

PROVINCE OF MPUMALANGA

MPUMALANGA GAMBLING AMENDMENT ACT, 2010

(As passed by the Mpumalanga Provincial Legislature on 12 March 2010)

General Explanatory Note:

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

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

MPUMALANGA GAMBLING AMENDMENT ACT, 2010

To amend the Mpumalanga Gambling Act, 1995, so as to define or further define certain expressions; to provide for totalisator, bookmaker and race course licences; to further regulate general conditions of licences; to further regulate prohibitions in respect of gambling to include betting and unauthorised race meetings; to provide for restrictions on betting through an agent and the unlawful inducement to gamble; to provide for the placing of gambling bets and the settling of gambling debts; to further regulate cheating to provide for cheating activities relating to betting and horse racing; to further regulate the power of the Board to make rules; to further regulate the power of the Responsible Member to make regulations; to provide for the payment of application and licence fees in respect of bookmaker, totalisator and race course licences; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of Mpumalanga, as follows:

Amendment of section 1 of Act 5 of 1995

1. Section 1 of the Mpumalanga Gambling Act, 1995 (Act No. 5 of 1995) (hereinafter referred to as "the principal Act") is hereby amended –

(a) by the insertion before the definition of "bingo" of the following definition:

"bet or wager" means –

(a) being a player, staking money or anything of value on a fixed-odds bet, or an open bet, with a bookmaker on any contingency; or

(b) being a bookmaker –

(i) accepting a stake of money or anything of value on a fixed-odds bet, or an open bet, from a player on any contingency;

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

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

(d) expressly or implicitly undertaking, promising or agreeing to do as contemplated in paragraphs (a), (b) or (c);"

(b) by the insertion after the definition of "Board" of the following definitions:

“**bookmaker**’ means any person who earns or endeavors to earn his or her livelihood, wholly or partly, by directly or indirectly laying or taking fixed-odds bets or open bets with members of the public or other bookmakers, but excluding totalisator- bets;

‘**bookmaker’s record keeping system**’ means any software used by a bookmaker to record any betting transactions of that bookmaker, as certified by the South African Bureau of Standards and approved by the Board;”;

(c) by the insertion after the definition of “financial interest” of the following definition:

“**fixed-odds bet**’ means a bet on one or more contingencies in which odds are agreed at the time the bet is placed;”;

(d) by the insertion before the definition of “independent site operator” of the following definition:

“**horse race**’ means any horse race over a defined or agreed course held for the entertainment of the public or members of any association or club, and “**horse racing**” has a corresponding meaning, but does not include –

(a) any race in the nature of a public trial gallop at which no betting takes place held under the management and control of the holder of a race course licence;

(b) any race or contest of a private nature at which no betting takes place; and

(c) any race held for the entertainment of the public where it is not intended that betting takes place and which meets with the prescribed requirements;”;

(e) by the substitution for the definition of “licensed premises” of the following definition:

“**licensed premises**’ means the place or premises specified in a licence on which the activities authorized thereby may be conducted in terms of this Act;”;

(f) by the insertion after the definition of “licensed premises” of the following definition:

“**licensed race course**’ means a race course licensed in terms of section 32C;”;

(g) by the insertion before the definition of “opportunity to play a further game” of the following definition:

“**open bet**’ means –

(a) a bet, other than a totalisator bet, taken by a bookmaker on one or more contingencies, in which no fixed-odds are agreed at the time the bet is placed; or

(b) a bet in respect of which the payout is determined after the outcome of the contingency on which such a bet is struck became known, with reference to dividends generated by a totalisator;”;

(h) by the insertion before the definition of “Republic” of the following definition:

“**race-meeting**’ means a race-meeting contemplated in section 74A;”;

(i) by the insertion before the definition of “spouse” of the following definitions:

“**South African Bureau of Standards**’ means the entity of that name established in terms of section 2(1) of the Standards Act, 1993 (Act No. 29 of 1993);

'sporting event' means any football, rugby, cricket, golf or tennis match, any boxing, wrestling, shooting or swimming contest, any foot, cycle, motor, boat or horse race and any other lawful contest, competition, tournament or game usually attended or viewed by the public;'

(j) by the insertion before the definition of "third party" of the following definition:

'take-back bet' means any bet taken by a licensed bookmaker with any other licensed bookmaker or licensed totalisator carrying on business within the Republic, where such bet is solely for the bona fide purpose of covering the whole or any portion of the bookmaker's commitment in respect of any bet or bets laid or to be laid by such bookmaker, provided that any such bet or bets are taken on the outcome of the same event or contingency, and for the purposes of this definition 'commitment' means the amount which such licensed bookmaker will have to pay out or which such bookmaker anticipates to pay out in respect of such bet or bets, irrespective of the stakes held by such bookmaker in respect of such bet or bets;'

(k) by the insertion after the definition of "this Act" of the following definitions:

"totalisator' means any electronic or mechanical instrument, machine, contrivance, apparatus or device for registering or indicating or registering and indicating the number or amount or the number and amount of bets on any horse race, sporting event, other event or contingency, or combination thereof, and which is operated in accordance with a system of betting in which the aggregate amount staked on such aforementioned categories of bets, after deduction from such aggregate amount of any amounts which may in terms of this Act be deducted therefrom, is divided amongst those persons who have made winning bets on such categories of bets in proportion to the amounts staked by such persons in respect of such winning bets, and includes any combination of such instrument, machine, contrivance, apparatus or device, whether inside the Province or not, and any scheme, form or system of betting, whether electronically or mechanically operated or not, which is operated on similar principles;"

"totalisator bet' means the placing or accepting of a bet by staking money or anything of value on the outcome of an event or combination of events by means of –

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

(b) any scheme, form or system of betting, whether mechanically operated or not, that is operated on similar principles;"

(l) by the insertion after the definition of "wide-area progressive system" of the following definition:

"winning bet' means any bet where the person who placed the bet correctly predicted the result of the event or contingency or combination thereof in respect of which the bet was placed;"

(m) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) placing or accepting a bet or wager or a totalisator bet in terms of subsection (4); or";

(n) by the substitution for subsection (4) of the following subsection:

"(4) A person places or accepts a bet or wager when that person –

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

(b) being a bookmaker –

(i) accepts a stake of money or anything of value on a fixed-odds bet or an open bet from a player on any contingency; or

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

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

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

(e) places or accepts a totalisator bet.”;

(o) by the substitution for subsection (6) of the following subsection:

(6) Despite subsection (5), for all purposes of this Act, none of the following activities is a Gambling game:

(a) a bet or wager in terms of subsection ~~[(3)]~~ (4), other than a bet or wager contemplated in subsection (5)(b); ~~[or]~~

(b) an amusement game; or

(c) a totalisator bet.”.

Amendment of section 23 of Act 5 of 1995

2. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Board may, subject to the provisions of this Act, grant the following licences in respect of gambling, namely –

(a) casino licence;

(b) route operator licence;

(c) site operator licence;

(d) bingo operator licence;

(e) manufacturer, maintenance or supplier licence;

(f) independent site operator licence;

(g) totalisator licence;

(h) bookmaker licence;

(i) race course licence.”

Insertion of section 32A in Act 5 of 1995

3. The following section is hereby inserted in the principal Act after section 32:

“Totalisator licence

32A.(1) No person may apply for a totalisator operator, branch or agency licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notice may state the evaluation criteria to be applied and any other requirements.

(2) A totalisator operator, branch or agency licence shall not be granted by the Board, unless the Board is satisfied that the applicant has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence.

(3) Any person, desiring to operate, carry on or conduct the business of a totalisator shall apply to the Board for the relevant licence.

(4) A totalisator operator, branch or agency licence shall, subject to any condition which the Board may impose, authorise the conducting of the categories of totalisators specified in the licence and at premises specified in the licence.

(5) The holder of a totalisator operator, branch or agency licence shall conduct totalisators in accordance with rules made by such holder and which have been approved by the Board.

(6) The return to players shall not be less than the prescribed percentage.

(7) A totalisator licence shall attach to the premises specified in the licence and shall be valid for the period as prescribed by the Board.”.

Insertion of section 32B in Act 5 of 1995

4. The following section is hereby inserted in the principal act after section 32A:

“Bookmaker licence

32B.(1) No person may apply for a bookmaker licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notice may state the evaluation criteria to be applied and any other requirements.

(2) A bookmaker licence shall not be granted by the Board, unless the Board is satisfied that the applicant has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence.

(3) Any person, desiring to operate, carry on or conduct the business of a bookmaker shall apply to the Board for the relevant licence.

(4) A bookmaker licence shall authorise, subject to any conditions which the Board may impose, the conducting of the business of a bookmaker in or on the specified premises by laying fixed odds and open bets.

(5) A bookmaker licence shall attach to the premises specified in the licence and shall be valid for the period as prescribed by the Board.”.

Insertion of section 32C in Act 5 of 1995

5. The following section is hereby inserted in the principal act after section 32B:

“Race course licence

32C.(1) No person may apply for a race course licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notice may state the evaluation criteria to be applied and any other requirements.

(2) A race course licence shall not be granted by the Board, unless the Board is satisfied that the applicant has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence.

(3) Any person, desiring to operate, carry on or conduct horse racing on any premises in the Province shall apply to the Board for the relevant licence.

(4) A race course licence shall authorise, subject to any conditions which the Board may impose, the holding of race meetings on the premises specified in the licence.

(5) A race course licence shall attach to the premises specified in the licence and shall be valid for the period as prescribed by the Board.”.

Amendment of section 34 of Act 5 of 1995

6. Section 34 of the principal Act is hereby amended –

(a) by the substitution for paragraph (j) of subsection (1) of the following paragraph:

“(j) relating to the business relationships and associations of the holder of a licence, any shareholder of such licence holder and any employee of such licence holder; **[and]**”;

(b) by the addition after paragraph (k) of subsection (1) of the following paragraphs:

“(l) relating to a bookmaker’s record keeping system;

(m) relating to broad based black economic empowerment; and

(n) relating to combating the incidence of addictive and compulsive gambling.”.

Amendment of section 63 of Act 5 of 1995

7. Section 63 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph (d) of subsection (1):

“(e) obtain any information, programme or data which refers to or is suspected to refer to gambling or betting or any activities incidental thereto stored on a computer by –

(i) personally operating or instructing a computer; or

(ii) requesting a competent person on the premises to operate or instruct the computer to produce a printout or electronic copy of any such information, programme or data.”.

Amendment of section 74 of Act 5 of 1995

8. Section 74 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person shall –

(a) place or have a gambling device in premises other than the holder of a licence issued in terms of this Act or any other Act or participate in gambling or betting or wager on the result of any event or contingency with any other person, other than with the holder of a

licence issued in terms of this Act or any other Act, who is authorised by such licence to gamble, take bets or accept[**s**] wagers on the event or contingency concerned within the Province: Provided that this section shall not prevent a licence holder from gambling, taking bets or accepting wagers from the public in accordance with the conditions of his or her licence;

- (b) without the required licence referred to in paragraph (a), permit any gambling, betting or wagering on the result of any event or contingency in or at any place under his or her control or in his or her charge or without the required licence referred to in paragraph (a), place or have a gambling device at his or her premises; or
- (c) gamble, make or place a bet or wager on the result of any event or contingency at any place referred to in paragraph (b) or visit any such place with the object of participating in gambling, betting or wagering on the result of any event or contingency or partaking in any activity concerning the foregoing.”

Insertion of section 74A in Act 5 of 1995

9. The following section is hereby inserted in the principal Act after section 74:

“Prohibition of unauthorised race meetings

74A.(1) No person shall –

- (a) hold, organise, arrange, attend or in any manner take part in or assist at a horse race; or
- (b) print, publish, possess, sell or offer for sale or in any manner circulate or distribute a race card,

unless the relevant horse race takes place at a licensed race course.

(2) Any person who contravenes subsection (1) or any of the conditions of a race course licence shall be guilty of an offence.

(3) In any prosecution for an offence referred to in subsection (2), any person who without lawful reason was present at the race course concerned while a horse race takes place shall be deemed to have attended such horse race intentionally.”.

Amendment of section 76 of Act 5 of 1995

10. Section 76 of the principal Act is hereby amended –

- (a) by the substitution for subsection (1) of the following subsection:

“(1) No person under the age of 18 years shall enter any designated area **[in respect of limited payout machines]** or partake in any gambling game or betting or handle or operate any gambling device or be entitled to enforce any gambling debt, notwithstanding the provisions of section 87.”; and

- (b) by the substitution for subsection (2) of the following subsection:

“(2) No licensee or employee of a licensee shall permit any person who is under the age of 18 years, and no parent or guardian of a person under the age of 18 years shall permit such

person to enter or remain in a designated area **[in respect of limited payout machines]** or partake in any gambling game or betting or handle or operate a gambling device.”;

Insertion of section 78A in Act 5 of 1995

11. The following section is hereby inserted in the principal Act after section 78:

“Restriction on betting through agent, and unlawful inducement to gamble

78A.(1) No person shall –

(a) act as an agent for the holder of a bookmaker’s licence for the purpose of betting, whether or not for gain; or

(b) whether or not for gain act as an intermediary between any holder of a bookmaker’s licence and any other person for the purpose of betting.

(2) No person shall, directly or indirectly, give or undertake to give to any other person money or any other valuable consideration, other than the amount of a wager won by such other person, to induce that person to gamble.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.”.

Insertion of section 78B in Act 5 of 1995

12. The following section is hereby inserted in the principal Act after section 78A:

“Place of gambling and settling gambling debts

78B.(1) No person shall gamble or make or place a bet at any place other than on appropriately licensed premises: Provided that gambling by means of the placing of a voice or data telephone bet where the holder of a licence accepts and records the bet at the licensed premises shall be deemed to have occurred at the licensed premises.

(2) A gambling debt may only be settled at –

(a) licensed premises;

(b) a place authorised by the Board on application by the holder of the licence concerned;

(c) a place where a debt is ordinarily paid in such circumstances when the debt is paid pursuant to a court order or the terms of settlement of legal proceedings instituted for its recovery;

(d) in the case of a debt owed by a holder of a totalisator licence or bookmaker licence or a member of the public to the holder of a totalisator licence or bookmaker licence –

(i) at a place contemplated in paragraph (a), (b) or (c);

(ii) by crossed cheque marked not transferable sent by post to the holder of the totalisator or bookmaker licence concerned, or

(iii) by way of electronic funds transfer; or

(iv) by way of cash.

(e) in the case of a debt owed by the holder of a totalisator licence or a bookmaker licence to a member of the public –

(i) in a manner contemplated in paragraph (a), (b) of (c);

(ii) by crossed cheque marked not transferable sent by post to the physical address of the winning person concerned; or

(iii) by way of electronic funds transfer or

(iv) by way of cash.

(3) No licence holder contemplated in this section shall accept a bet from –

(a) a person under the age of 18 years;

(b) any person whose name is included on the list of excluded persons contemplated in section 76 which has been delivered to such licence holder in the manner prescribed; or

(c) any person by way of voice or data telephone transmission if the placing of such bet by such person will constitute a crime by such person in the jurisdiction from which the bet is so placed.”.

Amendment of section 79 of Act 5 of 1995

13. Section 79 is hereby amended by the addition of the following paragraphs after paragraph (c) of subsection (1):

“(d) place, increase or decrease a bet or determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet, or aid anyone in acquiring such knowledge, for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;

(e) claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from any gambling activity, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;

(f) place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet;

(g) reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet;

(h) administer or cause to be administered to any horse which is in training for the purpose of participating in a horse race, by invasive or non-invasive routes, including oral, rectal, transdermal, intradermal, subcutaneous, intramuscular, intravenous or any other route whatsoever –

(i) any endocrine or hormonal substance, whether natural or synthetic;

(ii) any medicinal substance, chemical or drug; or

(iii) any other substance which may act as a stimulant or depressant thus affecting the speed, stamina, courage, conduct or performance of a horse during an horse race or prior to such race; or

(i) use or cause to be used in or on any horse which is in training for the purpose of participating in any horse race any electronic, electric, galvanic, reflective, fluorescent or laser equipment or apparatus that may cause injury or affect the performance of such horse during the course of an horse race or prior to such race:

Provided that the provisions of paragraphs (h) and (i) shall not prevent the administration by an appropriately qualified person of any such substance, chemical or drug to any horse or the use of any such equipment or apparatus in or on any horse for the treatment of such animal for therapeutic reasons.”.

Amendment of section 84 of Act 5 of 1995

14. Section 84 is hereby amended by the substitution for subsection (1), of the following subsection:

“(1) The Board may make rules, not inconsistent with the provisions of this Act, relating to the exercise of its powers and the execution of its functions, including –

- (a) any matter pertaining to an application for a licence;
- (b) the management and control of licensed premises, licence holders and gambling operations;
- (c) rules for the playing of any form of gambling game or betting;
- (d) internal control measures for licence holders;
- (e) the books, accounts and records to be kept and returns to be furnished;
- (f) any matter which, in terms of this Act, is required or permitted to be determined; and
- (g) any other matter pertaining to the functions of the Board.”.

Insertion of section 84A in Act 5 of 1995

15. The following section is hereby inserted in the principal Act after section 84:

“Rules of gambling games or betting.

84A.(1) No gambling game shall be played, or betting conducted, otherwise than in accordance with the rules approved therefor.

(2) The holder of any licence shall in respect of any gambling game or betting authorised by such licence for which no rules have been made by the Board make rules relating to the playing of such gambling game or the conducting of such betting and submit such rules to the Board for approval.

(3) The rules of each gambling game or betting shall be displayed as prescribed, and a licence holder shall at the request of any player make available for examination a copy of the approved rules of any gambling game or betting.”.

Amendment of section 85 of Act 5 of 1995

16. Section 85 is hereby amended by the addition of the following paragraphs after paragraph (g) of subsection (1):

“(h) the management and control of gambling, horse racing, betting or related activities;

(i) any matter which is required to be limited or controlled in terms of the National Act.”.

Amendment of Schedule in Act 5 of 1995

17. The Schedule to the principal Act is hereby amended –

(a) by the insertion of the following items after item 6 of Part A:

“Race course licences

6A. Applications for race course licences must be accompanied by the following non-refundable fees:

(1) Each application for a race course licence: R50 000, 00;

(2) Each application for either the transfer, removal or amendment of a race course licence: R5 000, 00.

Totalisator licences

6B. Applications for totalisator licences must be accompanied by the following non-refundable fees:

(1) Each application for a totalisator operator licence: R50 000, 00;

(2) Each application for either the transfer, removal or amendment of a totalisator licence: R5 000, 00.

(3) Each application for a totalisator agency or branch licence: R5 000, 00.

(4) Each application for either the transfer, removal or amendment of a totalisator agency or branch licence: R1 000, 00.

Bookmaker licences

6C. Applications for bookmaker licences must be accompanied by the following non-refundable fees:

(1) Each application for a bookmaker licence: R5 000, 00.

(2) Each application for either the transfer, removal or amendment of a bookmaker licence: R1 000, 00.”.

(b) by the insertion of the following items after item 6 of Part B:

“Race course licences

6A. Every holder of a race course licence shall, in advance, pay a licence fee of R25 000, 00 for every year or part of a year ending on 31 March: Provided that such payments shall be made on or before 31 March of every year in respect of the ensuing year.

Totalisator licences

6B.(1) Every holder of a totalisator operator licence shall, in advance, pay a licence fee of R25 000, 00 for every year or part of a year ending on 31 March: Provided that such payments shall be made on or before 31 March of every year in respect of the ensuing year.

(2) Every holder of a totalisator agency or branch licence shall, in advance, pay a licence fee of R2 500, 00 for every year or part of a year ending on 30 September: Provided that such payments shall be made on or before 30 September of every year in respect of the ensuing year.

Bookmaker licences

6C. Every holder of a bookmaker licence shall, in advance, pay a licence fee of R2 500, 00 for every year or part of a year ending on 30 September: Provided that such payments shall be made on or before 31 **March** of every year in respect of the ensuing year."

Repeal of laws

18. The laws specified in the Schedule to this Act are hereby repealed to the extent that such laws are applicable within the Province and as indicated in the third column thereof.

Transitional provisions

19.(1) Notwithstanding the repeal of any provision of any law by this Act, any application made by virtue of such a provision before the date of commencement of this Act and not disposed of on that date shall be continued with and disposed of as if that provision was not so repealed.

(2) Any licence or other authority granted in terms of any law repealed by this Act and which is capable of being granted in terms of this Act shall be deemed to have been granted in terms of this Act, after which the provisions of this Act shall apply in respect of such licence or authority.

(3) Any rule or regulation made under a provision of any law repealed by this Act and which may be made under sections 84 and 85 respectively, shall be deemed to have been made under this Act.

(4) Anything done in terms of a provision of any law repealed by this Act and which shall or may be done in terms of a provision of this Act, shall be deemed to have been done in terms of the latter provision.

(5) All licences issued in terms of the Horse-Racing and Betting Ordinance, 1978 (Ordinance No. 24 of 1978) shall, subject to the payment of the fees and taxes, be deemed to be licences issued in terms of and subject to the provisions of this Act until 30 September 2010 in respect of bookmaker licences, whereupon such licences shall expire: Provided that applications for new licences may be made in terms of this Act prior to such date.

(6) Any person who at the commencement of this Act is so employed that he or she is required to be in possession of a certificate of approval in terms of section 55, may for a period of one hundred and eighty days after such commencement, continue to be so employed while not in possession of the relevant certificate of approval: Provided that applications for new certificates of approval may be made in terms of this Act prior to such date.

Short title and commencement

20.(1) This Act shall be called the Mpumalanga Gambling Amendment Act, 2010, and shall come into operation on a date determined by the Premier by Proclamation in the *Provincial Gazette*.

(2) Different dates may be so fixed in respect of different sections of this Act.

SCHEDULE

Number and year of law	Short title	Extent of repeal
Ordinance No. 24 of 1978	Transvaal Horse-Racing and Betting Ordinance, 1978	The whole.
Act No. 12 of 1979	Lebowa Horse-racing and Betting Act, 1979	The whole.
Act No. 20 of 1988	Kwandebele Totalisator Act, 1988	The whole.
Act No. 39 of 1989	Bophuthatswana Gaming and Betting Act, 1989	The whole.