

DISTRIBUTED BY VERITAS TRUST

Veritas makes every effort to ensure reliable information, but cannot take legal responsibility for information supplied.

CHAPTER 10:04

CENSORSHIP AND ENTERTAINMENTS CONTROL ACT

*Acts 37/1967, 59/1971, 52/1972, 39/1973 (s. 30), 60/1973, 42/1976 (s. 7), 41/1978 (s. 6),
32/1979 (s. 4), 29/1981 (s. 59), 6/1983, 26/1989, 9/1997 (s. 10), 22/2001 (s. 4);
R.G.N. 124/1974; S.I. 694/1981.*

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II

ESTABLISHMENT AND FUNCTIONS OF BOARD OF CENSORS

3. Board of Censors.
4. Functions of Board.
5. Committees of Board.
6. Advisers and officers of Board and committees.
7. Remuneration, etc.

PART III

FILMS AND RECORDED VIDEO OR FILM MATERIAL

8. Interpretation in Part III.
9. Prohibition of unapproved films.
10. Powers of Board in respect of films.
11. Certificate of approval of films and film advertisements.
12. Prohibited films.

PART IV

PUBLICATIONS, PICTURES, STATUES AND RECORDS

13. Prohibition of importation, production and dissemination of undesirable publications, pictures, statues and records.
14. Power of Board to examine publications, pictures, statues and records and to declare them undesirable or to declare publication or record prohibited.
15. Future periodical publications.

PART V

PUBLIC ENTERTAINMENTS

16. Prohibition of public entertainments unless approved.

PART VI

PROHIBITED EXHIBITIONS AND ENTERTAINMENTS

17. Prohibition of certain exhibitions and entertainments.

PART VII

APPEALS

18. Establishment of Appeal Board.
19. Appeal to Appeal Board.
20. Questions of law may be referred to Supreme Court.
21. Certificate prohibiting disclosure.

PART VIII

GENERAL

22. Board may alter or reverse its decisions.
23. Minister may alter decisions of Board and Appeal Board.
24. Admission of certain persons free of charge.
25. Seizure of articles for examination by Board.
26. Prohibition of possession of prohibited articles.
27. Prohibition of restricted person.
28. Display or advertisement of restrictions imposed by Board.
29. Exemption or declaration not invalidated by failure to publish in *Gazette*.
30. When ignorance of Board's declaration a defence.
31. Evidence.
32. Offences and penalties.
33. Determination of what is indecent or obscene or offensive or harmful to public morals.
34. Regulations generally.
35. Regulations relating to theatres.

AN ACT to regulate and control the public exhibition of films, the importation, production, dissemination and possession of undesirable or prohibited video and film material, publications, pictures, statues and records and the giving of public entertainments; to regulate theatres and like places of public entertainment in the interests of safety; and to provide for matters incidental to the foregoing.

[Date of commencement: 1st December, 1967.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Censorship and Entertainments Control Act [*Chapter 10:04*].

2 Interpretation

In this Act—

“Board” means the Board of Censors appointed under section *three*;

“committee” means a committee appointed under section *five*;

“drive-in theatre” means a place constructed for the admission of vehicles thereto and provided with stands or other accommodation for vehicles, so arranged that persons may witness the entertainment or film while seated in such vehicles;

“entertainment” includes any stage play, tragedy, comedy, farce, opera, burlesque, interlude, melodrama, strip-tease, pantomime, dialogue, prologue, epilogue, concert, cabaret, circus or other

dramatic or musical entertainment or any part thereof;

“film” means—

- (a) any sequence of visual images recorded on any material, whether photographic film, magnetic tape or any other material, so as to be capable, by the use of such material, of being—
 - (i) shown as a moving picture; or
 - (ii) recorded on other material, by the use of which it can be shown as a moving picture; and
- and
- (b) the sounds embodied on any sound-track associated with a film as defined in paragraph (a); and
- (c) any portion of a film as defined in paragraph (a) intended for the purpose of advertising such a film; and

- (d) any exhibited illustration of any matter relating to any film as defined in paragraph (a); and
- (e) any picture intended for exhibition through the medium of any mechanical, electronic or other device;

“film advertisement” means an advertisement of a film other than an advertisement contained in a newspaper or periodical;

“import” means to bring, or cause to be brought, into Zimbabwe;

“judicial proceeding” means a proceeding before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;

“Minister” means the Minister of Home Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“picture” includes—

- (a) any drawing, symbol, illustration, painting, wood-cut or similar representation;
- (b) any print, photograph, engraving or lithograph;
- (c) any object in or on which there is a picture;
- (d) any exhibition for the purpose of advertising; but does not include a film;

“place” includes any vehicle, vessel or aircraft;

“play”, in relation to a record, means to render audible the sounds recorded thereon and includes the broadcasting thereof through the medium of radio or television;

“prohibited” in relation to—

- (a) any film, means declared to be prohibited in terms of section *twelve*;
- (b) any publication, picture, statue or record, means declared to be prohibited in terms of subsection (2) of section *fourteen*;

“public”, in relation to the exhibition of any film, publication, picture or statue, the playing of any record or the giving of any entertainment, means the exhibition of such film, publication, picture or statue, the playing of such record or the giving of such entertainment, as the case may be—

- (a) in public; or
- (b) at any place to which admission is obtained—
 - (i) by membership of any association of persons; or
 - (ii) for any consideration, direct or indirect; or

- (iii) by virtue of any contribution towards any fund;

and, without derogation from section 13 of the Interpretation Act [*Chapter 1:01*], “public entertainment” means an entertainment so given or intended to be so given;

“publication” includes—

- (a) any newspaper, book, periodical, pamphlet, poster, playing card, calendar or other printed matter;
- (b) any writing or typescript which has in any manner been duplicated or exhibited or made available to the public or any section of the public;

“record” means any contrivance or device in or on which sound has been recorded for reproduction;

“recorded video or film material” means any material, whether magnetic tape, photographic film or other material, upon which any film is recorded;

“statue” includes any figure, cast, carving, moulding or model;

“theatre” means any—

- (a) building, tent or other erection; or
- (b) drive-in theatre;

where a public entertainment is given or a film is exhibited to which the public or any section of the public has access or is permitted to have access, whether on payment or otherwise and whether or not the right of admission thereto is reserved;

“undesirable” means undesirable within the meaning of subsection (2) of section *thirteen*.

PART II

ESTABLISHMENT AND FUNCTIONS OF BOARD OF CENSORS

3 Board of Censors

(1) The Minister shall appoint a board, to be known as the Board of Censors, to perform the functions entrusted to it under this Act.

(2) The Board shall consist of not less than nine members who shall be appointed for a period of not more than three years.

(3) The Minister may appoint an alternate member to any member of the Board.

(4) A retiring member and an alternate member shall be eligible for re-appointment as a member or as an alternate member.

(5) The Minister shall designate one member as chairman of the Board and one member as vice-chairman of the Board.

(6) If the chairman is prevented by illness, absence from Zimbabwe or other cause from exercising his functions on the Board or committees of the Board, the vice-chairman shall exercise the functions and powers and perform the duties of the chairman.

(7) If at a meeting of the Board the chairman and vice-chairman are absent, the members present may elect one of their number to preside.

(8) The quorum of the Board shall be as prescribed.

(9) A decision of the majority of the members present at a meeting of the Board shall be the decision of the Board:

Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(10) An alternate member shall act as a member only when a member to whom he is alternate is unable to perform his duties as a member, and when so acting shall have all the powers of such member, other than the powers of the chairman.

(11) The Minister shall, subject to the law relating to the Public Service, appoint an officer to be the secretary of the Board who shall perform such duties as may be assigned to him by the Board.

4 Functions of Board

The functions of the Board shall be—

- (a) to examine any article or public entertainment submitted to it;
- (b) to make such inquiries as it may consider necessary in regard to any publication, picture, statue, record or public entertainment which is alleged to be or which the Board has reason to believe is of a nature contemplated in section *seventeen*;
- (c) to advise the Minister in regard to any matter arising out of the application of any provision of this Act which the Minister may refer to the Board;
- (d) to perform any other function assigned to it by this Act or any other enactment.

5 Committees of Board

(1) The Board may, with the approval of the Minister, appoint from its own members or alternate members one or more committees, and may delegate thereto such of the functions of the Board as the Board considers fit.

(2) Subject to subsection (3), a committee may comprise one or more persons.

(3) The chairman of the Board shall be an *ex officio* member of, and may preside over, a committee.

(4) If a member of a committee who is a member, other than an alternate member, of the Board is unable for any reason to attend a meeting of such committee his alternate on the Board may attend.

(5) A committee may, with the approval of the Minister, co-opt members who are not members or alternate members of the Board.

6 Advisers and officers of Board and committees

(1) The Board or any committee may call on such persons as it may wish to assist it in an advisory capacity on any matter it is required to consider.

(2) The Minister may appoint such officers as he thinks fit to assist the Board or any committee thereof in the performance of its functions.

7 Remuneration, etc.

Any—

- (a) member or alternate member of the Board;
- (b) member or co-opted member of any committee;
- (c) person mentioned in subsection (1) or (2) of section *six*;

may be paid such remuneration or allowances or both as may be prescribed.

PART III

FILMS AND RECORDED VIDEO OR FILM MATERIAL

8 Interpretation in Part III

In this Part—

“distribute” does not include the transmission through the post or otherwise of recorded video or film material for the purpose of processing the film recorded thereon for the private use of an individual;

“publish” has its ordinary meaning and is not qualified in any way by the definition of “publication” in section *two*.

9 Prohibition of unapproved films

(1) Subject to this Part, no person shall—

- (a) distribute, televise or publicly exhibit any film; or

- (b) exhibit to any person, other than a person referred to in subsection (2), any film which—
- (i) is intended to be exhibited in public; or
 - (ii) though recorded in such a manner as to be incapable of being exhibited in public, is wholly or substantially a copy or recording of a film intended to be so exhibited; or
- (c) publish any film advertisement; unless the film or copy or recording or film advertisement, as the case may be, has been approved by the Board in terms of section *ten*.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) A film referred to in paragraph (b) of subsection (1) may be exhibited to—

- (a) any person concerned in the making of the film; or
- (b) any person in the course of his business as a distributor or exhibitor of films; or
- (c) any person or class of persons exempted from that paragraph by the chairman of the Board; without the film having been approved by the Board.

(3) The Board may, subject to such conditions as it thinks fit, exempt from subsection (1)—

- (a) any film or film advertisement or any class of films or film advertisements; and
- (b) any person or class of persons; and may at any time amend or withdraw any such exemption.

(4) The Board shall cause notice of any exemption in terms of subsection (3), and of any amendment or withdrawal thereof, to be published in the *Gazette*.

10 Powers of Board in respect of films

(1) The Board shall have power to examine any film or film advertisement and—

- (a) subject to subsection (2), to approve the film or film advertisement either unconditionally or subject to any one or more of the conditions set out in subsection (3); or
- (b) to reject the film or film advertisement; or
- (c) in accordance with section *twelve*, to declare the film to be prohibited.

(2) The Board shall not approve any film or film advertisement which in its opinion—

- (a) depicts any matter that is indecent or obscene or is offensive or harmful to public morals; or
- (b) is likely to be contrary to the interests of defence, public safety, public order, the economic interests of the State or public health; or
- (c) depicts any matter in a manner that is indecent or obscene or is offensive or harmful to public morals.

(3) In approving any film or film advertisement, the Board may impose one or more of the following conditions—

- (a) in the case of a film intended to be televised, that it shall not be televised except—
 - (i) between such hours as may be specified;
 - (ii) after notices, indicating that the film is considered unsuitable for viewing by persons of such class as may be specified, have been televised at such times and after such intervals as may be specified;
 - (iii) after any specified portion has been excised therefrom;
- (b) in the case of a film other than a film referred to in paragraph (a) or in the case of a film advertisement, that it shall not be distributed, exhibited or published, as the case may be—
 - (i) to persons of a specified age or sex;
 - (ii) except after any specified portion has been excised therefrom;
- (c) any other condition designed to ensure that the film or film advertisement is not distributed, exhibited or published, as the case may be, to any person or class or persons.

(4) If the Board is satisfied that any film or film advertisement has been approved for exhibition or publication, as the case may be, by a board of censors of another country, the Board may without examining such film or film advertisement exercise in relation thereto any of the powers conferred upon the Board by this section.

(5) Subject to subsection (6), no person shall—

- (a) where the Board has approved a film or film advertisement subject to the excision of any portion therefrom, exhibit or televise such film or publish such film advertisement after the excision of such portion therefrom unless the film or film advertisement has thereafter

been submitted to the Board for further examination:

Provided that the Board may authorize the exhibition or televising of the film or publication of the film advertisement without further examination; or

- (b) without the approval of the Board, distribute, televise or exhibit any film or publish any film advertisement which, after having been approved by the Board, has been in any way altered or modified; or
- (c) contravene any condition imposed by the Board in terms of subsection (3):

Provided that no condition imposed in relation to a film in terms of subparagraph (i) of paragraph (b) of subsection (3) shall be contravened in respect of a person who—

- (i) is required to be present at the exhibition of such film in the course of his employment; or
- (ii) sees such film while he is outside the place to which persons are admitted for the purpose of witnessing the exhibition of such film; or
- (d) televise or publicly exhibit any film approved by the Board, without signifying in the prescribed manner the Board's approval thereof.

(5a) Any person who contravenes subsection (5) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment

(6) The Board may, subject to such conditions as it thinks fit, exempt any person or class of persons from subsection (5) and may at any time amend or withdraw any such exemption.

(7) The Board shall cause notice of any exemption in terms of subsection (6), and of any amendment or withdrawal thereof, to be published in the *Gazette*.

11 Certificate of approval of films and film advertisements

(1) When the Board in terms of section *ten* approves any film or film advertisement, the Board shall signify its approval by means of a certificate given in the form and manner prescribed.

(2) A person to whom a certificate is issued in terms of subsection (1) shall pay the prescribed fee for such certificate.

12 Prohibited films

(1) After examining any film, the Board may, if it considers that—

- (a) the film is of a nature described in subsection (2) of section *ten*; and
- (b) it is necessary or expedient in the public interest to do so; declare the film to be prohibited.

(2) Wherever the Board has given any decision in terms of subsection (1) declaring any film to be prohibited, it shall, without delay, cause notice of such decision to be published in the *Gazette*.

(3) In a notice in terms of subsection (2) making known the decision of the Board declaring any film to be prohibited, it shall not be necessary for the actual title, if any, of the film to be set out in the notice if the notice, in describing the film, also sufficiently describes the title concerned.

(4) The Board may, after making a declaration in terms of subsection (1), direct the secretary of the Board to notify such person or class of persons as the Board thinks fit of the declaration.

(5) No person shall import any recorded video or film material on which is recorded a film that the Board has declared to be prohibited in terms of subsection (1).

(5a) Any person who contravenes subsection (5) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) Any recorded video or film material imported after the Board has, in terms of subsection (1), declared the film recorded thereon to be prohibited shall be liable to forfeiture and shall be disposed of as the Board may direct.

PART IV

PUBLICATIONS, PICTURES, STATUES AND RECORDS

13 Prohibition of importation, production and dissemination of undesirable publications, pictures, statues and records

(1) No person shall—

- (a) import, print, publish, manufacture, make or produce, distribute, display, exhibit or sell or offer or keep for sale any publication, picture, statue or record; or
- (b) publicly play any record;

which is undesirable or which has, under section *fourteen* or *fifteen*, been declared by the Board to be undesirable:

Provided that, where a person has imported such a publication, picture, statue or record, nothing in paragraph (a) shall prevent him from re-exporting it to the source from which he imported it or to such other place as the Board may approve.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) A publication, picture, statue or record shall be deemed to be undesirable if it or any part thereof—

- (a) is indecent or obscene or is offensive or harmful to public morals; or
- (b) is likely to be contrary to the interests of defence, public safety, public order, the economic interests of the State or public health; or
- (c) discloses, with reference to any judicial proceedings—
 - (i) any matter which is indecent or obscene or is offensive or harmful to public morals or any indecent or obscene medical, surgical or physiological details the disclosure of which is likely to be offensive or harmful to public morals; or
 - (ii) for the dissolution or a declaration of nullity of a marriage or for judicial separation or for restitution of conjugal rights, any particulars other than—
 - A. the names and occupations of the parties and witnesses;
 - B. a concise statement of the allegations, defences and counter-allegations in support of which evidence has been given;
 - C. submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;
 - D. the judgment and the verdict of the court and any observations made by the judge in giving judgment.

(3) Subparagraph (ii) of paragraph (c) of subsection (2) shall not be construed so as to permit the disclosure of anything contrary to subparagraph (i) of that paragraph.

- (4) This section shall not apply to—
 - (a) the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings;
 - (b) the printing, publishing or distribution of any notice or report in pursuance of the directions of any court;
 - (c) any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in any court;
 - (d) any publication of a technical, scientific or professional nature *bona fide* intended for the advancement of or for use in any particular profession or branch of arts, literature or science;
 - (e) any publication of a *bona fide* religious character.

(5) The Board may, on such conditions as it may consider fit, exempt in writing any person or institution from any provision of this section either indefinitely or for a period determined by it, and may at any time by notice in writing to the person or institution concerned withdraw any exemption granted under this subsection.

(6) No prosecution in respect of an offence under subsection (1a) shall be instituted without the authority in writing given under the hand of the Attorney-General or his deputy.

14 Power of Board to examine publications, pictures, statues and records and to declare them undesirable or to declare publication or record prohibited

(1) The Board shall have power to examine any publication, picture, statue or record and to declare whether or not it is, in the opinion of the Board, undesirable.

(2) The Board may, if it considers it necessary or expedient in the public interest to do so, declare any publication, picture, statue or record which has been declared undesirable under subsection (1) or section *thirteen* to be prohibited.

(3) When the Board has given any decision under subsection (1) or (2) declaring any publication, picture, statue or record to be undesirable or prohibited, it shall, without delay, cause such decision to be made known by notice published in the *Gazette*.

(4) In a notice in terms of subsection (3) making known the decision of the Board declaring any picture which is accompanied by a word or words or any publication or record to be undesirable or prohibited it shall not be necessary for the word or words concerned or the actual title of the publication or record to be set out in the notice if the notice, in describing the picture, publication or record, also sufficiently describes the word or words or title concerned.

(5) The Board may, after making a declaration in terms of subsection (1) or (2), direct the secretary of the Board to notify such person or class of persons, as the Board thinks fit, of the declaration.

(6) No prosecution shall be instituted under this Act in respect of any publication, picture, statue or record if the Board has, under subsection (1), declared that in the Board's opinion it is not undesirable.

(7) Any publication, picture, statue or record imported after the Board has, under subsection (1), declared that in the Board's opinion it is undesirable, shall be liable to forfeiture and shall be disposed of as the Board may direct.

15 Future periodical publications

(1) Subject to this section, where—

- (a) four or more consecutive editions of any publication which is published periodically have, under subsection (1) of section *fourteen*, been declared by the Board to be undesirable; and
- (b) every subsequent edition of that publication is, in the opinion of the Board, likely to be undesirable;

the Board may declare all editions of that publication subsequent to the date of the declaration to be undesirable.

(2) Before making any declaration under subsection (1) the Board shall give notice in the *Gazette*—

- (a) stating that it is proposed to make such declaration; and
- (b) specifying the publication concerned; and
- (c) calling upon any person who has any objection to the proposal to submit his objection in writing to the Board within the period of twenty-one days next following the date of publication of the notice in the *Gazette*.

(3) The Board shall consider every objection submitted under subsection (2) and may afford any

person who has lodged any objection under that subsection an opportunity to appear before and to be heard by the Board in support of his objection.

(4) When the Board has made a declaration under subsection (1)—

- (a) it shall, without delay, cause such declaration to be made known by notice published in the *Gazette*; and
- (b) it may direct the secretary of the Board to notify such person or classes of persons, as the Board thinks fit, of the declaration.

(5) The Board shall, upon payment of the prescribed fee and upon the application in writing of any person made after a period of twelve months has elapsed since the date of a declaration under subsection (1), review its decision relating to the declaration and for such purposes may afford the applicant an opportunity to appear before and to be heard by the Board in support of his application.

(6) Upon a review under subsection (5) the Board may—

- (a) confirm the declaration;
- (b) declare that specified editions of the publication which are subject to the declaration shall no longer be subject thereto;
- (c) revoke the declaration from a date to be specified by the Board.

(7) Whenever the Board makes a declaration under paragraph (b) or revokes a declaration under paragraph (c) of subsection (6) it shall, without delay, cause such decision to be made known by notice published in the *Gazette* and, if any person has been notified in terms of subsection (4) of the declaration relating to the publication concerned, it shall cause the secretary of the Board to notify the person concerned of such decision.

(8) Any publication imported after the Board has, under subsection (1), declared it to be undesirable shall be liable to forfeiture and shall be disposed of as the Board may direct.

PART V

PUBLIC ENTERTAINMENTS

16 Prohibition of public entertainments unless approved

(1) Subject to this section, no person shall perform in or give or permit the giving of any public entertainment unless such public entertainment has been approved by the Board.

(2) The Board may, in its discretion and on such conditions as it may think fit, exempt from subsec

tion (1) any particular public entertainment or any class of public entertainments, or any public entertainment intended for performance before any class of persons or under any particular circumstances, and it may at any time withdraw any exemption granted under this subsection.

(3) When the Board approves of any public entertainment it shall signify such approval by means of a certificate given in the form and manner prescribed:

Provided that the Board may in its discretion give such certificate in respect of any public entertainment without requiring such public entertainment to be submitted to it for approval.

(4) There shall be paid for every certificate given by the Board such fees as are prescribed.

(5) Subject to subsection (6), the Board may approve or reject any public entertainment unconditionally or approve it subject to the condition that it shall not be exhibited or given—

- (a) to persons of a specified age; or
- (b) except after any specified portions have been omitted therefrom; or
- (c) except on such conditions as to the nature or content of the entertainment or the time, place or manner of the exhibition or giving thereof as the Board may impose; or
- (d) except on such other conditions as the Board may impose;

and may impose any two or more of such conditions in respect of the same public entertainment.

(6) The Board shall not approve any public entertainment which in its opinion—

- (a) is of a nature described in subsection (2) of section *ten*; or
- (b) after consultation with the Secretary of the Ministry responsible for home affairs, is likely to be associated with breaches of the peace, disorderly or immoral behaviour or abuses relating to the consumption of alcohol or drugs.

(7) No person shall—

- (a) without the approval of the Board, perform in any public entertainment or give or permit the giving of any public entertainment which, after having been approved by the Board, has in any way been altered or modified; or
- (b) perform in any public entertainment or give or permit the giving of any public entertainment in contravention of any condition imposed by the Board under subsection (5).

(8) Any person who contravenes subsection (1) or (7) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

PART VI

PROHIBITED EXHIBITIONS AND ENTERTAINMENTS

17 Prohibition of certain exhibitions and entertainments

(1) Notwithstanding anything to the contrary in this Act, the Board may, by notice in writing addressed to any person who is or is believed by the Board to be in charge of—

- (a) the public exhibition or intended exhibition of any publication, picture, statue or record or the public playing or intended playing of any record; or
- (b) the public exhibition or intended exhibition, or the televising or intended televising, of any film in respect of which an exemption in terms of subsection (3) of section *nine* is in force or which has been approved in terms of subsection (4) of section *ten*; or
- (c) the giving or intended giving of any public entertainment in respect of which an exemption under subsection (2) of section *sixteen* is in force or a certificate has been given under the proviso to subsection (3) of that section;

prohibit the same, or permit it subject to such conditions as the Board may in its discretion impose, if the Board has reason to believe that the said publication, picture, statue or record is undesirable or, as the case may be, the said film or entertainment is of a nature described in subsection (2) of section *ten* or, after consultation with the Secretary of the Ministry responsible for home affairs, is likely to be associated with breaches of the peace, disorderly or immoral behaviour or abuses relating to the consumption of alcohol or drugs.

(2) The Board may at any time withdraw any prohibition or condition imposed under subsection (1).

(3) Any person who contravenes any prohibition or condition imposed under subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment:

Provided that it shall be a complete defence for the accused to prove that he was unaware of such prohibition or condition and could not reasonably be expected to have become aware thereof.

PART VII

APPEALS

18 Establishment of Appeal Board

(1) For the purpose of hearing and determining appeals in accordance with section *nineteen*, there is hereby established an Appeal Board consisting of a president and two members appointed by the Minister.

(2) The Minister may appoint an alternate to any member of the Appeal Board other than the president.

(3) Every appointment shall be for a period of one year or such longer period not exceeding three years as may be specified in the notification of such appointment, but a retiring member or alternate member shall be eligible for re-appointment.

(4) The Appeal Board may appoint any person with special expert knowledge to act as a member in an advisory capacity in any appeal where it appears to the Appeal Board that such knowledge is required for the proper determination of the appeal.

(5) There shall be paid to all persons appointed under this section such remuneration or allowances or both as may be prescribed.

19 Appeal to Appeal Board

(1) Any person who is aggrieved by a decision of the Board given under this Act may, in the manner and within the period prescribed, appeal against that decision to the Appeal Board.

(2) Upon the noting of an appeal under this section the appellant shall pay the prescribed fees, which shall accompany the notice of appeal, and no appeal shall be entertained by the Appeal Board until such fees have been paid.

(3) The Appeal Board shall thereupon inquire into and consider the matter and may confirm, vary or set aside the decision of the Board or give any other decision which the Appeal Board may consider just, and, subject to section *twenty*, the decision of the Appeal Board shall be final.

(4) Where the appellant is wholly or partly successful in the appeal the fees paid under subsection (2) shall be refunded to him.

20 Questions of law may be referred to Supreme Court

(1) If in any proceedings before the Appeal Board—

- (a) a question of law arises for decision; or
- (b) a question arises as to whether a matter for decision is a question of fact or a question of law; or
- (c) a question arises as to the admissibility of evidence;

the president of the Appeal Board may, at the request of any person directly affected by the Appeal Board's decision on the proceedings, refer the matter to the Supreme Court for decision, whether before or after the Appeal Board has given its decision on the proceedings:

Provided that a matter shall not be referred to the Supreme Court in terms of this subsection in pursuance of a request made more than one month after the Appeal Board has given its decision on the proceedings.

(2) If after the Appeal Board has given its decision on any proceedings, the president of the Appeal Board refuses any request to refer a question to the Supreme Court in terms of subsection (1), the person by whom the request was made may, within one month of the giving of that decision, apply to the Supreme Court for an order directing the president of the Appeal Board to refer the question to the Supreme Court, and the president of the Appeal Board shall comply with any such order.

(3) On any reference to the Supreme Court under this section and on any application under subsection (2), the Board and every person who appeared or was represented in the proceedings before the Appeal Board shall be entitled to appear and be heard.

(4) Where a question has been referred to the Supreme Court in terms of subsection (1) after the Appeal Board has given its decision on the proceedings concerned and the Supreme Court decides that the question was erroneously determined by the Appeal Board—

- (a) the Appeal Board shall, if it considers it requisite to do so for the purpose of giving effect to the Supreme Court's decision, give the persons concerned in the proceedings a further opportunity of presenting their cases; and

- (b) the Appeal Board shall reconsider its decision on the proceedings concerned in conformity with the Supreme Court's decision; and
 - (c) if on such reconsideration it appears to the Appeal Board to be appropriate to do so, the Appeal Board shall revoke or amend its decision or give such other decision on the proceedings as the Appeal Board considers just.
- (5) Any reference of a question to the Supreme Court under this section shall be by way of stating a case for the Supreme Court's opinion.

21 Certificate prohibiting disclosure

(1) Where the Minister considers it necessary or expedient to do so, he may issue a certificate to the Appeal Board or to any court to which any decision, order or proceedings of the Board or the Appeal Board has or have been brought on review or appeal that it would not be in the public interest for any matter relating to the decision, order or proceedings of the Board, the Appeal Board or the court concerned, other than the actual result thereof, to be publicly disclosed.

(2) Upon the issue of a certificate in terms of subsection (1)—

- (a) the proceedings before the Appeal Board or the court concerned shall be held *in camera*;
- (b) no person other than the parties, their legal representatives or any person whose presence is considered by the Appeal Board or court concerned to be necessary in connection with those proceedings shall be present at the proceedings before the Appeal Board or the court concerned;
- (c) no person shall broadcast, televise, exhibit, publish, distribute or in any other manner bring to the notice of the public any information relating to the decision, order or proceedings concerned, other than the actual result thereof;

unless the Appeal Board or the court concerned, having regard to the purpose for which the certificate was issued in terms of subsection (1), orders otherwise.

(3) Any person who contravenes paragraph (b) or (c) of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART VIII

GENERAL

22 Board may alter or reverse its decisions

Save as is elsewhere specifically provided in this Act, any decision made by the Board under this Act may, after a period of at least two years has elapsed since the decision was so made, be reversed or altered by the Board.

23 Minister may alter decisions of Board and Appeal Board

(1) Notwithstanding any other provision of this Act, if the Minister is satisfied that a decision of the Board—

- (a) to reject a film or film advertisement or to declare a film or film advertisement to be prohibited; or
- (b) to declare any film, publication, picture, statue or record to be undesirable or prohibited;

is not in the public interest, the Minister may vary or set aside the decision of the Board, whether or not such decision has been confirmed by the Appeal Board.

(2) Where the Minister has varied a decision of the Board in terms of subsection (1), no appeal shall lie in terms of Part VII against that decision as varied by the Minister.

(3) It shall not be necessary for the Minister, before acting in terms of subsection (1), to solicit representations from or afford a hearing to any person.

(4) Where the Minister has acted in terms of subsection (1), he shall, without delay, cause his action to be made known by notice in the *Gazette*.

24 Admission of certain persons free of charge

(1) Any person who is for the time being in charge of any place where any film, publication, picture or statue is being publicly exhibited, any record is being publicly played or any public entertainment is being given shall on demand admit thereto free of charge any member of the Board or of a committee thereof, or any other person on production of a written authority for such admission under the hand of the chairman of the Board, or any police officer who is on duty or any probation officer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not

exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

25 Seizure of articles for examination by Board

(1) In this section—

“officer” means—

- (a) an officer as defined in section 2 of the Postal and Telecommunication Services Act [Chapter 12:02] or section 2 of the Customs and Excise Act [Chapter 23:02]; or
- (b) a police officer; or
- (c) a probation officer.

(2) Subject to subsection (3), an officer may seize any—

- (a) publication, picture, statue or record; or
- (b) recorded video or film material; or
- (c) material which he has reasonable grounds for believing is recorded video or film material; for examination by the Board.

(3) An officer who seizes any article in terms of subsection (2) shall cause it to be forwarded to the Board for examination as soon as possible after such seizure, and the Board shall not retain the article any longer than is necessary for such examination.

26 Prohibition of possession of prohibited articles

(1) No person shall, without lawful excuse, have in his possession any—

- (a) publication, picture, statue or record that is indecent or obscene or prohibited; or
- (b) recorded video or film material on which is recorded a film that is indecent or obscene or prohibited.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) No prosecution in respect of an offence in terms of subsection (1) shall be instituted without the authority in writing of the Attorney-General or his deputy.

27 Prohibition of restricted person

(1) Where the Board has approved a film, film advertisement or public entertainment subject to the condition that it shall not be exhibited or given to persons of a specified age or sex, no person who

is of such specified age or sex shall be present at any place at which the film, advertisement or public entertainment is being exhibited or given:

Provided that it shall be a sufficient defence for a person charged with a contravention of this section if he proves to the satisfaction of the court that he was, at the relevant time—

- (a) required to be present at such exhibition or performance in the course of his employment; or
- (b) outside the place to which persons were admitted for the purpose of witnessing the exhibition or performance.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

28 Display or advertisement of restrictions imposed by Board

(1) Where the Board has approved a film or public entertainment subject to the condition that it shall not be exhibited or given to persons of a specified age or sex—

- (a) the person in charge of the place or premises where the film or public entertainment is exhibited or given shall cause to be prominently displayed in or on that place or those premises the relevant restriction pertaining to the exhibition or performance of the film or public entertainment;
- (b) no person shall publish or exhibit any advertisement of the film or public entertainment unless the relevant restriction pertaining to the exhibition or performance thereof is published or exhibited with that advertisement:

Provided that it shall be a sufficient defence for a person charged with a contravention of this paragraph if he proves to the satisfaction of the court that he was not aware of the relevant restriction.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

29 Exemption or declaration not invalidated by failure to publish in Gazette

No exemption or declaration by the Board or withdrawal thereof shall be invalid solely by

reason of any failure on the part of the Board to comply with subsection (4) of section *nine*, subsection (3) of section *fourteen* or subsection (4) or (7) of section *fifteen*, as the case may be, requiring the Board to make known the decision concerned by notice published in the *Gazette*.

30 When ignorance of Board's declaration a defence

In any prosecution against a person for an offence in terms of subsection (1) of section *thirty-two* involving a contravention of subsection (5) of section *twelve*, subsection (1) of section *thirteen* or subsection (1) of section *twenty-six* where it is averred that the offence was committed in respect of a publication, picture, statue or record which has under section *fourteen* or *fifteen* been declared by the Board to be prohibited or undesirable or in respect of any recorded video or film material on which is recorded a film that has in terms of section *twelve* been declared by the Board to be prohibited—

- (a) if the declaration of the Board was made known in the *Gazette*, it shall not be a defence that the person concerned was not aware of such declaration;
- (b) if the declaration of the Board was not made known in the *Gazette*, it shall be a defence for the person concerned to prove that he was not aware and could not reasonably have been expected to become aware of such declaration.

31 Evidence

In any prosecution in respect of an offence under this Act a certificate or written statement purporting to have been made and signed by a member of the Board, a member of a committee or the secretary to the Board shall be *prima facie* proof of the facts stated therein and it shall not be necessary to tender oral evidence of such facts unless the court before which the proceedings are held so directs, in which event a postponement shall be allowed to enable a witness to attend and give such oral evidence.

32 Offences and penalties

The court convicting any person of any offence under this Act may declare any article in respect of or in connection with which the offence was committed to be forfeited to the State, and any such article shall thereupon be disposed of as the court may direct.

33 Determination of what is indecent or obscene or offensive or harmful to public morals

For the purposes of this Act a matter or thing, or the manner in which any matter or thing is depicted, as the case may be, shall be deemed to be—

- (a) indecent or obscene if—
 - (i) it has the tendency to deprave or corrupt the minds of persons who are likely to be exposed to the effect or influence thereof or it is in any way subversive of morality; or
 - (ii) whether or not related to any sexual content, it unduly exploits horror, cruelty or violence, whether pictorial or otherwise;
- (b) offensive to public morals if it is likely to be outrageous or disgusting to persons who are likely to read, hear or see it;
- (c) harmful to public morals if it deals in an improper or offensive manner with criminal or immoral behaviour.

34 Regulations generally

The Minister may make such regulations as he thinks necessary or expedient for carrying into effect the purposes of this Act and for its better administration and, more particularly, providing for—

- (a) anything which in terms of this Act is to be prescribed;
- (b) the convening of meetings of committees of the Board, and the quorum for and the procedure at such meetings;
- (c) the manner in which applications for the approval of films and public entertainments or any other application to the Board shall be made, and the fees payable therefor;

Provided that the Minister may grant any person total or partial exemption from the payment of such fees;
- (d) the manner in which publications, pictures, statues

- and records shall be submitted for the consideration of the Board;
- (e) all matters relating to the issue, possession and production of certificates of approval given by the Board;
 - (f) the duties of a person in charge of the public exhibition of any film, picture or statue, the public playing of any record or the giving of any public entertainment, in connection with the supervision of the same by such person;
 - (g) the practice and procedure of the Appeal Board and the fees to be charged in respect of proceedings therein;
 - (h) penalties for contraventions of the regulations:

Provided that no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

35 Regulations relating to theatres

(1) The Minister may make regulations providing for the conditions to be observed in regard to the safety from fire or otherwise of any theatre or for the safety, convenience and control of persons attending any theatre.

(1a) Regulations made under subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

(2) Where the Minister has appointed a local authority or any officer thereof to be an inspector for the purpose of regulations made under subsection (1), any fees payable in respect of any service rendered by such inspector shall be paid to the local authority concerned.

Law Reviser's Note on amendments to the Act since the Revised Edition (1996)

This version of the Act, reflecting the position as at the 1st May, 2004, includes the amendments made by the Magistrates Court Amendment Act, 1997 (No. 9 of 1997), with effect from the 10th October, 1997, and the Criminal Penalties Amendment Act, 2001 (No. 22 of 2001) with effect from the 20th May, 2002.

The provisions affected by those amendments are:-

<i>Amending Act</i>	<i>Effect on this Act</i>
Act No. 9 of 1997	Section 20 repealed and substituted
Act No. 22 of 2001	Amendments to sections 9, 10, 12, 13, 16, 17, 21, 24, 26, 27, 28, 34 and 35 (all inserting penalty provisions) and 32 (repeal of former general penalty provision).

In addition section 32 of the Act has been revised in order to incorporate a consequential amendment overlooked in Act No. 22 of 2001.