

NATIONAL GAMBLING ACT

PRESIDENT'S OFFICE

No. 1098. 3 July 1996

NO. 33 OF 1996: NATIONAL GAMBLING ACT, 1996

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

ACT

To make provision for the regulation and co-ordination of certain matters relating to casinos, gambling and wagering; for that purpose to make provision for the promotion of uniform norms and standards applying generally throughout the Republic; to make provision for the establishment of the National Gambling Board; and to make provision for matters connected therewith.

PREAMBLE

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides in section 126 that a provincial legislature shall be competent to make laws for the province with regard to casinos, gambling and wagering;

AND SINCE the Constitution in the said section empowers Parliament to make provision in an Act of Parliament for the promotion of uniform norms and standards applying generally throughout the Republic with regard to casinos, gambling and wagering;

AND SINCE it is necessary in order to determine national economic policy and to prevent provincial laws from materially prejudicing the economic interests of other provinces and the Republic as a whole;

(Afrikaans text signed by the President.)

(Assented to 27 June 1996.)

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

Definitions

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

(i) "bet" means stake any money or thing of value or, expressly or impliedly, undertake, promise or agree to stake any money or thing of value on the result or contingency of or relating to any sporting or athletic contest, competition, tournament or game usually attended by the public; (xi)

(ii) "Board" means the National Gambling Board established by section 2; (x)

(iii) "casino" means any premises in or on which gambling is conducted under a casino licence issued by a provincial licensing authority; (i)

(iv) "gamble" means play any gambling game, bet or wager on any lawful event, excluding any lawful lottery or sports pool; (ii)

(v) "gambling game" means any game, whether or not the result thereof is determined by chance, played with playing cards, dice, gambling machines or gambling devices for money, property, cheques, credit or anything of value other than an opportunity to play a further game, including, without derogating from the generality of the foregoing, roulette, bingo, twenty-one, black-jack, chemin de fer and baccarat, and excluding any lawful lottery; (iii)

(vi) "inspector" means a person appointed under section 14; (vi)

(vii) "Minister" means the Minister responsible for the administration of this Act; (vii)

(viii) "opportunity to play a further game" means an opportunity which cannot be distributed or transferred to the person who has won such an opportunity or to any other person, for any purpose other than to use such opportunity without any interruption to continue playing the type of game in respect of which the opportunity was won, but does not include an opportunity which can in any manner, whether directly or indirectly, be converted into money, property, cheques, credit or anything of value, or can be so converted in terms of any scheme, arrangement, system, plan or device which the Minister may from time to time by notice in the Gazette declare not to be an opportunity to play a further game; (iv)

(ix) "political office-bearer" means a person as defined in section 190A of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), including members of the Provincial Houses of Traditional Leaders, the Council of Traditional Leaders, the Volkstaat Council and any local government, and any official of a political party; (viii)

(x) "provincial licensing authority" means a body established by a law of a provincial legislature relating to gambling; (ix)

(xi) "this Act" includes any regulation made under section 17. (v)

Establishment of National Gambling Board

2. There is hereby established a juristic person to be known as the National Gambling Board.

Composition of Board

3. (1) The Board shall consist of-

(a) a chairperson, who in the opinion of the Minister, after he or she has consulted with the premier of each province, is a fit and proper person to serve as chairperson of the Board;

(b) one member designated by the Minister;

(c) four members, one each designated by the Ministers of Environmental Affairs and Tourism, of Finance, for Safety and Security, and of Trade and Industry;

(d) one representative of each province designated by the government of such province; and

(e) not more than two members, who in the opinion of the Minister, have applicable knowledge or experience of matters connected with the objects of the Board, and who shall be appointed by the Minister.

(2) The chief executive officer, appointed by the Board in terms of section 7(1)(a), shall ex officio be a member of the Board, but he or she shall not have voting rights at Board meetings.

(3) The members referred to in subsection (1)(a) and (e) shall be appointed only after the Minister has through the media and by notice in the Gazette invited nominations of persons as candidates for the respective positions on the Board, and the parliamentary committees concerned have made recommendations to the Minister in relation thereto after a transparent and open process of considering persons so nominated, having due regard to the objects of the Board as set out in section 10.

(4) A member of the Board shall hold office for such period, not exceeding five years, as the Minister may determine at the time of appointment, and shall be eligible for reappointment at the termination of his or her first term of office: Provided that a person appointed in terms of subsection (1)(c) or (d) may be substituted at any time at the request of the Minister or government, as the case may be, by whom he or she was designated.

(5) The Minister may, after he or she has afforded a member the opportunity to state his or her case, at any time terminate the term of office of any member if such member has become disqualified or has neglected to perform his or her functions as a member properly: Provided that when the member is a person appointed in terms of subsection (1)(c) or (d), the Minister shall prior to such termination consult the Minister concerned or the Premier of the province concerned, as the case may be.

(6) The Minister shall, in accordance with subsection (1) and subject to subsections (3) and (4), fill a casual vacancy on the Board by, in the case of-

(a) the chairperson, the appointment of another person as chairperson; and

(b) any other member, the appointment of another person as member, for such period, not exceeding five years, as the Minister may determine at the time of appointment.

(7)(a) A person shall not be appointed as a member or remain to be a member of the Board -

(i) unless he or she is a fit and proper person;

(ii) if such person, whether personally or through his or her spouse, partner or associate-

(aa) has or acquires a direct or indirect financial interest in any activity related to the objects of the Board;
or

(bb) has or acquires any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member of the Board;

(iii) if such person-

(aa) is or becomes a political office-bearer;

(bb) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;

(cc) has at any time been, or is removed from an office of trust on account of misconduct; or

(dd) has at any time been or is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty.

(b) A person shall, prior to his or her appointment as a member, submit to the Minister a written statement in which it is declared whether or not he or she has any interests as referred to in paragraph (a)(ii) and whether or not he or she is disqualified in terms of paragraph (a)(iii).

(c) If any member of the Board during his or her term of office acquires an interest which is or is likely to become an interest as referred to in paragraph (a)(ii), he or she shall forthwith after the acquisition of such interest in writing inform the Minister thereof.

(8)(a) A member of the Board shall not vote, attend or in any other manner participate in or influence the proceedings at any meeting of the Board if, in relation to any matter before the Board, he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased or proper manner.

(b) If at any stage during the course of any proceedings of the Board it appears that a member of the Board has or may have any interest as referred to in paragraph (a)-

(i) that member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members of the Board to discuss the matter and determine whether that member should be prohibited from participating in the further proceedings at such meeting by reason of a conflict of interests; and

(ii) such disclosure, and the decision taken by the remaining members of the Board in that regard, shall be recorded expressly in the minutes of the meeting in question.

(c) If any member of the Board fails to disclose any interest referred to in paragraph (a) or if, having such an interest, he or she attends or in any manner participates in or directly influences the proceedings at the meeting concerned, the relevant proceedings shall be null and void.

Meetings of Board

4. (1) The first meeting of the Board shall be held on such a date and at such a time and place as the chairperson may determine, and all meetings thereafter shall be held on such dates and at such times and places as the chairperson may determine in consultation with the Board.

(2) The procedure at a meeting of the Board shall be determined by the chairperson in consultation with the Board, and any decision in this regard shall be taken after due consideration of the principles of openness and transparency.

(3) The quorum for a meeting of the Board shall be the majority of the members of the Board.

(4) A decision of the Board shall be taken by a majority of the votes of the members present at a meeting of the Board, and in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

Committees of Board

5. (1) The Board may from time to time appoint one or more committees to perform the functions and exercise the powers delegated to it by the Board.

(2) A committee shall consist of such members of the Board as the Board may designate.

(3) The Board shall designate the chairperson of a committee.

(4)(a) A committee shall perform its functions and exercise its powers subject to the provisions of this Act and such directives of the Board as are not in conflict with such provisions.

(b) Any decision taken in the performance or exercise of a function or power so delegated shall be deemed to have been taken by the Board.

Remuneration and allowances of members of Board and committees

6. (1) Members of the Board or a committee who are not in the full-time service of the State, shall in respect of their services be paid such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of State Expenditure.

(2) The remuneration and allowances of the persons referred to in subsection (1) may differ according to the different offices held by them or the different functions performed by them.

Staff of Board and remuneration

7. (1) The Board shall, subject to its directions and control, in the performance of its functions under this Act, be assisted by-

(a) a suitably qualified and experienced person as chief executive officer appointed by the Board for the purpose of assisting the Board in the performance of all financial, administrative and clerical responsibilities pertaining to the functions of the Board, and who shall in respect thereof be accountable to the Board; and

(b) such staff, appointed by the Board, as may be necessary to enable the Board to perform its functions.

(2) The persons appointed by the Board in terms of subsection (1), and inspectors appointed in terms of section 14, shall receive such remuneration, allowances and other employment benefits and shall be appointed on such other terms and conditions and for such periods, as the Board may determine.

(3)(a) Any function or power which the Board may perform or exercise in terms of this Act, may be delegated either generally or specially to any member of the staff of the Board.

(b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed or exercised by the Board.

Funds of Board

8. (1) The funds of the Board shall Consist Of-

(a) money appropriated by Parliament;

(b) levies determined by the Board in consultation with the Minister, the Minister of Finance and the premiers of the provinces by proclamation in the Gazette and collected from persons holding licences in accordance with this Act and in terms of relevant provincial legislation for specific functions of the Board; and

(c) other money accruing to the Board from any source.

(2) There shall be paid out of the funds of the Board such amounts as are necessary to defray any expenses incurred by the Board, including the remuneration, allowances and other employment benefits of the members, staff and inspectors of the Board.

(3) The Board shall in each financial year, at a time determined by the Minister, submit to the Minister a statement of the estimated income and expenditure of the Board for the following financial year.

(4)(a) The Board may in any financial year submit supplementary statements of the estimated expenditure of the Board for that financial year to the Minister for his approval.

(b) The approval of the Minister shall only be granted with the concurrence of the Minister of State Expenditure.

Accountability, audit and annual report

9. (1) The chief executive officer appointed under section 7(1)(a) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)-

(a) be charged with the responsibility of accounting for State and any other money received or paid out for or on account of the Board; and

(b) cause the necessary accounting and other related records to be kept.

(2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.

(3) The Board shall-

(a) report to the Minister at least once every year on its activities, and the Minister shall cause such report to be tabled forthwith in Parliament; and

(b) simultaneously submit copies of the report referred to in paragraph (a) to the premiers of the various provinces.

Objects of Board

10. The objects of the Board shall be-

(a) with a view to the effective performance of certain matters relating to casinos, gambling and wagering to promote uniform norms and standards applying generally throughout the Republic, and to bring about uniformity in the legislation relating to gambling in force in the various provinces;

(b) to establish and maintain a national inspectorate to perform inspection services in respect of certain gambling activities;

(c) to monitor the existence of any dominant or over-concentrated market-share in the gambling industry in the Republic;

(d) to advise the Minister and the provinces on any matter in respect of which the Minister or the provinces require the advice of the Board;

(e) to do research with reference to any matter referred to in paragraph (a) and to study and investigate all such matters in order to make recommendations for the development, improvement, modernisation or reform thereof;

(f) to facilitate the resolution of any disputes which may arise between the respective provinces regarding the regulation and control of gambling activities; and

(g) to liaise with any, foreign or international body having any objects similar to the objects of the Board.

Functions of Board

11. In order to achieve its objects referred to in section 10-

(a) the Board shall have due regard to-

(i) the powers of the provinces, and the regional, economic, financial, social and moral interests of the Republic;

(ii) the promotion of the basic principles underlying gambling in the Republic referred to in section 13; and

(iii) international developments in the field of gambling;

(b) the Board shall from time to time advise the Minister on the maximum number of any kind of gambling licences to be awarded in the Republic or in any one province;

(c) the Board may advise and provide guidelines to the provincial authorities on the regulation and control of gambling or wagering activities, including-

(i) the manner and nature of the regulation and control of gambling activities in general or in connection with a specific gambling activity;

(ii) the granting, issuing, suspension, withdrawal and amendment of gambling licences;

(iii) the criteria to be complied with before any gambling licence is granted;

(iv) the nature and manner of the auditing of the businesses of licensees and the documents and records which shall be kept and submitted to the provincial authorities;

(v) the imposition of taxes, levies and duties in respect of any gambling activities;

(vi) the types of games that may be played in a casino;

(vi) the types, minimum standards and qualities of gambling equipment which may be used by any licensee;

(vii) the control and restriction of the game of bingo or any similar game;

(ix) any matter on which the Minister or a provincial authority requires the advice of the Board;

(x) measures relating to the advancement, upliftment and economic empowerment, through the gambling industry, of persons or groups or categories of persons disadvantaged by unfair discrimination;

(xi) in general, any other matter which the Board may consider necessary or expedient to give advice to the Minister or a provincial authority;

(d) the Board may advise the Minister on the determination of national norms and standards regarding any matter referred to in paragraph (c) that should apply generally throughout the Republic;

(e) the Board may in consultation with the Minister allocate out of the funds of the Board such amounts as may be necessary for programmes for the rehabilitation of persons who in its view have become addicted to obsessive gambling; and the Board may require any licensing authority to submit any report or information related to the activities of such licensing authority to the Board.

Consultation

12. The Board may consult any person, organisation or institution with regard to any matter deemed necessary by the Board in order to enable the Board to achieve its objects.

General policy underlying gambling in Republic

13. (1) Subject to the provisions of this Act, gambling in the Republic shall be regulated in accordance with the following principles:

(a) Gambling activities shall be effectively regulated, controlled, policed and licensed;

(b) members of the public who participate in any licensed gambling activity shall be protected;

(c) society and the economy shall be protected against the over-stimulation of the latent demand for gambling;

(d) standardisation and quality in respect of equipment used by any licence holder shall be promoted and maintained;

(e) the issuing of licences in respect of any gambling activity shall be transparent, fair and equitable;

(f) the State or any organ of the state or any organisation with which the State is concerned shall from 10 May 1999, apart from taxes or levies, not have any financial interest in any gambling activity: Provided that any provincial licensing authority considering an application for a licence contemplated in paragraph (j) before 10 May 1999 shall disregard any such financial interest held by the State, such organ of the State or organisation;

(g) licensing authorities with specific functions and powers relating to gambling shall be established by the provinces for the regulation and control of gambling activities;

(h) no political office-bearer shall-

(i) be a member of an authority referred to in paragraph (g); or

(ii) have a direct or indirect financial interest in any gambling activity;

(i) matters relating to gambling activities shall be performed in accordance with norms and standards determined by the Minister, with due regard to the findings and recommendations of the Board, by regulation made in terms of section 17(1)(b);

(j) a maximum of 40 casino licences may be granted in the Republic, and such casino licences shall be divided among the provinces as follows:

(i) Eastern Cape 5;

(ii) Free State 4;

(iii) Gauteng 6;

(iv) KwaZulu-Natal 5;

(v) Mpumalanga 4;

(vi) Northern Province 3;

(vii) Northern Cape 3;

(viii) North West 5;

(ix) Western Cape 5;

Provided that where the number of licences in a province issued before 27 April 1994 exceeds the maximum number of licences allocated to a province in terms of this paragraph, such allocation shall be deemed to be applicable to that province from 10 May 1999;

(k) the maximum number of gambling machines, other than gambling machines in casinos, which may be licensed in the Republic or in any particular province shall be prescribed by regulation made in terms of section 17;

(l) gambling machines referred to in paragraph (k) shall be linked to a central electronic monitoring system for the purposes of the monitoring and detection of significant events associated with each gambling machine;

(m) the South African Bureau of Standards mentioned in section 2(1) of the Standards Act, 1993 (Act No. 29 of 1993), shall be the sole agent for the Board in respect of the standardisation, testing, analysis, calibration and certification of gambling machines, any electronic monitoring system or any other devices or systems used for the purposes of a gambling game or any other gambling activity.

(2) For purposes of subsection (1)(k) and (l)-

(a) "gambling machine" means any electronic or electromechanical device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to be played or operated, and the playing or operation of which, whether by reason of the skill of the operator or as a result of chance, or both, may entitle the person playing or operating the machine, or any other person, to receive cash or anything of value;

(b) "electronic monitoring system" means any electronic or computer or communications system or device that is so designed that it may be used or adapted to send or receive data to or from gambling machines in relation to the security, accounting or operation of gambling machines.

(3) In order to provide for the maintenance and promotion of competition in the gambling industry, and, in respect thereof, to prevent or control restrictive practices, acquisitions and monopoly situations, as envisaged in the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979)-

(a) no person shall, subject to paragraph (b), hold more than 16 casino licences in the Republic or more than two casino licences in any particular province: Provided that any person who prior to 27 April 1994 held more than two casino licences in a particular province may hold not more than three casino licences in that particular province;

(b) the provisions of paragraph (a) shall until 10 May 1999, subject to subsection (1)(j), not be applicable to a person to whom a licence has been granted in terms of any law in force immediately before 27 April 1994;

(c) a provincial legislature may in provincial legislation provide that a person may be deemed to be a body referred to in subsection (4)(c).

(4) For purposes of subsection (3), "person" means-

(a) any natural person;

(b) any company, organisation, trust, partnership, association or any other corporate body;

(c) any natural person or body referred to in paragraph (b) who or which holds or controls a direct or indirect financial interest of more than 10 per cent in any casino licence-, or

(d) any natural person or body referred to in paragraph (b) who or which manages or in any other way conducts, controls, administers or supervises a casino on behalf of another person or body who or which is the holder of a casino licence.

Appointment of inspectors by Board

14. (1) The Board may appoint any suitably qualified person as an inspector to perform, subject to the control and directions of the Board, any of the or all functions assigned to an inspector by section 15.

(2) Every inspector appointed under subsection (1) shall be furnished with a certificate signed on behalf of the Board and stating that he or she has been so appointed as an inspector: Provided that if his or her appointment as inspector is limited to any particular function or particular functions, his or her certificate shall state such limitation.

(3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of the person affected thereby, the inspector shall on request by such person produce to him or her the certificate referred to in subsection (2).

Functions and powers of inspectors

15. (1) An inspector may, for the purposes of this Act or any provincial law relating to gambling and casinos-

(a) without prior notice enter upon any licensed or unlicensed premises which are occupied or used for the purposes of any gambling activity or any other premises on which it is suspected-

(i) that a casino or any other gambling activity is being conducted without the authority of a licence;

(ii) that persons are being allowed to play or participate in any gambling game or other gambling activity or to play any gambling machine; or

(iii) 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, and may, after having informed the person who is then deemed or appears to be in charge of the premises of the purpose of his or her visit, make such investigation and enquiry as he or she may think necessary;

(b) in any premises referred to in paragraph (a)-

(i) require the production of any licence or written permission or authorisation required under any provincial law relating to gambling activities of the person in control of such premises;

(ii) question any person who is on or in such premises, and inspect any activities in connection with the conduct of any gambling activity; and

(iii) examine or inspect any gambling machine, equipment, device, object, book, record, note or other document referred to in paragraph (a) found on those premises and make a copy thereof or an extract therefrom;

(c) require any person who is deemed or appears to be in charge of any premises referred to in paragraph (a)-

(i) to point out any equipment, device or object referred to in that paragraph which is in his or her possession or custody or under his or her control;

(ii) to produce for the purpose of examination or of making copies or extracts, all books, records, notes or other documents referred to in paragraph (a) which are in his or her possession or custody or under his or her control;

(iii) to provide any information in connection with anything which has been pointed out or produced in terms of subparagraph (i) or (ii); and

(d) seize and remove any gambling machine, equipment, device, object, book, record, note or other document referred to in paragraph (a) which in his or her opinion may furnish proof of a contravention of any provision of a provincial law relating to gambling or mark it for the purposes of identification.

(2) When performing any function in terms of subsection (1), an inspector may be accompanied by and avail himself or herself of the services of an assistant, interpreter or any police officer.

(3) An inspector shall in respect of any provision of this Act or any other national or provincial legislation or any regulations promulgated under such legislation applying in respect of gambling and associated activities be deemed to have been appointed a peace officer for purposes of sections 40, 41, 44, 45, 46, 47, 48, 49 and 50 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Offences

16. Any person who-

(a) falsely represents himself or herself to be an inspector;

(b) wilfully obstructs, hinders or delays any inspector or other person lawfully accompanying an inspector in the performance of his or her functions under this Act;

(c) without the consent in writing of the inspector concerned, removes from the place where it has been left by the inspector, or tampers with, destroys or makes alterations to anything seized by such inspector;

(d) refuses or fails to comply to the best of his or her ability with any request of an inspector under section 15; or

(e) contravenes or fails to comply with any provision of this Act, shall be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Regulations

17. (1) The Minister may, after consultation with the Board, make regulations regarding-

(a) the maximum number of any kind of licence relating to gambling to be granted in the Republic or in each province;

(b) the determination of norms and standards relating to any matter referred to in section 11 (d) which shall apply generally throughout the Republic; and

(c) in general, any other matter which may be considered necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) The Minister shall not make any regulations under subsection (1) or section 13(1)(k) unless he or she has consulted with the premier of each province.

(3) Any regulation made under this Act shall be laid on the Table in Parliament within 14 days after the publication thereof in the Gazette if Parliament is in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of the next ensuing ordinary session.

Gambling debts enforceable

18. Any gambling debt lawfully incurred by a person in the course of any gambling activity regulated by any law, and which is not in any respect in conflict with such a law, shall, notwithstanding provisions of common law or any other law, be enforceable in law.

Repeal of laws

19. The Lotteries and Gambling Board Act, 1993 (Act No. 210 of 1993), is hereby repealed.

Short title and commencement

20. This Act shall be called the National Gambling Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.