⁶
 - a. Thought would need to be given to which rules would become part of the law. In order to protect minors, it might be a good idea to restrict alcohol advertising in places where children are likely to see it, e.g. on billboards and at sporting events. Instead of a complete ban on television advertising, perhaps alcohol advertisements could be restricted to programs for which children comprise less than 15% of the viewing audience.¹³⁷ Alternatively, alcohol advertisements could be permitted on television only after a certain hour (e.g. 9pm), as in New Zealand.¹³⁸ As discussed above, it is not sufficient simply to prohibit advertisements ‘intended to target or attract’ minors. As in France, advertisements could be accompanied by mandatory health warnings.
3. **Statutory oversight of the current code:** the current ARA code could be given legal authority by mandating in a statute that all liquor manufacturers follow it. Alternatively, or in addition, a government agency could be given responsibility for oversight and adjudication, with stronger powers of enforcement (e.g. the power to issue fines for non-compliance). This sort of reform could easily be combined with amendment of the code.
4. **Amendment of the voluntary code:** the current ARA code could remain voluntary. However, it could be amended to include tighter controls on advertising, as discussed above (e.g. prohibiting sponsorship of sporting events, banning advertisements on television before 9pm).
 - a. The ARA might not be willing to tighten its code of conduct. However, experiences around the world show that the threat of government

¹³⁴ J. Nelson, *Alcohol Advertising and Advertising Bans: A Survey of Research Methods, Results and Policy Implications* (2001) p. 16

¹³⁵ The Times, *France ban on internet alcohol advertising hits industry* (19 September 2008)

¹³⁶ A. Regaud & M. Craplet, *The Loi Evin: A French Exception* (2004) (1) THE GLOBE

¹³⁷ C. Parry & S. Dewing, *A Public Health Approach to Addressing Alcohol-Related Crime in South Africa* (2006) 5(1) AFRICAN JOURNAL OF DRUG AND ALCOHOL STUDIES 41 at 51

¹³⁸ http://www.gala.org.nz/fact_sheet_gala.pdf

regulation or interference is often enough to persuade industry groups to augment their own controls over advertising.¹³⁹

(ii) Recommendations

- The government should consider amending the law to tighten controls on alcohol advertising. Adding new provisions to the Liquor Act, 2003 to limit minors' exposure to advertisements may be a neat compromise between the two extremes of banning all alcohol advertising and leaving the industry to regulate itself.

M. PUBLIC HEALTH INFORMATION CAMPAIGNS

As discussed in Section II above, public health information campaigns can take various forms. Some examples of campaigns from around the world are given in Section VII below. There is a longer but less detailed list available on the website of the International Centre for Alcohol Policies.¹⁴⁰ Designing an information campaign is beyond the scope of this report, but there is significant evidence to suggest that it is an effective and important part of any harm reduction strategy. Information on its own is less effective than an approach which combines education with other policy measures.¹⁴¹

The government already has the power to embark on public health and information campaigns, so no legislative changes are necessary. For example, section 21(2) of the National Health Act 61 of 2003 states that the Director-General of the Dept. of Health "must, in accordance with national health policy...promote health and healthy lifestyles". Heads of provincial health departments are under a similar obligation.¹⁴² NGOs could also play a significant role in public education.

¹³⁹ P. Anderson, *The impact of alcohol advertising: ELSA project report* (2007) p. 54

¹⁴⁰ <http://www.icap.org/PolicyTools/ICAPBlueBook/ExamplesofTargetedInterventions/tabid/113/Default.aspx>

¹⁴¹ International Center for Alcohol Policies, *ICAP Blue Book* (2009)

¹⁴² National Health Act, 2003 s 25

V. COMMUNITY PARTICIPATION IN CREATING SAFE DRINKING ENVIRONMENTS

To what extent does South African law enhance or limit community involvement in creating safe drinking environments? The following section will examine the law – not just legislation regulating the alcohol industry, but also the Constitution and the common law – in order to show how it allows for public participation in law-making processes. This section will also describe other opportunities communities have outside the law-making process to contribute meaningfully to the creation of safer drinking environments.

A. PUBLIC PARTICIPATION UNDER THE LIQUOR ACTS

All references to public participation in the national and provincial liquor Acts relate to the process of granting liquor licences. However, not all of the statutes contain explicit provisions regarding the role of the public in this process. On this point, see also Section IV above.

(i) Liquor Act 27 of 1989

The Liquor Act, 1989, which currently governs seven provinces (*see Annexure 2*), does not itself provide for public participation in the licence application process. However, the Regulations under the Act allow members of the public to lodge representations in favour of, or against, the granting of a licence.¹⁴³ Communities that oppose the granting of a liquor licence in a particular area may sign petitions, which can be used by a liquor board in making its decision whether or not to grant the liquor licence. However, it is apparent from case law (*see section VI*) that there is no guarantee that the community's interests will prevail over the business interests of those applying for liquor licences. At present, therefore, there is no guarantee that a particular argument will be accepted. It might be argued, for example, that a licence should not be granted in respect of a location within 1 km of a school. Since there is no categorical rule prohibiting the granting of licences within 1 km of schools, the relevant liquor board would have to weigh up the harm of granting the licence (ie, the potential harm to learners) against potential benefits. Depending on the facts of a particular case, the board might or might not grant the licence.

(ii) Liquor Act 59 of 2003

The Liquor Act, 2003 expressly mentions the role of the public in liquor licence applications. However, the 2003 Act only governs licences for macro-manufacturing and distribution of liquor. Under the Act, the Minister with the power to grant a liquor licence may call for public submissions on any licence application before proposing conditions for the applicant. Though the Minister has the power to call for public submissions, there is no obligation to do so. Thus public participation is limited by the 2003 Act, since it is left to the discretion of the Minister whether or not to involve the public in the licence application process.

¹⁴³ *Regulations under s 182 of the Liquor Act, 1989*, No. R1405, 1 June 1992 (Gazette No. 13997)

(iii) Gauteng Liquor Act 2 of 2003

Gauteng Province also defines a role for the public in its Liquor Act. Chapter 3 of the Act, which governs the liquor licence application process, provides that notice of an application for a liquor licence must be given to the public in at least two local newspapers, in the Government Gazette and on the premises. The provision also states that any person may lodge an objection to the granting of a licence 21 days after the application is made. Therefore, it is critical that the public in Gauteng be made aware that they are able to file objections to the granting of a liquor licence anywhere in the province.

(iv) Eastern Cape Liquor Act 10 of 2003

The Eastern Cape Province also allows the public to play a role in the liquor licence application process. Chapter 3 of the Act prohibits any person from selling liquor unless that person is registered. Section 22(3) provides that upon receipt of an application for registration, the board must enable the public to have access to, inspect or obtain a copy of the application and lodge representations or objections to it. As in Gauteng, it is critical that communities in the Eastern Cape be made aware of their right to participate in this administrative process, since this may be essential for creating safer drinking environments in their areas.

B. PUBLIC PARTICIPATION UNDER THE CONSTITUTION

The Constitutional Court has held that the Constitution calls for an open and transparent government, and in doing so requires all legislative organs to facilitate public participation in the making of laws.¹⁴⁴ It has also held that the duty to facilitate public involvement must be construed in the context of our constitutional democracy, which embraces the principles of participation and consultation.¹⁴⁵ The right to public participation imposes a correlative duty on the State to facilitate this participation in the conduct of public affairs by ensuring that the right can be realized. Such public involvement in the legislative process may be vital in creating safer drinking environments, particularly in those provinces that have not yet enacted provincial liquor statutes. It may also give a basis on which to challenge the validity of previously enacted liquor statutes that do not allow for sufficient public participation in liquor licence decisions, or in some other aspect of regulating the liquor industry.

(i) The duty to facilitate public participation

Under sections 56(a), 72(a), and 118(1)(a) of the Constitution, the National Assembly, the National Council of Provinces, and provincial legislatures have an obligation to facilitate public involvement in their legislative and other processes. Section 160(4)(b) states that no by-law may be passed by a municipal council unless the proposed by-law has been published for public comment, whilst section 152(1)(e) states that one of the objects of local government is to encourage the involvement of communities and community organisations in the matters of local government. Two recent

¹⁴⁴ *Matatiele Municipality and others v. President of the RSA and others* 2007 (6) SA 477 (CC)

¹⁴⁵ *Doctors for Life International v. Speaker of the National Assembly and others* 2006 (6) SA 416 (CC)

Constitutional Court cases have given meaning to the nature and the scope of this duty to facilitate public involvement in the legislative process. A brief description of these two cases highlights how public involvement in the law-making process is critical in a representative and participatory democracy.

The *Matatiele*¹⁴⁶ case concerned a dispute about the validity of a constitutional amendment that had the effect of altering provincial boundaries. The Constitutional Court held that the amendment had been adopted in a manner that was inconsistent with the Constitution, since one of the provincial legislatures had failed to hold public hearings or invite written representations during the legislative process. The Court explained that the nature and the degree of public participation that was reasonable would depend on a number of factors, including the nature, content, importance and urgency of the legislation and the intensity of its impact on the public. The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute in ensuring that this group was given a reasonable opportunity to participate. As the Court explained, this may necessitate the provision of transportation to and from hearings or even hosting radio programs (in multiple languages) on an important bill; mere requirements of notice or hearings may not be enough.

In the *Doctors for Life*¹⁴⁷ case, the Constitutional Court held that there were at least two aspects to the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided. In this sense, public involvement may be seen as "a continuum that ranges from providing information and building awareness, to partnering in decision-making".¹⁴⁸

As the *Matatiele* and the *Doctors for Life* cases show, when provincial legislatures make rules to regulate their proceedings, they are required to do so with due regard to principles of representative and participatory democracy, accountability, transparency and public involvement. They are empowered to hold public hearings and to receive petitions, representations or submissions from any interested persons or institutions. They are required to conduct their business in an open manner, they must provide public access to their proceedings and those of their committees, and they may not exclude the public from the sittings of their committees unless it is reasonable and justifiable to do so.¹⁴⁹ These forms of public involvement are important in assessing whether current liquor legislation allows for sufficient means of public participation.

(ii) Opportunities for community involvement in the legislative process

With regards to public participation in creating safer drinking environments, it is essential that communities be aware of the constitutionally guaranteed role that they have to play in the enactment of future alcohol legislation. The community also has a role to play in some of the day-to-day decisions that are made by legislative bodies in

¹⁴⁶ *Matatiele*, supra

¹⁴⁷ *Doctors for Life*, supra

¹⁴⁸ *Ibid*

¹⁴⁹ *Matatiele*, supra

the regulation of the alcohol industry. If public involvement is to be meaningful, it must encompass both these aspects: public awareness and participation in decision-making.

As explained above, some of the provincial liquor Acts do not make adequate provision for public participation in the licence application process. Of the current liquor statutes that do provide for public notice and involvement, only one stipulates the languages in which publicity must be given. This is problematic because the language of publication may not be a language that is largely spoken or understood by the local community. Moreover, in poorer communities where literacy rates are low, public notices may go unread. This is a significant issue, since it is in poorer communities that people may be particularly vulnerable to alcohol abuse. Although all current liquor statutes allow communities to raise objections to liquor licence grants, generally the only way that these objections can be raised is through written responses (*see section IV above*). There may be an argument for greater participation by the public – this could be achieved through oral submissions or other creative means of public participation such as monthly community meetings where members of the community would be informed of new liquor licence applications and could thus have an opportunity to raise any concerns or objections. Some liquor Acts provide for the appointment of inspectors. Allowing a member of the community to be appointed as an inspector and undergo any relevant training would give members of the community an ability to control and regulate their own environment to a greater degree through the duly elected community inspector.

There may also be a role for the community to engage in the legislative process if it were to lobby for changes to be made to the current liquor laws. The community could then be active in this process of amending the laws. Also, where certain decisions and rules regarding alcohol use are left to the discretion of the different municipalities, there may be an opportunity for the public to be involved when those rules are adopted or changed, or when those decisions are made.

C. PUBLIC PARTICIPATION OUTSIDE THE LAW-MAKING PROCESS

The following section deals with the ways in which communities may be empowered to create safer drinking environments outside the law-making process. Programmes and campaigns that tackle issues of alcohol safety and underage drinking in a community can be initiated by various groups and on various levels. It is critical to involve as many actors in the community as possible in order for any comprehensive alcohol safety programme to have a significant impact. Empowering the community will require strong participation by the government through funded programming, dissemination of information about alcohol safety issues, and suggested policies and approaches to tackling the issues. Empowering communities will also require active participation by community-based organizations, educational institutions, religious institutions and other social groups that can drive campaigns from a grassroots level. Businesses and corporations also stand to play an important role in empowering the communities within which they operate by holding community and social events that bring awareness to alcohol safety issues.

(i) Creating awareness

In order for communities to be empowered to create safe drinking environments, the first step is to create educational programmes to inform the community about the risks that are attached to drinking and the alternatives available to the youth when engaging in social activities. The relevant actors can play an important role by implementing programmes that focus on training relevant community actors in preventing and responding to alcohol related issues. Training key actors within the community allows for them to take a stand and unite the community against a common cause. The key is thus to target opinion leaders within communities. Localized campaigns that tackle the particular issues that are most problematic in a particular community may be more effective than large national campaigns.

In the United States, 747 schools across the nation require some sort of alcohol education. Some alcohol education programmes target university students: one online alcohol prevention program ('alcohol.edu') is used on more than 500 college and university campuses across the U.S. It is designed to challenge students' expectations about alcohol while enabling them to make healthy and safe decisions. Programmes such as this one aim to take a realistic stance to alcohol consumption on a college campus. The courses are designed not to lecture about the dangers of alcohol, but rather to demonstrate the harmful effects that alcohol has on the body. Through real life scenarios students find more information about how to control their drinking. Similar programming could be instituted in South Africa with the help of the government to provide funding for such programmes.

Resources should also be used to help make communities aware of liquor laws, such as laws requiring the display of liquor licence certificates in a visible place. By making the public aware of such provisions, the community can help report 'illegal' activities. Public education on the content of liquor laws would allow the public to be informed and to take action on behalf of the community.

(ii) Creating alternatives for young people

Another way in which communities can be empowered is to focus on young people by providing them with alternative means of social interaction that do not involve alcohol, e.g. youth clubs and sports facilities. Creating programmes focused on the youth that are not centred entirely on alcohol can shift the focus away from alcohol in their daily lives. One American government website, ('stopalcoholabuse.gov'), encourages communities to be proactive in changing the 'teen scene'. Suggested ways in which to accomplish this include:

- creating friendly alcohol-free places where teens can gather;
- creating programmes (e.g. volunteer work) in which young people can grow, explore their options, succeed, and feel good about themselves without alcohol;
- helping teens realise that, like taking drugs or smoking, underage drinking is unhealthy and can drastically impact their lives; and
- letting teens involved with underage drinking know that it is acceptable to ask for, and get, help.

Similar initiatives could be undertaken in South Africa.

D. CONCLUSION

The Constitution, the various governing liquor statutes and South African case law all provide for different levels of public participation, and are all essential in assessing the extent to which the community may be able to participate in creating a safer drinking environment. On the one hand, the Constitution greatly enhances community involvement through its provisions that give an obligation to facilitate public participation in the legislative process. On the other hand, liquor statutes such as the National Liquor Act 27 of 1989 make no provision at all for the public to participate in any aspect of regulating the liquor industry. Thus, there may be opportunities for the community to be involved in future liquor law amendments or enactments, or else there may be opportunities to challenge current liquor legislation.

VI. SOUTH AFRICAN CASE LAW

Through the enforcement and interpretation of the various liquor statutes that have been enacted nationally and provincially, South African courts continue to play a role in shaping the laws regarding regulation of alcohol sale and consumption. However, the power of the courts to create safe drinking environments is limited to the issues that arise from the disputes litigated before the court, most of which do not directly concern the need to address the harmful effects of alcohol. The following discussion of South African case law is relevant to other sections of this paper, and should be read in conjunction with the analysis of South African legislation (*see Section II*). However, it warrants its own discussion here because it also concerns the extent to which the courts may be a forum for change.

A. CONSTITUTIONAL COURT CASES

Only three Constitutional Court cases have dealt directly with issues relevant to alcohol sale and consumption, and all of them involve sellers of alcohol challenging certain liquor statutes by arguing that their rights were infringed in some manner by the provisions contained in these Acts.

In its most recent judgment regarding alcohol sale, the Constitutional Court invalidated the definition of ‘shebeen’ contained in the Gauteng Liquor Act 2 of 2003, owing to it being impermissibly vague and hence unconstitutional.¹⁵⁰ The Gauteng Liquor Act sought to normalize the sale of liquor by shebeens for the first time. As the Court explained,

Historically, shebeens have been informal and unlicensed liquor traders selling liquor largely to customers in townships. In many cases, shebeens operate from private homes and are small traders. Their businesses have always been considered unlawful, and they have suffered the consequential vulnerability and marginalization. The Act seeks to change this by bringing shebeens within the scheme of the Act.

The way in which ‘shebeen’ was defined restricted shebeen owners to selling only ten cases of beer and failed to specify a period of time within which these were to be sold. Those with the authority to grant shebeen permits construed the text to mean ten cases of beer per week. However, shebeen owners argued that it is not possible to run a profitable shebeen selling that amount of beer and said that the livelihood of shebeen owners had therefore been placed in jeopardy.

The increased regulation of shebeens is a positive step in trying to make the environments in which alcohol is sold and consumed safer. The more regulated such environments are, the greater role government can play in implementing safety measures. Although increased regulation is essential, it must be done properly if it is to be effective, and this may be an area where local communities and NGOs can

¹⁵⁰ *South African Liquor Traders’ Association and others v. Chairperson, Gauteng Liquor Board* 2009 (1) SA 565 (CC)

provide critical perspectives to the legislature as new rules and regulations are being developed. What this judgment demonstrates is that the legislature will do the public a disservice if, in attempting to regulate drinking environments, care is not taken to ensure that the legislation is constitutional and will pass the scrutiny of the courts.

In *S v. Lawrence*,¹⁵¹ a party who held a licence to sell wine objected to two provisions in the Liquor Act 27 of 1989. One provision prohibited the sale of any liquor other than table wine under such a licence. The other prohibited the sale of liquor at times other than those specified in the Act. It was argued that these provisions infringed the right to engage in economic activity, as was guaranteed by the interim Constitution of 1993. The Constitutional Court, however, argued that no-one could claim that the right to engage in economic activity entitles him or her to ignore laws which have a rational basis. Accordingly, it held that the provisions were not unconstitutional because they were both reasonable and necessary. This case is significant in that it highlights the Constitutional Court's recognition of the harmful effects of excessive drinking and the statutory measures necessary for curtailing them. The court stated:

Liquor is a potentially harmful substance. It is part of the normal environment in which the liquor trade is conducted in South Africa, and other countries, for selling to be regulated by licences which control not only the right to sell liquor but also where, when and what liquor may be sold. There is a rational basis for such a regime which is not inappropriate to the regulation and control of the liquor trade in an open and democratic society.

The Court's emphasis on the need for regulation and control of the alcohol industry highlights the necessity of *effective* regulation. This gives communities and community organizations a great opportunity to ensure that the current liquor laws are regulating the industry properly and in a way that minimizes the harmful effects of alcohol.

Although it is clear that the State has an interest in controlling the environments where liquor is sold and consumed, there are limitations on how the State may do so. In *Phillips*,¹⁵² the Constitutional Court declared certain provisions in the Liquor Act, 1989 unconstitutional because they infringed the right to freedom of expression. Section 160 made it an offence for 'on-consumption' licence-holders¹⁵³ to allow a person

(i) to perform an offensive, indecent or obscene act; or

¹⁵¹ *S v. Lawrence; S v. Negal; S v. Solberg* 1997 (4) SA 1176 (CC).

¹⁵² *Phillips and Another v. Director of Public Prosecutions, Witwatersrand Local Division* 2003 (3) (CC)

¹⁵³ The Liquor Act 27 of 1989 distinguishes between (a) on-consumption licenses that authorize the sale of liquor to be drunk only at the place at which it is sold, and (b) off-consumption licenses in terms of which the liquor is sold for consumption elsewhere.

- (ii) who is not clothed or not properly clothed, to perform or to appear, on a part of the licensed premises where entertainment of any nature is presented or to which the public has access.

The Constitutional Court agreed that “liquor notoriously has a negative effect on the behaviour, feelings and thought patterns of consumers. It is known to give rise to lapses in judgment, false courage, lack of discernment, lack of discipline and a measure of vulnerability.” However, the Court felt that although the State's interest in minimizing the harm that might result from these negative consequences was significant, this particular statutory provision went far beyond that required by any legitimate purpose of the State.

B. THE GRANTING OF LIQUOR LICENCES

Much of South African case law relating to the liquor industry deals with issues arising out of the granting of liquor licences by the provincial liquor boards. An overview of these cases will highlight the factors taken into consideration in the decision to grant a liquor licence, the role of the courts in reviewing the granting of liquor licences and the role that the community can play in the process. This will help to demonstrate the extent to which a safer drinking environment can be created through the process of granting liquor licences.

(i) Factors for consideration

Provincial liquor boards are given the authority to issue liquor licences. The Liquor Act, 1989 sets out conditions that have to be met in order for a liquor licence to be granted by the liquor board. It states:

22. The Board shall not grant an application for any licence unless –

- (i) the premises are or will on completion be suitable for the purposes for which they will be used under the licence;*
- (ii) if the premises are situated in the vicinity of a place of worship or school or in a residential area, the business will be carried on in a manner that would not disturb the proceedings in that place of worship or school or prejudice the residents of that residential area;*
- (iii) the applicant concerned is of good character and is otherwise fit to be the holder of the licence;*
- (iv) the granting of the licence is in the public interest...*

It should be noted (and this point was touched on above) that there is no absolute ban on selling alcohol near schools or places of worship under the 1989 Act. Objections to the granting of a liquor licence to a particular applicant, whether it is an objection from the Liquor Board or a member of the community, are often argued on the basis

that such a grant would be contrary to the “public interest.” So, if a particular liquor board is to refuse an application on the basis that the proposed premises will be near a place of worship or school, it will need to do so on the basis either that the granting of the licence would lead to the disturbance of proceedings at the school or place of worship, would prejudice the residents of the area, or is not in the public interest.

The courts have struggled to give meaning to this term. In *Maharaj*¹⁵⁴ the Natal Provincial Division stated that the phrase “in the public interest” did not mean that the public whose interest was to be served was necessarily to be widely representative of the general public. It required an enquiry into whether the public would be better served if the applicant were granted the licence than if the existing state of affairs were to continue, and it was not the national interest that was intended, but that of the inhabitants in the areas for which the licence was sought or visitors to that area. In another judgment, the Northern Cape Division similarly stated that the term “public interest” had to be interpreted to mean that the granting of the licence had to be in the interest of the community affected.¹⁵⁵

In *Bulks Deals*,¹⁵⁶ an application to the Western Cape Liquor Board had been made for the grant of a restaurant liquor licence in a shopping centre which happened to be situated in a residential area. Various objections had been filed against the grant of the licence by the residential community which expressed concerns about the noise emanating from the licensed premises, as well as the noise which could be expected from the increased traffic flow to the shopping centre. Given the objections from the community, the Liquor Board refused to grant the licence to the applicant. However, the Court, after analyzing what constituted the “public interest,” set aside the Liquor Board’s decision. The court reasoned:

While those persons living near to the centre are part of those whose interests can be said to make up the public interest, the board erred, in my view, in basing its decision in effect on their interests. Having regard to the fact that recognition should be taken of free-market principles it is clear that in considering the public interest, the nature of the shopping centre and the nature of the establishment which an applicant proposes to operate must also be taken into account when assessing whether the public interest will be served.

Although this case involves objections to the granting of liquor licences based on concerns about noise levels, it is significant in that it demonstrates that there are limits to the community’s ability to control whether or not alcohol may be sold in their community. The case also highlights that the business interests of the liquor licence applicant can override the community’s interest in preventing alcohol from being sold in the community.

(ii) The role of the courts

¹⁵⁴ *Maharaj v. Chariman, Liquor Board* (1997) (1) SA 273 (N)

¹⁵⁵ *Asko Beleggings v Voorsitter Van Drankraad No En Andere* (1997) (2) SA 57 (NC)

¹⁵⁶ *Bulks Deals Six CC v. Chairperson, Western Cape Liquor Board and others* 2002 (2) SA 99 (C)

Provincial liquor boards are granted a wide discretion with regards to granting liquor licences, and the courts have a limited role to play in reviewing these decisions. Section 131(a) of the Liquor Act, 1989 allows a court to review the decision of a Liquor Board only if the court is satisfied that the competent authority (a) has exceeded its powers; (b) has refused to exercise a power which it was obliged to exercise; or (c) has exercised the power in an arbitrary, *mala fide* or grossly unreasonable manner. Of course, the 1989 Act must now be read subject to the Constitution and, more specifically, the Promotion of Administrative Justice Act 3 of 2000.

Historically the role of the courts has been limited when reviewing decisions by liquor boards. In a judgment given in 1956,¹⁵⁷ a court in Southern Rhodesia, as it then was, found that where a liquor licensing board, in the honest and diligent exercise of its discretion, is of the opinion that the interests of the public do not require an additional licence in a particular area, the High Court on appeal should be extremely slow to come to the conclusion that the opinion held by the board is unreasonable. Such deference is warranted because the Courts acknowledge that the liquor boards are likely to be more connected to the local environment and more in tune with what would be in the best interest of the communities affected. The potential disadvantage of this deference is that a liquor board is more likely to be influenced by local politics than a court of law, and this may have a negative impact on the decision-making process.

(iii) The role of the community

Even though there appears to be a role for the community to play (i.e. objecting to the granting of liquor licences), there is no guarantee that the community's interests will prevail over the business interests of those applying for liquor licences. People have the opportunity to testify before the liquor board in opposition to or in support of the granting of a liquor licence. In *Bulk Deals*, one of the people who testified in opposition to the grant of the licences was the chairman of an organization representing the residents of the affected community. Other residents testified that they objected to the granting of any liquor licences in their area, and a petition was signed by 197 residents objecting to the grant of these licences. Despite all this community involvement, the Court gave judgment in favour of the applicant, who was deemed to have legitimate business interests that outweighed the community interests.

Section 140 of the Liquor Act, 1989 also requires that the views of a designated police officer be taken into account by the liquor board when considering licence applications. The object of this is likely to be to have someone with local knowledge to assist the board in its decision-making. The designated police officer is potentially an important figure in communicating the needs of the community to the board. This was true in *Bulk Deals*, where the designated police officer altered the opinion he was to submit to the liquor board when he became aware of the large number of objections filed by residents of the community.

(iv) Opportunities for creating safer drinking environments

¹⁵⁷ *Simpson v. Lewin* 1956 (4) SA 486 (SR)

It is clear that much discretion is left to the liquor boards in this decision-making process; however, it is uncertain whether this is likely to work for or against the community in any efforts to create safer drinking environments. Since the courts' role is limited to reviewing the decisions made by the liquor boards, one way in which there may be an opportunity to create safer drinking environments is through increased guidance from the government on which factors should carry more weight when a liquor board is deciding whether or not to grant a liquor licence. In particular, if specific limitations on the locations at which alcohol may be sold are to be achieved – for instance, if one were to go about establishing an inflexible rule prohibiting the granting of a licence within a certain distance from schools – the best way to do so would be through legislative amendment. Such an amendment could specifically mandate this approach, removing this issue from the discretion of particular liquor boards.

VII. FOREIGN LIQUOR POLICIES: CASE STUDIES

Alcohol abuse is a worldwide problem, more pronounced in some countries than in others. With varied success, governments have attempted to create safe drinking environments through a wide range of regulatory frameworks and media campaigns. The following is an examination of some of the various methods employed by the United States, Australia, the Republic of Ireland, Botswana, Namibia and Ghana to curb alcohol abuse and to create safe drinking environments for their citizens.

A. UNITED STATES OF AMERICA

(i) Litigation

The United States court system, often a foil of legislative will, has been uniquely deferential to governmental efforts to control the sale and distribution of alcohol within the country. This has allowed the U.S. government to experiment with a variety of regulatory mechanisms.

Courts in the United States recognize a broad power of state and municipal governments to regulate all aspects of the sale of liquor in order that a safe drinking environment may be maintained. Although the Federal Government lacks the constitutional power to decree explicitly the minimum drinking age throughout the States, it effectively rendered the age uniform by granting highway funding to states on a conditional basis. If the state raised its minimum drinking age to 21, it received funding; if it did not, it received nothing.¹⁵⁸ Despite the law's questionable constitutionality, the Supreme Court upheld the scheme in *South Dakota v. Dole*.¹⁵⁹ Most states increased the drinking age from 18 to 21 within a few years of the law's passage in 1984. By 1995, the drinking age was 21 in every state.¹⁶⁰

The Supreme Court has explicitly affirmed the power of the states under the Constitution to regulate the times, places, and circumstances under which liquor may be sold.¹⁶¹ The nation-wide policy of regulating liquor sale through state or municipal-granted licences has never been successfully challenged. Courts have judged the rights of an individual or a business to sell liquor to arise only from the state, and as such, these rights are to be exercised only in a manner determined by the state. The Supreme Court has stated that there are no rights or freedoms to sell liquor inherent in citizenship of the United States.¹⁶² The Court has gone as far as to recognize a state power to regulate the sale of non-intoxicating liquors if such regulation advances the regulation of intoxicating liquors.¹⁶³

Many states in the U.S. ban or discourage the sale of alcohol within a certain radius of schools (cf. Alcoholic Beverage Control Acts of California, Texas, New York, and Illinois) and courts generally uphold these regulations. Considerable deference is shown to the public interest of limiting the proximity of alcohol to young students,

¹⁵⁸ National Minimum Drinking Age Act of 1984, 23 U.S.C. § 158.

¹⁵⁹ 483 U.S. 203

¹⁶⁰ New York Times, *Louisiana Court Upholds Drinking Age of 21* (3 July 1996)

¹⁶¹ *New York State Liquor Authority v. Bellanca* 101 S.Ct. 2599

¹⁶² *Crowley v. Christensen* 11 S.Ct. 13

¹⁶³ *Jacob Ruppert, Inc. v. Caffey* 40 S.Ct. 141

and the interests of business owners are generally placed behind that of the public. On these grounds, federal courts have upheld the revocation of liquor licences in newly annexed areas of a city despite the fact that the business in question was originally established outside of the city's domain. The city's concern for the safety of the students of a nearby school was held to be a valid exercise of police power trumping the interests of the individual business owner.¹⁶⁴

(ii) Alcohol policies in the United States

Anti-underage drinking and alcohol related violence campaigns in the United States are supported by a mixture of statute and industry public relations advertising. Liquor laws are propagated by individual states but vary significantly within them. Most state liquor licence laws allow for a "local option" whereby municipalities and counties may augment the state's rules within their jurisdiction.¹⁶⁵ In some states, this has led to the existence of "dry counties" wherein the sale of alcohol is severely limited or prohibited entirely.¹⁶⁶

However such statutory restrictions are often undermined by problems inherent in the minimum drinking age. The legal drinking age in the United States, 21, is the highest in the world (alongside Indonesia, Micronesia, Palau, Sri Lanka, and Pakistan).¹⁶⁷ In such an environment, underage drinking is a common problem. Large fines and jail time are common enforcement mechanisms to limit the sale of alcohol to underage drinkers, but the prevalence of fake IDs and of-age drinkers willing to buy alcohol for underage friends has made the problem difficult to remedy by statute. Binge drinking remains quite common in universities in the United States. According to several recent studies conducted by universities, nearly half of all of the alcohol consumed by college students is attributable to underage drinkers, and nearly half of college students recently surveyed admitted regular binge drinking.¹⁶⁸ It is likely that intoxication is a component of most sexual assaults committed at U.S. colleges.¹⁶⁹

Seeking to create safe drinking environments and to reduce the negative effect of underage alcohol abuse, the U.S. Federal Government has created a wide variety of organizations and initiatives designed to curb alcohol abuse by promoting personal responsibility and alcohol-related education. Government-run websites such as stopalcoholabuse.gov include a wide variety of pamphlets and materials designed to reduce underage alcohol use by influencing teenage life both in the home and at school. "The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking," "A Guide to Action for Families," "A Guide to Action for Communities," "A Guide to Action for Educators," and "Start Talking Before They Start Drinking: A Family Guide" are all freely available for download on the website. Government

¹⁶⁴ *Davidson v. City of Clinton, Miss.* 826 F.2d 1430

¹⁶⁵ Among others, the Alcoholic Beverage Control Acts of California, Texas, New York, and Illinois.

¹⁶⁶ A map of dry counties in Kentucky, from the Kentucky Alcoholic Beverage Control, is available at: <http://abc.ky.gov/NR/rdonlyres/0C5C5FD7-1B46-47CB-BD55-4445BE9E1D21/0/WetDryMap91207.pdf>

¹⁶⁷ International Center for Alcohol Policies, *Minimum Age Limits Worldwide*, available at: <http://www.icap.org/Publications/ICAPReports/tabid/75/Default.aspx>

¹⁶⁸ "Underage Drinking and Drunk Driving Statistics Among College Students," Mothers Against Drunk Driving, available at: <http://www.madd.org/docs/College%20Statistics.pdf>

¹⁶⁹ "Alcohol and Sexual Assault," *Alcohol Health and Research World*, National Institute on Alcohol Abuse and Alcoholism, Volume 25, Number 1, 2001.

programs also aim to influence consumer decisions through on-premise advertising. “Don’t Serve Teens,” another anti-underage drinking campaign funded by the government, includes on its website links to download and print point-of-sale logos, stickers, and posters emphasizing in large, bold lettering the dangers of alcohol and the penalties for violations of the law. The website also provides “driver’s license guides” to aid retailers in spotting fake IDs.¹⁷⁰ College drinking is another priority. Collegedrinkingprevention.gov includes a section on “Alcohol Myths” emphasizing the dangers of alcohol. An interactive map providing a summary of the alcohol policies maintained by the administrations of major US colleges is also provided for the benefit of concerned parents.

Some of the most prominent safe drinking campaigns are initiated and funded by breweries and distilleries. Alcohol companies put out their own signs and posters as part of public relations “responsible marketing” campaigns.¹⁷¹ (From a cynical perspective, these signs are useful should, for example, the companies be sued by the victims of an underage drunk driver and need to establish a pre-existing commitment to the prevention of underage drinking.) A typical US liquor store is plastered with a hodgepodge of various industry-funded anti-underage drinking campaign posters proclaiming such maxims as “21: IT’S THE LAW” and “21 MEANS 21.” Advertisements listing hotlines for those suffering from alcoholism are also common. The Beer Institute, a lobbying organization for the industry, publishes an eight page “Advertising and Marketing Code” to which most alcoholic beverage producers voluntarily adhere. The code mandates that advertising not be aimed toward underage drinkers (e.g., the use of Santa Claus is expressly forbidden, and all models and actors employed in advertising must be over the age of 25) or present alcohol in an overly favourable light. Advertisements that link alcohol use with drunkenness or illegal behaviour are also forbidden by the code.¹⁷²

B. REPUBLIC OF IRELAND

Ireland continues to struggle with the nationwide problem of alcohol abuse. Binge drinking is common, and crime is strongly correlated with intoxication. In 2008 the average amount of pure alcohol consumed by every person over the age of 15 in the country was 12.4 litres, a per capita rate that ranks among the highest in the world.¹⁷³ (In 2003, Ireland consumed 13.69 litres per person; South Africa consumed 6.72.¹⁷⁴) In that year, the perpetrators of almost half of the homicides committed in the country

¹⁷⁰ We Don’t Serve Teens, available at www.dontserveteens.gov.

¹⁷¹ See e.g. MillerCoors underage drinking prevention campaign, available at: <http://www.millercoors.com/what-we-believe/true-responsibility/preventing-underage-drinking.aspx>; see also Anheuser-Busch “Beeresponsible” campaign, available at: <http://www.beeresponsible.com/underage-drinking-distributor-efforts.html>.

¹⁷² The Beer Institute, *Advertising and Marketing Code* (January 2006), available at: <http://www.beerstitute.org/BeerInstitute/files/ccLibraryFiles/Filename/000000000384/2006ADCODE.pdf>.

¹⁷³ Alcohol Action Ireland, *Alcohol Related Harm: Facts and Statistics* (2009), available at: http://alcoholireland.ie/?page_id=110.

¹⁷⁴ UNdata: A World of Information, available at: <http://data.un.org/Data.aspx?d=WHO&f=inID%3ARF15>.

were intoxicated. Alcohol was also identified as the potential trigger for a third of all domestic violence cases and almost half of all cases of sexual assault.¹⁷⁵

Irish law regarding alcohol is little different from that of South Africa. The minimum drinking age is 18; licences are granted by a local licensing authority; inspectors ensure compliance.¹⁷⁶ National liquor law was amended in 2003 to prohibit the serving of intoxicated persons in a bar and the selling of alcohol at a reduced rate during any period of the day (“happy hours”).¹⁷⁷ Per capita consumption of beer has dropped 6.9% since the ban was passed, reversing an upward trend,¹⁷⁸ and British health officials are considering a similar ban.¹⁷⁹

In 2003, Ireland commissioned the National Strategic Task Force on Alcohol to address rampant alcohol abuse. The task force recommended more stringent enforcement of existing laws and the eliminations of promotions such as two-for-one deals and happy hours. It also recommended that advertising for alcoholic beverages be banned where it might have an effect on children and youths under the age of 18.¹⁸⁰ Happy hours are now banned (see above), but alcohol industry advertising has yet to be seriously controlled. Adherence to certain codes of alcohol advertising remains voluntary.¹⁸¹

C. AUSTRALIA

Australia (and New Zealand with it) has implemented several innovative and effective mechanisms for controlling alcohol abuse and related violence. The country has seen the rise of “naming and shaming” movements designed to publically humiliate liquor-serving businesses who violate the terms of liquor licences. State governments such as that of New South Wales have begun to list publically the “most dangerous” pubs in the state in a move to reduce violence and lax adherence to liquor law. The New South Wales Bureau of Crime Statistics recently published a list of 100 such pubs in the state, ranking the pubs in order by number of reported assaults per year.¹⁸² The report garnered major attention in the national media and other states are expected to create similar lists.¹⁸³ Melbourne has recently announced a trial program to flash football-inspired yellow cards at unruly pub patrons, warning them that if their behaviour continues they will be removed.¹⁸⁴

¹⁷⁵ Alcohol Action Ireland, *Alcohol and Crime* (2009), available at: http://alcoholireland.ie/?page_id=58.

¹⁷⁶ “Alcohol and the Law in Ireland,” Barkeeper, available at: <http://www.barkeeper.ie/page.asp?menu=0&page=274>.

¹⁷⁷ Intoxicating Liquor Act of 2003, Number 31 of 2003.

¹⁷⁸ “Alcohol Consumption in Ireland: 1986-2006,” Dr. Ann Hope, Health Service Executive, available at: http://www.healthpromotion.ie/fs/doc/hpu_publications/HPR00485.pdf.

¹⁷⁹ ABC News, *British May Ban ‘Happy Hour’ as Drink Deaths Rise* (22 November 2008)

¹⁸⁰ National Strategic Task Force on Alcohol, *Interim Report* (May 2002)

¹⁸¹ *Ireland: New Codes on Alcohol Advertising*, IRIS Merlin, 2006, available at: <http://merlin.obs.coe.int/iris/2006/2/article24.en.html>.

¹⁸² http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_atoc#alcohol_crime.

¹⁸³ ABC News, *Naming and Shaming Begins in NSW* (25 July 2007)

¹⁸⁴ The Herald Sun, *Red and Yellow Card System Could Be Trialled [sic] in Melbourne Pubs* (15 April 2009)

Australian cities have also experimented with forced “lockouts” that mandate pubs be cleared of patrons by a certain hour. The lockouts have met stiff opposition from business owners affected by decreased revenues, and the success of these programs has varied between cities. Melbourne recently abandoned a trial 2:00 AM lockout.¹⁸⁵ However Shepparton’s success with a similar trial program has led to a movement to push the lockout to midnight. Shepparton police attributed the lockout to a significant reduction in “antisocial behaviour”.¹⁸⁶

Like Ireland, Australia has recently launched a massive campaign to reduce alcohol abuse and related violence. Last year the Federal Government set aside \$53 million dollars to the creation of early intervention programs and a nation-wide television advertising campaign to stem the rise in alcohol abuse and related crimes.¹⁸⁷

D. BOTSWANA

Botswana offers a warning against overly stringent statutory methods of battling alcohol abuse. The country has attempted to combat a high rate of alcoholism and associated violence through a series of draconian statutory restrictions. By recent amendment to the country’s Liquor Act, liquor may now only be sold between the hours of 5:00 PM and 11:00 PM, Monday through Thursday, at stores and bars. On Fridays and Saturdays, liquor may be sold only between noon and 11:00 PM. No liquor may be sold on Sundays.¹⁸⁸ The new law is deeply unpopular, and newspapers and policy analysts have predicted that it will spawn a glut of new, illegal shebeens.¹⁸⁹ The newly amended law also stipulates that no liquor licence may be granted to a business located within 500 metres of a school, highway, or church. Existing licences are to be held to the same standard, but they may “negotiate” with the licensing authority if their business is a pre-existing violation.¹⁹⁰

In 2008, Botswana’s President, Ian Khama, proposed a tax on alcohol that would increase its price by 70%. The proposal was dropped several months later, after it became clear that it was too politically unpopular to be viable.¹⁹¹

E. NAMIBIA

Namibia has encountered similar problems implementing safe consumption policies. In an attempt to legitimize and regulate illegal activity, the Liquor Act of 1998 included provisions providing for the licence of shebeens.¹⁹² To reduce unlicensed distribution, the Namibian government has attempted to “crack down” on remaining illegal, unlicensed shebeens. However, these shebeens account for a large portion of alcohol sales in Namibia, and the crackdown has generated widespread resistance and

¹⁸⁵ AAP News, *No Plan to Extend 2am Pub Lockout* (31 August 2008)

¹⁸⁶ ABC News, *Police Praise Pub Lockout Trial* (13 November 2008)

¹⁸⁷ ABC News, *Sydney Pubs Top ‘Most Violent’ List* (11 March 2008)

¹⁸⁸ “Botswana: Liquor Regulations Come into Effect,” Mmegi, March 31, 2008, available at: <http://allafrica.com/stories/200803311841.html>.

¹⁸⁹ BBC News, *Law Enrages Botswana Bar Owners* (16 February 2006)

¹⁹⁰ “Botswana Liquor Regulations Come into Effect.”

¹⁹¹ Afrol News, *Botswana May Abandon High Alcohol Levy* (9 September 2008)

¹⁹² Liquor Act 6 of 1998

discontent. This resistance has often been violent. In June 2006, police fired tear gas and rubber bullets into a crowd of angry shebeen owners, killing one man.¹⁹³

Despite strict enforcement of licence regulations, Namibia continues to suffer the effects of nation-wide alcohol abuse. The Liquor Act emphasizes that liquor licences should not be granted in areas where the business would constitute a “public nuisance” or be too close to a school or church, but these provisions have had little effect. According to the UN, more than half of Namibia’s adult population consume an average of more than 5 bottles of beer a day.¹⁹⁴ Alcohol-related crime remains a major problem for the country. By way of example, there are no known illegal shebeens in the towns of Henties Bay, Swakopmund and Walvis Bay. However the towns’ 150 licenced shebeens have contributed directly to a spiralling rate of alcohol-related violence and crime. “Although there are no illegal outlets, there still seems to be an increase in crime stemming from alcohol consumed at [shebeens]”, a police chief in the area recently told a local newspaper.¹⁹⁵

F. GHANA

In the face of increasing media converge of alcohol abuse within their country, Ghana’s parliament has considered introducing legislation similar to that of Botswana to increase taxes on alcohol in order to reduce consumption.¹⁹⁶ Widespread and loosely regulated advertising has also been deemed a factor in the nation’s rising rates of alcohol-related crime.¹⁹⁷ To date, Ghana has not committed any significant resources to battle against alcohol abuse.

G. CONCLUSIONS

Statutory restrictions on the licensing and sale of alcohol are effective only to a point. Under any statutory framework, problems with illegal distribution may persist, as in Ghana and the U.S. These problems are often exacerbated by under-enforcement or inadequate funding. If the statutory framework is too rigid or too contrary to social norms, widespread resistance such as that seen in Botswana and Namibia is possible. Lockouts, such as those attempted in Australia, might be successful in South Africa, but they would likely generate heavy resistance if the lockout time was too restrictive.

Internationally, media campaigns aimed at altering social norms have shown some success. These campaigns are not inexpensive, but their messages can be effective and are easily disseminated. The media can substantially alter public perceptions of drinking norms and behaviour, something that legislation alone cannot do. If the public is educated about the dangers of alcohol abuse, including how it relates to violence and the spread of disease, it is less likely to engage in the activities which statutes are designed to prevent.

¹⁹³ “Shebeen Impasse Confusion,” National Society for Human Rights, available at: <http://www.nshr.org.na/index.php?module=News&func=display&sid=597>.

¹⁹⁴ “Alcohol ‘Destroying’ Namibia,” allAfrica.com, available at <http://allafrica.com/stories/200706270798.html>.

¹⁹⁵ The Namibian, *Alcohol-Related Crime in Erongo Out of Control* (17 February 2009)

¹⁹⁶ The Chronicle, *Make Alcohol Less Attractive to Youth—MP* (25 June 2009)

¹⁹⁷ Ghana News, *MPs Urge Youth to Stay Away from Alcohol Abuse* (19 June 2009)

Community participation is vital. The National Institute on Alcohol Abuse and Alcoholism, a U.S. government-funded think tank created to analyze alcohol policy, has repeatedly found community-based prevention and intervention programs to be effective means of reducing alcohol abuse and unsafe consumption in the U.S.¹⁹⁸ Media advocacy forms the backbone of these efforts. “Without skilful media work, it is very difficult, and perhaps impossible, to implement policy-driven structural changes within a community,” the NIAAA observes.¹⁹⁹ A bottom-up, grassroots approach to controlling a community’s, and by extension a nation’s, alcohol intake is therefore an essential component to the creation of a safe drinking environment.

¹⁹⁸ For a comprehensive summary of the relevant research, see Dr. Harold D. Holder (NIAAA), *Community Prevention of Young Adult Drinking and Associated Problems*, available at: <http://pubs.niaaa.nih.gov/publications/arh284/245-248.htm>.

¹⁹⁹ *Ibid.*

VIII. CONCLUSION

In the absence of universal standards, different countries, provinces and municipalities adopt different measures to regulate drinking environments. Many of these measures have been outlined in this report. Note, however, that very few national or local authorities will implement all of the available measures: most will pick and choose from the list. An appropriate regulatory response must take account of cultural and social factors. For example, the legal drinking age may be loosely enforced in countries with Mediterranean drinking habits, where children are typically introduced to alcohol at a relatively young age. In countries where rates of alcohol-related violence are high, such as the UK, an increased police presence may be especially important.²⁰⁰

Illegal distribution and unsafe consumption of alcohol are best addressed by media campaigns in conjunction with legislative reform, not through statute alone. Outside of the legislative process, local alcohol safety programmes and grassroots campaigns are essential for bringing awareness to the public on alcohol safety issues as well as for informing the public about the laws that govern alcohol sale and consumption. Through the partnering of government resources with creative ideas from local groups and networks, the community may be empowered to make a positive step towards creating a safer drinking environment.

Many of the measures discussed above should be accompanied by a specific campaign to increase public awareness. For example, it is not sufficient simply to mandate that manufacturers label liquor bottles with the number of ‘standard drinks’ they contain – the public needs to be made aware of the recommended limits on alcohol consumption. Indeed, any significant change to the law – e.g. lowering BAC limits, banning open liquor containers in motor vehicles – should be well-publicised, so that people understand their new rights and responsibilities.

Policies intended to create a safe drinking environment should consider not simply the safety of drinkers themselves, but also the safety and security of the general public. Certain measures – such as greater policing – may address both these concerns.

²⁰⁰ BBC News, *Alcohol the ‘new British disease’* (20 May 2004)

ANNEXURE 1: DETAILED SUMMARIES OF MAJOR LEGISLATION

This section summarises in detail the following major statutes:

- Liquor Act 59 of 2003
- Liquor Act 27 of 1989
- Gauteng Liquor Act 2 of 2003
- Eastern Cape Liquor Act 10 of 2003

A. LIQUOR ACT 59 OF 2003

Chapter 1 lists definitions and limits the Act's application to the manufacture and distribution of all liquor and methylated spirits and to the regulation of all imposable substances in South Africa.

The Act defines 'liquor' to include any substances identified as liquor in s 1 of the Liquor Products Act 60 of 1989, as well as 'traditional African beer' or any drink declared to be liquor in s 42(2)(a) of the Act.

Chapter 2 contains the prohibitions on manufacture (ss 4 and 5), employment (s 8), sale and supply (ss 4, 5 and 10), and advertising (s 9) of certain categories of liquor in certain circumstances. The chapter also establishes bans on 'imposable substances' (s 6) and declares licensure to be the only means of lawfully conducting alcohol manufacture and distribution (ss 4, 5 and 7). The central prohibitions are in ss 4(2) and 5(1), which provide that liquor and methylated spirits must not be manufactured or distributed except under the terms of the Act.

The current volume threshold for manufacturers of beer is 100 million litres per year; for manufacturers of 'traditional African beer', 50 million litres per year; for manufacturers of wine, 4 million litres per year; for manufacturers of spirits, 2 million litres per year. Micro-manufacturers are not required to be registered under the national Act, but can be (and slowly are becoming) regulated by provincial legislation.

Under s 7 all premises upon which registered activities take place must also be registered. Conducting registered activities from unregistered premises is a contravention of a licence under the Act and thus an offence as defined by Chapter 5, which contains all the provisions relating to offences and penalties in the Act.

Every offence in the Act is punishable by one of two categories of penalties: R1 million or up to five years imprisonment; or R 500 000 and up to 1 year imprisonment. Chapter 5 lays out all the penalties applicable to all the offences in detail.

The Act contains various provisions relating to the protection of minors from alcohol. While "minors" are defined in s 1 as "persons who have not yet attained the age of eighteen years", s 8 only prohibits the employment of anybody who has not attained the age of 16 years, except in specified circumstances. Presumably, these allowances are made to prevent prejudicing minors above the age of 16 who require employment in order to support themselves and their families.

Advertising also falls within the ambit of Chapter 2. Without elaboration, s 9(1)(a)(ii) prohibits advertising ‘in a manner intended to target or attract minors’. The provision has yet to be tested in the courts. Intention is a vague standard, and there exists the possibility that advertising that does not subjectively intend to attract minors but that attracts them nonetheless would not be prohibited.

The Act does not completely criminalize the provision of alcohol to minors. Under s 10(2), parents and guardians are permitted to supply their minor children with alcohol with their supervision.

All offences relating to minors fall within the more severe category of penalties under Chapter 5. Section 10(3) provides that where a minor goes to lengths to conceal his or her status as a minor in an attempt to procure liquor it is the responsibility of the entity providing the alcohol to take appropriate measures to determine the age of the minor. The supplier will be guilty of an offence if the minor manages to obtain alcohol through deceit. The Act does not contain criminal prohibitions governing the actions of minors; it governs only the conduct of the seller, supplier, advertiser, guardian or employer.

Section 8(2) of Chapter 2 prohibits what was previously known in South Africa as the ‘dop system’, whereby employees in the liquor industry were remunerated with liquor.

Chapter 3 controls licence applications made by distributors and manufacturers of liquor. The Minister (defined in s 1 as ‘the member of Cabinet responsible for liquor matters’ – currently the Minister of Trade and Industry) is granted a wide discretion to request further information in the determination of licence applications. However, the circumstances in which a licence may be refused are limited by the Act, and all applications meeting certain procedural requirements must be granted. Under s 11(2), persons incapable of obtaining these licences are listed as minors, un-rehabilitated insolvents, persons committed under the Mental Health Act 18 of 1973, persons convicted of contravention of the Liquor Act within the 3 years preceding the application, and persons convicted of another offence which is inconsistent with the objects of the Act within the 3 years preceding the application. If the applicant is not disqualified by falling into one of the categories of persons described in s 11(2) or has not broken a deadline, the Minister is obliged to grant the licence. The powers of the Minister to impose conditions on licences are less circumscribed. Although not required to do so, the Minister is competent to call for public submissions on any given licence application before proposing conditions.

A licence is valid until it is cancelled, on the grounds of contravention of conditions or the supervening death, incapability, or insolvency of the licensee. Licences held by licensees who are no longer competent to hold them may either be de-registered or transferred to another person.

The Minister may, during the subsistence of the licence, propose and impose new conditions on licences, on the grounds of a contravention of certain requirements listed in s 19(2). In s 24 the normal remedies of review and appeal of the Minister’s decisions in respect of licences are explicitly laid out.

Chapter 4 governs the enforcement by inspectors of the Act’s regulatory framework. Designated by the Minister, Inspectors are invested with broad investigatory powers to carry out their functions: investigating complaints and monitoring and enforcing compliance with the Act. These powers authorize the inspectors to question any persons believed to have relevant information, to inspect and copy documents, to sample or seize any substances regulated by the Act, to take photographs or make audio-visual recordings, or to “do all things necessary for conducting the inspection”. An inspector who has a reasonable belief of non-compliance with the Act may approach a magistrate for the issue of a search warrant. Inspectors are authorized to enter premises even without a warrant to do routine inspections or in circumstances where consent has been obtained. S 30 imposes a “duty to produce documents, answer questions and assist inspector(s)” on all persons and outlines what sort of evidence may not be used against persons in criminal proceedings.

Under ss 31, 32 and 33, inspectors who hold a reasonable belief that a person or establishment is guilty of non-compliance may issue a compliance notice stipulating the contravention, the steps that should be taken to rectify such contravention, and the time in which such steps must be taken. A compliance certificate must be issued once the contravention is rectified. Provision is made for objections to such notices to the Minister and for normal appeal and review remedies against decisions of the Minister on these matters.

Chapter 5 creates offences and their penalties. See chart, below:

| OFFENCE | PENALTY |
|--|--|
| Manufacturing and distributing without registration. | Fine up to R1 million OR Imprisonment up to 5 years. |
| Contravention of prohibitions of impotable substances. | |
| Contravention of employment prohibitions. | |
| Registered activity from unregistered premises. | Fine up to R 500 000 OR Imprisonment up to 1 year. |
| Contravention of advertising restrictions. | |
| Obstruction, interference or hindrance of inspector exercising powers in terms of the Act. | |
| Failure to comply with compliance notices. | |
| Impersonating a registrant or inspector; falsifying or altering licences or compliance certificates. | |
| Use of the powers of an inspector outside the parameters authorized by the Act. | |

Any person convicted of an offence carrying the higher penalty may have all the stocks of liquor or methylated spirits in his or her possession forfeited by the court and destroyed or sold to a licensed liquor retailer or distributor.

Chapter 6 establishes the National Liquor Policy Council to facilitate inter-governmental consultation between all spheres of government and to settle disputes regarding liquor policy in order to promote a consolidated national policy dealing with the liquor industry.

Chapter 7 empowers the Minister, in consultation with the Cabinet member responsible for Health, to create requirements for the display of public health notices on premises registered or licensed in terms of the Act.

B. NATIONAL LIQUOR ACT 27 OF 1989

Chapter 1 lists definitions. A “closed day” is a Sunday, Good Friday and Christmas day. There is no definition of a minor.

Chapter 2 establishes liquor boards. A separate liquor board is established in each province. Section 6(a) states that the function of the board is to act in accordance with recommendations provided for by the Minister, and to give any recommendations to the Minister in respect of the granting of licences in order to regulate the distribution of liquor. Section 14(1) provides that the meeting of the board must be accessible to the public.

Chapter 3 regulates the application process.

Chapter 4 excludes persons who have previous convictions, persons who are insolvent and minors from applying for a liquor licence and stipulates conditions for particular licences.

Chapter 6 provides that a person may not be employed in the business of selling liquor if that person is under the age of 18, or if the person has in the past 2 years been convicted of a contravention of an act regulating the liquor industry. The Act uses the term juveniles instead of minors.

Chapter 7 makes provision for general conditions applicable to on-consumption licences. The chapter outlines the business times for all the types of liquor licences available under the Act. As the Act does not recognize shebeens in the Northern Cape, for example, such traders can apply for a temporary licence at the cost of R100 per day.

Chapter 8 is similar to Chapter 7 but applies to off-consumption licences. In this Act, off-consumption also includes macro-manufacturers and distributors.

Chapter 12 s 126 states that a magistrate or a police officer of a particular rank may close down a licenced premise if that premise is in contravention with any provisions of the Act.

Chapter 13 regulates the processes of the furnishing of reasons, reviews and appeals.

Chapter 14 regulates prohibited and controlled liquids. A regulation made under s136 (2) may prescribe a penalty of R1000 or imprisonment for a period of six months for contravention of s136 (1).

Chapter 15 deals with the appointment of inspectors and police officers. Inspectors have very limited powers. They are permitted only to check the suitability of the premises during the licence application process and accompany the police during planned raids.²⁰¹

Chapter 16 outlines offences. The Act specifically mentions offences by holders of on-consumption licences and off-consumption licence, among others. Unless the law prescribes otherwise, a magistrate’s court has jurisdiction to impose the penalties prescribed by the Act.

| Offences | Penalties |
|--|---|
| Offences in general. | Fine OR Imprisonment for not more than 5 years |
| Offences regarding information. | Fine OR Imprisonment for not more than 6 months |
| Offences regarding meetings of the board. | |
| Offences regarding inspectors and police officers. | |
| Offences regarding liquor trade. | |
| Offences by holders of licences in general. | |
| Offences by holders of off-consumption licences. | |
| Offences by holders of sundry licences. | |

Eastern Cape Liquor Act 10 of 2003

Chapter 2 of the Act establishes the Eastern Cape Liquor Board, an independent legal entity, whose primary duties are to consider, approve or refuse liquor licences. Under s 5(1), the board must consist of no more than five members, and one or two of the members must be officers in the Provincial service.

The chapter also establishes a panel of appeal. The panel is tasked with hearing appeals against decisions made by the board. Its decision is final. Section 18(1) provides that any meeting of the board or the panel must be accessible to the public. However the deliberations and the voting on any matter at a meeting must take place behind closed doors.

Chapter 3 provides for the registration process. Under s 9, no person may sell liquor unless that person is registered or is deemed to be registered. There are, according to s 20, five categories of licences that may be granted by the Board. Section 21 excludes certain persons from the registration process.

S 22(3) provides that upon receipt of the application, the board must enable the public to have access to, inspect or obtain a copy of the application and lodge representations

²⁰¹ Correspondence with Kabelo Kapanda, Inspector of the Northern Cape Liquor Board (23 June).

or objections to it. Section 24 gives an applicant the right to appeal a negative decision of the Board within 30 days. The appeal gives applicants another chance to acquire a liquor licence and offers interested parties another opportunity to make oral representations for or against the appeal. Non-compliance with the obligations stipulated in the registration certificate, once granted, can result in the Board serving a compliance notice on the registered person or referring the matter to the South African Police Service for investigation if the non-compliance by the registered person may constitute an offence. If a registered person who has been served a compliance notice under s 28 does not comply with the requirements set out in the notice, the Board must vary, suspend or cancel the registration or amend the register accordingly. There remains a right of appeal after such a decision from the Board.

Under s 35, the Board is required to keep a record of all persons who have been registered.

Chapter 4 defines the terms and conditions applicable to the sale of liquor. The Act prohibits the selling of liquor to a person under the age of eighteen, drug trafficking and prostitution on registered premises, the payment of liquor in lieu of wages and the employment of people under age of sixteen on registered premises. The Act also regulates the granting of registration where the premises are situated within a prescribed radius to a place of worship and educational premises. Trading hours relating to registered activities can be found in s 42. Although exact times are not provided, the provision indicates that the trading hours are determined by the municipality in whose area of jurisdiction the premises are situated.

Chapter 5 of the Act deals with law enforcement and judicial proceedings. The Board may, under s 46, appoint any person, or designate any officer of the Board, as an inspector. Inspectors are deemed to be peace officers as defined in s 1 of the Criminal procedure Act of 1977. Chapter 5, from s 47 to s 53, outlines the various powers and duties given to inspectors, which are necessary for them to conduct an inspection. As peace officers, inspectors are permitted to close down unregistered outlets, confiscate alcohol stock from unregistered outlets, and issue compliance notices. Certain concoctions and drinks are prohibited under s 56 of the Act.

The Act provides offences relating to inspections, offences relating to liquor trading, and general offences such as selling liquor without a registration certificate or consuming alcohol where it is not permitted to do so. The Act imposes penalties for these and other offences.

| OFFENCE | PENALTY |
|--|---|
| Not complying with notices and summons. | Fine OR Imprisonment up to 1 year. |
| General offences. | Fine OR Imprisonment up to 3 years. |
| Selling liquor without registration. | |
| A registered retailer of alcohol selling liquor to a manufacturer or wholesaler. | |
| Selling liquor to persons under the age of 18 years or an intoxicated person. | |
| When an outlet is managed by a person | |

| | |
|---|--|
| who is prohibited from doing so. | |
| When a person who is registered to sell liquor at a particular event sells liquor at another event. | |
| When a person sells liquor outside of the prescribed trading hours. | |
| Failing to display a public health notice. | |
| Offences pertaining to inspections. | |
| Selling liquor without registration. | |

Chapter 6 allows the Member of the Executive Council (MEC) to make regulations regarding the Act. When it was promulgated the Act gave shebeens, which were illegal at the time, six months to apply for temporary registration certificates, thereby recognizing shebeens. This can be found in **Chapter 7** of the Act. The Act, however, does not provide a definition for a shebeen.

Gauteng Liquor Act 2 of 2003

Chapter 1 lists definitions. A minor is defined as a person under the age of twenty-one (21) years. A shebeen is any unlicensed place of operation whose main business is liquor and that sells less than 60 cases of beer per week. A tavern is a premises which has the main business of supplying liquor, food and various forms of entertainment.

Chapter 2 establishes a Gauteng Liquor Board and the local committees of the Board. The local committees can be found in municipal areas within the province. Under s 21, a local committee shall consider all applications for licences, the transfer of licences, amendment of conditions, and any other applications. The local committee must then make recommendations to the board on whether a licence application should be granted.

Chapter 3 governs the liquor licence application process. Applications are made to the relevant municipal local committee and must be accompanied by all the supporting documents. Section 24 provides that notice of an application for a liquor licence must be given to the public in at least 2 local newspapers, in the Government Gazette as well as on the premises. In this way, the Gauteng Act, more than the Liquor Act of 2003 and the Eastern Cape Act, requires consultation with affected communities. Any person may lodge an objection to the granting of a licence within 21 days from the date of publication of the notice required in terms of section 24.

Chapter 4 lists the general conditions of licence. Section 37(5) stipulates that a licence shall at all times be displayed in a conspicuous place on the premises. Section 38 establishes a Liquor Trade Association which is known as the Gauteng Liquor Traders Association, which all licensees must join, unless they are already members of other Associations.

On-consumption premises must be a prescribed size. All premises must comply with all laws at all times, including health and smoking laws. Minors cannot be employed by a licensed person; however, this rule does not apply to a person above the age of 18 who is undergoing or has undergone training in the catering service. Under s 46 a

licensee may not sell liquor to a person under the age of 18.

This Chapter also provides special conditions applicable to on-consumption and off-consumption licences. An on-consumption licence entitles the licensee to sell liquor for consumption on the licensed premises whereas an off-consumption licence entitles the licensee to sell liquor for consumption away from the licenced premises. Exact business hours are not provided for any particular type licence, but there is a provision that food, light meals or snacks must also be served at most on-consumption outlets such as hotels, restaurants, taverns, nightclubs and by sorghum beer traders. Off-consumption outlets can conduct on-consumption activities, such as tasting, under certain conditions.

Chapter 5 makes provision for enforcement and judicial proceeding. The provisions relating to inspectors in the Act are similar to those in the Eastern Cape Act.

Chapter 6 provides that the Board, a local committee or a State department can recover all reasonable costs incurred during the inspection of premises.

Chapter 7 outlines prohibited categories of drink and concoction.

Chapter 9 outlines offences. There are general offences, offences regarding information, offences regarding meetings of the board, offences regarding inspectors and police officers, offences regarding liquor trade, and offences by licensees in general. Under s 133, any person who is guilty of an offence under the terms of the Act shall on conviction be liable for a fine not exceeding R100 000 or subject to imprisonment for a period not exceeding ten years or both. Additionally, the Board may impose on a licensee a fine not exceeding R200 000 or suspend or revoke a licence if the licensee has failed to comply with any term of a licence or provision of the Act. In comparison to the Eastern Cape Liquor Act, these penalties are particularly severe.

ANNEXURE 2: STATUS OF PENDING PROVINCIAL LEGISLATION

Provincial liquor statutes in the nine provinces are currently at different stages of development. Some of the statutes are still in bill form (e.g. the Limpopo Liquor Bill). Some of the statutes have been enacted by the respective provincial legislatures and signed by the Premiers, but have not yet come into operation in their entirety. Only two of the statutes have been enacted, signed and have come into operation: the Eastern Cape Liquor Act, 2003 and the Gauteng Liquor Act, 2003.

However, the Liquor Act, 1989 is not automatically repealed in a province as soon as the provincial statute is enacted. Further steps must be taken. Schedule 1 of the Liquor Act, 2003 provides that any earlier provision of law concerning the micro-manufacture, retail sale or consumption of liquor remains in force in a province until certain conditions have been met:

- The province must enact legislation regulating the micro-manufacture, retail sale or consumption of liquor. This legislation must establish a system of licences or registration for micro-manufacture or retail sale. It must also create enforcement mechanisms, and meet certain other specified criteria.
- Once the legislation has been enacted by the provincial legislature, the Premier or responsible MEC of the province must notify the responsible Minister of the national government.
- The Minister of the national government must then consult with the MEC to set a date for the repeal of the Liquor Act, 1989 in the province. This date must be announced in the Gazette.
- However, if the Minister believes that the provincial legislation does not meet all of the specified criteria, he must notify the MEC of any reservations with respect to the provincial statute.

| Province | Status of legislation |
|-----------------|---|
| Eastern Cape | The Eastern Cape Liquor Act 10 of 2003 has been enacted and is operational. The Liquor Act, 1989 no longer applies. |
| Free State | The Free State Liquor Act 3 of 2007 has been enacted and signed by the Premier, but no date of commencement has been proclaimed. No date has been set for the repeal of the 1989 Act. |
| Gauteng | The Gauteng Liquor Act 2 of 2003 has been enacted and is operational. The Liquor Act, 1989 no longer applies. |
| KwaZulu-Natal | The KwaZulu-Natal Liquor Licensing Bill is in bill form at present. |
| Limpopo | The Limpopo Liquor Bill is still in bill form. Changes to the draft bill are anticipated. |
| Mpumalanga | The Mpumalanga Liquor Licensing Act 5 of 2006 has been enacted and signed by the Premier, but no date of commencement has been proclaimed. No date has been set for the repeal of the 1989 Act. |
| North West | The North West Provincial Liquor Bill is in bill form at present. |
| Northern Cape | The Northern Cape Liquor Act 2 of 2008 has been enacted and signed by the Premier, but no date of commencement has been proclaimed. No date has been set for the repeal of the 1989 Act. |

| | |
|--------------|--|
| Western Cape | The Western Cape Liquor Act 4 of 2008 has been enacted and signed by the Premier. It came into force, but only in part (ss 76(a), (b) and (d) to (i); s 80; and ss 87(1) to (3)) on 1 January 2009. No date has been set for the repeal of the 1989 Act. |
|--------------|--|

ANNEXURE 3: SAMPLE BYLAWS ON LIQUOR TRADING HOURS

The following table is an extract from three sets of bylaws regulating trading hours for the sale of liquor in different Eastern Cape municipalities.

| Type of registration | Makana Municipality | Buffalo City Municipality | Nkonkobe Municipality |
|---|--|--|--|
| 20(a): sale for consumption off-premises | Monday – Saturday: 8am – 8pm Sunday: 8am – 1pm | Monday – Saturday: 8am – 8pm Sunday: 9am – 1pm | Monday – Saturday: 9am – 9pm Sunday: 9am – 1pm |
| 20(b): sale for consumption on premises | Monday – Saturday: 10am – 12am Sunday: 10am – 10pm | Monday – Thursday: 10am – 11pm Friday – Saturday: 10am – 2am Sunday: 12pm – 10pm | Monday – Thursday: 10am – 12am Friday – Saturday: 10am – 2am Sunday: 11am – 10pm <i>Casinos/hotels: 24hrs</i> |
| 20(c): sale for consumption on and off premises | <i>Not specified</i> | <i>Off-premises</i> Monday – Saturday: 8am – 8pm Sunday: 9am – 1pm <i>On premises</i> Monday – Thursday: 8am – 10pm Friday – Saturday: 8am – 12am Sunday: 12am – 10pm | Monday – Thursday: 10am-12am Friday – Saturday: 11am – 2am Sunday: 11am – 10pm |
| 20(d): sale for consumption at special events | <i>Determined by Liquor Board</i> | <i>Determined by Council</i> | <i>Determined by Council and SAPS</i> |
| 20(e): micro-manufacturing | Monday – Saturday: 8am – 5pm Sunday: 8am – 1pm | Monday – Saturday: 7am – 10pm Sunday: 9am – 1pm | <i>Determined by Council and SAPS</i> |