
GENERAL NOTICE

NOTICE 231 OF 2013

DEPARTMENT OF TRADE AND INDUSTRY

LICENSING OF BUSINESSES BILL 2013

INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT LICENSING OF BUSINESSES BILL

I, Dr Rob Davies, MP, Minister of Trade and Industry, having obtained Cabinet approval, hereby publish the Licensing of Businesses Bill for broader public comments.

Interested persons may submit written comments on the proposed Bill within 30 calendar days from the date of publication to:

Director-General, Department of Trade and Industry
Private Bag X84
Pretoria
0001

Or Hand deliver to

77 Meintjies Street
Block B, 1st Floor
Sunnyside
Pretoria
Fax No: 012 394 1729
Email: bdalasile@thedti.gov.za
For Attention: Ms Baneka Dalasile

DR ROB DAVIES (MP)
MINISTER OF TRADE AND INDUSTRY

REPUBLIC OF SOUTH AFRICA

LICENSING OF BUSINESSES BILL

(Minister of Trade and Industry)

LICENSING OF BUSINESSES BILL

To provide for a simple and enabling framework for procedures for application of business licences by setting national norms and standards ;to provide for framework for co-operative governance and harmonisation of standard procedures and minimum, requirements for application of business licences; to provide for framework for support monitoring and standard setting by national government in order to build local government into an efficient, frontline agency capable of integrating the activities of all spheres government for the overall social and economic upliftment of communities in harmony with their local natural environment ;to provide for the appointment of inspectors; to provide for framework of penalties and administrative fines for non- compliance; to repeal the Businesses Act, 1991 and all proclamations, notices, regulations promulgated under that law; and to provide for matters connected therewith.

PREAMBLE

Whereas the Constitution provides that every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law;

Whereas the Constitution provides that, in the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, independent and interrelated;

Whereas the Constitution provides that all spheres of government must respect the constitutional status, powers and functions of government in other spheres;

Whereas the Constitution provides that all spheres of government must co-operate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, consulting one another on matters of common interest, co-ordinating their actions and legislation with one another;

Whereas the Constitution further provides that national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions;

AND BEARING IN MIND THAT-

the state must respect, protect, promote and fulfil, the right of every citizen to choose their trade, occupation or profession and all rights in the Bill of rights which is the cornerstone of democracy in the Republic;

public administration must be governed by the democratic values and services must be provided impartially, fairly, equitably and without bias;

AND IN ORDER TO-

promote a culture of transparency and accountability in public bodies through legislative commands to ensure participation by every citizen in trade, occupation or profession,

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

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1

1. Definitions
2. Purpose of the Act
3. Application of the Act
4. Exemption
5. Conflict of laws

CHAPTER 2

6. Application for a licence
7. Extension of period to deal with licence application
8. Deemed issuing of a licence
9. Deemed abandonment of licence application
10. Validity of a licence
11. Extension of a licence
12. Renewal of a licence
13. Extension of period to deal with renewal of a licence
14. Deemed issuing of a renewal licence
15. Deemed abandonment of a licence renewal application
16. Condonation of non-renewal of a licence
17. Revocation of a licence
18. Automatic revocation of a licence
19. Fronting practices
20. Death or incapacity of licence holder
21. Transfer of licence

CHAPTER 3

22. Amendment of a licence by a licencing authority at its own discretion
23. Amendment of a licence at the request of the licence holder
24. Disqualifications
25. Prohibitions
26. Closing down of business premises
27. Penalties
28. Administrative fines or penalties
29. Dispute resolution

CHAPTER 4

30. Appointment of Inspectors
31. Deemed inspectors
32. General Powers of inspectors
33. Powers to enter premises and question
34. Powers to remove and impound goods
35. Powers to issue fines
36. Powers to issue compliance notices
37. Objections to compliance notices
38. Business Registry
39. Reports by licencing authority
40. Reports by MEC

CHAPTER 5

41. Regulations
42. Powers of licensing authority
43. Accreditation of community based organisations
44. Repeal of laws
45. Short title and commencement

SCHEDULE 1

1. Transitional provisions

SCHEDULE 2

1. Laws repealed

Definitions

1. In this Act, unless the context otherwise indicates —

“**business**” means the offering of goods or services for sale to the public;

“**by-law**” means legislation passed by the council of a municipality regulating licensing of businesses within the area of jurisdiction of or a geographic area of a municipality;

“**business premises**” in relation to a business means the premises upon, in or from which the business is or is to be carried on;

“**business register**” means a register of all licensed businesses, compiled by a licensing authority;

“**carry on business**” includes the opening or keeping open of any premises for such purpose;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the Department of Trade and Industry;

“**hawker**” means a person who goes from place to place, or along the streets, selling the goods which he carries with him or her which is conveyed either by vehicle, pushcart, trolley, bike, barrow, basket, carrier, or otherwise on a public road or at any other place accessible to the public or in, on or from a temporary static structure or mobile structure;

“**Immigration Act**” means Immigration Act, 2002 (Act No. 13 of 2002)

“**inspector**” includes a deemed inspector and-

(a) any person appointed under section 29;

(b) any member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), of or above the rank of sergeant;

(c) the Commissioner for Customs and Excise or any officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act 91 of 1964);

(d) a traffic officer appointed in terms of the National Road Traffic Act, 1996 (Act No.93 of 1996);

(e) any person appointed under section 10 of Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No.54 of 1972);

(f) a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

(g) any person deemed or designated by the Minister upon application;

“**licensing authority**” means any local or metropolitan municipality as defined in section 1 of the Municipal Structures Act (Act No. 117 of 1998);

“**MEC**” means a provincial Member of the Executive Council responsible for local Government;

“**Minister**” means the Minister of Trade and Industry;

“**Minister responsible for local government**” means national Minister responsible for local Government;

“**person**” includes-

(a) any company incorporated or registered as such under any law;

(b) anybody of persons corporate or unincorporated;

(c) an organ of state;

“**premises**” includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel, train or aircraft;

“**prescribe**” means prescribe by regulation;

“**Refugees Act**” means Refugees Act, 1998(Act No. 130 of 1998);

“**Republic**” means the Republic of South Africa;

“**sell**” includes expose for sale or have in possession for purposes of sale or any purpose of trade or manufacture or to offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or to exchange, or to dispose of to any person in any manner whether for a consideration or otherwise; and “**sold**”, “**selling**” and “**sale**” have corresponding meanings;

“**this Act**” includes any regulations made in terms of this Act.

Purpose of the Act

2. The purpose of the Act is amongst others to:

- (a) promote the right to freedom of trade, occupation and profession and any rights contained in the Constitution;
- (b) promote the development of South African economy by providing a standardised regulatory framework within which business licencing would take place;
- (c) to encourage a conducive environment that promotes compliance and sustainability of businesses;
- (d) set essential norms and standards applicable nationally, provincially and in municipalities relating to licencing of businesses.

Application of the Act

3. This Act applies to any person carrying on business or who seeks to carry on business within the Republic.

Exemption

4. (1) A licencing authority may in consultation with the Minister, Minister responsible for local government and relevant MEC-

- (a) after conducting a thorough investigation and on any reasonable and justifiable grounds, out of its own initiative; or
- (b) upon application by any person;

exempt certain categories of persons or applications for licences from the application of one or more provisions of this Act, provincial legislation or a by-law;

(2) Before granting such exemption, licencing authority must publish such application for exemption in the gazette for a period of not less than thirty (30) days and invite public comment.

Conflict of laws

5. (1) This Act must be interpreted and applied in a manner that gives effect to the purpose set out in section 2 of this Act

(2) If there is an inconsistency between any provision of this Act and a provision of any other national or provincial legislation-

- (a) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the other; and
- (b) to the extent it is impossible to apply or comply with one of the inconsistent provisions without contravening the provisions of the second, the provisions of this Act shall prevail.

Application for a licence

6. (1) Any person who is a South African citizen or is a foreigner as defined in the Immigration Act, who seeks to apply for a licence to carry on business in any premise or sell goods or service as a hawker must lodge such an application—

- (a) at the relevant licensing authority's office;
- (b) in the prescribed manner and form;
- (c) in compliance with this Act, provincial legislation or by-law;
- (d) upon payment of the prescribed application fee; and
- (e) if the applicant is a foreigner, such application must be accompanied by a valid business permit issued under the Immigration Act, 2002 and any other valid documentation required to verify the status of such a foreigner in the Republic issued under Immigration Act, 2002 or Refugees Act, 1998.

(2) The licensing authority may within thirty (30) days from date of receipt of the application and where the requirements contemplated in subsection (1) are met, issue a licence with such conditions the licencing authority deems fit.

(3) If the application does not comply with the requirements prescribed in this section or any relevant provincial legislation or by-law, the licensing authority may notify the applicant in writing of that fact requesting any such further information and may return the application to the applicant with such instructions the licencing authority deems appropriate.

Extension of period to deal with application

7. (1) A licensing authority may on justifiable grounds, extend the initial period prescribed for consideration and making of a decision on an application contemplated in section 6 of this Act by not more than fourteen (14) days.

(2) The licensing authority may inform the applicant of such extension on or before the expiry of the initial period for consideration of an application.

(3) Such extension may only be done once unless justifiable grounds and circumstances require a further extension: Provided that such period may be extended more than twice.

(4) If an applicant decides to dispute the decision by the licensing authority to extend the period for consideration of his or her application, he or she shall refer the dispute to the alternative dispute resolution body established by the licensing authority or any dispute resolution forum.

Deemed issuing of licence

8. If upon the expiry of the period provided for in sections 6 or 7 of this Act, the licensing authority has not issued a license applied for or where the said period was extended, upon the expiry of such an extension period, the licensing authority has not issued such license, such

application must be deemed to have been approved and such license must be deemed as having been issued.

Deemed abandonment of application

9. If an applicant fails to submit any outstanding document in writing in terms of section 6 (3) by the licensing authority within the prescribed time, the application shall be regarded as having been abandoned.

Validity of a licence

10. A licence issued in terms of this Act, shall be valid for a period of five (5) years from date of issue unless revoked by the licencing authority in terms of this Act or has expired.

Extension of licence period

11. (1) A licensing authority may, on good cause shown, extend a licence for a period not exceeding six (6) months from the date of its expiry.

(2) A licence may only be extended once, unless good cause is shown as to why such an extension may be extended for an additional period.

Renewal of a licence

12. (1) A licence holder who intends to continue to carry on business in any premise or sell goods at street fronts must lodge an application for renewal of such a licence-

(a) three (3) months before the expiry of such a licence;

(b) at the relevant licensing authority office ;

(c) in the prescribed manner and form;

(d) in compliance with this Act ,relevant provincial legislation or a by-law; and

(e) upon payment of the prescribed renewal application fee.

(2)The licensing authority may if the requirements prescribed in subsection (1) are met, within thirty (30) days from date of receipt of the renewal application, issue such licence with such conditions the licencing authority deems fit.

(3) If the renewal application does not comply with the requirements of this section, provincial legislation or by-law, the licencing authority must notify the applicant in writing of that fact within thirty (30) days from date of receipt of the application requesting any such further information and may return the renewal application to the applicant with such instructions the licencing authority deems appropriate.

Extension of period to deal with application for renewal

13. (1) A licensing authority may on justifiable grounds, extend the initial period prescribed for consideration and making of a decision on an application contemplated in section 12 of this Act by not more than fourteen (14) days.

(2) The licensing authority may inform the applicant of such extension on or before the expiry of the initial period for consideration of an application.

(3) Such extension may only be done once unless justifiable grounds and circumstances require a further extension: Provided that such period may be extended more than twice.

(4) If an applicant disputes the decision by the licensing authority to extend the period for consideration of his or her application, he or she shall refer the dispute to the alternative dispute resolution body established by the licensing authority or any dispute resolution forum.

Deemed issuing of renewal licence

14. If upon the expiry of the period provided for in section 12 of this Act, the licensing authority has not issued a renewal license applied for or where the said period was extended, upon the expiry of such an extension period, the licensing authority has not issued such license, such application must be deemed to have been approved and such license must be deemed as having been issued.

Deemed abandonment of renewal application

15. If an applicant fails to submit any outstanding document or amount as requested in writing in terms of section 12 (3) by the licensing authority within the prescribed time, the application shall be regarded as having been abandoned.

Condonation of non-renewal

16. A licensing authority may, on good cause shown and where it is justifiable under the circumstance, condone late application for a renewal of a licence by a licence holder.

Revocation, suspension of a licence

17. (1) A licensing authority may, whether on its own initiative or upon application by the license holder or pursuant to a court order or the dispute resolution body or pursuant to an investigation by the licensing authority, where a licensing authority deems fit revoke or suspend a licence issued to any person on such terms and conditions if-

(a) the licence was erroneously, dishonestly or fraudulently granted; or

(b) the licence was granted in contravention of this Act, provincial legislation or by-law.

(2) When a licence has been revoked, all the rights, benefits and allowances accruing therefrom lapse on the date that the licence was revoked.

(3) A licence holder may, on the prescribed form, refer a decision of the licensing authority to revoke or suspend a licence to the appropriate dispute resolution authority established by the licensing authority for such purpose.

Automatic revocation of licence

18. (1) The licensing authority may, whether on its own initiative or pursuant to an investigation by the licensing authority, or pursuant to a complaint received from any person automatically revoke a licence issued to any person and order any such person to stop trading, if such person-

- (a) such person, consistently fails without plausible explanation to comply with compliance notices issued or is trading in breach of the licence conditions or contravenes this Act, provincial legislation or a by-law;
- (b) becomes subject to any disqualification referred to in this Act;
- (c) has been found guilty of selling counterfeit goods in contravention of the Counterfeit goods Act, 1997 or any other applicable or related legislation in the Republic;
- (d) has been found guilty of contravening of the Customs and Excise Act, 1964 or any applicable tax legislation in the Republic;
- (e) has been found guilty of contravening Foodstuffs, Cosmetics and Disinfectants Act, 1972 or any other applicable or related legislation in the Republic;
- (f) has been found guilty of employing illegal foreigner or contravention of any provision of the Immigration Act, 2002 or Refugees Act, 1998 or any applicable or related legislation in the Republic;
- (g) has been found guilty of conducting illegal business from the licensed premises in contravention of any legislation in the Republic.

(3) A licence holder may, on the prescribed form, refer a decision of the licensing authority to Automatically revoke a licence to the appropriate dispute resolution authority established by the licensing authority for such purpose.

.Fronting practices

19. (1) For the purposes of this section, fronting practice includes-

(a) conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of this Act including practices where-

- (i) a person applies for a licence on behalf of any other person or for the use by any other person;
- (ii) a licence holder is discouraged or inhibited from substantially participating in the business activities of the licenced business; or
- (iii) it is found that an arrangement, transaction or conclusion of a legal relationship between a licence holder and any other person, has the effect of frustrating or circumventing the provisions of this Act, by-law or any other legislation in the Republic.

(2) Contravention of this section is an offence.

Death or incapacity of licence holder

20. (1) For the purposes of this section, the expression 'an administrator of an estate' includes-

- (a) an executor of a deceased estate;
- (b) a liquidator or trustee of an insolvent estate; and
- (c) a curator.

(2) When a licensee dies, becomes insolvent, or is placed under curatorship, the administrator of the estate must, as soon as he or she is appointed, inform the licensing authority of his or her appointment as such;

(3) The administrator may, for the purposes of administering the estate, continue to conduct the licensed activities in the name of the estate or make an application in the prescribed manner and form to the licensing authority to transfer the licence to any another qualified person;

(4) Any person may apply in the prescribed manner and form to the licensing authority for the appointment of a qualified person to conduct the licensed activities of the licensee, pending the appointment of an administrator contemplated in subsection (2).

Transfer of licence

21. (1) A licensee may make an application to the licensing authority, for the transfer of a licence to another person, in the prescribed format and on payment of the prescribed fee

(2) The licensing authority must, within the prescribed period, consider the application and may -

- (a) approve;
- (b) approve subject to conditions; or
- (c) refuse,

the application for transfer of a licence.

(3) The licensing authority may not grant an application for transfer unless it is satisfied that the person to whom the licence is to be transferred is not disqualified in terms of the Act.

(4) When the application in subsection (1) is approved, the licence holder ceases to be the licensee and all rights and obligations of the licence holder are transferred to the new licence holder.

(5) The provisions of sections (6) to 15 in respect of the application process and requirements shall *mutatis mutandis* apply in the application for a transfer of a licence with the necessary changes.

Amendment of licence by licencing authority on its own discretion

22. (1) The licencing authority may in its sole discretion where it will be in the public interest to do so, at any time in writing inform a licence holder that it intends to amend the licence issued or any licence conditions and it may -

- (a) provide reasons for the proposed amendment; and
- (b) invite the licence holder to submit a written response within a stipulated period;

(2) The licencing authority may before amending such licence publish such intention in the provincial *Gazette* for a period of thirty (30) days inviting comments from interested persons.

(3) The licencing authority may after due consideration of any response received, including that of any person other than the licence holder, amend the licence or conditions of the licence and issue an amended licence to the licence holder or decide not to amend as the case might be.

Amendment of a licence on application by a licence holder

23. (1) A licencing authority may upon application by a licence holder upon payment of the prescribed fee, with reasons of the proposed amendment, at any time amend the licence issued or any licence conditions attached to the licence.

(2) Before considering such application, the licencing authority must publish such application for a period of thirty (30) days in the provincial *Gazette* inviting interested persons to submit written comments on the proposed amendment to the licencing authority.

(3) The licencing authority may after due consideration of any response received, including that of any person other than the licence holder, amend the licence or conditions or reject such application as the case might be.

Disqualifications

24. The licencing authority may not issue a licence to any person who —

- (a) is an illegal foreigner, prohibited or undesirable person in the Republic as defined in the Immigration Act, Refugees Act or any other legislation;
- (b) has at any time in the preceding two (2) years been found guilty of contravening this Act or any other law resulting in the revocation of his or her licence; or
- (c) failed to comply with instruction or application requirements prescribed in this Act or by-law.

Prohibitions

25. (1) No person may carry on business or sell goods as a hawker without a valid licence issued in respect of that premise or place by the relevant licensing authority.

(2) No person may carry on business or sell goods in a manner that contravenes the licence conditions or provisions of this Act, related legislation or a by-law;

(3) No person may fail to produce a trading licence upon request by the licensing authority.

(4) No person may —

(a) refuse to grant an inspector access to premises to which the inspector is authorised to have access;

(b) obstruct, interfere or hinder an inspector who is exercising a power or performing a duty in terms of this Act or any applicable or related legislation including a by-law;

- (c) refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of this Act or any related legislation or by-law;
 - (d) falsify, or without authorisation, alter a licence, a compliance notice;
 - (e) fail to comply with a compliance notice, or reasonable instruction or request issued by the licencing authority;
- (5) submit or provide any information which is false, misleading, forged or any false document which purports to be but is not a true copy of an original document to the licensing authority.
- (6) It shall be an offence to contravene subsections (1), (3), (4) and (5).

Closing down of licenced premises

26. (1) Where the licensing authority is of the opinion that-

- (a) public disturbance;
- (b) disorder;
- (c) gross violation of the Act;
- (d) a riot;
- (e) continuous non-compliance with the licensing authority's instructions, request or provisions of this Act;
- (f) the premise is not licenced;
- (g) public violence,

is occurring or threatening at or near any licensed premises, the licensing authority or an inspector may order the licence holder or any person in charge at the time to temporarily close the licensed premises for the period directed by the licensing authority.

(2) A licensing authority may within a reasonable time withdraw an order issued in terms of subsection (1) or make it a permanent order in which event the licence will be revoked.

Penalties

27. (1) Any person who contravenes sections 19, 25 subsections (1),(3),(4) or (5) is guilty of an offence and may upon conviction be liable to a fine or imprisonment for a period not exceeding ten (10), or to both a fine and imprisonment.

Administrative fine or penalty

28. (1) A licensing may impose administrative fine or penalty upon a licence holder who is found to be carrying on business in contravention of the terms and conditions of the licence and this Act or where the licence holder fails to comply with the compliance notice issued in terms of this Act.

(2) When determining an appropriate penalty, a licencing authority may consider amongst others, the following factors:

- (a) the nature, duration, gravity and extent of the contravention;
- (b) the behaviour of such person;
- (c) the degree to which such person has co-operated with the licencing authority; or
- (d) whether such person has previously been found in contravention of this Act or by-law.

Dispute resolution

29. (1) A licensing authority must establish an appropriate dispute resolution authority to deal with grievances or appeals against decisions of the licencing authority executed under this Act

(2) Any decisions of the licensing authority relating to business licensing must be in writing and must contain reasons therein.

(3) Any person whose rights have been materially and adversely affected by any decision taken by the licensing authority in the exercise of its powers and duties under this Act, provincial legislation or by-law, may —

(a) within thirty (30) days after the date such person became aware of the decision, if not given reasons for such decision, request the licencing authority in writing to furnish him or her with written reasons for the decision;

(b) if the licencing authority has in accordance with paragraph (a) furnished such person with written reasons for the decision, such a person may lodge an appeal to the appropriate dispute resolution authority established by the licensing authority in the prescribed manner and form against such decision.

(4) If a person is not satisfied with the decision of the dispute resolution authority established by the licensing authority, such a person may approach any other dispute resolution forum.

Appointment of inspectors

30. A licensing authority must appoint suitable person with skills, expertise, competencies and relevant qualifications as an inspector to perform any or all of the functions assigned to an inspector.

Deemed inspectors

31. The following persons designated or appointed in terms of any other legislation in the Republic are hereby deemed to be inspectors for the purpose of this Act:

(a) any member as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), of or above the rank of sergeant;

(b) the Commissioner for Customs and Excise or any officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act 91 of 1964);

(c) a traffic officer appointed in terms of the National Road Traffic Act, 1996 (Act No.93 of 1996);

(d) any person appointed under section 10 of Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No.54 of 1972);

(e) a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

(f) any person designated by the Minister as such.

.General Powers of inspectors

32. (1) An inspector shall-

(a) have powers as prescribed in this Act or by-law or any other applicable or relevant legislation in the Republic;

(b) Conduct inspections, monitor and enforce compliance with this Act or by-law and any other law which authorises him or her to conduct an inspection;

- (c) investigate complaints submitted to the licensing authority;
 - (d) question any person on any premises in respect of any matter which may be relevant to the inspection;
 - (e) question any person to whom the inspector believes may have information relevant to the inspection;
 - (f) order any person to appear before him at a reasonable time and place determined by the inspector with regard to the matter being investigated; or
 - (g) inspect or copy any document, take photographs or make audio-visual recordings of any person, process, action or condition on or regarding any premises and take samples of any substance that is relevant to the inspection; or
 - (h) have the power to close any premises pending further investigation as provided for in this Act.
- (2) An inspector must exercise his or her powers, or perform his or her functions in the presence of any person affected thereby and shall on demand by such person produce his or her identification card.

Power of inspectors to enter premises, request a document and question anyone

33. An Inspector may-

- (a) enter any premises where the inspector reasonably suspects that a business is being conducted;
- (b) request the owner of the business or a manager or an employee to produce licence for the business and premises; or
- (c) question any person on the premises and conduct an inspection of any business activity on the premises.

Power of inspectors to remove and confiscate goods

34. (1) An inspector may remove any goods on the premises and confiscate them.

- (2) An inspector may issue the business owner a receipt with details of the goods that are removed and impounded.

Power to issue fines

35. An inspector may issue an administrative fine in terms of this Act to a licence holder who-

- (a) fails to produce a business licence upon request ;
- (b) has contravened the conditions of the licence issued to the business or premises

Power to issue a compliance notice

36. (1) An inspector may issue a compliance notice in the prescribed form, to a person whom the inspector on reasonable grounds believes is carrying on business in contravention of the licence conditions.

(2) A compliance notice must set out—

- (a) the person or business premises the notice applies;
- (b) the provision of this Act that has not been complied with;
- (c) details of the nature and extent of the non-compliance;
- (d) any steps that are required to be taken and the period within which those steps must be taken; and
- (e) any penalty that may be imposed in terms of this Act.

(3) A compliance notice issued remains valid until—

- (a) it is set aside by the dispute resolution authority;
- (b) the dispute resolution authority issues compliance certificate as contemplated in paragraph (c);
- (c) if the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the inspector must issue a compliance certificate;
- (d) if a person to whom a compliance notice has been issued fails to comply with the notice, the inspector may impose administrative fine against such a person.

Objections to compliance notice

37. (1) Any person issued with a compliance notice may appeal against such notice to the dispute resolution authority in the prescribed manner and form within—

- (a) fifteen (15) days after receiving such notice; or
- (b) such longer period as may be allowed by the dispute resolution authority, on good cause shown.

(2) After considering any representations by such person against the notice and the licensing authority in support of such notice, the dispute resolution authority may confirm, modify or cancel all or part such notice.

(3) If the dispute resolution authority confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it, failing which the licensing authority must approach the dispute resolution authority for the imposition of an administrative fine.

Business Registry

38. (1) A licencing authority and the relevant provincial department shall keep an up to date central registry of all licensed businesses.

(2) Business register shall contain the following information amongst others:

- (a) Full names, particulars and residential and postal address of the owner of the registered business;
- (b) the number of the certificate of licensing;
- (c) the registered name of the business;

- (d) the date of registration of the business;
- (e) the address where the business is being conducted from;
- (f) the nature of the business;
- (g) expiry date of the licence; and
- (h) compliance reports.

(3) The Minister in consultation with the Minister responsible for local government may, for the better attainment of the objects of this Act or for statistical purpose, prescribe the frequency of the update of the business register by licencing authority and MEC and the collection of statistical information from all business registers which shall not be less than two times in a calendar year.

Reports by licencing authority

39. A licencing authority must compile and submit to the MEC at least twice a year or as required a consolidated report in the form of a business registry of all licensed businesses and any other prescribed information.

Reports by MEC

40. The MEC must compile and submit to the Minister, Minister responsible for local government at least twice a year or as required a consolidated report in the form of a business register of all licensed businesses from licencing authorities in the relevant province.

Regulations

41. (1) The Minister may, after consultation with the Minister responsible for local government and the relevant MEC, in accordance with subsection (3) make regulations regarding any matter that may be prescribed in terms of this Act or any matter which is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Minister may, after consultation with the Minister responsible for local government and the relevant MEC, in accordance with subsection (3) make regulations whenever he deems it necessary or expedient in the public interest or for the better attainment of the objects of this Act and in line with the purpose thereof prescribing national norms and standards regarding the requirements for application of licences, time frames for applications and issuing of licences and any matter related thereto;

(3) Before making any regulations in terms of subsection (1) or (2), the Minister may publish the proposed regulations for public comment for a period not exceeding thirty (30) days.

Powers of the licensing authority

42. (1) A licensing authority may, in consultation with the Minister, Minister responsible for local Government and relevant MEC, make by-laws regarding licensing of businesses and any substantive or procedural matter connected therewith.

(2) Before making any such by-law, the local authority must publish such proposed by-law for public comments for a period not less than thirty (30) days in the provincial *gazette*.

Accreditation of community based organisations

43. (2) Licensing authorities must promote establishment of community based organisations, business associations or non-governmental organisations that will assist licensing authorities in monitoring the implementation of this Act or by-law as well as educating communities about the processes and requirements prescribed in the application of a licence for a business and any matter related thereto.

(2) Licensing authorities must develop a framework for the accreditation or recognition of such organisations or associations.

Repeal of laws

44. (1) The law specified in Schedule 2 and all proclamations, regulations or notices promulgated or published in terms of that law are repealed.

(2) The repeal of the law specified in Schedule 2 does not affect any transitional arrangements made in Schedule 1.

Short title and commencement

45. This Act is called the Licensing of Businesses Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

Transitional provisions

- (1) Any application for a licence or matter received by a licencing authority under the Business Act, 1991, before the date of commencement of this Act and not disposed of prior to the date of commencement of this Act, must be disposed of by that authority in terms of that Act despite its repeal.
- (2) Despite the repeal of the Business Act, 1991, upon coming into operation of this Act, a licence issued under that Act and all compliances notices or fines remains valid, as if that Act had not been repealed, until it expires, thereafter it shall be renewed in terms of this Act unless revoked by the licensing authority.
- (3) A Licence holder must convert a licence issued under the Business Act, 1991, into a licence issued under this Act, may do so within twelve (12) months from the commencement date of this Act.

SCHEDULE 2

LAWS REPEALED

<i>No. and year</i>	<i>Title</i>	<i>Extent of repeal or amendment</i>
71 of 1991	Businesses Act	Repealed in its entirety
