

REPUBLIC OF SOUTH AFRICA

LOTTERIES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 22743 of 10 October 2001) (The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)

[B 81—2001]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Lotteries Act, 1997, so as to further regulate the conduct of promotional competitions; and to provide for matters incidental thereto.

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

1. Section 54 of the Lotteries Act, 1997, is amended by the substitution for subsections (1), (2) and (3) of the following subsections: 5

“(1) A promotional competition shall not be unlawful if—

- (a) it is conducted only in the Republic;
- (b) the consideration payable in respect of the purchase of goods or the use of services in respect of which that promotional competition is conducted—
 - (i) is the price usually or ordinarily paid for such or similar goods or services without the opportunity of taking part in a promotional competition;
 - (ii) is not increased by the opportunity to participate in that promotional competition; and
 - (iii) is the only consideration payable for those goods or services and includes consideration for the right to compete; **[and]**
- (c) the opportunity of participating in the promotional competition is not the only or the only substantial inducement to a person to purchase or use the goods or services to which the promotional competition relates;
- (d) the promotional competition is conducted in accordance with the regulations prescribed by the Minister in terms of subsection (2) or (3);
- (e) the promotional competition or any conduct under it is not substantially comparable to—
 - (i) a business practice which has been declared unlawful in terms of the **[Harmful Business Practices]** Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988); or
 - (ii) a restrictive practice which has been declared unlawful in terms of the **[Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979)]** Competition Act, 1998 (Act No. 89 of 1998);
- (f) the Minister has not in terms of subsection (4) declared the promotional competition unlawful;
- (g) the goods or services manufactured, sold, supplied, distributed or delivered in connection with the right to participate in a promotional competition are

- usually or ordinarily manufactured, sold, supplied, distributed or delivered by the person for whose benefit the promotional competition is held; **[and**
- (h) **where the promotional competition is held in association or jointly with or in support of another promotional competition or in respect of or for the benefit of more than one person, the maximum values or limits prescribed by the Minister in respect of the total value or number of prizes, the frequency, duration or number of promotional competitions or the geographical area in which promotional competitions may be held, are not exceeded; and]** 5
- (i) the promotional competition is not substantially similar to any competition, game or sports pool conducted by or on behalf of the National Lottery; and 10
- (j) the purchase of goods or use of services promoted by the promotional competition is not the only means, instrument, method, process or mechanism to enable a participant to take part in the draw relating to that competition. 15
- (2) The Minister **[shall]** may, after consultation with the board, with due regard to the effect of promotional competitions on the National Lottery, lotteries incidental to an exempt entertainment and society lotteries, make regulations **[in respect]** which are necessary for the proper conduct and regulation of promotional competitions in general.— 20
- (a) **in general;**
- (b) **in respect of a particular category of promotional competitions;**
- (c) **in respect of a particular category of persons conducting or in any way associated with a promotional competition; or**
- (d) **in respect of a category of persons who may participate in a promotional competition or a category of promotional competitions.]** 25
- (3) **[The regulations shall include provisions]** Without derogating from the generality of subsection (2), the Minister may make regulations in respect of—
- (a) the minimum age of a person who may participate in any particular competition or category of competitions; 30
- [(b) (i) the maximum value of prizes in a calendar year, which shall not exceed R1 000 000;**
- (ii) the maximum number of prizes in a calendar year; and**
- (iii) the nature of prizes,** 35
- which may be utilised in respect of a promotional competition or a specified number of such competitions by a person who or category of persons which conducts, promotes, organises or in any other way is associated with a promotional competition or such competitions;**
- (c) **subject to paragraph (b), the maximum value of prizes in a calendar year, which shall not exceed R1 000 000, the maximum number of prizes in a calendar year and the nature of prizes in respect of any specific promotional competition or category of promotional competitions;** 40
- (d) **notification of the board of every promotional competition, and the conditions and requirements in respect thereof, including the information required in respect of that notification and the payment of a fee to the board in respect of the processing of that notification;** 45
- (e) **the frequency, duration and maximum number of promotional competitions to be run in a calendar year by a person who or category of persons which conducts, promotes, organises or in any other way is associated with a promotional competition;** 50
- (f) **the geographical area in which a promotional competition or category of promotional competitions may be conducted, if such area is not the whole territory of the Republic; and]**
- (g) the conditions or circumstances under which the board or any person designated by it may without the consent of the person who conducts the promotional competition inspect any aspect, including any process or procedure, relating to a promotional competition, including the accounting procedures and the process of identifying the winner or winners of that promotional competition; 55
- (h) any matter relating to the conduct of a promotional competition which may— 60
- (i) have a negative influence or consequence on or for the public or a part thereof; or

- (ii) negatively affect the National Lottery; and
- (i) offences and penalties for the contravention of the regulations.”.

Short title and commencement

2. This Act is called the Lotteries Amendment Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LOTTERIES AMENDMENT BILL, 2001

General

Section 54 of the Lotteries Act, 1997 (Act No. 57 of 1997) (“the Act”) makes provision for the regulation of promotional competitions. Section 1 of the Act defines a promotional competition as “a lottery conducted for the purpose of promoting the sale or use of any goods or services”, whereas “lottery” in terms of that section includes “any game, scheme, arrangement, system, plan, competition or device, which the Minister may by notice in the *Gazette* declare to be a lottery”.

Section 54 also places an obligation on the Minister who administers the Act, currently the Minister of Trade and Industry, to make regulations in respect of promotional competitions, prescribing a range of matters not provided for in that section. Section 54 has not yet come into operation.

The main purpose of section 54 was to protect the National Lottery and other legal lotteries against competition as well as the general public participating in promotional competitions.

Promotional competitions had prior to the enactment of the Act been prohibited by the now repealed Gambling Act, 1965 (Act No. 5 of 1965). Despite this prohibition, promotional competitions have for many years been conducted openly and in general without prosecutions taking place in this regard.

The report of the relevant Wiehahn Commission of Inquiry into gambling, which investigated and made recommendations in respect of the desirability of gambling and lotteries in the Republic, did not specifically address this matter. The version of the Bill leading to the enactment of the Act first tabled in Parliament, based on that report, did not contain any provisions in respect of promotional competitions. The provisions of section 54 were added to the Bill during the consideration thereof by the relevant parliamentary committee.

Discussion

On the instruction of the Lotteries Board, regulations to be made in terms of section 54 were drafted and published in *Government Gazette* No. 669 Notice R.1319 of 5 November 1999 for public comment. Approximately 140 submissions were received from interested parties.

The submissions received generally reacted disfavouredly to the draft regulations. Apart from complaints in respect of specific provisions in the regulations, it was clear from the comments that the provisions of section 54 were viewed by most as impractical, unimplementable, hostile to and not cognisant of accepted marketing practice and realities, and unduly restrictive on *bona fide* business operations. The maximum value of prizes, limited by section 54 to R1 million annually, was especially severely criticised.

The Lotteries Board then requested the Bureau of Market Research of the University of South Africa (UNISA) to conduct research regarding promotional competitions and to report on the possible effect of the draft regulations on promotional competitions.

The UNISA report concluded that “... current business practices regarding promotional competitions differ substantially from the stipulations contained in the Draft Regulations . . .”. The Lotteries Board considered this report and concluded that, since one of the main purposes of section 54 had been to protect the National Lottery and other lotteries and in view of the lack of impact of promotional competitions on those lotteries, the strict provisions of section 54 could be amended to retain the measures affording protection to the general public. The Board recommended to the Minister of Trade and Industry to amend section 54 to enable general compliance with its provisions.

The proposed amended section 54 retains the provisions necessary to achieve the intended object of that section, namely the protection of the general public. This is achieved by—

- (a) repealing unnecessary limits and protective measures which are not required;
- (b) amending the provision relating to the Minister’s power to make regulations;
- and
- (c) general technical amendments.

A new measure is also proposed in that a further paragraph is added to subsection (1), in order to clarify a position which the lawgiver intended but which may lead to

ambiguity. This measure proposes that a promotional competition is not unlawful if the purchase of goods or use of services promoted by the promotional competition are not the only means, instrument, method, process or mechanism to enable a participant to take part in the draw relating to that competition.

The Minister's power to declare a promotional competition unlawful, currently provided for in subsection (4) of section 54, is retained.

Consultation

Apart from the consultative process described above, UNISA also conducted wide-ranging consultation with interested parties during its research. The legislative proposals were recommended by the Lotteries Board.

Financial implications for State

None.

Parliamentary procedure

The Department of Trade and Industry and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which section 74 or 76 of the Constitution applies.

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