

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Kenya Gazette Supplement No. 1 (Trans Nzoia County Bills No. 1)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TRANS NZOIA COUNTY BILLS, 2018

NAIROBI, 13th March, 2018

CONTENT

Bill for Introduction into the Trans Nzoia County Assembly —

PAGE

The Trans Nzoia County Alcoholic Drinks Control Bill, 2018 1

NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

**THE TRANS NZOIA COUNTY ALCOHOLIC DRINKS CONTROL
BILL, 2018**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Objects and Purpose of Bill.

PART II—ADMINISTRATION

- 4—Establishment of the County Alcoholic Drinks Control Board.
- 5—Establishment of the Sub County Alcoholic Drinks Control Committee
- 6—Establishment of the County Alcoholic Drinks Control Appeals Committee.
- 7—Establishment of the County Alcoholic Drinks Control Fund.
- 8—Administration of the Fund.

PART III—LICENSING

- 9—Control of alcoholic drinks.
- 10—Application for a Licence.
- 11—Types of Licences.
- 12—Grant of a licence.
- 13—Licence for premises.
- 14—Persons not eligible for a licence.
- 15—Validity and renewal of licence.
- 16—Licence to body corporate.
- 17—Transfer of licence.
- 18—Non Renewal of Licence.
- 19—Licence to be displayed.
- 20—Cancellation of licence.
- 21—Employment for sale of alcoholic drinks.

PART IV—GENERAL REQUIREMENTS AND OFFENCES

- 29—Drunken behaviour.

- 23—Access by persons under the age of eighteen years.
- 24—Reports by Public Health officers and Police Officers.
- 25—Conformity with requirements.
- 26—Display of signs.
- 27—Vending machines.
- 28—Selling in sachets.
- 29—Information required on packages.

PART V—SALE AND CONSUMPTION

- 34—Disorderly conduct.
- 31—Breach of licence.
- 32—Sale to authorized officer.
- 33—Debt from sale of alcoholic drinks
- 34—Non-disclosure of conviction.
- 35—Sale without licence.
- 36—Sale of adulterated alcoholic drinks.
- 37—Proof of sale.
- 38—Burden of Proof.
- 39—Endorsement of conviction on licence.
- 40—Forfeiture of licence upon conviction.

PART VI—ADVERTISEMENT AND PROMOTION

- 41—Prohibition of promotion and advertisement.
- 42—Promotion at underage events.
- 43—Encouraging consumption of alcoholic drinks.
- 44—Display of notices.

PART VII—ENFORCEMENT

- 43— Authorized officers.
- 46—Places authorized officers may enter.
- 47—Powers of officers.
- 48—Use of records.
- 49—Entry of dwelling place.

- 50— Court to issue warrant.
- 51— Use of force.
- 52— Certificate of analysis.
- 53— Assistance of officers.
- 54— Obstruction of authorized officers
- 55— Seizure by authorized officers.
- 56— Order for restoration by Court.
- 57— General Penalty.
- 58— Nature of offences.
- 59— Nature of evidence in proceedings.

PART VIII—EDUCATION AND INFORMATION

- 60— County Government to undertake information, education and communication.
- 61— Integration of alcohol matters into syllabuses.
- 62— Integration of alcohol matters into healthcare.
- 63— Establishment of rehabilitation facilities and programs.

PART VIII—MISCELLANEOUS

- 60— Regulation.
- 61— Transitional.

FIRST SCHEDULE—Types of Licence

SECOND SCHEDULE—Licence hours

THIRD SCHEDULE—WARNING MESSAGES

FOURTH SCHEDULE—FORMS

**THE TRANS NZOIA COUNTY ALCOHOLIC DRINKS CONTROL
BILL, 2018**

A Bill for

**AN ACT of the County Assembly of Trans Nzoia to provide for the
licensing and regulation of the production, sale, distribution,
consumption and outdoor advertising of alcoholic drinks, and for
connected purposes**

ENACTED by the Trans Nzoia County Assembly as follows—

Short title

1. This Act may be cited as the Trans Nzoia County Alcoholic Drinks Control Act, 2018.

Interpretation

2. In this Act, unless the context otherwise requires—

“Accounting Officer” means the accounting officer of the relevant agency;

“alcohol” means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas;

“alcoholic drink” includes alcohol, spirit, wine, beer traditional alcoholic drink, and any one or more of such varieties containing one-half of one per cent or more of alcohol by volume, including mixed alcoholic drinks, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being;

“appeals committee” means the County Alcoholic Drinks Appeal Committee established under section 6;

“authorized officer” means an authorized officer within the meaning of section 45;

“authority” means the National Authority for the Campaign against Alcohol and Drug Abuse established under the National Authority for the Campaign Against Alcohol and Drug Abuse Act 2012

“Board” means the County Alcoholic Drinks Control Board;

“Cinema” has the meaning assigned to it in the Films and Stage Plays Act (Cap. 222);

“County” means the Trans Nzoia County;

“Directorate” means the County Directorate of Trade;

“Director” means the County Director of Trade;

“Entity” includes a company, corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not; “Executive Member” means the County Executive Member responsible for Commerce and Industry;

“Fund” means the Alcoholic Drinks Control Fund established by section 7;

“Governor” means the Governor of Trans Nzoia County;

“health institution” means a hospital, nursing home, convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

“illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity;

“Licensee” means a person who holds a license granted under this Act;

“locality” unless where context otherwise provides to the contrary, means a city, municipality, town, urban area, sub county or ward as the case may be;

“manager” in relation to—

- (a) a cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;
- (b) a health institution, includes the owner or a person in charge or in control of the health institution;
- (c) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified building;

“manufacture” means the brewing, distilling or tapping or any processing of or intermediate processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in Kenya;

“manufacturer”, in respect of an alcoholic drink, includes any person or entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“package” means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored;

“retailer” means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers;

“sell” includes—

- (a) barter or exchange without use of money;
- (b) offer or expose for sale, barter or exchange without use of money;
- (c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit; supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain;

“Sub County Committee” means the sub-county Alcoholic Drinks Regulation Committee appointed under section 7 of the Act;

Object and purpose of Act

3. The object and purpose of this Act is to provide for the licensing of alcoholic drinks by the County Government pursuant to part II of the Fourth Schedule of the Constitution so as to control the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to—

- (a) protect the health of the individual in the light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks
- (c) protect the consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks and other adulterated chemicals;
- (d) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;
- (e) inform and educate the public on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
- (f) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (g) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks
- (h) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumption of alcoholic drinks

- (i) ensure there is public participation in the management of alcohol and infrastructure development

PART II – ADMINISTRATION

Establishment of the County Alcoholic Drinks Control Board

4. (1) There is established the County Alcoholic Drinks Control Board which shall be a body corporate with perpetual succession capable of entering into contracts, suing and being sued on its own name.

(2) The County Alcoholic Drinks Control Board shall consist of the following—

- (a) a representative from the Office of the Governor;
- (b) the Executive member for the time being responsible for Commerce and Industry, or his(her) appointee;
- (c) the Executive member for the time being responsible for Health, or his(her) appointee;
- (d) the Executive member for the time being responsible for Social Services, or his(her) appointee;
- (e) the Executive Member for the time being responsible for physical planning in the County, or his(her) appointee;
- (f) the Officer Commanding Police Services in the County;
- (g) the Officer responsible for the coordination of national government functions in the County;
- (h) Six residents of the County, appointed by the Governor, recommended by the Executive Member responsible for commerce and Industry, one of whom shall be appointed as the chairperson, and shall include the following -
 - (i) a representative from faith based or religious organization;
 - (ii) one person representing the bar owners in the county;
 - (iii) a representative from a National Campaign Against Drug Abuse Authority;
 - (iv) an advocate of high the Court of Kenya of not less than seven years standing;
 - (v) a woman representative from a reputable women organization in the County; and
 - (vi) a representative from persons with disability
- (i) The Director of Trade, as an *ex officio* member of the Board

Functions of the Board

The functions of the Board shall be to—

- (a) Support and facilitate sub-county committees and the appeals committee in carrying out their functions;
 - (b) Carry out public education on alcoholic drinks in the county directly and in collaboration with other public or private bodies and institutions;
 - (c) Facilitate citizen participation in matters related to alcoholic drinks control in accordance with the framework for citizen participation established under the Constitution of Kenya, County Government Act, the Urban Areas And Cities Act or any other relevant written law;
 - (d) Facilitate and promote in collaboration with other county and national government institutions the establishment of treatment and rehabilitation facilities and programs;
 - (e) Carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks and control;
 - (f) Develop in collaboration with other county national government departments strategies and plans for implementing this Act and control of alcohol abuse and any other relevant national legislation and coordinate and support their implementation;
 - (g) Advise the executive member generally on the exercise of his or her powers and performance of his functions under this Act and in particular on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
 - (i) In collaboration with other relevant county departments, prepare and submit alcoholic drinks status report bi-annually in the prescribed manner to the executive member which shall be transmitted to the county executive committee, the county assembly and the directorate;
 - (j) Recommend to the executive member and participate in the formulation of laws and regulations related to alcoholic drinks;
 - (k) Monitoring and evaluating the implementation of this Act including the operations of the sub county committees and advising the executive member on necessary measures to be adopted;
 - (l) Carry out other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the executive member;
- (4) The members of Board appointed in accordance with sub-section (2) (h) (i-vi) shall serve in the Board for a term of three years, and are eligible for reappointed for only one other term.

(5) The Executive Member and the County Public Service Board shall ensure that the Board has adequate human, financial and any other appropriate resources to enable it carry out the functions assigned under this Act

Establishment of the Sub County Alcoholic Drinks Control Committee

5. (1) There shall be, for every Sub County, a committee to be known as the Sub County Alcoholic Drinks Control Committee.

(2) The Sub County Committee shall consists of—

- (a) the Sub County administrator appointed under the County Government Act who shall be the Chairperson;
- (b) the Sub County Public Officer of Health;
- (c) the Officer Commanding Police Services in the Sub County;
- (d) a representative from the Directorate of Trade who shall be the secretary;
- (e) the officer responsible for the Coordination of National Government functions in the Sub County;
- (f) the officer for the time being responsible for Physical Planning in the Sub County;
- (g) the Officer for the time being responsible for Social services in the Sub County;
- (h) four residents of the Sub County, recommended by the Executive Member, and appointed by the Governor, one of whom shall be—
 - (i) a youth representative from a reputable youth organization in the County
 - (ii) a woman representative from a reputable women organization in the County
 - (iii) a representative from a Faith Based Organization; and
 - (iv) a person with disability;

(3) The persons appointed under sub-section (g) must be persons of unquestionable integrity and moral standing in the society.

Functions of the Sub County Committee

In carrying out its functions the Sub County committee shall -

- (a) vet applications and recommend to the Board for issuance of licenses in accordance with this Act;
- (b) temporarily withdraw or suspend a license until the Board makes a determination of the same;

- (c) make inspection or other visits to premises at such times as it may deem appropriate;
- (d) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Governments Act, the Urban areas and Cities Act or any other written law;
- (e) collaborate with ward administrators, councils appointed under the County Government Act 2012, and the officers in charge of coordination of national government functions in the wards and villages;
- (f) collaborate with similar committees in other Counties for effective implementation of the Act; and
- (g) perform such other functions as may, from time to time be allocated to it by the Executive Member concerned.

(5) The authorized officer specified under section 45 of the Act or any person designated by the Authority shall attend the meetings of the Sub County Committee in an ex officio capacity.

(6) A person shall not be a member of the Sub-County committee if such a person is—

- (a) the holder of a license in the County under this Act;
- (b) a partner in a firm or director or shareholder of a company or other body which is the holder of a license in the county under this Act;
- (c) directly or indirectly employed as an agent of a person, firm or company which is the holder of a license in the county under this Act;
- (d) undischarged bankrupt;
- (e) a person who has been convicted of an offence under this Act or of a felony.

(7) The members of Sub County Committee appointed in accordance with sub-section (2) (g) (i-iv) shall serve in the Sub County Committee for a term of three years, and are eligible for reappointed for only one other term.

(8) The Board shall provide secretariat services for Sub County Committees

Establishment of the County Alcoholic Drinks Control Appeals Committee

6. (1) There is established the County Alcoholic Drinks Control Appeals Committee

(2) The members to the Appeals Committee shall be appointed by the Governor, with recommendation from the Executive member responsible for Commerce and Industry

(3) The Appeals committee shall consist of—

- (a) County Director of Trade, who shall be the secretary of the committee;
- (b) A representative from the National Campaign Against Drug Abuse Authority;
- (c) A representative from the Faith based Organization within the County
- (d) the Officer responsible for the coordination of national government functions in the County;
- (e) an advocate of High Court of not less than seven years standing

(4) No one member of the Board shall also be a sitting member of the Appeals Committee

(5) Notwithstanding the provision of subsection (4), the authorized officer specified under section 45 of the Act or any person designated by the Authority shall attend the meetings of the Sub County Committee in an ex officio capacity.

(6) An applicant whose application for a new license, to renew or transfer a license has been refused or cancelled may within seven days of such refusal request in writing the review of such refusal to the Appeals committee

(7) A person aggrieved by the decision of the Sub-Committee to grant a new license or to renew a license may request in writing the review of such decisions

(8) Upon receipt of the request under this section, the Appeals committee shall notify the Sub County committee of the pending review

(9) The Appeals committee shall within twenty one days consider and make a final determination on the request for review

Functions of the Appeals Committee

In carrying out its functions the Appeals committee shall—

- (a) Receive complains from the public on matters pertaining to, but not limited to licensing of, alcoholic drinks within the county
- (b) Deliberate on the complains
- (c) Advise the Board on whether to-
 - (i) Dismiss the request for review in its opinion if the request is frivolous or vexatious
 - (ii) Uphold the decision of the Sub County committee

- (iii) Annul the decision of the Sub County committee
- (iv) Give direction to the Sub County committee with respect to any action to be taken
- (v) Make any other declaration as it may deem fit

Establishment of the County Alcoholic Drinks Control Fund

7. (1) There is established a fund to be known as the County Alcoholic Drinks Control Fund.

(2) The Fund shall consist of—

- (a) such money as may be appropriated by the county assembly;
- (b) such license and other fees as may be payable under this Act;
- (c) such sums as may be realized from property forfeited to the county government under this Act;
- (d) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
- (e) all other sums which may in any manner become payable to, or vested in the Board;

(3) The Fund shall be used for meeting the capital and recurrent expenditures relating to—

- (a) carrying out the functions of the Board stipulated under section 4 (3) of the Act;
- (b) assisting in the operations of the Sub-County Committees and the Appeals Committee;
- (c) any other matter incidental to the matters stated in paragraphs (a) and (b)

(4) Where, in terms of subsection (2)(b), any immovable property is assigned to the Fund, the Board shall deal with the property in such manner as he thinks fit and may sell the property and use the proceeds of sale for the purposes for which the monies are meant

(5) A part of the receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall be paid into the County Treasury.

(6) Pursuant to sub-section (5), such payment made to the County Treasury shall not exceed fifty percent of such receipts, earnings or accruals of the Fund

Administration of the Fund

8. (1) The Fund shall be administered by the County Alcoholic Drinks Control Board.

(2) The day-to-day administration of the Fund shall be vested with the Director of Trade, with approval of the Executive Member responsible for commerce and Industry.

(3) The Director may, with approval of the Executive Member for the time being responsible for Commerce and Industry, invest or place on a deposit account any of the monies of the Fund and any interest on monies so invested or deposited shall be placed to the credit of the Fund.

(4) The Board shall—

- (a) supervise and control the administration of the Fund;
- (b) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning use of expenditure;
- (c) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (d) prepare, sign and transmit through the Executive Member to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the County Treasury may from time to time direct;
- (e) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and
- (f) designate such staff as may be necessary to assist in the management of the Fund provided that such staff shall work in the Board.

PART III—LICENSING

Control of alcoholic drinks

9. (1) No person or entity shall—

- (a) brew, manufacture or otherwise produce;
- (b) sell, distribute, repackage or dispose of or deal with;
- (c) import;
- (d) auction;
- (e) sell, or dispose of, by a deceased person's legal person representative;
- (f) sell, or dispose of, by a trustee in bankruptcy;
- (g) sell, or dispose of, by a liquidator of a company;

any alcoholic drink in the county except under and in accordance with a license issued under this Act

(2) Any person who contravenes the provisions of sub section (1) commits an offence

(3) Subsection (1) shall not apply to—

- (a) the bona fide administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine, by a medical practitioner, a Veterinary surgeon registered under the Veterinary Surgeons Act (Cap. 366) or a pharmacist registered under the Pharmacy and Poisons Act (Cap. 244), of a medicine containing alcoholic drink;
- (b) the sale of spirituous or distilled perfume, or perfumery;
- (c) the sale of industrial alcohol;
- (d) the sale of alcoholic drink to the members only of any canteen, club, Institute, mess or similar institution of the disciplined forces for reasons other than for personal profit.

Application for License

10. (1) A person or entity intending to brew, manufacture, import, repackage, distribute or deal in any alcoholic drink in the county or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Sub County Committee in the Sub County where the premise is to be situated and shall pay a prescribed fee.

(2) The application under subsection (1) shall contain —

- (a) comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale;
- (b) for a manufacturer's license, certification from the Kenya Bureau Standards;
- (c) such other matters as may be prescribed.

(3) The Sub County Committee shall, within twenty-one days after the submission of application for a license, prepare a notice setting forth the names of all applicants, the types of licenses applied for, the premises in respect of which the licenses are applied for and the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—

- (a) published at the Office of the Sub County Administrator for period of not less than twenty one consecutive days;
- (b) posted in some conspicuous place at or near the applicant's premises;

- (c) send to the Inspector General of Police, or to such police officer as the Inspector General of Police may have notified the Governor that the person has been appointed to receive it on his behalf;
 - (d) send to the Sub County Public officer of health of the Sub County in which the premises in respect of which the licenses are applied for are situated; and
 - (e) send to the Sub County physical planning officer.
- (4) The Inspector General of Police or, as the case may be, or the police officer appointed by him for that purpose; the Sub County public health officer and the Sub County physical planning officer shall, before the hearing of any application under this section, report as fully as possible to the Sub County Committee on all matters which may be relevant to the consideration of the application.
- (5) Any person may lodge objection to an application.
- (6) Every objection to an application shall be made in writing to the Secretary of the Sub County Committee, and the objector shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.
- (7) A Sub County Committee may of its own motion take notice of any matter or thing which, in the opinion of the Committee, constitutes an objection to an application, whether or not any objection has been otherwise lodged.
- (8) Where in respect of an application a Sub County Committee Acts in pursuance of subsection (7), the Committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, adjourn the hearing for such period, not being less than seven days, as the Sub County Committee considers necessary to enable the applicant to reapply thereto.
- (9) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub County Committee, and shall satisfy the Sub County Committee that there is need for the grant of a license of the type applied for in the particular locality in respect of which the application is made.
- (10) A Sub County Committee may require the personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary.
- (11) Any objector may appear personally or by an advocate at the hearing of the application.

(12) A Sub County may authorize, in writing, any person to appear before any Sub County Committee having jurisdiction in any part of the area within the jurisdiction of the Sub County for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.

(13) Where a Sub County Committee considers it necessary to take evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the chairman shall be empowered to administer oaths.

(14) For the purposes of Chapter XI of the Penal Code (Cap.63) (which concerns offences relating to the administration of justice), all proceedings before a Sub County Committee shall be deemed to be judicial proceedings.

(15) Every Sub County Committee shall maintain records of all its proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced and the decision of the court thereon:

Provided that no decision shall be quashed on appeal solely by reason of any omission or error in such record, unless it appears that a substantial miscarriage of justice has thereby been occasioned.

(16) The Sub County Committee shall, within twenty-one days of receipt of the application under subsection (1), record the application and assess the same on the basis of the objections received if any and the interests of the Sub County, and shall ensure that —

- (a) The available premises are suitable with regard to the nature of the license being sought;
- (b) The premises conform to the prescribed requirements of the occupational health and safety regulations;
- (c) The applicant possesses the infrastructure and equipment necessary to carry out the business applied for;
- (d) The applicant for a license to brew, distill, package or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under standards Act or any other relevant written law and;
- (e) The premise has sufficient number of competent staff in line with such norms as may be prescribed.

Types of licenses

11. (1) The several licenses which may be granted under this Act shall be those specified in the First Schedule, and the provisions of that Schedule and of any rules made under this Act shall have effect in relation to the respective licenses therein specified.

(2) Save as otherwise provided in this Act, no license may be granted so as to be applicable to more premises than one.

(3) The Board shall, when a license is granted, renewed, withdrawn or cancelled, include in the license a sufficient description of the licensed premises.

Grant of a license

12. (1) The powers to grant a license applied for under this Act lies with the Board

(2) Where the Sub County Committee has no objection to the application under section 10, it shall recommend to the Board for grant a license to the applicant upon payment of the prescribed fee

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

(4) Where the Sub County Committee is not satisfied with the application under section 10 it may

(a) reject the application giving reasons and notify 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 fourteen days.

(5) The applicant to whom the application is returned under subsection (4) (b) may —

(i) lodge an appeal with the Appeals committee within seven days of the date of notification, which will make a determination within fourteen days;

(ii) make an application for license in the subsequent call for applications for new licenses

(6) On receipt of any revised application under subsection (5)(i), the Board shall, within fourteen days issue a license.

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

License for premises

13. (1.) The Board shall not grant a new license for the sale of an alcoholic drink to be consumed on the premises unless the Sub County Committee is satisfied —

(a) That it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licenses have already been granted is insufficient for the

requirement of the locality given the population density per square kilometer and the permitted maximum number of such premises as shall be prescribed by law:

Provided that no license shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools or any residential area as have been demarcated by or under the relevant written laws;

- (b) that the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements;
- (c) that the premises in respect of which the application is made are located at least three hundred meters from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years;

(2.) The Sub County Committee shall not recommend for the grant of a license for the sale of an alcoholic drink in -

- (a) a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years;
- (b) an outlet or premises located within a fuel station or fast food restaurant unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years;

(3.) Despite sub section (1) the Sub County committee may recommend the issuance of a license to premises located within 300 meters of any nursery, secondary, primary or other learning institution for persons under the age of 18 years only if—

- (a) the premises do not share a wall with the institution and are sealed off by a physical and non transparent barrier that ensures zero visibility of the premise from the locality of the institution;
- (b) the premises displays on its outside any of the prescribed health messages in a clear and visible manner;
- (c) the premises do not bear any out-door alcoholic drinks promotion or advertisements;
- (d) the applicant does not engage in activities that interfere with learning in the institution or activities that are calculated to attract persons under the age of 18 years to the premises;

Persons not eligible for a license

14. The Board shall not grant a new license or transfer a license to any person who—

- (a) has failed to satisfy the Sub County Committee, if called upon to do so, of his good character and standing in relation to the expectations in this Act; or
- (b) has been convicted of an offence under this Act or of any offence which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months or
- (c) in the case of a retail license, is not resident in Kenya; or
- (d) is under eighteen years of age; or
- (e) is an undischarged bankrupt.

2. The Board may refuse to renew an existing license only when the Sub County Committee is satisfied that—

- (a) the licensee is not a fit and proper person to hold the license; or
- (b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the brewing, manufacture, distillation, repackaging, distribution or sale of an alcoholic drink for more than 3 times in one year; or
- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or
- (d) the business to which the license relates is conducted in a manner that is in breach of this Act, or any other rules and regulations for the time being in effect, or conditions set by the Sub County Committee; or
- (e) the conditions of the license have not been satisfactorily fulfilled; or
- (f) the premises to which the license relates are not in a proper state of repair, or are not provided with proper sanitary arrangements, or do not comply with the reasonable requirements of the Sub County Public Health officer and the owner of the premises or the licensee refuses or is unable to give satisfactory guarantees that the necessary repairs will be carried out, or due compliance effected, as the case may be, within a time specified by the Sub County Committee.

Validity and renewal of licenses

15 (1) Except as otherwise provided in this Act, a Board may, subject to this Part, grant, renew, transfer or remove a license, and may embody therein such conditions as it may deem appropriate, or it may refuse to grant, renew, transfer, withdraw or cancel a license.

(2) Every license and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Sub County Committee, the Board and the Appeals Committee.

- (3) Every grant of a license or its every renewal or transfer shall—
- (a) Be subject to the payment of such fee or fees as may be prescribed;
- (b) Expire at on—
- (i) the thirty first day of December each year if granted on first day of January the same year;
- (ii) the thirtieth day of June if granted on first day of July of the preceding year;
- (iii) after ninety days for the license issued under section 9 (1) (d), (e), (f) and (g).
- (c) Specify in the license the hours stipulated under the first schedule and as national legislation may provide within which the sale of alcohol is permitted and any other relevant conditions
- (4) Where an application for the renewal of a license has been made and the Board has not by the date of expiration of the license reached a decision thereon, such license shall continue in force until the decision of the Sub County Committee, or Appeals Committee is made known.
- (5) Where an application for a license has been refused, or a license has been cancelled, no subsequent application by the former applicant or licensee for a license of the same description shall be considered by the Sub County Committee during the period of six months from the date of such refusal or cancellation, except at the discretion of the Sub County Committee.

Licenses to body corporate

- (1) A license issued to a body corporate shall be issued in the name of the body corporate:

Provided that the Board may require prior disclosure of the directorship of the body corporate or refuse to grant a license to the body corporate if any of the directors does not qualify to be granted the license individually.

- (2) No transfer of a license issued to a body corporate shall be necessary on any change in the office of secretary, but any person for the time being holding such office shall be entitled to the privileges granted by, and shall be subject to the duties and liabilities imposed upon the holder of, such license.

Transfer of license

- 17.** (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his license, he may apply in writing to the Sub County Committee, which will recommend to the Director for the transfer of his(her) license to the purchaser or lessee or otherwise of

such premises, and the Board may, if it thinks fit, grant a transfer of such license.

(2) In the event of the death, bankruptcy or unsoundness of mind of a licensee, or in any similar event to which the Director declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager, as the case may be or any other person approved by the Director, to carry on the business of the licensee without any transfer or grant of a license either personally or by an agent approved by the Director.

(3) No further fee shall be payable in respect of a license granted under subsection (2) if, at the date of the grant, the license which was temporarily transferred was valid for the remainder of the period the license is valid.

(4) Every person to whom a license may have been transferred under Subsection (1), and every person permitted to carry on a business without a transfer or grant of a license in pursuance of subsection (3), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

Non-renewal of license

18. (1) If the renewal of a license is refused, the licensee shall, on payment of the proportionate part of the fee for the appropriate license, be entitled to a license of such description and for such period, not exceeding three months, as the Sub County Committee may consider necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such period to commence on the day after the last sitting of the Sub County Committee at which the renewal of his license has been refused, or on the day after the termination of his existing license, whichever day is the later.

(2) A license shall not be renewed if the licensee -

- (a) brews, manufactures, distills, produces, imports, repackages, sells or deals in anyway adulterated alcoholic drinks;
- (b) sells, supplies, or provides knowingly an alcoholic drink to persons under the age of eighteen years;
- (c) fails to observe public health and sanitation, and environmental provisions under any written law currently in force;
- (d) is found selling for direct consumption any alcoholic drink before or after the stipulated hours as per the license issued;
- (e) breaches or contravenes any other law, rules or regulations currently in force.

License to be displayed

19.(1) Every license shall be prominently and conspicuously displayed on the premises to which it relates.

(2) Any licensee who fails or neglects so to display his license commits an offence.

(3) Any person causing or permitting to be on his premises or on premises under his control any words, letters or sign falsely purporting that he is a licensee commits an offence.

Cancellation of license

20.(1) Upon receipt of a report made under section 27, the Sub County Committee shall—

(a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned therewith, informing him that at a meeting of the Sub County Committee to be held on a date to be specified, but not less than thirty days there from, the report will be considered by the Sub County Committee;

(b) send a copy of the report to every member of the Sub County Committee and to the Officer Commanding Police services in the Sub County;

(c) Inform the medical officer of health or the police officer, as the case may be, of the date upon which the Sub County Committee will consider the report, and require him to attend on the date specified.

(2) Any licensee concerning whom a report is to be considered may appear in person or by advocate before the Sub County Committee.

(3) The Sub County Committee, having duly considered the report and having heard the licensee, if he appears, may, if it thinks fit, recommend to the Board for cancellation of the license of the licensee reported upon, or it may make such an recommendation in respect of such license or the licensed premises specified therein as, in the opinion of the Sub County Committee, is necessary.

(4) Any person aggrieved by the decision of the Board upon recommendation of the Sub County Committee in regard to any such report may within fourteen days appeal against the decision to the Appeals Committee, or to Court.

(5) Where a licensee whose license has been cancelled under subsection (3) applies for appeal to the Appeals under subsection (4), his license shall not be deemed to be cancelled until the decision of the Appeals Committee is made known.

(6) The Board, on an appeal under this section, may confirm or reverse the decision earlier made on cancellation, or if such appeal is

dismissed by the Court, the licensee shall be entitled, on payment of the proportionate part of the fee for the appropriate license, to a license of such description and for such period, not exceeding three months, as the Board upon recommendation of the Sub County Committee may deem necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such license to run from the date of the decision of the Appeals committee or the Court.

Employment for sale of alcoholic drinks

21. (1) Notwithstanding the provisions of any other written law, no licensee shall employ a person under the age or apparent age of eighteen years, or knowingly employ a person who has been convicted of an offence under this Act or any other Act at any time in force regulating the sale of alcoholic drinks, to sell, control or supervise the sale of alcoholic drinks or to have the custody or control of alcoholic drinks on licensed premises.

(2) Where a licensee permits another person to manage, superintend or conduct day-to-day business of the premises in respect of which he is licensed, the licensee shall not be relieved off his duties and obligations under this act.

(3) Any person who contravenes the provisions of this section commits an offence.

PART IV—GENERAL REQUIREMENTS AND OFFENCES

Drunken Behaviour

22. (1) A licensee or an agent or employee of a licensee may refuse to admit to, and shall expel from, the premises to which his license relates any person who is drunk and disorderly, violent, or quarrelsome, or whose presence would subject the licensee to a fine or penalty under this Act.

(2) Any person referred to in subsection (1) who, on being requested by the licensee or his agent or employee, or by a police officer, to quit the licensed premises, refuses to do so, commits an offence.

(3) On the demand of a licensee or his agent or employee, a police officer shall expel or assist in expelling from the licensed premises the person referred to in subsection (1).

(4) A licensee who permits any drunkenness leading to violent, quarrelsome or riotous conduct to take place on the premises to which the license relates commits an offence.

Access by persons under age of eighteen years

23. (1) No person holding a license to manufacture, store or consume alcoholic drinks under this Act shall knowingly allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed.

(2) A person shall not enter or gain access to an area referred to under sub section (1) if such a person is in custody or accompanied by a person under the age of 18 years

(3) Any person who contravenes the provisions of subsections (1) and (2) commits an offence.

(4) Subject to subsection (3), a person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(5) Notwithstanding the provisions of subsection (1), it shall be a defence to an offence under this section if it is established that the accused person attempted to verify that the young person was at least eighteen years of age by asking for and being shown any of the documents specified in subsection (4) for the purpose of verifying the age of the young person and believed, on reasonable grounds, that the documentation was authentic.

(6) For the purposes of this section, the following documentation may be used to verify a person's age—

- (a) a national identity card issued by the Republic of Kenya;
- (b) a passport issued by the Republic of Kenya or any other country;
or
- (c) any other documentation as the Executive Member may prescribe.

Reports by Public Health officers and police officers

24. (1) A Public Officer of health within whose jurisdiction the premises falls, shall report to the Sub County Committee any licensed premises which are deficient in their state of sanitary or drainage conditions, or which are in bad repair.

(2) A Public Officer of Health or any person authorized by him in writing in that behalf may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

(3) A police officer not below the rank of Inspector shall report in writing to the chairperson of the appropriate Sub County Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his license.

(4) A police officer may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

Conformity with Requirements**25. (1) No person shall—**

- (a) brew, manufacture, distill, produce, import, repackage, distribute, sell or deal in; alcoholic drink in the County that does not conform to the requirements of this Act or any other relevant written law regulating alcoholic drinks.
- (b) A person who contravenes the provision of this section in relation to brew, distill, manufacture, distribution and importation of an alcoholic drink commits an offence and shall be liable to a fine not exceeding two millions, or to imprisonment from a term not exceeding five years, or both.
- (c) A person who contravenes the provision of this section in relation to sale of an alcoholic drink commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings or imprisonment for a term not exceeding one year or both

Display of signs

26. (1) Every retailer shall post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of an alcoholic drink to a person under the age of eighteen years is prohibited by law.

(2) Every sign required to be posted under subsection (1) shall—

- (a) be displayed on a surface measuring not less than 12 inches by 8 inches in size;
- (b) bear the word “WARNING” in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;
- (c) be in English or in Kiswahili.

(3) A retailer who contravenes any of the provisions of this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

Vending Machines

27. (1) No person shall permit an alcoholic drink to be sold by way of an automatic vending machine unless it is satisfied that the person has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

Selling in Sachets

28. (1) No person shall sell, manufacture, pack or distribute an alcoholic drink in sachets or such other form as may be prescribed.

(2) Notwithstanding the provisions of subsection (1)—

- (a) no person shall manufacture, pack, distribute or sell an alcoholic drink in a container of less than 250 milliliter;
- (b) any other distilled alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in paragraph (a), or as may be prescribed in the national legislation related to control of alcoholic drinks.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or both.

Information required on Packages

29. (1) Subject to this section, no person shall—

- (a) manufacture;
- (b) import;
- (c) sell or distribute, an alcoholic drink unless the package containing the alcoholic drink conforms to the requirements of subsection (2).

(2) Every package containing an alcoholic drink shall—

- (a) bear a statement as to its constituents; and
- (b) have at least two of the health warning messages prescribed in the Second Schedule, in English or Kiswahili.

(3) The statement and health warning referred to in subsection (2) shall comprise not less than 30% of the total surface area of the package.

(4) All the warning labels specified in the Second Schedule shall be randomly displayed in each twelve-month period on a rotational basis and in as equal a number of times as is possible, on every successive fifty packages of each brand of the alcoholic drink and shall be randomly distributed in all areas within the Republic of Kenya in which the alcoholic drink is marketed.

(5) The Executive Member may, by notice in the Gazette, prescribe that the warning, required under this section, be in the form of pictures or pictograms, provided that such notice shall come into operation upon expiration of six months from the date of its publication.

(6) The importer of an alcoholic drink which does not conform to the requirements of subsection (2) shall, at the point of importation,

ensure that the imported alcoholic drink bears such sticker containing the warning messages specified under subsection (2) as may be prescribed.

(7) The requirements of this section shall not apply to an alcoholic drink which is manufactured in Kenya for export.

(8) A person who contravenes any of the provisions of this section commits an offence and shall be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(9) This section shall come into operation upon expiration of six months from the date of commencement of this Act.

PART V—SALE AND CONSUMPTION

Disorderly Conduct

30. (1) Any person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licenced premises, shop, hotel or other public place or driving under the influence of alcohol, may be arrested without warrant and brought without unreasonable delay before a Magistrate.

(2) Any person convicted of being drunk and incapable or drunk and disorderly in or near a place referred to in subsection (1) shall be liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) Any person convicted under subsection (2) on more than three occasions in any period of twelve months shall—

- (a) be ordered by the convicting Magistrate to undergo at his own cost, such rehabilitation programme as may be appropriate in a public health institution;
- (b) be forthwith reported by the convicting Magistrate to the Sub County Committee, which shall inform such licensees as he deems desirable of such convictions, and thereupon, and until a period of twelve months has passed without any further such conviction in respect of that person, any licensee so informed who knowingly sells or supplies alcoholic drinks to or for delivery to that person commits an offence, and it shall furthermore be an offence for that person to be in possession of any alcoholic drink.

(4) Any licensee who sells an alcoholic drink to a person already in a state of intoxication or by any means encourages or incites him to consume an alcoholic drink commits an offence.

Breach of license

31. Any person who sells an alcoholic drink or offers or exposes it for sale or who bottles an alcoholic drink except under and in accordance

with, and on such premises as may be specified in a license issued in that behalf under this Act commits an offence and is liable—

- (a) for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or to both;
- (b) for a second or subsequent offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both, and in addition to any penalty imposed under paragraph (a) or (b), the court may order, the forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink.

Sale to Authorized Officer

32. Any person who knowingly sells, supplies or offers an alcoholic drink to an authorized officer or to a police officer in uniform or who harbours or suffers to remain on licensed premises any such police officer except for the purpose of keeping or restoring order or otherwise in the execution of his duty, commits an offence and is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.

Debt from sale of alcoholic drinks

33. No suit shall be maintainable to recover any debt alleged to be due in respect of the sale of any alcoholic drink which was delivered for consumption on the premises where it was sold unless it was sold for consumption with a meal supplied at the time of sale or unless the person to whom it was sold or supplied was at the time of the sale a lodger on such premises.

Non Disclosure of Conviction

34. Any person who is required by any provision of this Act to disclose any conviction and fails to do so when making any application commits an offence.

Sale without License

35. (1) If any person purchases any alcoholic drink from a licensee whose license does not cover the sale of that alcoholic drink for consumption on the premises, and drinks the alcoholic drink on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcoholic drink or under his control or used by his permission, or on any highway adjoining or near any such premises, and it is proved to the court that the drinking of the alcoholic drink was with the privity or consent of the licensee who sold the alcoholic drink, the licensee commits an offence.

(2) If a licensee whose license does not cover the sale of alcoholic drink to be consumed on his premises himself takes or carries, or employs or suffers any other person to take or carry, any alcoholic drinks out of or from his premises for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place (whether enclosed or not, and whether or not a public thoroughfare) other than the licensed premises, with intent to evade the conditions of the license, the licensee commits an offence, and, if the place is any house, tent, shed or other building belonging to the licensee or hired, used or occupied by him, the licensee shall be deemed, unless the contrary is proved, to have intended to evade the conditions of the license.

Sale of adulterated alcoholic drinks

36. (1) No person shall keep for sale, offer for sale or sell—

- (a) any alcoholic drink which has been in any way adulterated, or diluted by any person;
- (b) any non -alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited by the Alcoholic Drinks Control Act, 2010.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding ten million Kenya shillings or to imprisonment for a term not exceeding ten years, or to both.

(3) On the conviction of a licensee of an offence under subsection (2), the court may, in addition to any other penalty it may lawfully impose, if it finds that the drink in respect of which the offence was committed was adulterated by a substance or substances which rendered the drink unfit for human consumption, and unless the licensee proves to the satisfaction of the court that he took all reasonable precautions against such adulteration and that such adulteration took place without his knowledge or consent, order that his license be forfeited, and no license shall thereafter be granted or transferred to him.

Proof of Sale

37.(1) In any proceedings under this Act relating to the sale or consumption of an alcoholic drink, such sale or consumption shall be deemed to be proved if the court is satisfied that a transaction in the nature of a sale took place, whether or not any money has been shown to have passed, or as the case may be, if the court is satisfied that any consumption was about to take place.

(2) Evidence of consumption or intended consumption of an alcoholic drink, on licensed premises by some person other than the licensee or a member of his family or his employee or agent shall be prima

facie evidence that the alcoholic drink was sold by or on behalf of the licensee to the person consuming or about to consume the alcoholic drink.

Burden of Proof

38. (1) The onus of proving that a person is licensed under this Act shall lie on that person.

(2) The fact that a person not licensed under this Act to sell alcoholic drinks has a signboard or notice upon or near his premises fitted with a bar or other place containing bottles, casks or vessels so displayed as to induce a reasonable belief that alcoholic drink is sold or served therein, or having alcoholic drink concealed, or more alcoholic drink than is reasonably required for the person residing therein, shall be deemed to be prima facie evidence of the unlawful sale of alcoholic drink by that person.

(3) In any proceedings under this Act, where a person is charged with selling alcoholic drink without a license or without an appropriate license, such alcoholic drink being in a bottle and appearing to be unopened and labeled by its bottler, the contents of such bottle shall be deemed, unless the contrary is proved, to be alcoholic drink of the description specified on the label thereof.

Endorsement of Conviction on License

39. Every licensee who is convicted of an offence under this Act shall produce his license to the court convicting him, and the court shall endorse every such conviction on the license and the relevant administrative officer of the court shall inform the relevant Sub County Committee and the Board.

Forfeiture of License upon Conviction

40. If in any proceedings before a court it appears that a licensee—

- (a) whether he was present in the licensed premises or not, has permitted an unlicensed person to be the owner or part owner of the business of the licensed premises or to have a substantial interest in that business, except with the consent of the Sub County Committee and the Board; or
- (b) is convicted of an offence under this Act and a previous conviction within the preceding twelve months of the same or any other offence under this Act or three such previous convictions within the preceding five years is or are proved; or
- (c) is twice convicted within twelve months of selling, offering or keeping for sale any adulterated alcoholic drink, then the court may, in addition to any other penalty which it may lawfully impose, order that his license be forfeited, and that no license shall be issued or transferred to him for such period as the court may order.

PART VI—ADVERTISEMENT AND PROMOTION

Prohibition of Promotion and Advertisement

41. (1) No person shall promote an alcoholic drink by way of outdoor advertisement-

- (a) In a manner that is false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink.
- (b) Through painting or decorating a residential building with the name of the alcoholic drink or manufacturer, colour and brand images or logos associated with a manufacturer or an alcoholic drink or any other related form; and
- (c) In places demarcated under any written law as residential areas or within a distance of three hundred meters from nursery, primary or other institutions of learning for persons under the age of eighteen years or a place of worship, health facility or a public play ground or any other public land or property in public service vehicle .

(2) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) Pursuant to Article 24 (2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of –

- (a) protecting the consumers of the alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks; and
- (b) protecting persons under the age of eighteen years from the negative impact on health and social development from exposure to advertisements of alcoholic drinks

Promotion at underage Events

42. (1) No person shall promote an alcoholic drink –

- (a) at any event or activities associated with persons under the age of eighteen years;
- (b) using such things or materials that are associated with persons under the age of eighteen years.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shilling or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Encouraging Consumption of Alcoholic Drinks

43. (1) A licensee shall not—

- (a) award grant or give to a person an alcoholic drink for consumption in or outside the licensed premises without any consideration equivalent to the market price of the alcoholic drink or
- (b) promote any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink in order to win an award or prize

(2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Display of Notices

44. (1) The manager or owner of a place where an alcoholic drink is sold shall cause to be displayed therein, clear and prominent notices in English or Kiswahili stating that drinking of alcoholic drinks is prohibited for persons under the age of eighteen years and the prescribed penalty thereof.

(2) Every notice under subsection (1) shall be in such form and of such size, and shall be posted in such place, as may be prescribed.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both. (rep. ref 26).

PART VII—ENFORCEMENT**Authorized Officers**

45. (1) The Executive Member shall, upon recommendation by the respective Sub County Committee, appoint for each Sub County, any person or class of persons to be authorized officers for purposes of this Act.

(2) The Executive Member shall issue a certificate of appointment to every person appointed under this section.

(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorized officers for the purposes of this Act—

- (a) public health officers appointed under the Public Health Act (Cap. 242); and
- (b) any other person upon whom any written law vests functions of the maintenance of law and order.

- (c) officers appointed as enforcement officers under the National Police Service Act, Standards Weights and Measures Act and Anti-counterfeit Act.

Places Authorized Officers may enter

46. (1) For the purposes of ensuring compliance with this Act, an authorized officer may, at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of this Act.

(2) An authorized officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 45(2).

Powers of Officers

47. (1) In carrying out an inspection in any place pursuant to section 46, an authorized officer may—

- (a) examine an alcoholic drink or anything referred to in that section;
- (b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the alcoholic drink or thing;
- (c) open or require any person in the place to open any container or package found in the place that the officer believes on reasonable grounds contains the alcoholic drink or thing;
- (d) conduct any test or analysis or take any measurements; or
- (e) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act.

(2) Pursuant to article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of enforcement of this Act and for protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Use of Records

48. In carrying out an inspection in a place, an authorized officer may—

- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
- (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;

- (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document;
- (d) scrutinize any other record system in use in that place.

Entry of Dwelling Place

49. An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 50.

Court to Issue Warrant

50. (1) Upon an ex parte application, a magistrate or judge of the High Court, may issue a warrant authorizing the authorized officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

- (a) the dwelling place is a place referred to in section 49;
- (b) entry to the dwelling place is necessary for the administration or enforcement of this Act;
- (c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

Use of Force

51. An authorized officer executing the warrant issued under section 50 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorized in the warrant.

Certificate of Analysis

52. An authorized officer who has analyzed or examined an alcoholic drink or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

Assistance of officers

53. (1) The owner of a place inspected by an authorized officer under this Act or the person in charge of the place and every person found in the place shall—

- (a) provide all reasonable assistance to enable the authorized officer to carry out his duties under this Act;
- (b) furnish the authorized officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

(2) The inspecting agent in subsection (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection.

Obstruction of Authorized Officer

54. No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorized officer who is carrying out duties under this Act.

Seizure by Authorized Officer

55. (1) During an inspection under this Act, an authorized officer may seize any alcoholic drink or thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

(2) The authorized officer may direct that any alcoholic drink or thing seized be kept or stored in the place where it was seized or that it be removed to another place.

(3) Unless authorized by an officer, no person shall remove, alter or interfere in any manner with any alcohol, alcoholic drink or other thing seized.

(4) Any person from whom an alcoholic drink or thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the County Executive Member within the prescribed time and in the prescribed manner.

Order for Restoration by Court

56. (1) The Court may order that the alcoholic drink or thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

- (a) the applicant is entitled to possession of the alcoholic drink or thing seized; and
- (b) the alcoholic drink or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

(2) Where upon hearing an application made under subsection (1) the court is satisfied that the applicant is entitled to possession of the alcoholic drink or thing seized but is not satisfied with respect to the matters mentioned in subsection (1)(b), the court may order that the alcoholic drink or thing seized be restored to the applicant on the expiration of one hundred and eighty days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time.

General Penalty

57. Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding Kenya Shillings five hundred thousand, or to imprisonment for a term not exceeding three years, or to both.

Nature of Offences

58.(1) Offences under this Act, other than the offences specified under Part VI, shall be cognizable offences.

(2) Where a corporation, registered society or other similar legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall, on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

(4) Any Act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the Act or omission of the employer, and any proceedings for an offence arising out of such Act or omission may be taken against both the employer and the employee.

Nature of Evidence in Proceedings

59.(1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be proof of its contents.

(2) Subject to this Part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

(3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report.

(4) The party against whom the certificate or report provided for under subsection (3) is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.

- (5) In a prosecution for a contravention of this Act—
- (a) information on a package indicating that it contains an alcoholic drink is, in the absence of evidence to the contrary, proof that the package contains an alcoholic drink; and
 - (b) a name or address on a package purporting to be the name or address of the person by whom the alcoholic drink was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

PART VIII—EDUCATION AND INFORMATION

County Government to undertake Information, Education and Communication

60. (1) The County Government, in conjunction with National government shall promote public awareness about the health consequences, addictive nature and mortal threat posed by excessive alcoholic drink consumption through a comprehensive nationwide education and information campaign conducted by the Government through the relevant Ministries, departments, authorities and other agencies including the relevant non-governmental organizations and civil society.

(2) The education and information campaign referred to in subsection (1) shall focus on the family as the basic social unit and shall be carried out in all schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities in Kenya.

(3) The relevant agency in collaboration with the County Government and the relevant civil society groups shall provide training, sensitization and awareness programmes on alcoholic drink control for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons for proper information, dissemination and education on alcoholic drinks.

(4) In conducting the education and information campaign referred to in this section, the relevant agency and Government shall ensure the involvement and participation of individuals and groups affected by misuse of alcoholic drinks.

(5) Every Sub County in collaboration with the civil society and the relevant agency, shall conduct education and information campaigns on alcoholic drink within its area of jurisdiction.

Integration of Alcohol matters into Syllabuses

61. The relevant agency shall liaise with the Executive Member responsible for education, to integrate instruction on the health consequences, addictive nature and mortal threat posed by alcoholic drink consumption in subjects taught in public and private schools at all levels

of education, including informal and non formal and indigenous learning systems.

Integration of Alcohol matters into Healthcare

62. (1) The relevant agency shall liaise with the Executive Member responsible for Health for the time being responsible to ensure that alcoholic drink use education and information dissemination shall form part of healthcare services by healthcare providers.

(2) For the purposes of subsection (1), the relevant agency and the Government shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on alcohol consumption.

Establishment of Rehabilitation Facilities and Programs

63. (1) The Board shall-

- (a) in collaboration with other relevant County and national government agencies establish a treatment and rehabilitation facility and programs for persons dependent on alcoholic drinks.
- (b) ensure that the treatment and rehabilitation facility has the necessary human resources for effective operation and service delivery;
- (c) ensure that treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcoholic drinks.

PART IX—MISCELLANEOUS

Regulations

64. (1) The Executive Member may, on recommendation of the relevant agency, make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
- (b) prescribe the recommended levels of alcohol in alcoholic drinks which levels shall not exceed the levels set by the World Health Organization;
- (c) prescribe substances as harmful constituents of an alcoholic drink;
- (d) prescribe the hours within which the sale of alcoholic drinks shall be permitted;
- (e) prohibit the addition or use of any harmful constituent or ingredient in the production of alcoholic drinks;

- (f) prescribe the methods to be used in testing alcoholic drinks;
- (g) prescribe the information that manufacturers shall provide to the relevant agency including information on alcoholic drinks, sales and advertising data, and information on product composition, ingredients, hazardous properties and brand elements;
- (h) subject to this Act, control the labeling, packaging, sale or distribution of alcoholic drinks, so as to—
 - (i) ensure that the purchaser or consumer of an alcoholic drink is not misled as to its quality, quantity, character, value, composition, effect, merit or safety;
 - (ii) prevent injury or harm to the health of the consumer;
 - (iii) prescribe the forms of applications, notices, licenses and other documents for use under this Act;
 - (iv) prescribe the fees payable under this Act.

(3) Pursuant to Article 94(6) of the Constitution, the legislative authority delegated to the Executive Member in this section shall be exercised only for the purpose and intent specified in this section and in accordance with the principles and standards set out in the Interpretations and General Provisions Act and the Statutory Instruments Act 2013.

Transitional

65. (1) Notwithstanding any other provisions of this Act to the contrary, a person who immediately before the commencement of this Act was in accordance with Alcoholic Drinks Control Act 2010, a manufacturer, importer, distributor, or retailer of any alcoholic drink under that Act shall be deemed to be a manufacturer, importer, distributor, or retailer of any alcoholic drink under this Act.

(2) The manufacturer, importer, exporter, distributor, or retailer of any alcoholic drink in the contemplated referred to in subsection (1) shall, within four months of the commencement of this Act, comply with the requirements of this Act.

FIRST SCHEDULE

TYPES OF LICENCES

The following licenses may be granted under this Act—

1. Brewer's License

Subject to the conditions specified in the license, a brewer's license authorizes the holder to—

- (a) brew and store the brewed alcoholic drink in his depot;
- (b) sell the product of his brewery by wholesale in accordance with the conditions that are for the time being, applicable to a holder of

a wholesale license or by delivery from depot throughout Kenya;
and

- (c) bottle the alcoholic drink subject to such conditions as may be prescribed.

For the purposes of this paragraph, “depot” means premises of whatever description which are occupied by a brewer for of his trade.

2. Wholesale License

A wholesale license authorizes the licensee to sell an alcoholic drink at the premises specified in the license, subject to such conditions as may be prescribed.

3. Retail License

A retail license authorizes the licensee to sell an alcoholic drink on the premises, at the hours and subject to such other conditions as are specified in the license.

4. Temporal License

A temporal license authorizes the licensee to dispose of any alcoholic drinks in his possession under the section 9 (1) (d), (e), (f) and (g).

SECOND SCHEDULE

LICENCE HOURS

<i>Licenses</i>	<i>License Hours, Conditions and Exceptions</i>
1. General Retail Alcoholic Drink Licence (on license)	Authorized to sell alcoholic drink: (a) From Monday to Friday during the hours of 5.00 p.m. to 11.00 p.m. (b) During weekends and public holidays during the hours of 2:00 pm to 11:00 p.m.
2. General Retail Alcoholic Drink License (Off License) Wines and Spirits Retailers (Rural and Sub-Urban)	Authorised to sell alcoholic drink on any day of the week during the hours of 5: 00 p.m. to 8:30 p.m.
3. Supermarket or Franchised Retail Chain Stores (Urban) Alcoholic Drink License (Off-License)	Authorised to sell alcoholic drink on any day of the week during the hours of 10.00 a.m. to 8:30 p.m.
4. Hotel Alcoholic Drink License	Authorized to sell alcoholic drink on any day of the week to a lodger - for his own consumption and his guest's consumption on the premises, at any hour.

5. Restaurant Alcoholic Drink License	(a) Authorized to sell alcoholic drink on any day of the week to persons taking meals in the restaurant, for the consumption with such meals. (b) Authorized to sell alcoholic drink from Monday to Friday during the hours of 5.00 p.m. to 11.00 p.m. (c) Authorized to sell Alcoholic drink during weekends and Public holidays during the hours of 2.00 p.m. to 11.00p.m.
6. Club Alcoholic Drink License (a) Members Club A members club license may only be held by a club that is a non-profit association incorporated under the Society's Act. (b) Proprietary Club (Including Night Club)	Authorized to sell alcoholic drink to members on any day of the week at any hour. (a) From Monday to Friday during the hours of 7.00 p.m. to 3.00 a.m. (b) During weekends and public holidays during the hours of 7:00 pm to 3:00 a.m.
7. Theatre Alcoholic Drink License.	Authorized to sell alcoholic drink during the hours of 5.00 p.m. to 11.00 p.m.
8. Travellers' Alcoholic Drink License.	Authorized to sell alcoholic drink on any day of the week at any hour to persons <i>bona fide</i> travellers on board a train or air.
9. Railway Restaurant Car Alcoholic Drink License.	Authorized to sell alcoholic drink at any hour.
10. Steamship Alcoholic Drink License.	Authorized to sell alcoholic drink on any day of the week at any hour while the steamship, whether stationary or in motion, is on a voyage.

THIRD SCHEDULE WARNING MESSAGES

1. The following health messages shall be displayed on every package containing an alcoholic drink, sign or advertisement stipulated under the provisions of this Act—

- (a) Excessive alcohol consumption is harmful to your health;
- (b) Excessive alcohol consumption can cause liver cirrhosis;
- (c) Excessive alcohol consumption impairs your judgment; do not drive or operate machinery;
- (d) Not for sale to persons under the age of 18 years.

FOURTH SCHEDULE

FORM NO. 1

ALCOHOLIC DRINKS CONTROL ACT APPLICATION FOR THE
GRANT OR RENEWAL OF AN ALCOHOLIC RETAIL DRINKS
LICENCE

To be completed in triplicate

1. Name of Applicant.....
2. Applicant's Postal Address.....
3. Address and Plot number of Premise.....
(Give sufficient details to adequately identify the premise, eg street, phone etc.....)
4. Name by which premises known.....
5. If for renewal, give expiring licence number.....
6. Licence to run from.....to.....
7. Type of licence applied for.....

Date.....

Signature of Applicant.....

Note: If the application is for wholesale alcoholic drinks licence to be applicable to more premises than one, paragraphs 3 and 4 must give particulars of all such premises.

FORM 2

**APPLICATION FOR THE GRANT OR RENEWAL OF A LICENCE TO
MANUFACTURE OR PRODUCE AN ALCOHOLIC DRINK**

(1) Name of applicant.....

(2) Type of business

(a) Sole proprietorship (the business is owned by one person)

Personal identification number.....

(b) Partnership.....

Names, postal addresses and phone contacts of the partners

.....

.....

.....

Contact person.....

(c) limited liability company

Names, postal addresses and phone contacts of the
Directors.....

Contact person.....

(3) Postal address

(4) Physical address (exact place of manufacture)

(5) Tel

(6) Fax

(7) Email.....

(8) City, town or village.....

(9) Business registration number or certificate of
incorporation.....

(10) Is this a new/renewal application.....

(11) If Renewal, provide detail of No.....

(12) Do you have manufacturer's certification? Yes..... Yes.....

(13) List type and brands of alcoholic drinks to be manufactured

Alcoholic Drink Standards	Certification Number

(14) Brief description of alcoholic drinks

- (a) Unit Capacity in milliliters and Cost in shillings of the alcoholic drink(s)
-
- (b) Mode of transportation and storage condition.....
-
- (c) Describe the purpose for which the alcoholic drink (s) will be used (e.g. retail, wholesale or export, e.t.c)
- (15) Declaration by Applicant
- I Hereby.....declare and certify that information given in this application including attachment thereto is true and correct to the best of my knowledge and belief
- Date:
- Signature:
- Official Stamp:.....

FORM 3

APPLICATION FOR THE GRANT OR REWEVAL OF A LICENCE TO IMPORT OR EXPORT AN ALCOHOLIC DRINK

1. Name of applicant.....
Postal Address.....
2. Physical Address.....
3. Tel
4. Fax.....
5. E-mail.....
6. Business Registration No*.....
7. Is this a new/Renewal application?.....
8. If Renewal, provide detail of No
9. List type and brands of alcoholic drinks to be imported/exported

Alcoholic Drink Standards	Certification Number

APPLICATION FOR A *TEMPORARY ALCOHOLIC DRINK LICENCE

- Name of Applicant
- Applicant's postal address
- Reason(s) for license required
4. Address to which temporary license should be made applicable
5. Period for which temporary license required

MEMORANDUM OF OBJECTS AND REASONS

The Object and Purpose of this Bill is to provide for the Licencing of Alcoholic Drinks by the County Government pursuant to Part II of the Fourth Schedule of the Constitution so as to control the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks as provided for in the Bill. The enactment of the Bill shall enhance revenue collection and health of the people.

Dated the 12th February, 2018

BERNARD MUGANDA ALIANG'ANA,
Chairperson Finance and Economic Planning Committee.