

THE KILIFI COUNTY BETTING, GAMING AND LOTTERIES BILL, 2016

Arrangement of sections

PART I— PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Application of the Act restricted to the county.
- 4—Application of the national Betting, Gaming and Lotteries Act.
- 5—Objects of the Act.

PART II— COUNTY BETTING CONTROL AND LICENSING BOARD

- 6—Establishment of the Betting Control Board.
- 7—Functions of the Board.
- 8—Powers of the Board.
- 9—Application for licences and permits.

PART III – BETTING CONTROL AND LICENSING AND TAXES

- 10—Grant of a licence
- 11—Provisional licence
- 12—Gaming tax payable by casinos.

PART IV—MISCELLANEOUS

- 13—Regulations.
- 14—Transitional.

THE KILIFI COUNTY BETTING, GAMING AND LOTTERIES BILL, 2016

A Bill for

AN ACT of the County Assembly of Kilifi to provide for the control and licensing of betting and gaming premises; for the imposition and recovery of tax on betting and gaming; for the authorizing of public lotteries in the County; and for connected purposes.

ENACTED by the County Assembly of Kilifi, as follows –

PART I — PRELIMINARY PROVISIONS

1. This Act may be cited as the Kilifi County Betting, Gaming and Lotteries Act, 2014 and shall come into operation on such date as the county executive committee member responsible for trade, may in consultation with the Governor, appoint.

Citation
Commencement and

2. (1) In this Act, except where the context otherwise requires:

Interpretation.

“executive committee member” means the executive committee member responsible for trade;

“pool betting” means the making of bets (other than bets made by means of totalisator), whether the bets are made on the system known as a fixed odds betting or otherwise, by a number of persons on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons;

“pool betting scheme” means a scheme involving the receiving or negotiating of bets made by way of pool betting;

“premises” includes any place, and any vessel;

“tax” means any charges, fees, levies or impositions imposed under this Act;

“the Board” means the Betting Control and Licensing Board established under section 3;

“to bet” means to wager or stake any money or valuable thing by or on behalf of any person or, expressly or impliedly to undertake, promise or agree to wager or stake by or on behalf of any person, any money or valuable thing on a horse race, or other race, fight, game, sport, lottery or exercise or any other event or contingency;

“totalisator” means the instrument, machine or contrivance commonly known as a totalisator, or any other instrument, machine or contrivance of a similar nature, or a scheme for enabling any number of persons to make bets on any event or contingency whatsoever with one another or principles of a similar nature;

“winnings” includes winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

“gamming” means playing a game of chance for winning a sum of money (or money’s worth) whither or not other player(s) are at risk of losing money (or money’s worth)

“lotteries” includes contests in which tokens are distributed or sold, the winning token or tokens being secretly predetermined or ultimately selected in a random drawing.

3. This Act shall apply to all betting activities, gaming and lotteries within Kilifi County but shall not extend to such activities when carried out as national betting, Gaming and Lotteries as contemplated under the Fourth Schedule to the Constitution.

Application

4. (1) The provisions of the national Betting, Lotteries and Gaming Act shall apply to any matter relating to betting, lotteries and gaming to the extent that this Act does not make provision for any particular matter.

Application of Cap 131
Laws of Kenya

(2) Without prejudice to the generality of subsection (1), the national legislation shall apply in respect to—

- (a) offences created under that national legislation and the punishment prescribed therefore;
- (b) prohibitions against certain types of activities;
- (c) the regulation of certain activities, except that such regulation shall be carried out solely by the institutions of Kilifi County where such activities fall within the boundaries of county.

5. The objects of this Act are to—

Objects of the Act

- (a) give further effect to paragraph 4 of the Fourth Schedule of the Constitution which mandates the county government with the function of betting control and licensing;
- (b) to ensure that the national government policy on the control of betting as set out in the national legislation is implemented at the county level in accordance with the requirements of the Constitution to the effect that Government at either level shall among other things, as appropriate, implement the legislation of the other level of government; and (4) For purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (2) and (3).
- (c) to provide for the county institutions and for procedures applicable to the control and licensing of betting within the county.

PART II— COUNTY BETTING CONTROL AND LICENSING BOARD

6. (1) There is established the Kilifi County Betting Control and Licensing Board. Before the County Public Service Board makes an appointment under this section, the person(s) appointed shall be required to declare any conflict of interest in betting undertakings in Kenya.

Establishment of the
betting control board.

(2) The Board shall comprise—

- (a) a chairperson, appointed by the County Public Service Board;
- (b) the chief officer responsible for finance;
- (c) the head of the county inspectorate services;
- (d) six persons appointed by the Governor who shall be persons conversant with trade and financial matters respectively.

(3) The Governor shall appoint a qualified county public officer from any County department who shall be secretary and Chief Administrator of the Board for a period of three years.

(4) Before the Governor makes an appointment under this section, the Governor may require the person to be so appointed to declare whether that person has any, and if so what, financial interest in any betting undertaking operating in Kenya.

(5) The members referred to in paragraphs (a) and (d) of subsection (1) shall hold office for a period of three years from the date of their appointment, but shall be eligible for re-appointment.

(6) In the event of the chairperson being absent from any meeting of the Board, the members present shall choose one of their member to act as chairperson for that meeting.

(7) At all meetings of the Board, the chairperson or the member chosen to act as chairperson under subsection (6) together with three other members of the Board shall form a quorum.

(8) Meetings of the Board shall be held at least once every month and at such other times, on such occasions and at such places as the chairperson may determine.

(9) The chairperson or the member chosen to act as chairperson under subsection (6) shall have an original vote and, in the case of equality of votes, shall also have a casting vote.

(10) The Board may co-opt any person or persons whose assistance or advice it may require to serve on it for such length of time as it thinks fit, but a person so co-opted shall not be entitled to vote at any meeting of the Board or be

counted as a member for the purpose of forming a quorum.

(11) The County Public Service Board, with the approval of the County Executive Committee Member in charge of Trade, Industrialization, Cooperative development, Tourism and Wildlife, shall recruit such persons to act as officers and servants of the Board so as to enable it to discharge its duties under this Act.

(12) The chairperson, members, officers and servants appointed under this section shall be paid out of the moneys provided for that purpose by the County Government such salaries, remuneration and allowances, if any, as the County Public Service Board may determine.

(13) All permits and licences issued under this Act and all communications from the Board shall be through the chairperson or any member duly authorized by the chairperson, notification of that authorization being published in the County *Gazette* by the chairperson.

(14) The Board shall submit to the County Assembly for publication quarterly report of the proceedings of the Board containing particulars with respect to such matters as the County Assembly may direct.

7. (1) The functions of the Board shall be to—

Functions of the Board.

- (a) advise the County Department of Trade, Industrialization, Cooperative development, Tourism and Wildlife generally on the betting control and licensing policy within Kilifi County;
- (b) liaise with the Kenya Police Service to ensure the enforcement of the law as contained in this Act;
- (c) generally administer this Act and any relevant provision on betting control;
- (d) perform any other function given by this Act or by any other written law.

8. (1) The Board shall have power—

Powers of the Board.

- (a) to issue licences and permits in accordance with this Act and any regulations made thereunder;
- (b) the Board shall not suspend a licence or permit for more than fourteen days during the subsistence of a licence or permit and shall not vary or cancel a licence or permit without giving the licensee or permit-holder an opportunity to show cause against the variation or cancellation; and
- (c) to inquire into complaints against licencees or permit-holders

(2) Subject to this Act and to any general or special direction by the County Department of Trade, Industrialization, Cooperative development, Tourism and Wildlife, the Board shall regulate its own procedure.

(3) The Board may authorize the chairperson to exercise on its behalf such powers as it may from time to time specify, at any time when it is not meeting; but the exercise of those powers shall, to the extent required by the Board, be reported by the chairperson without unreasonable delay to a meeting of the Board.

9. (1) A person who desires to obtain, renew or vary a licence or permit under this Act shall make an application to the Board in the form and manner prescribed.

Application for licences
and permits

(2) On receipt of an application under subsection (1), the Board may make such investigations or require the submission of such declaration or further information as it may deem necessary in order to enable it to examine the application.

(3) After making investigations and considering any information or declaration as may have been required in terms of subsection (2), the Board may either grant, renew or vary a licence or permit or refuse a licence or permit or renewal or variation thereof without reason given:

Provided that no licence or permit shall be issued under this Act unless and until the Board has certified that the applicant is fit to hold the licence or permit and that the premises, if any, in respect of which the application is made are suitable for the purpose;

(4) A person who knowingly makes a false statement or declaration in an application for, or a renewal or variation of, a licence or permit shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding two years or to both.

PART III – BETTING CONTROL AND LICENSING AND TAXES

10. (1) The Board shall, after considering the application under section 9, indicate in writing whether it objects to the grant of the licence applied for.

Grant of Licence

(2) Where the Board has no objection with the application under section 9, it shall grant a licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in such form as may be prescribed and subject to such conditions as the Board may consider fit.

(4) Where the Board is not satisfied with the application under subsection (1), it may—

(a) reject the application by giving reasons and notifying the applicant accordingly within thirty days of the decision to reject; or

(b) make comments and recommendations thereon and return it to the Applicant within thirty days.

(5) The applicant to whom the application is returned under subsection (4)(b) may re-submit a revised application within two months of the date of

notification.

(6) On receipt of any revised application under subsection (5), the Board shall, within thirty (30) days determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(7) Where the Board grants a licence under this section it shall, publish the grant in the Gazette.

(1) Where premises are about to be constructed or reconstructed or are in the course of construction or reconstruction for the purpose of being used for betting on such premises, any person having an interest in the premises may apply in the prescribed form to the Board for an assurance that, on the completion of the construction or reconstruction, a licence of such type as specified in the application will be granted in respect of such premises.

Provisional Licence

(2) The provisions of sections 9 and 10 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(3) The Board may, subject to such reasonable conditions as it may therein include, give the applicant an assurance in the prescribed form that, on the completion of the premises, a licence of the type specified therein will be granted or it may refuse to give such an assurance.

(4) Where such an assurance has been given under subsection (3), the Board may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under subsection (2) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of such type as specified in the assurance in respect of the premises.

(5) Any assurance given under subsection (3) shall become ineffective and the Board shall not issue a licence if, between the date of the giving thereof and the date of completion of the premises, the applicant becomes a person to whom in accordance with section 11, a licence may not be granted.

12. There shall be paid by each casino a gaming tax in respect of cumulative winnings for each month at such rate as may be determined by the executive committee member responsible for trade.

Gaming Tax payable by
casinos

PART IV—MISCELLANEOUS

13. (1) The executive committee member may, with the approval of the County Assembly make regulations to enhance the effective implementation of the provisions of this Act.

Regulations

(2) Without prejudice to provide for the procedures in accordance with subsection (1), the regulations may provide for—

- (a) the procedure of application for licenses;
- (b) the requirements with respect to documentation that may be required

with the applications for licenses;

- (c) expenses of the Board;
- (d) Any other matter for the effective implementation of the business of the Board.

14. The executive committee member responsible for trade and the executive committee member responsible for finance shall take joint action to ensure expeditious transition to enable the full operationalization of this Act and for that purpose shall jointly make the necessary regulations and put in place the necessary administrative arrangements.

Transitional

MEMORANDUM OF OBJECTS AND REASONS

The Constitution mandates and empowers the County Governments with the responsibility of betting control and licensing.

Further, the purpose of this Bill is to ensure that the function of betting control and licensing is immediately and effectively implemented at the county level and those mechanisms are provided for this in county legislation.

The objects of the proposed law as set out in clause 4 are—

- (a) give further effect to paragraph 4 of the Fourth Schedule of the Constitution which mandates the county government with the function of betting control and licensing;
- (b) to ensure that the national government policy on the control of betting as set out in the national legislation is implemented at the county level in accordance with the requirements of the Constitution to the effect that Government at either level shall among other things, as appropriate, implement the legislation of the other level of government; and
- (c) to provide for the county institutions and for procedures applicable to the control and licensing of betting within the county.

The County Government is at liberty to establish its own institutions that will manage the licensing and control of betting. These institutions are also expected to implement the national government policy on the control and regulation of betting.

This Bill provides for the County Betting Licensing and Control Board to be chaired by a citizen resident in the county and who shall be appointed by the County Public Service Board.

The other members will be drawn from various sectors and stakeholder groups and the county public service.

There would be need for collaboration between the two governments on this issue especially on enforcement.

The Bill also provides for the gaming tax of twelve and a half percent to be levied on each casino in respect of cumulative winnings for each month. This is currently collectible by the national government and since this activity now falls within the powers of the county government, the tax is to be collected by the county government.

Dated the 7th March, 2016.

HON. SILAS MZUNGU CHITIBWI,
*Chairperson, Planning, Trade and
Cooperatives Committee.*