

**SOUTH AFRICAN INSTITUTE FOR DRUG – FREE SPORT AMENDMENT  
BILL, 2020**

**GENERAL EXPLANATORY NOTES:**

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

\_\_\_\_\_       Words underline with a solid line indicate insertions in existing enactments.

**BILL**

**To amend the South African Institute for Drug- free Sport Act, 2007, so as to delete certain definitions and to insert, amend or substitute other; to provide for the testing of learners participating in sport ; to provide for prior consent in writing by parents or legal guardians relative to testing of learners under the age of 18 years; to provide for undergoing dope testing for members of the fitness industry; to provide for inspection, power of entry by inspectors; to provide for the appointment of inspectors; to provide for prohibitions relative to the possession and distribution of illegal substance as prescribed by the WADA; to provide for compliance with performance system ; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 14 of 1997, as amended by section 1 of Act 25 of 2006**

1. Section 1 of the South African Institute for Drug – Free Sport Amendment Act, 2006 (Act No 25 of 2006) is hereby amended -

(a) by the deletion of the definition for the “**national sports federation**”

(b) by the insertion after the definition of “**National Anti – Doping Organisation (NADO)**” of the following definitions:

“**national federation**” means a national governing body of a code of sport in the Republic with affiliate members in not less than five provinces recognised by –

(i) Sport and Recreation South Africa as the only authority for the administration and control of the relative code of sport including but not limited to the special member, affiliates, voluntary organisation, or recreational organisation; and

(ii) the relevant international controlling body for that particular code of sport

(c) by the deletion of the definition for the “**SASCOC**”:

(d) by the insertion after the definition of “sample” for the following definitions:

“**Sports Confederation**” means the Confederation recognised by the Minister in writing as the national co-ordinating macro body for the promotion and development of high-performance sport in the Republic

(e) by the substitution of the definitions “**sports administration body**” for the following definition:

“**sports administration body** means –

- (a) a multi – coded international sports governing body (example, the International Olympic Committee (IOC);
- (b) an international sports federation;
- (c) a national federation;
- (d) a sport federation;
- (e) a tribunal, committee or other investigative body that is associated with a body referred to in paragraphs (a), (b), (c), or (d);
- (f) **[SASCOC] Sports Confederation**;
- (g) WADA;
- (h) a National Anti – Doping Organisation;

**Amendment of section 3 of Act 14 of 1997 as amended by section 2 of Act 25 of 2006**

2. Section 3 of the principal Act is hereby amended -

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

“ (3) (a) The Minister shall, with a view to the appointment of the members referred to in subsection (1), invite interested parties through the media and by notice in the Gazette to propose candidates, within 30 days of the publication of the said notice, for appointment as such member: Provided that the Minister shall after receipt of the applications, **[furnish the Institute and SASCOC with the said applications as soon as possible]** appoint the interview panel within 30 days to shortlist and conduct interviews: Provided further that **[the Institute and SASCOC]** the interview

panel must furnish the Minister with their recommendations with regard to the most suitable candidates for appointment as members, within 30 days after [receiving] conducting the interviews [it].”

**Amendment of section 6 of Act 14 of 1997 as amended by section 6 of Act 25 of 2006**

3. Section 6 of the principal Act is hereby amended-
  - (a) by the substitution for subsection (1) of the following subsection:

“(1) The Institute shall, in consultation with the Minister and subject to the Minister obtaining the concurrence of the Minister of Finance in this regard, appoint a suitably qualified and experience person as Chief Executive Officer of the Institute for a period of five years performance contract.”

**Amendment of section 10 of Act 14 of 1997 as amended by section 10 of Act 25 of 2006**

4. Section 10 of the principal Act is hereby amended-
  - (a) by the substitution for subsection (2) of the following subsection:

“(2) The Institute shall operate independently, but may co-operate with [SASCOC] Sports Confederation and SRSA from time to time as the need arises in order to achieve the objects of the Institute as contemplated in this Act.”

**Amendment of section 11 of Act 14 of 1997 as amended by section 11 of Act 25 of 2006**

5. Section 11 of the principal Act is hereby amended-
  - (a) by the addition in subsection (2), after paragraph (n) for the following paragraph:

“(o). The Institute may on annual basis publish the SAIDS Anti-Doping Rules in the Gazette after public consultation with all stakeholders”

(b) by the substitution in subsection (3), paragraph (a) for the following paragraph:

“(a) address the issue with [SASCOC] Sports Confederation or any other relevant sports body and organisation as he or she deems fit;”

**Amendment of section 11 of Act 14 of 1997 as amended by section 11 of Act 25 of 2006**

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

**“Testing of the learners participating in sports**

11D (1) The Institute may require the school governing body , parents or legal guardian consent in writing for learners participating in sports to arrange for -

(a) a learner to undergo doping control in order to determine whether he or she has been using prohibited substance or methods;

(b) the laboratory analysis of the sample for that purpose;

(c) the Institute to be given information arising out of the making of such request, including information relating to :

(i) An evasion, or an attempt evasion, by a person of a request to provide a sample;

(ii) the aiding, abetting, counseling, or procuring of such an evasion, or attempted evasion, by the learner;

(iii) any failure by the learner upon receipt of consent by parent or legal guardian to provide such a sample;

- (iv) any interference with the provision , collection or testing of the sample; or
- (v) the results of testing.
- (2) The Institute must in the prescribed manner provide the procedure and sample collection kit to be used for collection of sample from the learners in preparation for sport event.
- (3) The learner with the written consent of the parent or legal guardian must submit himself or herself for testing in order to detect the usage of prohibited substance published as a Scheduled to this Act.
- (4) The school or school governing body must upon receipt of the consent by the parents or legal guardian allow the Institute to conduct testing in terms of this Act.
- (5) The Institute in consultation with the Minister and Minister of Basic Education must develop the procedure guidelines for entering the school and testing of prohibited substance to the learners.
- (6) The Minister and Minister of Basic Education after consultation with the Institute publish the procedure guidelines in the Gazette within 30 days after the promulgation of this Act.
- (7) For the purpose of this section, the parents for learner under 18 years old must sign the pre- registration form for testing consent as a prerequisite for participation in sport.

### **Testing at recreational event and fitness industry**

- 11E (1) The Institute may require any participant at recreational event or in the fitness industry to undergo doping control in terms of section 11C.
- (2) For the purpose of this section “participants” means any person who participates in the recreation activity or registered as a member in the fitness industry.”

## **Inspection and powers of entry and inspection**

11F (1) A person appointed in writing as an inspector by the Institute may enter a fitness industry venue, or other business premises that provide sports supplements at any reasonable time during the day to conduct an inspection and make such inquiries as may be necessary to ensure that prohibited substances are not distributed to any athlete or sports person in terms of this Act.

(2) An inspector may be accompanied during an inspection by a police official and any other person reasonably required assisting in conducting the inspection.

(3) The inspector or police official may-

(a) require a person who appears to be in charge of the fitness venue or business premises to produce supplements certificates, records, book or other document, including documentation in electronic format relating to supplements distribution;

(b) examine any document referred to in paragraph (a) and where necessary make a copy of any such document; and

(c) direct any person who appears to be in control of such premises to take reasonable steps to ensure compliance with the Act.

(4) When appointing an inspector under subsection (1), the Institute must ensure that –

(a) a person appointed has sufficient qualifications and experience in the field of anti doping;

(b) at least one of the appointed persons is registered with the Health Profession Council of South Africa;

(c) a person appointed has not in any time been convicted of any criminal offence involving dishonesty and substance abuse; and

(d) a person appointed is independent of , and has no direct or indirect financial or other material interest in –

- (i) fitness industry;
- (ii) pharmaceutical owner; and
- (iii) any other person who is directly or indirectly linked to the persons referred to in subparagraph (i) and (ii).
- (5) The Institute must issue an inspector appointed in terms of subsection (1) with a certificate of appointment which the inspector must produce if so requested during an inspection.
- (6) A person present at an inspection must cooperate with and furnish such assistance as the inspector or police official may require in the exercise of his or her power under this Act.”

**Amendment of section 17 of Act 14 of 1997, as amended by section 17 of Act 25 of 2006**

- 7. Section 17 of the principal Act is hereby amended-
  - (a) by the substitution of subsection (2) paragraph (a) of the following subsection:

“(2) (a) The Minister shall **[on the recommendation of the Institute and SASCOC]** appoint at least three members from the persons referred to in subsection (1) (b) to constitute an appeal tribunal to hear and decide upon appeals against decisions made in terms of Article 13 of the Code where appropriate

**Amendment of section 17A of Act 14 of 1997, as amended by section 17A of Act 25 of 2006**

- 8. Section 17A of the principal Act is hereby amended-
  - (a) by the substitution of subsection (1) of the following subsection:



“17A. (1) SRSA, on the written recommendations of [SASCOC] Sports Confederation, may cause an investigation to be conducted as it deems fit to ascertain whether all national federations have complied with the provisions contained in this Act.”

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

“(2) SRSA, must, after consultation with the Institute and [SASCOC] Sports Confederation, identify any non – compliant national sports federations whereafter it may amongst others-

- (a) withdraw or reduce its or the Government’s funding of any such federation;
- (b) bar any such federation from administering its sport in the Republic; or
- (c) recommend that [SASCOC] national board colours refuse to award national colours to members of any such federation.

(C) by addition of the following subsection after subsection (3):

“(4) A person or juristic person is guilty of an offence if that person or juristic person –

- (a) provides a prohibited substance to any person participating in sport or recreational activity.
- (b) is in possession of prohibited substance;
- (c) is trafficking in any prohibited substance;
- (d) administer, or attempted to administer prohibited substance to any athlete, or assist, encourage, aiding, abetting, covering up or any type of complicity involving an anti – doping rule;
- (e) conceal or obstruct the inspectors relative to performance of their duties; or

(f) fails to comply with the provisions of section 11, 11A, 11B, 11C, 11D, 11E, and 11F;

(5) A person convicted of an offence in terms of this Act, is liable-

(a) in case of contravention of subsection (4), (a),(b),(c), (d),(e) and (f) to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment; or

(b) in any other case, to a fine or imprisonment for a period not exceeding five years, or both a fine and such imprisonment.

Insertion of section 17B, 17C, 17D and 17E in Act 14 of 1997

9. The following section is hereby inserted in the principal Act after section 17A:

**“17B Prohibition**

(1) No person may directly or indirectly distribute prohibited substances as prescribed from time to time by WADA.

(2) No person may for commercial purposes-

(a) obtain or possess a prohibited substance with the intention to sell or use; or

(b) directly or indirectly sell, dispose of or promote or advertise such substance in the media, newspaper, or electronic media.

**17C Prohibition notices**

(1) Any person found to be guilty in terms of this Act is prohibited from participating in sport or any activities related to sport or recreation for a period determined by the adjudication authority.

(2) If such a person is a registered medical practitioner with the Health Professional Council of South Africa, his or her license may be revoked by the Council upon due processes.”

#### **17D. Performance management system**

(1) The Minister must, establish a performance management system to monitor and evaluate the performance of the chairperson and other members of Institute.

(2) The performance management system must-

- (a) set appropriate key performance indicators as a yardstick for measuring the performance as contemplated in subsection (1);
- (b) set measurable performance targets; and
- (c) set a procedure to measure and review the said performance at least once a year.

(3) As soon as is practicable after the appointment of the chairperson or other members of Institute, a performance agreement must be concluded between the Minister, the chairperson or other members of Institute.

(4) The evaluation of the performance of the chairperson or other members of the Institute must be conducted by a panel constituted by the Minister in writing, for that purpose.

(5) The panel contemplated in subsection (4) must, after an evaluation of the performance of the chairperson or other members of the Institute, submit a report to the National Assembly for its consideration.”

#### **17E. Annual report**

(1) The Institute must-

- (a) supply the Minister with such information and particulars as he or she may in writing require in connection with the activities of Institute;

- (b) as soon as may be reasonable practically after the end of each financial year, but in any event within three months of the end of the financial year, supply the Minister with a copy of –
- (i) the annual report of the Institute;
  - (i) the financial statements of the Institute referred to in section 40 (1) (e) of the Public Finance Management Act, 1999 (Act No. 1 of 1999 as amended); and
  - (ii) the Auditor - General 's report relative to the statements referred to in par. (ii).

(2) The Minister must table a copy of the annual report referred in subsection (1)(b)(i) in Parliament within 30 days after it has been received by him or her if Parliament is then sitting and , if Parliament is not sitting, within 14 days after the next ensuing sitting of Parliament.

### **17F. Auditing**

(1) In addition to the annual financial statements to be prepared in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999 as amended) referred to in section 17D (1)(b)(ii), the Institute must cause its books and accounts to be audited annually by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991 as amended) and appointed as auditor of the Institute in writing.

(2) The Institute must produce and lay before the auditor -

- (a) all books and accounts of Institute;
- (b) all vouchers in support of the said books and accounts; and
- (c) all other books and documents relating thereto which are in its possession or under its control.

(3) For the purposes of the audit, the auditor may –

- (a) hear and receive evidence under oath; and

(b) by written notice require any person to appear before him or her in person at a time and place stated in such notice so as to give information or produce any books or documents necessary for the audit.

(4) Any person appearing in terms of such a notice must be paid such witness fees and allowances as he or she would have been entitled to if such a person appeared in a magistrate 's court as a witness.

(5) The auditor must –

(a) disallow any payment as contemplated in subsection (4) that has been made without proper authority according to the law and report the disallowance to the Institute in writing;

(b) lay a charge of misconduct against a person who made or authorized the payment referred to in paragraph (a), in respect of any unauthorized payment or portion thereof that is not condoned by the Institute;

(c) lay a charge against the person responsible for the unauthorized payment -

(i) as much of any amount of any deficiency or loss arising from negligent or misconduct of that person as is not condoned by the Institute;

(ii) as much of any amount which ought to have been but was not brought into account by that person as is not condoned by the Institute: Provided that no amount must be condoned where such deficiency or loss is the result of theft or fraud by that person, and certify in every case that the amount so charged is correct.

(6) Any amount so charged and certified by the auditor must be paid by the person against whom it has been charged to the Institute within 14 days after the charge was certified by the auditor, failing which it may be recovered from that person by Institute as a debt

(7) It shall be the duty of the auditor, in addition to his or her ordinary duties as an auditor, to certify on an annual basis whether or not, in his or her opinion-

- (a) the accounts of Institute are in order;
- (b) such accounts present a true and correct view of the financial position of Institute and its transactions;
- (c) due provision has been made for the redemption and repayment of loans raised by the Institute;
- (d) the value of the assets of the Institute has been correctly stated; and
- (e) all of his or her requirements and recommendations as auditor have been complied with and carried out by the Institute.

(8) All expenses of or incidental to any audit must be borne by the Institute.

#### **17G Delegation and assignment by the Institute**

(1) Subject to subsection (2), (3), (4) and (5), the Institute may, by resolution, delegate any power and assign any duty conferred or imposed on it in terms of this Act to-

- (a) its chairperson;
- (b) the chief executive officer;
- (c) any member of the Institute in the position of the director or above;
- (d) a person appointed as inspector in terms of section 11E; or
- (e) any other person appointed by it.

(2) The Institute is not divested of any power it delegates or relieved of any duty it assigns.

(3) Such delegation or assignment-

- (a) may be made subject to conditions determined by the Institute; and
- (b) must be communicated to the delegate or assignee in writing.

(4) The written communication in terms of subsection (3) (b) must contain full particulars of the matters being delegated or assigned and must specify the conditions, if any, referred to in subsection (3) (a).

(5) The Institute may, by resolution-

(a) amend or revoke a delegation or assignment made in terms of subsection (1); or

(b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made by the delegate or assignee with regard to a delegated or assigned matter, and decide the matter itself.

(6) (a) The chief executive officer may delegate any power or duty conferred or imposed on him or her to any staff member of the Institute, subject to any conditions imposed by the Institute, and subsections (2) to (5) apply with necessary changes to such delegation.

(b) A delegation under paragraph (a) does not prevent the chief executive officer from exercising the power or performing the duty in question himself or herself.

### **Short title**

**18.** This Act is called the South African Institute for Drug – Free Sport Act of 2020.