

NATIONAL GAMBLING ACT, 2004 (Act No. 7 of 2004)



the dtic

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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To provide for the coordination of concurrent national and provincial legislative competence over matters relating to casinos, racing, gambling and wagering; the continued regulation of those matters for that purpose to establish certain uniform norms and standards applicable to national and provincial regulation, and licensing of certain gambling activities; the creation of additional uniform norms and standards applicable throughout the Republic; and incidental thereto.

Definitions

Bingo: a game, including one played in whole or in part by electronic means

(a) that is played for consideration, using cards or other devices

(i) that are divided into spaces, each of which bears a different number, picture or symbol; and

(ii) with numbers, pictures or symbols arranged randomly so that each card or similar device contains a unique set of numbers, pictures or symbols.

(b) in which an operator or announcer calls or displays a series of numbers, pictures

or symbols in random order, and the players match each such number, picture or symbol on the card or device as it is called or displayed; and

- (c) in which the player who is first to match all the spaces on the card or device, or who matches a specified set of numbers, pictures or symbols on the card or device, wins a prize; or any other substantially similar game declared to be bingo in terms of section 6 (4).

Bookmaker: a person who directly or indirectly lays fixed-odds bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers.

Cash-dispensing machine: an automatic teller machine or similar device that dispenses cash to approved account holders or cardholders.

Casino: premises where gambling games are played or are available to be played, but does not include premises in which

- (a) only bingo and no other gambling game is played or available to be played;
(b) only limited payout machines are available to be played;

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

Council: the National Gambling Policy Council established by section 30 61 of the National Gambling Act.

Designated area:

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

Discounted price: a price charged by a licensee for any goods or services that are significantly below the prevailing fair-market price for similar goods or services provided in the ordinary course of business by persons who are not licensees in terms of the Act.

Electronic agent: a computer programme or an electronic or other automated means used

independently to initiate an action or respond to data messages or performances, in whole or in part, in an automated transaction.

Employment licence: a licence permitting a person to work in the gambling industry within the Republic.

Excluded person: a person who has been registered as such in terms of section 14 of this Act to be prevented from engaging in any gambling activity.

Fixed odds bet: a bet on one or more contingencies in which odds are agreed at the time the bet is placed.

Gambling device: equipment or any other thing that is used, or at the time of its manufacture was designed to be used, in determining the result of gambling activity.

Gambling industry: includes any matter regulated in terms of this Act, but does not include a regulatory authority.

Gambling machine: any mechanical, electrical, video, electronic, electromechanical or

other device, contrivance, machine or software, other than an amusement machine, that

- (a) is available to be played or operated upon payment of a consideration; and
- (b) may, as a result of playing or operating it, entitle the player or operator to a payout, or deliver a payout to a player or operator.

Informal bet: a bet, wager, undertaking, promise or agreement contemplated in section 4 of this Act between or among two or more persons, if

- (a) none of the parties involved is a bookmaker or derives a significant portion of their livelihood from gambling; and
- (b) no person is paid a fee or derives any gain, other than winning the bet itself, from the activity.

Interactive game: a gambling game played or available to be played through the mechanism of an electronic agent accessed over the internet, other than a game that can be accessed for play only in licensed premises, and only if the licensee of any such premises is authorised to make such a game available for play.

Interactive provider: a person licensed to make an interactive game available to be played.

Internet: the interconnected system of networks that connects computers around the world using the TCP/IP, and includes future versions thereof.

Inspector: a person appointed in terms of section 76 of this Act.

License: to register, approve or certify in terms of any applicable provincial law. When used in relation to

- (a) a person means to be in lawful possession of a valid licence, registration card or certificate issued to that person in terms of this Act or provincial law; or
- (b) a gambling activity means that a valid licence has been issued, in terms of this Act of provincial legislation, to a licensee, permitting the licensee to engage in or conduct that activity, or make that activity available for other persons to engage in it.

Licensed premises: specific premises that are named or described in a license issued in terms of this Act or applicable provincial law.

Limited payout machine: a gambling machine with a restricted prize, described in section 26 of this Act.

Manufacturer, supplier or maintenance provider: a person whose business is to import, manufacture, sell, lease, make available, distribute, maintain or repair a gambling device.

Minor: a person under the age of 18.

National licence: a licence issued in terms of this Act.

Open bet:

- (a) a bet, other than a totalisator bet, taken by a bookmaker on one or more contingencies, in which no fixed odds are agreed at the time the bet is placed; or
- (b) a bet in respect of which the payout is determined after the outcome of the contingency on which such a bet is struck became known, with reference to dividends generated by a totalisator.

Premises: includes land and any building, structure, vehicle, ship, boat, vessel, aircraft or container.

Prescribed: set by regulation in terms of this Act.

Prohibited practice: has the meaning assigned to it in the Competition Act, 1998 (Act No. 89 of 1998).

Provincial law: an act of a provincial legislature concerning the regulation of casinos, gambling, racing or wagering, and includes subordinate legislation made in terms of such an act.

Provincial licence: means a licence issued by a provincial licensing authority in terms of applicable provincial laws.

Provincial licensing authority: a body established by provincial laws to regulate casinos, racing, gambling or wagering.

Register of excluded persons: the register required to be maintained by the board in terms of section 14 of this Act.

Regulatory authority: the regulator or a provincial licensing authority.

Restricted gambling activity: a gambling activity other than social gambling or an informal bet.

Route operator: a person who is licensed as such in terms of applicable provincial laws contemplated in section 18 of this Act.

Site: premises licensed in terms of applicable provincial law for the placement of one or more limited payout gambling machines contemplated in section 18 of this Act.

Site operator: a person who is licensed to operate a site in terms of applicable provincial laws contemplated in section 18 of this Act.

Social gambling: the meaning, if any, is set out in applicable provincial laws.

Testing agent: a person licensed in terms of this Act to test and calibrate gambling machines or devices.

Gambling activities in general

An activity is a gambling activity if it involves:

- (a) placing or accepting a bet or wager in terms of section 4 (1) of this Act;
- (b) placing or accepting a totalisator bet in terms of section 4 (2) of this Act; or
- (c) making available for play, or playing
 - (i) bingo or another gambling game in terms of section 5 of this Act; or
 - (ii) an amusement game, to the extent that applicable provincial laws require such games to be licensed.

Bets and wagers

A person places or accepts a bet or wager when that person:

- (a) being a player, stakes money or anything of value on a fixed-odds bet or an open bet with a bookmaker on any contingency;
- (b) being a bookmaker
 - (i) accepts a stake of money or anything of value on a fixed-odds bet or an open bet

from a player on any contingency; or

(ii) stakes money or anything of value on a fixed-odds bet or an open bet with another bookmaker on any contingency;

(c) stakes or accepts a stake of money or anything of value with one or more other persons on any contingency; or

(d) expressly or implicitly undertakes, promises or agrees to do anything contemplated in paragraph (a), (b) or (c).

A person places or accepts a totalisator bet when that person stakes money or anything of value on the outcome of an event or combination of events by means of:

(a) a system in which the total amount staked, after deductions provided for by law or by agreement, is divided among the persons who made winning bets in proportion to the amount staked by each of them in respect of a winning bet; or

(e) any scheme, form or system of betting, whether mechanical or not, that is operated on similar principles.

Gambling games

- (a) Any activity is a gambling game if it meets the following criteria:
 - (i) It is played upon payment of any consideration, with the chance that the person playing the game might become entitled to or receive a payout; and
 - (ii) the result might be determined by the skill of the player, the element of chance, or both; or
- (b) It is a bet or wager in terms of section 4 (1) of this Act that is placed in a casino in relation to an activity that meets the criteria in paragraph (a).

Payout and opportunity to play further games

1. A payout is any money, merchandise, property, cheque, credit, electronic credit, debit, token, ticket or anything else of value won by a player:
 - (a) whether as a result of the skill of the player or operator, the application of the element of chance, or both; and
 - (b) regardless how the payout is made.

2. Neither of the following is a payout:
 - (a) An opportunity to play a further game; or
 - (b) A prize given to a participant or team of participants in a sporting event in respect of the participant's or team's performance in that event.

3. The result of a gambling game:
 - (a) is an opportunity to play a further game if the player is afforded the opportunity to continue playing the type of game without interruption
 - (i) in respect of which the opportunity was won; and
 - (ii) on the machine on which the opportunity was won; but
 - (b) is not an opportunity to play a further game if the opportunity can, in any manner, whether directly or indirectly, be
 - (i) distributed or transferred to the person who has won such an opportunity, or to any other person;
 - (ii) converted into money, property, cheque, credit or any other thing of value; or
 - (iii) converted in terms of any scheme, arrangement, system, plan or device prescribed in terms of subsection (4) of this Act.

Protection of minors

A minor must not:

- (a) enter a designated area within any licensed premises;
- (b) operate a gambling machine or gambling device;
- (c) conduct or make available a gambling activity;
- (d) engage in social gambling or a gambling activity other than an amusement game; or
- (e) falsely claim to be 18 years of age or over, in order to
 - (i) gain access to a designated area within licensed premises;
 - (ii) gain access to a gambling machine or gambling device; or
 - (iii) engage in, conduct or make available a gambling activity.

A person must not falsely claim that a minor is 18 years of age or over in order for that minor to:

- (a) gain access to a designated area within a licensed premises;
- (b) gain access to a gambling machine or gambling device; or
- (c) engage in, conduct or make available a gambling activity.

A licensee, licensed employee or a person in control of a licensed premises or gambling machine or device must not knowingly permit a minor to:

- (a) enter or remain in a designated area within such a licensed premises;
- (b) operate that gambling machine or device;
- (c) conduct or make available a gambling activity within such a licensed premises; or
- (d) engage in social gambling or a gambling activity, other than an amusement game, within such a licensed premises.

A person must take reasonable steps or measures to determine accurately whether or not a person is a minor before permitting that person to do anything contemplated in this Act.

A person must not knowingly pay any winnings from a gambling activity to:

- (i) a minor
- (ii) an excluded person; or
- (iii) any other person who won those winnings in a gambling activity that is unlawful in terms of this Act.

Excluded persons

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

- (e) any other person
 - (iv) to whom the applicant has a duty of care; and
 - (v) whose behaviour manifests symptoms of addictive or compulsive gambling.
- (5) If, in the circumstances of an application in terms of subsection (4) of this Act, the court considers it reasonable and just to prevent the person concerned from engaging in any gambling activity, the court may order the registration of that person as an excluded person.
- (6) An excluded person affected by an order in terms of subsection (5) of this Act may apply to the court that made the order at any time to set aside the order, and the court may do so if, after considering the grounds for making the original order and any new evidence before it, the court is satisfied that it is no longer reasonable and just to prevent that person from engaging in any gambling activity.
- (7) The Minister, by regulation made in accordance with section 87 of this Act, may prescribe:
 - (a) forms, standards and procedures for the registration of persons on, and cancellation of registrants from, the register of excluded persons;

- (b) fees for services in connection with the maintenance and access to the register of excluded persons, other than the registration of excluded persons; or
- (c) standards to be employed for licensees in giving effect to subsections (10) and (11) of this Act.

- (1) A licensee, licensed employee or person in control of licensed premises, gambling machine or gambling device must not knowingly permit an excluded person to:
 - (a) enter or remain in a designated area within those premises;
 - (b) operate that gambling machine or device;
 - (c) conduct or make available a restricted gambling activity, or any activity licensed as social gambling, within those premises; or
 - (d) engage in social gambling or a restricted gambling activity within those premises.
- (2) A person referred to in subsection (10) of this Act:
 - (a) must take the prescribed measures to determine accurately whether or not a person is an excluded person before permitting that person to do anything contemplated in subsection (10) (a) to (d) of this Act; and

- (b) is not liable under this Act or any other civil or criminal law for admitting an excluded person, provided the licensee has taken the prescribed measures.
- (1) Every licensee authorised to make a gambling activity available to the public must:
 - (a) make available at all its licensed premises
 - (i) the prescribed form to be used by a person wishing to register as an excluded person in terms of subsection (1) of this Act;
 - (ii) a directory of local recognised counseling, treatment or education services addressing the problems of compulsive and addictive gambling; and
 - (iii) prominently post a notice advertising the availability of those materials, in the prescribed manner and form, at every entry to those premises.

National central electronic monitoring system

The National Gambling Board should establish and maintain a national central electronic monitoring system capable of:

- (a) detecting and monitoring significant events associated with any limited payout machine that is made available for play in the Republic; and

- (b) analyzing and reporting that date in accordance with the prescribed requirements.
- (c) The Minister may, in consultation with the National Gambling Policy Council , and by regulation made in accordance with section 87 of this Act, prescribe a standard for:
 - (i) the operation of the national central electronic monitoring system;
 - (ii) the collection and analysis of dates through that system;
 - (iii) every limited payout machine that is made available for play to be electronically linked to the national central electronic monitoring system, and the licensee of that machine to pay the prescribed monitoring fees in relation to that machine; and
 - (iv) the national central electronic monitoring system to allow
 - the provincial licensing authority of each province access to all data on the system that originated in that province; and
 - the licensee of each limited payout machine linked to the system access to prescribed data on the system that originated from that machine.

Licensing of persons employed in the gambling industry

Gambling industry employees must be licensed.

- (1) A person must not engage in any work within the gambling industry in terms of this Act or applicable provincial law unless that person has a valid:
 - (a) national employment licence permitting that work; or
 - (b) provincial employment licence permitting that work issued by the provincial licensing authority in the province in which the person proposes to work, or works.
- (2) A licensee must not employ a person or permit an existing employee to engage in any work within the gambling industry unless that employee has satisfied the requirements of subsection (1) of this Act.
- (3) An employer of a person who is licensed in terms of this section must, within the prescribed time, disclose to the applicable licensing authority any prescribed information that concerns a licensed employee or agent of the employer.
- (4) The Minister may, by regulation made in accordance with section 87 of this Act, determine any specific category of work to be subject to the requirements of this section.

Conditions of employment licensing

A licence granted, and the license certificate issued, to a person in terms of section 28 of this Act is not transferable to another person.

Offences and breach of licence condition

- (1) It is an offence to contravene sections 7 to 20, 22 (1) and 4, 23 (1), (2) and (3), 25 (1), 26 (2) and (3) and 28 of this Act.
- (2) If a person appears to have committed an offence under this Act in circumstances that are also a substantially similar offence under applicable provincial law, the person may be prosecuted for the offence under this Act, or for a substantially similar offence under the applicable provincial law, but not for both.
- (3) The commission of an offence under this Act by a licensee is a breach of a condition of the licence.

Penalties

- (1) Any person convicted of an offence in terms of this Act is liable to a fine not exceeding R10 000 000, or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.
- (2) A licensee found to be in breach of a condition of a licence is liable to an administrative penalty not exceeding 10% of the annual turnover of the licensee.

Magistrate's court jurisdiction to impose penalties

Despite anything to the contrary contained in any other law, a magistrate's court has jurisdiction to:

- (1) impose any penalty for an offence or breach of a licence condition in terms of this Act; or
- (2) make an order contemplated in section 14 of this Act.

Serving documents

Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on or given to a person, is properly served or given when it has been either:

- (a) delivered to that person;
- (b) sent to that person by fax;
- (c) sent by registered post to that person's last known address; or
- (d) published in the Government Gazette.

Establishment of the National Gambling Policy Council

The National Gambling Policy Council is established by this Act. The council consists of:

- (a) the following regular members
 - the Minister; and
 - from each province, the member of the executive council responsible for casinos, racing, gambling and wagering in that province; and

- (b) the following supplementary non-voting members
 - from each province, the chairperson of the provincial licensing authority.
- (c) The Minister is the chairperson of the council.

Functions of the National Gambling Policy Council

The council is a body in which the national government and the provincial governments consult on:

- (i) the determination and establishment of national gambling policy;
- (ii) gambling laws, including the promotion of uniform national and provincial laws in respect of gambling norms and standards;
- (iii) any matter concerning gambling within the national and provincial sphere of government;
- (iv) any matter concerning the management or monitoring of gambling in the Republic, or in any specific province or provinces;
- (v) the resolution of any dispute that may arise among provincial licensing authorities, or

between a provincial licensing authority and the board, regarding the regulation and control of gambling activities; and

(vi) other matters that may be referred to it by a member of the council.

The council:

- (i) may provide oversight and direction to the board in the exercise of its powers and the performance of its duties;
- (ii) may refer any matter within its authority to the board or any provincial licensing authority with a request for a report or recommendation; and
- (iii) may make a finding that a provincial licensing authority has failed to comply with this Act and, if it does so, may direct that provincial licensing authority to enter into an agreement with the board in respect of the steps to be taken by the provincial licensing authority to ensure compliance with this Act.

Enforcement and offences

Inspector means a person appointed in terms of section 76 of this Act.

The board:

- (a) may appoint any suitably qualified person as an inspector and assign the inspector to monitor, investigate or evaluate any matter on behalf of the board, subject to the control and direction of the board;
- (b) must provide each inspector with a certificate signed on behalf of the board stating
 - that the inspector has been appointed under this Act; and
 - any limitation on the authority of that inspector;
- (c) an inspector performing a function under this Act must show his or her certificate of appointment to any affected person who demands to see it; and
- (d) for the purpose of this Act or any other national or provincial law in respect of gambling and associated activities, an inspector is deemed to be appointed a peace officer for the purposes of the relevant sections of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Powers and duties of an inspector

- (1) An inspector may attend the offices of any provincial licensing authority for the purpose of carrying out any activity contemplated in section 33 or 34 of this Act.
- (2) Without prior notice, an inspector in the company of an inspector appointed in terms of provincial law, may;
 - (a) enter any licensed premises, or other premises in which licensed activities are engaged in, conducted or made available, or in which records of any of those activities are prepared or maintained;
 - (b) enter any unlicensed premises in, on or from which it is suspected
 - that any gambling activity is being engaged in, conducted or made available; or
 - that any gambling machine or any equipment, device, object, book, record, note, recording or other document used or capable of being used in connection with the conducting of a casino or any other gambling activity may be found;

(c) in any premises referred to in paragraph (a) or (b)

- conduct any enquiry that the inspector believes to be necessary, after having informed the person who appears to be in charge of the premises of the purpose of the inspector's visit;
- require the person in control of such premises to produce any license or written permission or authorisation required under this Act or provincial law;
- question any person who is in or on those premises;
- examine any prescribed gambling equipment, device, object, book, record, note, recording or other document in, about, upon or around the premises referred to in paragraph (a) or (b); and
- seize and remove from those premises, and impound any such equipment for the purposes of examination and inspection; or any book, record, ledger, game device, cash box and its contents, counting room or its equipment, or gambling operations.

(d) require any person who appears to be in charge of any premises referred in paragraph (a) or (b) to

- point out any equipment, devices or objects referred to in those paragraphs that the person has possession or custody of, or control over;
- produce for the purpose of examination or of making copies or extracts, any book, record, note, recording or other document referred to in paragraph (a) or (b) that the person has possession or custody of, or control over; and
- provide any information in connection with anything that has been pointed out or produced in terms of subparagraph (i) or (ii).

(3) Without prior notice, an inspector, may do anything contemplated in subsection (2) of this Act for the purpose of carrying out the responsibilities of the board in terms of section 65 (1) (a) or (b).

(4) When performing a duty in terms of subsection (2) or (3) of this Act, an inspector may be accompanied and assisted by an assistant, interpreter or police official.

(5) An inspector may request and receive information, materials and any other data from any licensee or applicant for a license or registration under this Act, subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

- (6) In addition to any other provision in this Act, a person commits an offence if he/ she refuses or fails to comply to the best of his or her ability with any request of an inspector under section 77 of this Act, or falsely claims to be:
- (a) an inspector;
 - (b) a regulatory authority; or
 - (c) a person authorised to act on behalf of a regulatory authority.

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