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This notice replaces Notice No. 6676 in Gazette No. 53426 dated 26-09-2025 which was erroneously published

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

NO. 6683 **26 September 2025**

BUSINESS LICENSING BILL, 2025

1. I, Ms. Stella Thembisa Ndabeni, Minister of Small Business Development, hereby publish the Business Licensing Bill, 2025 for public comments.

2. Any interested person or stakeholder who wishes to submit written comments on the Business Licensing Bill, 2025 is hereby invited to do so within 30 days from the date of publication of this notice by:

   (a) Posting to the following address: Block G, the dtic Campus, Private Bag X 84, Pretoria 0001.
   (b) Hand delivery to the following address: the dtic Campus, Department of Small Business Development, 77 Meintjies Street, Sunnyside, Pretoria, Block G Ground Floor.
   (c) Mailing such comments electronically to the following address: BLBSubmission@dsbd.gov.za

3. Comments must be addressed to the Director-General: Department of Small Business Development and marked for the attention of Mr. Thembani Masinge.

4. All interested persons or stakeholders are kindly requested to provide the name, postal address, telephone, and email address of the person or organisation when submitting the comments.

5. Electronic copies of the Business Licensing Bill, 2025 may be obtained from the DSBD website at www.dsbd.gov.za and in the Government Gazette for public comments.

Stella Tembisa Ndabeni-Abrahams

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Ms. Stella Thembisa Ndabeni (MP)
Minister of Small Business Development
Date: 16 September 2025

REPUBLIC OF SOUTH AFRICA

BUSINESS LICENSING BILL

As introduced in the National Assembly (proposed section 76 Bill; explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. ___ of ____ 2025)
(The English text is the official text of the Bill)

(MINISTER OF SMALL BUSINESS DEVELOPMENT)

[B — 2025]

BILL

To provide for a business licensing framework; to provide for principles for business licensing; to provide for the coordination of concurrent competencies relating to business licensing; to promote greater consistency and uniformity in the application of procedures and decision-making by authorities responsible for business licensing; to provide for the appointment of authorised officers and enforcement of business licensing; to repeal the Businesses Act, 1991; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 22 of the Constitution provides that every citizen has the right to choose their trade freely and that the practice of a trade may be regulated by law;

AND WHEREAS "trade" is a functional area of concurrent national and provincial legislative competence;

AND WHEREAS "trading regulations", as a local government matter, is a functional area of concurrent national and provincial legislative competence;

AND WHEREAS "street trading", as a local government matter, is a functional area of exclusive provincial legislative competence;

AND WHEREAS the current business licensing legislation provides a very broad policy and legislative framework without sufficient guidelines to ensure policy coherence and consistency across the country;

AND WHEREAS the current business licensing legislation does not provide for the regulation and business licensing of foreign-owned businesses;

AND WHEREAS the current business licensing legislation does not reflect the co-operative governance structure as set out in the Constitution;

AND WHEREAS it is necessary that—

- a uniform, recognisable and comprehensive system of business licensing be established throughout the Republic to maintain economic unity, equal opportunity and equal access to government services; and
- the system of business licensing promotes social and economic inclusion;

AND REAFFIRMING the government's duty to promote economic unity and create a national framework for business licensing;

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

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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

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

"**authorised officer**" means an authorised officer contemplated in section 18;

"**business**" means the selling of goods or services to the public which requires a business license in terms of section 6 of the Act in order to conduct business;

"**Businesses Act**" means the Businesses Act, 1991 (Act No. 71 of 1991);

"business license holder" means a person holding a valid business license in terms of section 6;

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

“business undertaking” means business activity, project, or small enterprise that a person or organisation initiates and carries out, often with the intention of generating profit or achieving a specific goal;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Department**" means the Department responsible for Small Business Development;

"**designated business undertaking”** means a business undertaking that has been designated as a business undertaking requiring a business license as contemplated in section 4;

"**Immigration Act**" means the Immigration Act, 2002 (Act No. 13 of 2002);

"**licensing authority**" means a municipality contemplated in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or a provincial authority authorised to issue licenses in terms of provincial legislation;

"**MEC**" means a member of the Executive Council responsible for economic development in a province;

"**Minister**" means the Minister responsible for small business development;

"**National Committee**” means the National Inter-Departmental Coordination Committee established in terms of section 11(2);

“**non-citizen**” means any natural or juristic person who is not a South African citizen.

"**person**" means—

(a) a natural person;

(b) a juristic person as contemplated in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);

(c) any body of persons - corporate or unincorporated;

(d) a trust, as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988);

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

"**prescribe**" means prescribed by regulation;

"Provincial Committee" means the Provincial Inter-Departmental and Municipal Coordinating Committee on business licensing and economic regulation that may be established in terms of section 12(1);

"**Refugees Act**" means the Refugees Act, 1998 (Act No. 130 of 1998);

"**small enterprise**" has the meaning assigned to it in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

and

"this Act" includes the regulations.

Purpose of Act

2. The purpose of this Act is to—

(a) provide for a common business licensing framework;

(b) provide for principles of business licensing;

(c) provide for the coordination of concurrent national and provincial competencies relating to business licensing;

(d) promote greater consistency and uniformity in the application of procedures and decision-making by authorities responsible for business licensing;

(e) provide a framework for co-operative governance and the harmonisation of standard procedures and minimum requirements for the processing of business licenses; and

(f) provide for the appointment of authorised officers and the enforcement of business licensing.

Application of Act

3. This Act applies to all persons, citizens and non-citizens, provided that non-citizens comply with the visa or permit conditions as required in terms of the Immigration Act and the Refugees Act**.**

Designation of business undertakings

4. (1) A business must possess a business licence if it carries on a business undertaking that has been designated, in terms of subsection (2), as a business undertaking that requires a business licence.

(2) The Minister may, by notice in the Gazette, designate a business undertaking as requiring a business licence if the business undertaking falls within the scope of the functional areas listed in Schedule 4 to the Constitution.

(3) Prior to designating a business undertaking as contemplated in subsection (2), the Minister must—

(a) publish a notice in the Gazette of the intention to designate specified business undertaking, including the reasons for such designation;

(b) invite the public to submit written representations on the proposed designation within a period of not less than 30 days and not more than 90 days from the date of publication of the notice; and

(c) consider all submissions received from the public in terms of paragraph *(b)*, if any, and, where appropriate, provide a summary of the principal issues raised and a response thereto.

(4) A designation process referred to in subsection (3) may be initiated by—

(a) an application, in a form as prescribed by the Minister in the Government Gazette, by an industry association, sector association or interested person; or

(b) the Minister after conducting an investigation and on any reasonable and justifiable grounds, on his or her own initiative to further the objects of Act.

Exemption from requirement to obtain business license

5. (1) The Minister, in consultation with the Ministers responsible for trade, industry and competition, employment and labour, cooperative governance and traditional affairs, home affairs, and provincial and local government may, from time to time, exempt certain industries or sectors from the requirement to obtain a business license, either—

(a) upon application, in writing, by an industry association, national or provincial government department; or

(b) after conducting a thorough investigation and on any reasonable and justifiable grounds, out of his or her own initiative.

(2) Before granting an exemption in terms of subsection (1), the Minister must publish in the *Gazette* a notice of intention to exempt the industry or sector and invite public comments to be submitted within a period of not less than 60 days from the date of publication of the notice.

(3) Any business may seek an exemption from the requirement to obtain a business license by submitting, in writing, an application for exemption to the relevant licensing authority, which application must demonstrate that the business meets one or more of the following criteria:

(a) The business operates in a sector deemed as a low-risk by the Minister, which may include—

(i) a home-based business with minimal customer traffic;

(ii) small-scale artisans or craftspeople operating from home; or

(iii) freelancers or independent contractors working from home;

(b) the business has a proven track record of compliance with relevant regulations, evidenced by—

(i) no history of regulatory violations or penalties;

(ii) consistent adherence to health and safety standards; and

(iii) positive feedback from regulatory inspections;

(c) the business contributes significantly to local economic development, which may include—

(i) providing employment opportunities in underserved areas;

(ii) supporting local supply chains and vendors; or

(iii) engaging in community development initiatives;

(d) the business is a non-profit organisation or charity that qualifies as tax-exempt under relevant tax laws;

(e) the business is a start-up or small enterprise that requires temporary relief from licensing requirements to establish itself, provided it meets specific conditions set by the licensing authority; and

(f) any other relevant considerations as determined by the Minister, provided that they are consistent with the objectives of this Act.

(4) The relevant licensing authority must evaluate the application based on the criteria outlined in subsection (3) and provide a decision, in writing, to the applicant within 30 days of receiving the application. Provided that the

application is denied, the licensing authority must provide the applicant with reasons, in writing, for the denial.

(5) The Minister will publish regulations in the Government Gazette to be used by the Licensing Authority for the Application and evaluation criteria of the provision outlined in subsection 3.

Application for registration as business license holder

6. (1) A licensing authority may, on application by a person contemplated in subsection (2), issue a business license authorising a business to carry on a designated business undertaking within the licensing authority's area of jurisdiction.

(2) An application for a business license must be made by the person in actual and effective control of the business or a duly authorised representative.

(3) Any person who seeks to apply for a business license to carry on a business undertaking in any premises, must apply—

(a) at the relevant licensing authority's office;

(b) in the prescribed manner and form; and

(c) in accordance with any applicable national laws, provincial legislation and municipal by-laws.

(4) A licensing authority must issue a business license applied for in terms of subsection (3), unless—

(a) the business premises does not comply with any applicable prescribed requirements relating to town planning, the safety or health standards or any other requirements applicable to that type of business; or

(b) the licensing authority is not satisfied that the person in actual and effective control of the business is a suitable person to hold a business license, having regard to—

(i) any criminal convictions involving fraud, dishonesty, public health, or safety violations;

(ii) previous conduct directly related to the management or operation of a business, including prior regulatory breaches or license revocations; or

(iii) documented evidence of fraudulent activities, material misrepresentation, or conduct that poses a risk to public health, safety, or the integrity of the business licensing system.

(5) In considering an application for a license, a licensing authority may—

(a) grant the application and issue a license unconditionally;

(b) conditionally grant the application but make the issuance of the license subject to the applicant complying with certain requirements to ensure compliance with this section;

(c) grant the application and issue a license subject to particular conditions related to the requirements outlined in this section; or

(d) refuse the application.

(6) If an application is refused, the licensing authority must provide the applicant with reasons, in writing, for the refusal.

(7) A license issued in terms of subsection (4) is valid for the period stipulated on the license, which period may not exceed five years.

(8) A licensing authority may, on application by a license holder, by way of endorsement on the license—

(a) amend a condition;

(b) extend the period referred to in subsection (7);

(c) revoke a condition; or

(d) indicate that a condition specified in the license has been complied with.

Application Requirements

7. The Minister must issue regulations through the Government Gazette pertaining to the application requirements which must be in line with all relevant National Legislation, Provincial legislation and Municipal By-Laws.

Application for business license by foreign nationals

8. (1) If the applicant for a business license is not a South African citizen, the applicant must hold—

(a) a valid visa or permit authorising him or her to operate a business in terms of the Immigration Act; or

(b) an asylum seekers visa or refugee visa in terms of the Refugees Act.

(2) Notwithstanding subsection (1), a license granted to a non-citizen is only valid for the period that the non-citizen is authorised to operate a business in the Republic, as evidenced by a valid visa or permit granted in terms of the Immigration Act or the Refugee Act.

CHAPTER 2

PRINCIPLES OF BUSINESS LICENSING

Principles of business licensing

9. (1) The following principles apply to business licensing by a licensing authority:

(a) The principle of redress, whereby—

(i) past unjust business licensing and permitting policies and other development imbalances must be redressed, including through improved access to economic and business infrastructure;

(ii) business license policies and procedures at all spheres of government must address the inclusion of persons and areas that were previously excluded, with the emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation; and

(iii) business licensing management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;

(b) the principle of efficiency and suitability, whereby—

(i) business licensing optimises the use of existing resources and infrastructure;

(ii) decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts;

(iii) business licensing application procedures are efficient and streamlined and timeframes are adhered to by all parties;

(iv) business licensing procedures and criteria minimise administrative compliance burdens and avoid creating regulatory burdens and constraints; and

(v) license fees are set to cover administrative costs and not generate additional income as licenses serve as regulatory instruments rather than fiscal tools; and

(c) the principle of good administration, whereby—

(i) the affected spheres of government, where necessary, develop an integrated approach to business licensing that is guided by the principles and procedures as embodied in this Act;

(ii) the consideration of licensing applications includes fair and transparent processes that afford interested and affected parties the opportunity to provide inputs on matters affecting them; and

(iii) applicable provisions and procedures are clearly articulated and transparent to members of the public.

Compliance with principles of business licensing

10. (1) In enacting provincial business licensing legislation in terms of section 28, the provincial government must comply with the principles set out in section 9.

(2) In enacting business licensing by-laws in terms of section 29, a municipality must comply with the principles set out in section 9.

CHAPTER 3

INTER-GOVERNMENTAL SUPPORT

National support and monitoring

11. (1) The Minister may—

(a) within available resources, provide support and assistance to—

(i) a province as contemplated in section 125(3) of the Constitution; or

(ii) a municipality as contemplated in section 154(1) of the Constitution; and

(b) monitor—

(i) compliance with the business licensing principles and procedures; and

(ii) the capacity of provinces and municipalities to implement this Act.

(2) The Minister may establish a National Inter-Departmental Co-ordination Committee on business licensing and economic regulation.

(3) The National Committee must consist of the following members appointed by the Minister:

(a) At least two, but not more than four, persons to represent the Minister;

(b) one person, in full-time employment seconded from each of the following departments:

(i) the Department;

(ii) the national department responsible for trade, industry and competition;

(iii) the national department responsible for agriculture, land reform and rural development;

(iv) the national department responsible for co-operative governance and traditional affairs;

(v) the national department responsible for forestry, fisheries and the environment;

(vi) the national department responsible for mineral resources and energy;

(vii) the national department responsible for transport;

(viii) the national department responsible for employment and labour;

(ix) the national department responsible for home affairs;

(x) any other national department identified by the Minister; and

(c) one person, in full-time employment, seconded from each provincial economic development department.

(4) The Minister must appoint the chairperson and deputy chairperson from among the persons appointed in terms of section 11(3)*(a)*.

(5) The National Committee may—

(a) advise the Minister and the members of the Executive Council responsible for economic development on any matter related to business licensing;

(b) conduct research and review legislation and policies relating to business licensing to ensure that there is policy coherence between national, provincial and local government to reduce burdensome and prohibitive processes and procedures;

(c) advise the Minister concerning the implementation of business licensing principles and procedures, as well as the formulation of regulations under this Act; and

(d) perform any functions or duties related to business licensing as may be determined by the Minister by notice in the *Gazette*, provided that such functions do not fall within the licensing functions of provincial and local government.

Provincial Committee

12. (1) The MEC may establish, as a Provincial Committee, a Provincial Inter-Departmental and Municipal Co-ordinating Committee on business licensing and economic regulation, which consists of members appointed by the MEC, in

consultation with MECs responsible for provincial departments as contemplated in subsection (2).

(2) The Provincial Committee must consist of—

(a) one person to represent the MEC;

(b) one person, in full-time employment, from each of the provincial departments responsible for—

(i) economic development, trade, industry and competition;

(ii) agriculture, land reform and rural development;

(iii) co-operative governance and traditional affairs;

(iv) forestry, fisheries and the environment;

(v) mineral resources and energy;

(vi) transport;

(vii) employment and labour;

(viii) home affairs and;

(c) one person, in full-time employment, from the local economic development office of each municipality.

(3) The relevant MEC must appoint from among the members of the Provincial Committee, a chairperson, and a deputy chairperson.

(4) The Provincial Committee must—

(a) co-ordinate the co-operative development and support of business undertakings for all provincial government departments dealing with business licensing and economic regulation;

(b) co-ordinate the provision of support for business licensing and economic regulation across departments;

(c) report to the provincial legislature concerned;

(d) report to the Department on business undertakings relating to business licensing and economic regulation;

(e) collaborate with all municipalities regarding, and co-ordinate, the provision of support for business licensing and economic regulation and submit reports as prescribed.

(5) The relevant MEC may, in furtherance of inter-governmental co-ordination—

(a) assist a municipality with the preparation, adoption or revision of its policies and by-laws regarding business licenses; and

(b) facilitate the co-ordination and alignment of business licensing systems of different municipalities.

Municipal differentiation

13. (1) In the development and application of measures to monitor and support the performance of the functions of municipalities in terms of this Act and any other legislation regulating business licenses, the national government and provincial governments must take into consideration the unique circumstances of each municipality.

(2) For the purposes of this section, the unique circumstances of a municipality may be determined based on identified criteria, including—

(a) the categories of municipalities contemplated in section 155(1) of the Constitution;

(b) the criteria identified and applied in accordance with national or provincial legislation relating to the supervision and monitoring of local government; and

(c) financial resources, capacity and the financial viability of a municipality.

(3) For the purposes of this section, different information may be requested from different municipalities, taking into consideration the capacity of a municipality to administer the functions envisaged in this Act.

CHAPTER 4

NATIONAL COMPETENCY

Policy and regulatory framework

14. (1) The Minister may, by notice in the *Gazette*, identify existing or proposed licensing policies, legislation, regulations and administrative practices that are burdensome or restrictive to the small enterprise sector.

(2) The Minister must issue notice in the Government Gazette to organs of state in the national, provincial and local spheres of government responsible for licensing policies, legislation, regulations and administrative practices contemplated in subsection (1), which notice must include recommendations on corrective measures to be taken to address burdensome or restrictive licensing policies, legislation, regulations and administrative practices identified by the Minister in terms of subsection (1).

(3) The Director-General must—

(a) compile an annual report of any findings or recommendations in respect of the licensing measures contemplated in subsection (1); and

(b) submit the report to the Minister, for tabling in Parliament.

Preferential licensing for small businesses

15. (1) A licensing authority may make by-laws to provide for preferential business licensing for small businesses.

(2) Preferential licensing for small businesses may include—

(a) processes to facilitate easy and quick approval of business licenses for small businesses;

(b) assistance to the applicant in the application process;

(c) a shortened and simplified application process;

(d) a simplified and shortened renewal process;

(e) lower application fees; and

(f) the waiver or suspension of fees.

Designated trading areas for citizens and small enterprises

16. (1) The licensing authority may, after consultation with the MEC of the relevant province, the Minister and the Minister responsible for spatial planning and land use, make by-laws to—

(a) designate any specified area within its jurisdiction to be a trading area for the exclusive participation of small enterprises;

(b) define the boundaries of the exclusive trading area;

(c) alter the boundaries of any exclusive trading area;

(d) determine that any exclusive trading area ceases to be reserved for small enterprises; and

(e) determine how the designated trade and commercial areas and zones may be supported through various interventions, including, but not limited to—

(i) reduced municipal rates and fees;

(ii) financial incentives and grants; and

(iii) advice and training for small enterprises.

Database of business licenses maintained by licensing authority

17. (1) A licensing authority must keep a database of all business licenses issued within its jurisdiction.

(2) The Minister may, in order to promote the objects of this Act, or for statistical purposes, make regulations relating to—

(a) the manner and format in which the database of business licenses, as contemplated in subsection (1) is to be established and maintained by a licensing authority;

(b) any additional particulars to be included in the database;

(c) the frequency of the update of the business licensing database by the licensing authority; and

(d) the collection of statistical information from all business databases.

Appointment and designation of authorised officers

18. (1) A licensing authority may appoint an authorised officer to implement, monitor and enforce compliance with this Act, relevant provincial legislation or applicable by-laws.

(2) Authorised officers must be appointed or designated in accordance with the criteria and processes as envisaged in this Act and applicable regulations if promulgated by the Minister.

(3) The Minister must issue a regulation detailing the criteria for the appointment of authorised Officers.

(4) The licensing authority must ensure that the following provisions are established and maintained for authorised officers:

(a) A code of conduct applicable to authorised officers;

(b) comprehensive training programmes to ensure that authorised officers possess the necessary knowledge and competence to perform their duties effectively; and

(c) mechanisms for regular oversight and evaluation of the performance of authorised officers, including periodic reviews and reporting requirements.

General powers of authorised officers

19. (1) An authorised officer has the powers as provided for in this Act, the relevant provincial legislation or applicable by-laws regarding business licenses.

(2) An authorised officer, subject to sections 20, 21 and 22, has the power to—

(a) 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;

(b) investigate complaints submitted to the licensing authority;

(c) question any person on any premises in respect of anything which may be relevant to a matter that is being investigated;

(d) question any person whom the authorised officer believes may have information relevant to the inspection;

(e) order any person to appear before him or her at a reasonable time and place determined by the authorised officer, with regard to a matter that is being investigated;

(f) order any person related to the issuance or application of a license in terms of this Act to appear before him or her at a reasonable time and

place determined by the authorised officer, with regard to the matter being investigated;

(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; and

(h) close any premises pending further investigation in order to comply with the provisions of this Act.

Power of authorised officers to enter premises, request documents and question anyone

20. (1) Subject to subsections (2) and (4), an authorised officer may, in order to monitor and enforce compliance with this Act—

(a) enter any premises, other than a private dwelling, if the authorised officer has reasonable grounds to believe that a business is being conducted in contravention of this Act;

(b) request the person in charge of the premises to produce a business license; and

(c) question the person in charge of the premises in relation to any aspect of a business license and conduct an inspection of any business undertaking on the premises.

(2) An authorised officer may enter a private dwelling only—

(a) upon producing an appropriate identification, with the consent of the owner or occupier; and

(b) where consent is refused, if authorised to do so by a warrant issued in terms of subsection (3).

(3) A warrant contemplated in subsection (2) may be issued by a judge or a magistrate if it appears from written information given by the authorised officer on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has been or is being committed within the area of jurisdiction of that judge or magistrate. The warrant must specify the parameters within which the authorised officer may perform an inspection, entry, search or seizure.

(4) Notwithstanding the provisions of subsection (2), an authorised officer may inspect the premises without such a warrant as referred to in subsection (3) if that authorised officer has reasonable grounds to believe that—

(a) a search warrant will be issued to him under subsection (2)*(b),* if he or she applies for such a warrant; and

(b) the delay in obtaining such a warrant would defeat the object of the search.

Power of authorised officers to confiscate and remove goods

21. (1) Subject to section 20, an authorised officer, who reasonably suspects that a business is being conducted without a business license, or in contravention of the conditions on their business license, may, without a warrant, confiscate and remove any goods from the premises of a business that, on reasonable grounds, are being utilised in a manner that contravenes this Act or any relevant by-law or legislation that relates to business licenses.

(2) An authorised officer must issue to the business owner a receipt with details of the goods that are confiscated or removed in terms of subsection (1).

(3) Any goods confiscated and removed in terms of this section must be kept in such a way that it is secured against damage.

(4) In cases where perishable goods are seized, the authorised officer must follow a regulated handover process, which process must be outlined in the relevant by-laws potentially transferring such goods to the department responsible for agriculture or another designated agency, together with documentation of the condition and handling instructions.

Power to issue compliance notice

22. (1) An authorised officer may issue a compliance notice in the prescribed form to a person whom the authorised officer, on reasonable grounds, believes is carrying on business in contravention of this Act.

(2) A compliance notice must set out—

(a) the details of the person or business premises to which the notice applies;

(b) the provision of this Act that has been contravened;

(c) details of the nature and extent of the contravention;

(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) the internal appeal authority issues a compliance certificate as contemplated in subsection (4); or

(b) it is set aside by the internal appeal authority.

(4) Where the requirements of a compliance notice issued in terms of subsection (2) have been satisfied, the authorised officer must issue a compliance certificate.

(5) If a person to whom a compliance notice has been issued fails to comply with the notice, an authorised officer may impose an administrative penalty against such a person in terms of section 23.

Administrative penalty

23. (1) An authorised officer may impose an administrative fine, as contemplated in subsection (2), on a person for failure to comply with a compliance notice as envisaged in section 22.

(2) An authorised officer may impose an administrative fine in the amount of—

(a) up to R500, for a first failure to comply;

(b) up to R5000, for a second failure to comply; and

(c) up to R10 000, for a third failure to comply.

Objections to compliance notices

24. (1) Any person issued with a compliance notice may, in terms of section 25, appeal against such notice to the relevant internal appeal authority in the prescribed manner and form within—

(a) 15 days after receiving such notice; or

(b) such longer period as may be allowed by the internal appeal authority, on good cause shown.

(2) Where any person is issued with a compliance notice and has appealed in terms of subsection (1), the execution of the compliance notice is suspended until the finalisation of the appeal.

(3) If the internal appeal authority confirms or varies a notice, the business license holder must comply with that compliance notice as confirmed or altered, within the period specified therein.

(4) No person may apply to a court for the review of a compliance notice contemplated in subsection (1), until that person has exhausted his or her remedies in terms of this Act.

Internal appeal authorities

25. (1) A licensing authority must establish an internal appeal authority to deal with appeals against decisions of the licensing authority.

(2) Any person whose rights have been materially and adversely affected by any decision taken by the licensing authority in the exercise of its powers, may appeal such decision to the internal appeal authority within a period prescribed by the licensing authority.

(3) Sections 6, 7(1) and 8 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), apply to any court proceedings contemplated in this section.

Offences

26. (1) A person is guilty of an offence if the person in question—

(a) fails to produce a business license upon request;

(b) has contravened the conditions of the business license issued to the business or premises;

(c) operates a business without a business license in contravention of section 6 or otherwise fails to comply with the requirements of section 6 of this Act;

(d) obstructs or hinders an authorised officer in the performance of his or her functions or duties or the exercise of his or her powers under this Act;

(e) refuses or fails to give an explanation or particulars or information relating to a matter within his or her knowledge when requested by an authorised officer to do so, or if such person provides particulars of information which is false or misleading, knowing it to be false or misleading;

(f) falsely holds himself or herself out to be a licensing authority;

(g) makes use of an invalid or false business license not issued by a licensing authority;

(h) falsely holds himself or herself out to be an owner for purposes of applying for a business license;

(i) provides misleading or false information in support of their application for a business license;

(j) operate a business without the required visa or permit, where applicable and or;

(k) otherwise interferes with the enforcement of this Act.

Penalties

27. (1) Any person convicted of an offence in terms of this Act is liable—

(a) if convicted for the first time, to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment;

(b) if convicted for the second time, to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment;

(c) for a subsequent conviction, to a fine or to imprisonment for a period not exceeding 24 months or to both such fine and imprisonment.

CHAPTER 5

PROVINCIAL COMPETENCE

Power to enact provincial business licensing legislation

28. (1) A provincial government must enact legislation on business licensing in relation to the functional areas listed in Schedules 4 and 5 to the Constitution and in relation to street trading as a functional area listed in Schedule 5 to the Constitution.

(2) A provincial government may, by notice in the *Gazette*, provide support in the event of the inability or failure of a municipality to comply with an obligation in terms of this Act or provincial legislation.

CHAPTER 6

MUNICIPAL COMPETENCE

Power to enact business licensing by-laws

29. (1) A local authority must enact business licensing by-laws consistent with this Act, as well as the relevant provincial legislation, with respect to the functional areas listed as local government matters in Schedules 4 and 5 to the Constitution.

(2) Any by-law made in terms of this section may provide for the enforcement of the local authority's licensing by-laws, including the removal and impoundment by an authorised person of any goods, receptacle, vehicle or movable structure.

(3) In relation to impoundment as contemplated in subsection (2), provision must be made for the—

(a) safe and secure storage of such goods;

(b) return of such goods;

(c) part compensation if the goods are sold, to defray expenses; and

(d) disposal of the goods before they are reclaimed.

Restriction or prohibition of street trading

30. (1) The local authority may restrict the carrying on of the business of street vendors, pedlars, or hawkers—

(a) in a garden or park to which the public has a right of access;

(b) on a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), contiguous to—

(i) a building belonging to, or occupied solely by, the State or the local authority concerned;

(ii) a church or other place of worship;

(iii) in or near a place declared as a national heritage site of a provincial heritage site in terms of section 27 of the National Heritage Act, 1999 (Act No. 25 of 1999) in an area declared or to be declared under subsection (2).

(2) A local authority may, subject to this section, by resolution, declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendors, pedlars, or hawkers may be restricted or prohibited

(3) Before publishing the declaration referred to in subsection (2) in the *Gazette*, the local authority must have regard to the effect of the presence of a large number of street vendors, pedlars or hawkers in that area, and must consider whether—

(a) more effective supervision or control in that area, including negotiations with any person carrying on business in that area as a street vendor, pedlar or hawker or their representatives, will make such declaration unnecessary; and

(b) the intended restriction or prohibition will drive out of business a substantial number of street vendors, pedlars or hawkers.

(4) The local authority must cause a plan to be prepared showing the position of the area intended to be covered by the declaration.

(5) The local authority must publish in a newspaper circulating in the area of jurisdiction of that local authority, a notice setting out its intention to effect the restriction or prohibition concerned as well as the reasons therefore.

(6) The notice in subsection (5) must—

(a) state that the plan is open for inspection at a place and during the hours mentioned in the notice; and

(b) call upon any person who wishes to submit comments to submit such comments in writing to the local authority within a period mentioned in the notice, which period may not be shorter than 21 days following the day upon which the notice appeared in the newspaper.

(7) The local authority must, at least 21 days before the last day on which written comments may be submitted in terms of such notice, cause a copy of the said notice to be displayed at a suitable place in or near the area concerned.

(8) The local authority must consider all comments received in terms of subsection (6) or (7) and may thereafter decide on the declaration of the area concerned.

(9) The local authority must publish the declaration in the *Gazette*, and such declaration takes effect on the date of such publication or on the date specified in the declaration.

(10) The local authority must, after the publication of the declaration referred to in subsection (9), submit to the MEC a copy of the plan of the area, the notice published in the newspaper in terms of subsection (5), the declaration published in the *Gazette* in terms of subsection (9) and all objections received, together with its comments thereon.

(11) The MEC may, within a period of 60 days after such submission and after consultation with the local authority concerned, by notice in the *Gazette*, amend or revoke the declaration concerned.

CHAPTER 7

REGULATIONS AND DIRECTIVES

National regulations and directives

31. (1) Subject to section 32, the Minister, acting with the concurrence of the Minister responsible for local government, may make regulations or directives on business licensing applicable to local government, regarding—

(a) any matter that, in terms of this Act, falls within the functional areas applicable to local government as envisaged in Part B of Schedule 5 to the Constitution; and

(b) the framework for business licensing, including procedures and requirements;

(2) The regulations contemplated in paragraph *(b)* may provide for procedures and forms dealing with—

(a) the application for a business license;

(b) the extension of the period to deal with licensing applications;

(c) the validity of a business license;

(d) the extension of a business license;

(e) the renewal of a business license;

(f) the extension of the period to deal with the renewal of a business license;

(g) the condonation of the non-renewal of a business license;

(h) the revocation or suspension of a business license;

(i) fronting practices;

(j) the death or incapacity of a license holder;

(k) the transfer of a business license;

(l) the amendment of a business license by a licensing authority, at its own discretion; and

(m) the amendment of a business license, at the request of the license holder.

(n) the issuance of compliance notices as outlined in section 22(1);

(o) the procedures for objections to compliance notices as outlined in section 24.

(3) The Minister may issue guidelines outlining thresholds for license fees, penalties and fines to be levied in pursuance of this Act.

Consultative process before promulgation of regulations and directives

32. (1) Before the regulations or directives in terms of section 30 are promulgated, the Minister must—

(a) consult organised local government on the substance of those regulations or directives, as the case may be; and

(b) publish, for a period of at least 30 days, the draft regulations or directives, as the case may be, in the Government *Gazette* for public comment.

Provincial regulations and directives

33. (1) The MEC, acting with the concurrence of the provincial executive council, may make regulations or directives on business licensing applicable to the provincial government, regarding—

(a) any matter that, in terms of this Act, falls within the functional areas applicable to provincial government as envisaged in Schedules 4 and 5 to the Constitution;

(b) the framework for business licensing, including procedures and requirements as outlined in section 31(1)*(b)*;

(c) the procedures and forms for business licensing applications, extensions, renewals, and amendments as outlined in section 31 (1)*(b)*;

(d) the issuance of compliance notices as outlined in section 22(1);

(e) the procedures for objections to compliance notices as outlined in section 24.

Consultative process before promulgation of provincial regulations and directives

34. (1) Before the regulations or directives in terms of section 33(1) are promulgated, the MEC must—

(a) consult organised provincial government on the substance of those regulations or directives, as the case may be; and

(b) publish, for a period of at least 30 days, the draft regulations or directives, as the case may be, in the Government *Gazette* for public comment.

CHAPTER 8

GENERAL PROVISIONS

Transitional provisions

35. (1) Any application for a business license or matter received by a licensing authority in terms of the Businesses Act, 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) With effect from the date of the commencement of this Act—

(a) a business license or compliance notice issued in terms of the Businesses Act remains valid, as if that Act had not been repealed, until

it expires, thereafter it must be renewed in terms of this Act, unless revoked by the licensing authority; and

(b) a fine or administrative penalty issued in terms of the Businesses Act remains valid, as if that Act had not been repealed, until it is fully discharged, unless revoked by the licensing authority.

Repeal of Businesses Act

36. The Businesses Act is hereby repealed.

Short title and commencement

37. This Act is called the Business Licensing Act, 2025, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE BUSINESS LICENSING BILL, 2025

1. BACKGROUND

1.1 Governments seek to achieve a wide range of social, economic, environmental, and regional and equity objectives through various legislative and fiscal tools most commonly through spending, taxation and regulation. A Government's role in the economy can be broken down into two basic sets of functions, firstly it attempts to promote economic stability and growth and secondly, it attempts to regulate and control the economy. Its tools for promoting stability and growth are fiscal policy (alterations in tax rates and spending programmes) and monetary policy (alterations in the amount of money in circulation). Regulation is one of the state's core functions. It is also one of its classical functions. From a historical perspective, the state engaged in regulation long before the government also took it upon itself to provide welfare services to its citizens. Regulation defines the border between state and society, government and market (Christensen, 2010). Regulations are indispensable to the proper functioning of economies and societies**.** They underpin markets, protect the rights and safety of citizens and ensure the delivery of public goods and services. Government regulation provides rules, standards and guidance to individuals and organisations.

1.2 South Africa is committed to building a developmental state that efficiently guides national economic development by mobilising the resources of society and directing them toward the realisation of common goals. A developmental state plays an active role in guiding economic development and using the resources of the country to meet the needs of the people. A developmental state tries to balance economic

growth and social development.

1.3 Section 22 of the Constitution of the Republic of South Africa, 1996 ("Constitution"), provides that every citizen has the right to choose their trade, occupation or profession freely and that the practice of a trade, occupation or profession may be regulated by law. The Businesses Act, 1991 (Act No. 71 of 1991) ("Businesses Act"), as amended in 1993, provides for the issuing of trade licenses and permits by municipalities to both formal and informal businesses that want to operate in their geographic jurisdiction. Business licenses are permits issued by local government that allow individuals or companies to conduct business within the government's geographical jurisdiction. It is the authorisation to start a business issued by the local government. A single jurisdiction often requires multiple licenses that are issued by multiple government departments and agencies. Business licenses vary between countries, states, and local municipalities. There are often many licenses, registrations and certifications required to conduct a business in a single location.

1.4 Trade regulation in South Africa has a long history beginning in colonial times and continuing into the establishment of the Republic. It was also invariably inter-linked with colonial laws and apartheid laws especially laws, that regulated access and ownership of land, housing and trade, on the basis of racial discrimination.

1.5 During the 1980s, much of the legal framework that the apartheid government had used for decades to control and restrict black business undertaking was removed. The 1980s represented a period of deregulation in which the policy climate surrounding the small-scale industry began to shift from outright repression to tolerance and, in some instances, initiatives for the limited promotion of black

businesses. In the beginning of 1980, under the leadership of the newly founded Small Business Development Corporation new efforts to stimulate small-scale black manufactures were gradually put in place as part of a wider growth strategy. This period also saw the abolition of a number of apartheid laws, initially the Influx Control Act, 1986 (Act No. 68 of 1986) and subsequently the Group Areas Act, 1950 (Act No. 41 of 1950), the Black Land Act, 1913 (Act No. 27 of 1913), the Development Trust and Land Act, 1936 (Act No. 18 of 1936) and the Population Registration Act, 1950 which was repealed in 1991.

1.6 A further development came in 1991, with the enactment of the Businesses Act, which repealed a wide range of licensing laws relating to many different types of businesses. The Businesses Act was amended in 1993 to, amongst others, provide for the power of the Minister to amend Schedule 2 to the said Act, which lists the businesses that require a business license, as well as to provide powers for licensing authorities to impound goods and equipment where appropriate.

1.7 Since the enactment of the Businesses Act, many changes have taken place in the South African economy. Technological advances during this time created an environment that enabled different types of small business to flourish. Furthermore, with the abolishment of the influx control laws, migration from the rural areas to the cities, including foreign migration has seen a major increase in un-regulated or unlicensed businesses.

1.8 Since 1994, a substantial body of new laws has emerged from all levels of government to fulfil the mandate presented by the Constitution. The journey towards a constitutional, democratic order began with the adoption of the Constitution and has

continued with the enactment of new laws as well as the amendment and or repeal of old laws. This effort was spearheaded by the South Africa Law Reform Commission ("SALRC") whose mandate is to do research with reference to all branches of the law of the Republic and to study and investigate all such branches to make recommendations for the development, improvement, modernisation or reform thereof, including the repeal of obsolete or unnecessary provisions, the removal of anomalies, the bringing about of uniformity in the law in force in the various parts of the Republic, the consolidation or codification of any branch of the law and steps aimed at making the common law more readily available.

1.9 In its October 2016 provisional review, the SALRC identified 226 statutes that were administered by the then Department of Trade and Industry ("DTI"). Of these 226 statues, five had been transferred to two other departments whereby, in February 2010, the administration of the Competition Act, 1998 (Act No. 89 of 1998) was transferred to the Department of Economic Development and, on 15 July 2014, certain Acts with their amendment Acts were transferred to the Minister of Small Business Development, including the Close Corporations Act, 1984 (Act No. 69 of 1984), the National Small Enterprise Act, 1996 (Act No. 102 of 1996) ("National Small Enterprise Act") and the Co-operatives Act, 2005 (Act No. 14 of 2005) ("Co-operatives Act").

1.10 In this 2016 review, the SALRC proposed that nineteen (19) Acts be completely repealed, and also made recommendations on the amendments of a large number of Acts. The Businesses Act was, however, not identified for repeal or amendment in this review. While the SALRC did not recommend the review of the Businesses Act, the need for this legislation to be reviewed had been realised not only by the Government but also by the very stakeholders that the said Act impacts on, especially

small enterprises both formal and informal, who are involved in street trading.

1.11 The review of the Businesses Act began around 2010 and culminated in the gazetting of the Licensing of Businesses Bill on the 18th of March 2013 by the then Minister of Trade and Industry. This was further extended to 30th April 2013. Public consultation suggested to the Minister that the time given for consultation was not enough. As a result, the Minister established a task team with particular terms of reference to consult with the general public and constituencies. This Task Team submitted its report in early 2014 for consideration by the Minister.

1.12 With the establishment of the Department of Small Business Development ("DSBD") in 2014, two pieces of legislation were initially transferred from the DTIC to the DSBD, namely, the National Small Enterprise Act and the Co-operatives Act. In the process of discussing the further transfer of functions, it was agreed that the Businesses Act would be transferred to the DSBD, but this process was never completed and finalised through a Presidential proclamation. In October 2020, the Businesses Act and thus the draft Licensing of Business Bill, 2013, were assigned to the DSBD by Presidential proclamation.

1.13 During the 2021/2022 period, the DSBD started the process of reviewing the Businesses Act and the erstwhile Licensing of Business Bill, 2013, and envisaged that the Business Licensing Bill would be introduced in Parliament by the end of the 2023/24 financial year. This was, however, suspended in order to prioritise the finalisation of the Business Licensing Policy as approved by Cabinet on 28 May 2025, so as to establish a policy basis for the Bill.

2. OBJECTIVES OF THE BILL

The Business Licensing Bill, 2025 (the "Bill") seeks to provide for a business licensing framework and repeals the Businesses Act. The Objectives of the Bill are to—

(a) set essential principles and procedures for business licensing;

(b) promote the development of the South African economy by providing a standardised regulatory framework within which the licensing of businesses must take place; and

(c) provide a framework for co-operative governance and the harmonisation of standard procedures and minimum requirements for the application of business licenses.

3.1 Chapter 1: Introductory provisions

3.1.1 This Chapter sets out the definitions, purpose, and requirements for business licensing in South Africa. It introduces the concept of designated activities that require a business license and the process for exemptions. This Chapter also outlines the requirements for business licenses, including for non-citizens.

3.1.2 **Clause 1** introduces definitions for terms used in the Act. Some definitions, where practicable, are drawn from and aligned to definitions in other legislation.

3.1.3 **Clause 2**

Clause 2 outlines the purpose of the Bill which is to set essential principles and procedures which are applicable nationally, relating to the licensing of businesses. It aims to promote the development of the South African economy by providing a

standardised regulatory framework within which the licensing of businesses must take place, providing a framework for co-operative governance and the harmonisation of standard procedures and minimum requirements for the application of business licenses. It also intends to promote an environment that is conducive to compliance and the sustainability of business compliance within the Act.

3.1.4 **Clause 3**

Clause 3 deals with the application of the Act.

3.1.5 **Clause 4**

Clause 4 outlines the procedure by which the Minister may designate a business undertaking as a business that requires a business license.

3.1.6 **Clause 5**

Clause 5 deals with exemption from the requirements to obtain a business license, including the criteria and procedures.

3.1.7 **Clause 6**

Clause 6 introduces the requirements and procedures for the licensing of all businesses.

3.1.8. **Clause 7**

Clause 7 mandates the Minister to issue regulations through the Government Gazette pertaining to the application requirements.

3.1.9 **Clause 8**

Clause 7 deals with the requirements for non-citizens seeking business licenses.

3.2 Chapter 2: Principles of business licensing

3.2.1 This Chapter outlines the principles and procedures that must guide business licensing, including efficiency, transparency and good administration. It requires provincial and municipal governments to comply with these principles when enacting their own legislation and by-laws. Key areas include principles like efficiency, suitability, and good administration for business licensing, as well as requirement for provincial and municipal governments to comply with these principles.

3.2.2 **Clause 9**

Clause 9 introduces the concept of and application of business licensing principles and procedures that will in addition to the provisions in the Bill, guide the development of provincial legislation and municipal by-laws.

3.2.3 **Clause 10**

Clause 10 provides for compliance with principles of business licensing in enacting provincial legislation and municipal by-laws.

3.3 Chapter 3: Inter-governmental support

3.3.1 This Chapter outlines the inter-governmental support and co-ordination mechanisms for business licensing. It establishes national and provincial committees to provide support, monitoring, and alignment of licensing systems. Provision is made for the Minister to provide support and assistance to provinces and municipalities, establish a National Inter-Departmental Coordination Committee on business licensing. Provision is also made for Provinces to establish Provincial Inter-Departmental and Municipal Coordinating Committees.

3.3.2 **Clause 11**

Clause 11 deals with providing national support and monitoring to provinces and municipalities within available resources concerning the implementation of this Act. It further stipulates that the Minister may establish a National Inter-Departmental Co-ordination Committee on business licensing and economic regulation.

3.3.3 **Clause 12**

Clause 12 provides for provincial support and monitoring and makes provision for the establishment of a Provincial Inter-Departmental and Municipal Co-ordinating Committee, known as the Provincial Committee, appointed by the MEC responsible for economic development.

3.3.4 **Clause 13**

Clause 13 provides that the provisions in the Act and regulations must be consistent with the unique circumstances of each municipality based on the categories, criteria, and financial resources.

3.4 Chapter 4: National competency

3.4.1 This chapter outlines the national government's role in business licensing, including, measures to address, simplification of business licensing procedures, preferential licensing for small businesses, designated trading areas, a database of business licenses and the appointment and powers of authorised officers.

3.4.2 **Clause 14**

Clause 14 provides for the Minister to identify, address, and simplify burdensome licensing practices and procedures.

3.4.3 **Clause 15**

Clause 15 outlines the provisions for preferential business licenses for small enterprises to accelerate the approval of licenses for small enterprises and co-operatives.

3.4.4 **Clause 16**

Clause 16 of the Bill provides that the local authority may, after consultation with relevant stakeholders, designate trading areas for citizens and small enterprises.

3.4.5 **Clause 17**

Clause 17 provides for the establishment of a database of all business licenses issued by a licensing authority. The clause also states that the Minister may regulate the collection and maintenance of the database to promote the objectives of this Act.

3.4.6 **Clause 18**

Clause 18 provides for the appointment of authorised officers who will be responsible for enforcing the Act's provisions.

3.4.7 **Clause 19**

Clause 19 deals with the general powers of authorised officers as provided for in the Act, by-law or any other applicable or relevant legislation in the Republic.

3.4.8 **Clause 20**

Clause 20 details the powers of authorised officers to enter premises where the authorised officer reasonably suspects that a business is being conducted without a valid business license. The clause further states that an authorised officer may request

a document for the business and premises concerned, question anyone on the premises and conduct an inspection of any business activity on the premises.

3.4.9 **Clause 21**

Clause 21 provides for the powers of authorised officers to remove and confiscate goods found on premises without a valid business license. The clause states that the authorised officer may issue a receipt detailing the confiscated goods.

3.4.10 **Clause 22**

Clause 22 provides the authorised officer with the power to issue a compliance notice. It sets out conditions under which those powers must be exercised and deals with the validity of compliance notices.

3.4.11 **Clause 23**

Clause 23 provides the authorised officer with the power to issue fines in instances where the conditions of a business license are contravened. It also outlines the maximum administrative fine amounts for compliance failures.

3.4.12 **Clause 24**

Clause 24 outlines the procedure on how to deal with objections to compliance notices.

3.4.13 **Clause 25**

Clause 25 provides for the establishment of an internal appeal authority to deal with appeals and indicates the persons who may lodge an appeal with the appeal authority.

3.4.14 **Clauses 26 and 27**

Clause 26 deals with the list of offences which may attract penalties and clause 27 deals with the penalties in the Bill.

3.5 Chapter 5: Provincial competence

3.5.1 The Bill provides for provincial governments to enact their own business licensing legislation, in relation to the functional areas listed in Schedules 4 and 5 to the Constitution. Provincial governments may also provide support in the event of a municipality's inability or failure to comply with obligations under the national or provincial legislation.

3.5.2 **Clause 28**

Clause 28 deals with the power to enact provincial legislation. The clause further states that the provincial government may provide support in case of municipal compliance failure with an obligation in terms of this Act or provincial legislation.

3.6 Chapter 6: Municipal competence

3.6.1 Chapter 6 focuses on the scope of municipal authority regarding business licensing and street trading regulations within South Africa. It outlines the powers granted to local authorities to enact business licensing by-laws that align with both national legislation and relevant provincial laws, emphasising adherence to constitutional mandates outlined in Schedules 4 and 5 to the Constitution. The Chapter details the process by which local authorities can declare areas where street vending activities may be restricted or prohibited, highlighting the procedural steps such as public notice, consultation, and submission of plans to ensure transparency and

community engagement. Additionally, it underscores the role of the provincial government in reviewing and potentially amending these declarations, demonstrating a structured approach to balancing local economic interests with regulatory oversight and public welfare concerns.

3.6.2 **Clause 29**

Clause 29 deals with the competencies of local authorities as it relates to business licensing by-laws. The Bill makes provision for local government to exercise its constitutional powers to develop municipal business licensing by-laws that is consistent with the national legislation and regulations.

3.6.3 **Clause 30**

Clause 30 provides for the restriction or prohibition of street trading in a particular area or jurisdiction of a local authority. It outlines the conditions to be considered during the restrictions and prohibition procedures. It further stipulates the process of issuing intention notices to effect restriction or prohibition.

3.7 Chapter 7: Regulations and directives

3.7.1. This Chapter establishes the regulatory authority of both the national and provincial governments to issue regulations and directives necessary for the implementation and administration of the Act.

3.7.2. **Clauses 31, 32, 33, and 34**

Clauses 31, 32, 33, and 34 provide for the Minister and MECs to make regulations or directives on business licensing applicable to local and provincial governments. These clauses further outline the scope of regulatory powers, including procedures, forms,

and compliance processes, and require a consultative process with relevant government structures and public comments before promulgation.

3.8. Chapter 8: General provisions

3.8.1 Chapter 8 provides for the legislative considerations and procedural requirements surrounding business licensing and trading regulations in South Africa, as outlined in constitutional frameworks. It highlights the interplay between national, provincial and local government jurisdictions in developing and implementing laws related to trade and business licensing.

3.8.2 **Clause 35**

Clause 35 provides for the transitional provisions between the new and repealed legislation in terms of applications, compliance, administrative penalties and fines.

3.8.3 **Clause 36**

Clause 36 of the Bill seeks to repeal the Businesses Act.

3.8.4 **Clause 37**

Clause 37 of the Bill provides for the short title and commencement of the Act.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

During the initial process of consultations, the Department focused on municipalities that are responsible for the implementation of business licensing by-laws. With the approval of the Bill by the Minister by the end of the 2023/2024 period, it was envisaged that the Bill would proceed to Cabinet for approval to publish the Bill for public consultations in the second quarter of 2025/26 financial year.. The following stakeholders were consulted:

- All nine provincial economic development departments;
- South African Local Government Association – SALGA;
- The Social Protection, Community and Human Development Cluster;
- The Department of Cooperative Governance and Traditional Affairs (“COGTA”) – Free State;
- The Department of Home Affairs;
- Districts and Municipalities;
    - Sarah Baartman District;
    - Nelson Mandela Bay Metro;
    - Chris Hani District;
    - Joe Qabi District;
    - Alfred Nzo District;
    - O.R. Tambo District;
    - Buffalo City Metro;
    - Amathole District;
    - West Rand District Municipality;
        - Mogale City;
        - Merafong City;
    - City of Ekurhuleni;
    - City of Joburg;
    - City of Tshwane;
    - Mangaung Metro municipality;
    - Setsoto Local Municipality;
    - Fezile Dabi District Municipality;
    - Nala Local Municipality;
    - Mantsopa Local Municipality;

- Phumelela Local Municipality;
- Kopanong Local Municipality;
- Matjhabeng Local Municipality;
- Moqhaka Local Municipality;
- Metsimaholo Local Municipality;
- Xhariep District Municipality;
- City of Umhlathuze;
- Bojanala Platinum District Municipality;
- Rustenburg Local Municipality;
- J.B Marks Local Municipality; and
- Madibeng Local Municipality.

5. FINANCIAL IMPLICATIONS OF THE BILL

5.1 There are no significant financial implications envisaged for the fiscus. The DSBD will establish this function by either incorporating it into its "Regional and Local Economic Development Coordination" directorate or by restructuring this directorate to provide for a new business regulation directorate. Additional funding would be needed for the development of a national computerised business licensing system that would have functionality and operating rights for provinces and municipalities.

5.2 Provincial and local government economic departments that have already implemented business regulatory services and structures would not face any significant changes and additional costs, while those that had not implemented the appropriate systems would have to streamline and further increase their organisation from the current approach of combining business regulation with LED to fully fledged business regulation and consumer protection directorates.

6. CONSTITUTIONAL IMPLICATIONS

The Bill has been aligned to the objectives set out in the Constitution as follows—

6.1 In terms of section 22 of the Constitution, 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.

6.2 In terms of section 154 of the Constitution—

(a) the 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

(b) draft national or provincial legislation that affects the status, institutions, powers or functions of local government that must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

6.3 In terms of Part A of Schedule 4 to the Constitution, “trade” is a functional area of concurrent national and provincial legislative competence. The Bill provides for a province to exercise its constitutional powers to develop provincial business licensing legislation and regulations consistent with national legislation and regulations. The Bill also provides for local government to exercise its constitutional powers to develop municipal business licensing by-laws that are consistent with

national and provincial legislation and regulations.

6.4 In terms of Part B of Schedule 4 to the Constitution, “trading regulations” as a local government matter is a functional area of concurrent national and provincial legislative competence, to the extent set out in sections 155(6) and (7) of the Constitution. The Bill provides for a province to exercise its constitutional powers to develop provincial business licensing legislation and regulations consistent with national legislation and regulations. The Bill also provides for local government to exercise its constitutional powers to develop municipal business licensing by-laws that are consistent with national and provincial legislation and regulations.

6.5 In terms of Part B of Schedule 5 to the Constitution, “street trading” as a local government matter is a functional area of exclusive provincial legislative competence to the extent set out for provinces in sections 155(6) and (7). The provisions in the Bill are aligned with Part B of Schedule 5 to the Constitution as it relates to “street trading”.

6.6 In terms of section 44(2) of the Constitution, Parliament may intervene in the passing of legislation which falls within the ambit of a functional area listed in Schedule 5 to the Constitution under certain specified conditions. In this regard, section 44(2) of the Constitution reads as follows:

"Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary—

(a) to maintain national security;

(b) to maintain economic unity;

(c) to maintain essential national standards;

(d) to establish minimum standards required for the rendering of services; or to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or the country as a whole.".

7. PARLIAMENTARY PROCEDURE

7.1 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*[1], *("Tongoane")* the Constitutional Court ("CC") confirmed the test formulated in order to determine the classification of a Bill ("tagging test"). According to the CC, what matters for the purposes of tagging, is not the substance or purpose of the Bill, but rather whether the provisions of the Bill in "substantial measure" fall within a functional area listed in Schedule 4.[2]

7.2 In commenting on the "substantial measure test", the CC made the following remarks:

"[60] The test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns, and capacities of the provinces, the more say the provinces should have on its content. …

1 2010 (6) SA 214 (CC).
2 See *Tongoane* at paragraph 58.

[71] On the other hand, the "substantial measure" test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)*(a)-(f)*, and second, by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence." [Our underlining.]

7.3 The phrase "substantial measure" is further defined as follows:[3]

"It is submitted that 'substantial measure' refers to the extent or degree to which a particular Bill deals with a matter of concurrent legislative competence as listed in Schedule 4. To put it differently, it refers to the extent of, or degree of impact of the particular Bill on provincial interests as listed in Schedule 4. The impact or effect of the Bill on the interest of the provinces must be of substantial extent, degree, or measure for it to be tagged as a section 76 Bill. …what is important should be the cumulative or combined effect of the Bill rather than

[3] Mailula D, "Customary (Communal) Land Tenure in South Africa: Did Tongoane overlook or avoid the core issue?" Constitutional Court Review, Vol. 4, 2011 at page 89.

how individual provisions individually affect a particular concurrent matter. Although the individual provisions will be considered, it is their cumulative or combined impact that is ultimately determinative of whether a particular Bill in substantial measure falls within a concurrent legislative competence of the two spheres of government." [Our underlining.]

7.4 As stated above, a Bill, the provisions of which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution, must be classified as a section 76 Bill. In order to test whether the provisions of a Bill fall within a functional area listed in Schedule 4, the cumulative effect of all the provisions of the Bill must be taken into account in order to determine its impact on the provinces.

7.5 As indicated in the above discussion, the Bill deals with the functional areas of "trade" and "trading regulations" as envisaged in Part A and Part B of Schedule 4 to the Constitution, respectively. In terms of the functional areas of "trade" and "trading regulations", the national and provincial government has concurrent legislative competence. Since the provisions of the Bill deal with "trade" and "trading regulations" which are functional areas listed in Schedule 4, the State Law Advisers are of the view that the Bill must be tagged as a section 76 Bill.

7.6 The State Law Advisers are also of the opinion that it is necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)*(a)*(ii) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since the Bill deals with matters related to the status, institutions and powers of local government, as envisaged in section 154(2) of the Constitution.

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