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THE BUNGOMA COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2014

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THE BUNGOMACOUNTY ALCOHOLIC DRINKS CONTROL BILL, 2014

A Bill for

AN ACT of Bungoma County Assembly 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 Bungoma County Assembly, as follows—

PART I—PRELIMINARY

Short title and Commencement.

1. This Bill may be cited as the Bungoma County Alcoholic Drinks Control Bill, 2014 and shall come into Operation on the date of publication in the Gazette.

Interpretation.

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

"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, liquor, traditional alcoholic drink, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, modified industrial alcohol blended for human consumption and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being;

"authorized officer" means an authorized officer within the meaning of section 57;

"Authority" means the National Authority for the Campaign Against Alcohol and Drug Abuse established under the National Authority for the

Act No 4 of 2010 of the Laws of Kenya

Campaign Against Alcohol and Drug Abuse Act;

"cinema" has the meaning assigned to it in the Films and Stage Plays Act;

Chapter .222 of the Laws of Kenya

"County" means the Bungoma County;

"County Public Service" means the Bungoma County Public Service;

"Directorate" means the Alcoholic Drinks Control Directorate established under section 4;

"entity" includes a company, corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not;

"Enforcement Committee" means the County Alcoholic Drinks Control Enforcement Coordinating Committee established under section 58;

"Executive Member" means the county executive member responsible for alcohol control;

"Fund" means the Alcoholic Drinks Control Fund established under section 6;

"Governor" means the Governor of Bungoma 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, , sub-county or ward ,as the case may;

"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, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in the county or anywhere in Kenya;

"manufacturer", in respect of an alcoholic drink, includes any entity that is involved in its manufacture , and includes 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;

(d) 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 Regulations Committee appointed under section 9.

Object and purpose of Act.

3. (1) The object and purpose of this Act is to provide for licensing of alcoholic drinks by the County government pursuant to Part II of the Fourth Schedule to the Constitution.

(2) Despite subsection (1), the object and purpose of the Act includes 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 county from 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 consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;

(d) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;

(e) inform and educate the residents in the county 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 consumptions of alcoholic drinks.

PART II—ADMINISTRATION

Establishment of Directorate.

4. (1) There is hereby established in the County the Alcoholic Drinks Control Directorate which shall be office in the County Public Service.

(2) The Directorate shall consist of—

(a) the Executive Member who shall be the chairperson;

(b) the county public health officer;

(c) officer commanding Kenya Police Services in the county;

(d) officer commanding Administration Police in the sub-county;

(e) the Director who shall be the Secretary who shall be an ex officio member;

(f) the officer responsible for coordination of national government functions in the county;

(g) the officer for the time being responsible for physical planning in the county;

(h) one person who is an advocate of the High Court appointed by the Executive Member from among staff serving in the County Public Service;

(i) two residents of the county appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth provided that one person shall be of the opposite gender.

(3) The functions of the Directorate shall be to—

(a) support and facilitate Sub-county Committees in carrying out their functions:

(b) carry out public education on alcoholic drinks control 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 to framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law:

(d) facilitate and promoted in collaboration with other county and national government institutions the establishment of treatment and rehabilitation facilities and programmes;

(e) carry out research directly or in collaboration with other institutions and serve as the repository of

data and statistics related to alcoholic drinks 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 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;

(h) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive Member which shall be transmitted to the County Executive Committee, county assembly and the Authority;

(i) recommend to the Executive Member participate in the formulation of laws regulations related to alcoholic drinks; and regulations related to alcoholic drinks;

(j) monitoring and evaluating the implementation of this Act including the operations of the Sub-county Committees and advising the Executive Member on the measures to be adopted;

(k) review decisions made by the Sub-county Committee; and

(l) carry out such other functions as may be 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 Directorate shall be headed by a Director who shall be appointed by the County Public Service Board.

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

Establishment of rehabilitation facilities and programs.

5. (1) The Directorate shall—

(a) in collaboration with other relevant county and national government agencies establish treatment and rehabilitation facilities and programs for persons dependent on alcoholic drinks in each Ward;

(b) ensure that the treatment and rehabilitation facilities have the necessary human resources for effective operation and service delivery;

(c) ensure that the treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcoholic drinks.

Establishment of the Fund.

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

(2) The Fund shall consist of—

(a) such monies 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) moneys earned or arising from any investment of the Fund;

(a) all other sums which may in any manner become payable to, or vested in, the Fund.

(3) Where, in terms of subsection (2) (b), any immovable property is assigned to the Fund, the Director, shall deal with the property in such manner as he considers fit and may sell the property and use the proceeds of sale for the purposes for which the Fund established.

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

(a) carrying out the functions of the Directorate under section 4 and 5;

(b) assisting in the operations of the Sub-County Committees; any other matter

(c) incidental to the matters stated in paragraphs (a) and (b).

(5) The receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the County Revenue Fund, but shall be retained for the purposes of the Fund.

Administration of the Fund.

7. (1) The Fund shall be administered by the Director.

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

(3) The Director shall—

(a) (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 to the Auditor- General in respect of each financial year and within three months after the end of each financial year 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 in the management of the Fund provided that such staff shall work in the Directorate.

PART III—LICENSING

Control of alcoholic drinks.

8. (1) A person shall not—

(a) manufacture or otherwise produce;

(b) sell, distribute or dispose of, or deal with,

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

(2) A person who contravenes the provisions of subsection (1) commits an offence.

(3) The provisions of subsection (1) shall not apply to—

(a) the importation of alcoholic drinks into the country if the alcoholic drink has been imported to the country pursuant to an import license issued by the Authority;

Cap 366.
Cap 244

(b) 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 a pharmacist registered under the Pharmacy and Poisons Act of a medicine containing alcoholic drink

No.5 of 1996.

(c) sale of spurious or distilled perfume or perfumery;

(d) the sale of industrial alcohol;

(e) the sale by auction by an auctioneer, licensed under the Auctioneers Act, of an alcoholic drink in quantities not less than those authorized to he sold under a wholesale alcoholic drink license belonging to a wholesale dealer, on the licensed premises of the dealer;

(f) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;

(g) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;

(h) the sale by the liquidator of a company of an alcoholic' drink forming part of the company's assets;

(i) the sale of alcoholic drink at Parliament or the County Assembly Buildings, if sold with the permission of the Speaker of the respective Assembly;

(j) 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.

Establishment of the Sub-county committee

9. (1) There shall be, for every sub-county, a committee to be known as the Sub-county Alcoholic Drinks Regulation Committee which shall—

(a) issue licenses in accordance with this Act; and

(b) perform such other functions as may, from time to time be assigned to it by the Governor.

(2) The sub-county committee may, in the discharge to its functions under this Act, make inspection or other visits to premises at such times as it may deem consider appropriate.

(3) In carrying out its functions, the Sub-county Committee shall —

No 17 of 2012.
No. 13 of 2011

(a) 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 relevant written law;

(b) collaborate with ward administrators and village administrators and councils appointed under the County Governments Act, 2012 and the officers in charge of coordination of national government functions in the wards and villages; and

(c) collaborate with similar committees in other counties for effective implementation of the Act.

(4) The sub-county committee shall consist of—

No. 17 of 2012.

sub-county administrator appointed under the County Governments Act who shall be the chairperson;

(a) the sub-county public health officer;

(b) the officer commanding Kenya Police Services in the sub-county;

(c) the officer commanding administration police in the sub-county;

(d) one officer designated by the Director who shall be the Secretary and an *ex officio* member;

(e) the officer responsible for 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) three residents of the county appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth ,provided that not more than two persons shall be of the same gender.

(5) The authorized officers specified in section 57 or any person designated by the Authority shall attend the meetings of the sub-county committee in an ex-officio capacity.

(6) An officer who is a member of the sub-county committee under sub-section (1) may be represented in the committee meetings by another officer who shall not be below the rank of the deputy to the officer being represented.

(7) A person shall not be a member of the sub-county committee if such 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 that 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) undercharged bankrupt; or

(e) a person who has been convicted of an offence under this Act or of a felony.

(8) The conduct of business and affairs of the sub-county committee shall be in such manner as may be prescribed.

(9) The directorate shall provide secretariat service for sub- county committees.

Application for a license.

10. (1) A person intending to produce manufacture, import, distribute 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 the 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) an indication as to whether the manufacture or sale of the alcoholic drink is licensed in another county and if so the evidence of such licensing;

(c) for a manufacturer's license certification from Kenya Bureau of Standards;

(d) such other matters as may be prescribed.

Notice of application.

11. (1) The sub-county committee shall, within twenty- one days after the submission of an application for a license prepare a notice setting out the names of all applicants, the types of license being applied for, the premises in respect of which the license is applied for and the time, date and place of the meeting, and shall cause a copy of the notice to be—

(a) published at the office of the sub-county administrator for a 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 may designate to receive such notice of his behalf;

(d) send to the sub-county public health officer in 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.

(2) The persons specified under subsection (1) shall within fourteen days upon receipt of the notice submit a report on any relevant matter to be considered by the sub-county committee.

Objection.

12. (1) Any person may lodge an objection to an application.

(2) An objection to an application shall be made in writing to the Secretary to 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.

Objection by sub-country committee.

13. (1) A sub-county committee may, on its own motion, take notice of a matter or thing which, in the opinion of the Committee, constitutes an objection to an application, whether or not any objection has been lodged.

(2) Where in respect of an application a sub-county committee acts in pursuance 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 reply thereto.

Attendance before the sub-county committee

14. (1) Every person making an application shall, save as otherwise provided attend 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.

(2) A sub-county committee may require the personal attendance 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.

(3) An objector may appear personally or by an advocate at the hearing of the application.

(4) 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 local authority for the purpose of representing the

inhabitants of that part in respect of objection lodged to an application.

Evidence to be given on action.

15. 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.

Application of chapter XI of the Penal Code.

16. For the purposes of Chapter XI of the Penal Code which relates to offences relating to the administration of justice all proceedings before a sub-county committee shall be considered to be judicial proceedings.

Record of proceeding.

17. (1) A 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.

(2) A decision shall not 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.

Conditions for grant of a license.

18. The sub-county committee shall, within twenty-one days of receipt of the application under subsection (1) record the application and assess the application 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 bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law: and

(e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

Grant of a license.

19. (1) The sub-county committee shall alter the application under section 11 grant or refuse to grant the license.

(2) The sub-county committee shall 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 sub-county committee may consider fit.

(4) Where the Sub-county Committee is not satisfied with the application under subsection (I), 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 thereon and return it within fourteen days recommendations to the applicant.

(5) The applicant to whom the application is under subsection (4) (b) may re-submit, a revised application within thirty days of the date of notification.

(6) On receipt of any revised subsection (5), the Sub-county within thirty days determine accordance with this Act determination, if satisfied, issue an application under Committee shall, the application in and upon such license:

(7) Where the sub-county committee grants a license under this section it shall, publish the grant in county Gazette.

Provisional license.

20. (1) Despite the provisions of sections 10 to 19, the sub-county committee may issue a provisional license for the manufacture or sale of an alcoholic drink for such period not exceeding six months as may be appropriate, where the Committee is satisfied that the applicant for the licence has demonstrated to the satisfaction of the Committee that the manufacture or sale of the alcoholic drink is licensed in another county.

(2) The issuance of the provisional license under subsection (1) shall be to the applicant complying with the provisions of sections 10 to 19 within the period of the provisional license.

(3) Where before the construction or reconstruction of a premises or in the course of construction or

reconstruction of a premises for the purpose of using the premises for sale of alcoholic drinks for consumption on such premises, a person having an interest in the premises may apply in the prescribed form to the sub-county committee for an assurance that, on the completion of the construction or reconstruction and a license of the type to be specified in the application granted in respect of such premises.

(4) The provisions of sections 10 to 19 shall apply to such applications, which shall he accompanied by a signed copy of the plans of such premises.

(5) The sub-county committee may, subject to such reasonable conditions as it may specify give notice to the applicant in the prescribed form that, on the completion the premises a license of the type specified therein shall be granted.

(6) Where notice has been given under subsection (4), the sub-county committee may, within reasonable time, on being satisfied that the premises has been completed in accordance with the signed plans submitted under subsection (3) and that the conditions which have been imposed in the notice have been complied with, issue to the applicant a license of the type specified in the notice in respect of the premises.

(7) A notice issued under subsection (5) shall become ineffective and the sub-county committee shall not issue a license, if between the date of giving the notice thereof and the date of completion of the premises, the applicant becomes a person to whom in accordance with section 5 a license may not be granted.

License for premises.

21. (1) The sub-county committee 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 shall 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 be 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 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 grant 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) in an outlet or premises located within a fuel station or a fast food restaurant.

(3) Despite subsection (1), the sub-county committee may issue a license to a premise located within three hundred meters of any nursery, primary, secondary or other learning institution for persons under the age of eighteen years only if—

(a) the premises does 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 does not bear any outdoor alcoholic drinks promotion or advertisement;

(d) the applicant does not engage in activities that interfere with learning in the institution or activities calculated to attract the age of eighteen to the premises.

Person not eligible for a license.

22. (1) The Sub-county committee shall not grant a 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 suitability to be granted a license under this Act;

(b) has been convicted of an offence under this Act or of any offence of 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;

(d) is under eighteen years of age; or

(e) is an undischarged bankrupt.

(2) The sub-county committee may decline to renew an existing license where the sub-county committee is satisfied that—

(a) the licensee is not a suitable to hold the license;

(b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the manufacture, distillation, distribution or sale of an alcoholic drink or more than three times within one year: or

(c) has been convicted of an offence and sentenced to imprisonment without the option of a line 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 written law or conditions set by the sub-county committee; or

(e) the conditions of the license has not been satisfactorily fulfilled or

(f) the premises to which the license relates—

(i) is not in a proper state of repair;

(ii) is not provided with proper sanitary arrangements; or

(iii) does not comply with the 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 shall 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.

23. (1) except as otherwise provided in this Act, a sub-county committee may subject to this part—

(a) grant renew, transfer or revoke or cancel a license, and may specify such conditions as it may considered appropriate;

(a) refuse to grant, renew, transfer, withdraw or cancel a license.

(2) The sub-county committee shall approve every application for a license or for renewal, transfer, revocation or cancellation of a license under subsection (1).

(3) The renewal or transfer of a license shall—

(b) be subject to the payment of such fees as may be prescribed;

(c) expire on thirty first day of December each year;

(d) specify in the license the hours specified under the First Schedule and as national legislation may provide within which the sale of alcohol is permitted and any other relevant condition.

(4) Where an application for the renewal of a license has been made and the sub-county committee has not by the date of expiration of the license made its decisions, such license shall continue in force until the decision of sub-county committee is made.

(5) Where an application for a license has been refused, or a license has been cancelled, a subsequent application by the former applicant or licensee for a license of the same description shall be considered by the sub-

county committee within six months from the date of such refusal or cancellation.

Review.

24. (1) A person aggrieved by the decision of the sub-county committee to grant a license or to renew a license may within fourteen days of such refusal decision apply to the Directorate for a review of the decision.

(2) Upon receipt of a n application for review under this section, the Directorate shall notify the respective sub-county committee of the pending review.

(3) The Directorate shall within twenty- one days of receipt of the application consider and make a final determination on the application for review.

(4) The Directorate may—

(a) dismiss application for review if it considers the application to be frivolous or vexations;

(b) uphold the decision of the sub-county committee;

(c) annul the decision of the sub-county committee;

(d) give directions to the sub-county committee with respect to any action to be taken; or

(e) make any other order as it may consider fit and just.

Right of review

25. The right to apply for review under section 24 does not prohibit a person from seeking any other legal remedy a person may have.

Appeals to Court

26. (1) Despite section 24, an applicant whose application for a license, to renew or transfer a license has been refused may within twenty-one days of such refusal appeal against such refusal to Court.

(2) An applicant under section 24 who is not satisfied with the decision of the Directorate may within thirty days appeal to the High Court.

Licenses to body corporates.

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

(2) Despite subsection (1), the sub-county committee may require prior disclosure of the directors 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.

(3) A transfer of a license issued to a body corporate shall not be made on any change in the office of secretary, except that 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.

Types of licenses.

28. (1) The licenses which may be granted under this Act are specified in the Second Schedule.

(2) The provisions of the Second Schedule and of any rules made under this Act shall have effect in relation to the respective licenses therein specified.

(3) Except as provided in this Act, a license shall not be granted so as to be applicable to more than one premises.

(4) The sub-county committee shall, when a license is granted, renewed, revoked or cancelled include in the license a description of the licensed premises.

(5) A license may be granted to apply to more than one premise, subject to such conditions as may be specified in the license and to specification of the addresses of all such premises in the license.

(6) The Third Schedule shall have effect in relation to the fees payable in accordance with this Act.

Transfer of a license.

29. (1) Where a license sells or leases or otherwise disposes of the premises or business specified in the license the licensee may apply, in writing, to the licensee the sub-county committee for the transfer of his license to the purchase or lessee or otherwise of such premises, and the sub-county committee may, it considers 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 sub-county committee 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 sub-county committee, to carry on the business of the licensee without any transfer or grant a license either personally or by an agent approved by the sub-county committee.

(3) An additional fee shall not 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 a period of more than six months.

(4) A person to whom a license is transferred under subsection (1), and a person permitted to carry on a business without a transfer or grant of a license in accordance with subsection (2) , shall possess all the rights and be liable to all the duties and obligations of the original licensee.

Renewal of a license

30. (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.

(2) The period under subsection (1) shall commence on the day after the last sitting of the sub-county Committee at which the renewal of his license is refused or in the day after the termination of his existing license, whichever day is the later.

License to be displayed.

31 (1) Every license shall be prominently and conspicuously displayed on the premises to which ii relates, and any licensee who fails or neglects so to display the license commits an offence.

(2) Where a wholesale alcoholic drink license is granted so as to be applicable to more than one premises, it shall be displayed in the premises first named therein and copies thereof displayed in the other outlets.

(3) A person causing or permitting to be on his or her premises or on premises under his control words, letters or sign falsely importing that his or her is a licensee commits an offence.

Prohibition of employment of underage persons from selling alcoholic drinks.

32. (1) Despite the provisions of any other written law a licensee shall not employ a person under the age of eighteen, to sell, control or supervise the sale of alcoholic drinks or to have the custody or control of alcoholic drinks on a licensed premises.

(2) Where a licensee permits another person to manage, superintend or conduct the day-to-day business of

the premises in respect of which he or she is licensed, the licensee shall not be relieved or his or her duties and obligations under this Act.

(3) A person who contravenes the provision of this section commits an offence.

Drunken behavior.

33 (1) A licensee, an agent or an employee of a licensee may refuse to admit to, and shall expel from, the premises to which the 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.

Debt from sale of alcoholic drinks.

34. A suit shall not be maintained 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 consumption with a unless the person to the time of the sale a was sold unless it was sold for meal supplied at the time of sale or whom it was sold or supplied was at lodger on such premises.

Access by person under age of eighteen.

35. (1) A person holding a license to manufacture, store or sell alcoholic drinks under this Act shall not allow a person under the age of eighteen years to enter or gain access to the area in which alcoholic drink is manufactured, stored, sold or consumed.

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

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

Reports by public health officers and police officers.

36. (1) A sub-county public health officer within whose jurisdiction the premises fall 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 sub-county public health officer or any person authorized by him in writing 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 or her license.

(4) A police officer not below the rank of Inspector may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

Cancellation of a license.

37. (1) Upon receipt of a report made under section 36 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 or her that at a meeting of the sub-county committee to be held on a date to be specified, but not less than thirty days therefrom, the report shall 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 roliceervices in the sub county;

(c) inform the sub-county public health officer or the police officer, as the case may be, of the date upon which the Sub-county committee shall consider the report, and require him or her attend on the date specified.

(2) A licensee whom a report is to be considered may appear in person or by an advocate before the sub-county committee.

(3) The sub-county committee, having considered the report and having heard the licensee, it he appears, may, if it considers fit, cancel the license of the licensee reported upon, or it may make such an order in respect of such license or the licensed premises specified therein as, in the opinion of the tub-county committee, is necessary.

(4) A person aggrieved by the decision of the sub-county committee upon any such report may within thirty one days appeal against the decision to Court.

(5) The Appellate Court may confirm or reverse the decision of the Sub- county Committee.

(6) If a license is cancelled or if on appeal under sub-section (5), the 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 sub-county committee may consider 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 sub-county committee or of the Court, as the case may be.

PART IV—GENERAL REQUIREMENTS

Conformity with requirements.

38. (1) A person shall not manufacture, or distribute or sell an alcoholic drink in the county in a manner that does not conform to the requirements of this Act or any other written law regulating alcoholic drinks.

(2) A person who contravenes the provisions of this section in relation to manufacturing, distribution and importation of an alcoholic drink commits an offence and shall be liable on conviction a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

Supply to young persons.

39. (1) A person shall not knowingly sell, supply or provide an alcoholic drink to a person under the age of eighteen years.

(2) 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 fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(3) Despite the provisions of subsection (l) 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.

(4) 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.

Display of signs.

40. (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) The 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, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Vending machines.

41. (1) A person shall not sell or permit an alcoholic drink to be sold by way of an automatic vending machine.

(2) A person who contravenes this section commits an offence and shall be liable on conviction 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.

42. (1) a person shall not sell, manufacture, pack or distribute an alcoholic drink in sachet except in the form prescribed under this Ac t or any other relevant written law.

(2) Despite subsection (1)—

(a) a person shall not manufacture, pack distribute or sell in the county an alcoholic drink in a container of less than two hundred and fifty milliliter;

(b) any other distilled or fortified 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 on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months or both.

PART V—SALE AND CONSUMPTION

Sale of intoxicated person.

43. A licensee who sells an alcoholic drink to a person already in a state of intoxication or by any means encourages or incites him or her consume an alcoholic drink commits an offence.

Disorderly conduct.

44. (1) A person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licensed premises, shop. hotel or other public place may be arrested without warrant and brought without unreasonable delay before a Magistrate.

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

(3) Upon conviction under sub-section (2), the convicting Magistrate may issue an order for community service to any person convicted of the offence under this section for more than one time in accordance with provisions of the Community Service Orders Act, 1998.

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(4) Despite sub-section (3). a person convicted under subsection (2),on more than three occasion in any period of twelve months shall –

(a) be ordered by the ,convicting Magistrate to undergo at his or her own cost, such rehabilitation programme as may be appropriate in a public health institution;

(b) be 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 be an offence for that person to be in possession of any alcoholic drink.

Breach of license.

45. (1) 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 [hat behalf under this Act commits an offence and is liable, on conviction—

(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 subsections (1) (a) or (1) (b) , the court may order, the forfeiture of all alcoholic drinks found in the possession, custody or control or the person convicted, together with the vessels containing the alcoholic drink.

(2) Except as provided for in this Act, a person shall not—

(a) sell, an alcoholic drink in any workplace, office, factory, public park or any public recreational facility, public transport vehicle, public beach, sports stadium or public street;

(a) sell, purchase or consume an alcoholic drink in an alcoholic drink selling outlet after the expiry of the hours for which the outlet is licensed to sell the alcoholic drink.

(3) A person who contravenes the provisions of subsection (2) commits an offence and shall be liable to conviction the penalties specified under subsection (1).

Sale to authorized officer.

46. A 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 or her duty, commits an offence and is liable on conviction a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months, or to both.

Non disclosure of conviction.

47. A 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.

48. (1) Where a person purchases an 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 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 takes or carries, or employs or suffers any other person to take or carry any alcoholic drinks out of or from his premises 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 unless the contrary is proved, to have intended to evade the conditions of the license.

Sale of adulterated drinks.

49. (1) A person shall not keep for sale, offer for sale—

(b) any alcoholic drink which has been in any way adulterated, or diluted by any person;

(c) any non alcoholic drink which has been in any way adulterated with alcohol, or which contains

any of the substances prohibited under the Alcoholic Drinks Control Act.

(2) A person who contravenes the provisions of this section commits an offence and shall he liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both. No. 4 of 2010

(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 or she took all reasonable precautions against such adulteration took place without his or her knowledge or consent order that be license be forfeited and a license shall not thereafter be a granted or transferred to him or her.

Proof of sale.

50 (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 a 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.

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

(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 displayed so 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.

52. A 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.

Forfeiture of license upon conviction.

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

(a) (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; 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 of keeping for sale any adulterated alcoholic drink, the court may, in addition to any other penalty which it may lawfully impose, order that the licenses be forfeited, and that license shall not be issued or transferred to him or her for such period as the court may order.

PART VI—ADVERTISEMENT AND PROMOTION

Prohibited advertisement and promotion.

54. (1) A person shall not promote an alcoholic drink by way of outdoor advertisement—

(a) in a manner that is false, misleading or deceptive or that is 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 metres from a nursery, a primary school, a secondary school, or other institution of learning for persons under the age of eighteen years or a place of worship, health facility, a public playground or any other public land or property or in public service vehicle.

(2) A person who contravenes the provisions of this section commits an offence and shall be, on conviction, 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 consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks; and

(b). protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Promotions in relation to underage persons.

55. (1) A person shall not promote an alcoholic drink—

(a) at any event or activity associated with persons under the of' eighteen years;

(b) using such things or materials that are associated with persons under the age of eighteen years.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand

shilling or 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 protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Encouraging consumption.

56. (1) A licensee shall not—

(a) award, grant or give to a person an alcoholic drink for consumption in or outside the licensed the premises without any consideration equivalent to the market price of the alcoholic drink; or

(b) promote any alcoholic drink in manner as to encourage consumption of an alcoholic drink 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.

(3) Pursuant to Article 24(2) of the Constitution the right to freedom of expression set out under Article 33 of the Constitution is limited to the extent specified in this section for the purpose' of protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks and also for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

PART VII—ENFORCEMENT

Authorized officers.

57 (1) The Executive Member shall, upon recommendation by the 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 a person appointed under this section.

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(3) Despite 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; and No 11 A of 2011

(b) officers appointed as enforcement officers under the National Police Service Act, Standards Act, Weights and Measures Act and Anti Counterfeit Act; Cap 496. Cap 513.

(c) any other person upon whom any written law vests functions of the maintenance of law and order.

Enforcement committee.

58. (1) The Governor may establish a County Alcoholic Drinks control Enforcement Coordinating Committee for the purpose of enforcing this Act.

(2) The Enforcement Committee shall consist of—

(a) the chief officer responsible for alcoholic drinks control who shall be the chairperson of the committee;

(b) one authorized officer appointed under section 57;

(c) the officer responsible for coordination of national government functions in the county;

(d) the County Public Health Officer;

(e) the officer in charge of Kenya Police Services in the county;

(f) the officer in charge of Administration Police Services in the county;

(g) one officer appointed by Kenya Bureau of Standards;

(h) one officer appointed by Anti-Counterfeit Agency;

(i) one officer appointed by Department of Weights and Measures; and

(j) any other officer as the Governor may designate.

(3) The Directorate shall provide secretariat services to the Enforcement Committee.

Functions of Enforcement Committee.

59. The functions of the Enforcement Committee shall be to—

(a) co-ordinate enforcement of the Act;

(b) monitor and evaluate the enforcement process and system under the Act;

(c) advise the Governor on the necessary measures to be adopted in order to ensure effective enforcement and compliance with the Act; and

(d) carry out any other function as may from time to time be assigned by the Governor.

Places authorized officers may enter.

60. (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 a person 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 50 (2).

(3) Pursuant to Article 24(2) of the Constitution, the right to privacy set out under Article 31 of the Constitution is limited to the extent specified, in this section for the purpose of 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.

Powers of officers.

61 (1) In carrying out an inspection in any place pursuant to section 53, an authorized officer may—

(a) examine an alcoholic drink or anything referred to in that section;

(b) require a person in such a 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 under 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.

62. (1) 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 date 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; and

(d) scrutinize any other record system in use in that place.

(2) Pursuant to Article 24(2) of the Constitution the rights privacy and property set out under Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of 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.

Entry of dwelling place.

63. An authorized officer shall not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 57.

Court to issue warrant.

64. (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 60;

(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.

65. An authorised officer executing the warrant issued under section 57 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

Certificate of analysis.

66. An authorised 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.

67 (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 or her 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 mentioned under subsection (1) shall issue the respective inspection completion and certification certificate on being satisfied with the inspection.

Obstruction.

68. A person shall not obstruct, hinder or knowingly make a false or misleading statement to an authorized officer who is carrying out duties under this Act.

Seizure.

69 (1) During an inspection under this Act, an authorised officer may seize an 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 authorised 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 authorised by an officer, a person shall remove, alter or interfere in any manner with any alcohol, alcoholic drink or other thing seized.

(4) A 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 a notice containing the prescribed information to the Executive Member within the prescribed time and in the prescribed manner.

(5) 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 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.

Order for restoration.

70 (1) The High 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 shall 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 paragraph (b) of subsection (1), 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 proceedings in respect of an offence under this Act have not been commenced before that time.

General penalty.

71. A person convicted of an offence under this Act for which no other penalty is provided shall be liable, on

conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Nature of offences.

72. (1) An offence 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, a 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 prosecuting 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) An 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.

73. (1) In a prosecution an offence under this Act, a copy of a 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 prosecuting 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—MISCELLANEOUS

Regulations.

74. (1) The Executive Member may, on recommendation of the Department, make Regulations 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 regulations on the brew and sale of a traditional drink commonly known as *'busaa.'*

(b) prescribe anything required by this Act to he prescribed or prohibit anything required by this Act to be prohibited;

(c) (c). prescribe the forms of applications, notices. licenses and other documents for use under this Act;

(d) prescribe the fees payable under this Act.

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(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 Interpretation and General Provisions Act and the Statutory instrument Act, 2014.

Transitional
No. 4 of 2010.

75. (1) Notwithstanding any other provision 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) Despite subsection (1), a manufacturer, importer, exporter, distributor or retailer of any alcoholic drink referred to other subsection (1), shall, within four months upon commencement of this Act, comply with the requirements of this Act.

FIRST SCHEDULE (S. 16)

LICENSE HOURS

License Hours, conditions and Exceptions	Licenses
Authorized to sell alcoholic drink:	I. General Retail Alcoholic Drink License (on license).
From Monday to Friday during the hours of 5.00 p.m. to 11.00 p.m.	
During weekends and public holidays during the hours of 2:00 pm to 11:00 p.m.	
Authorised to sell alcoholic drink on any day of the week during the hours of 5: 00 p.m. to 8:30 p.m.	2. General Retail 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 10.00 a.m. to 8:30 p.m.	3. Supermarket or Franchised (Urban) Alcoholic Drink License (Off-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.	4. Hotel Alcoholic Drink License
Authorized to sell alcoholic drink to members	5. Club Alcoholic Drink License
(a) From Monday to Friday during the hours of 5.00 p.m. to 11.00 p.m.	(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) During weekends and public holidays during the hours of 2.00 pm to 11.00 pm	(b) Proprietary Club including Night Club)
Authorized to sell alcoholic drink any day of the week during the hours of 7.00 p.m. to 3.00 a.m.	
Authorized to sell alcoholic drink during the hours of 5.00 p.m. to 1100 p.m.	6. Theatre Alcoholic rink License,
Authorized to sell alcoholic drink on any day of the week at any hour to persons bona fide travelers on board a train or air.	7. Travelers' Alcoholic Drink License.
Authorized to sell alcoholic drink at any hour	8, Railway Restaurant Car 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.	9. Steamship Alcoholic Drink License.
Authorised to sell alcoholic drink on the day and during the hours stipulated in the license by the Sub- county Committee for the purposes of specific occasions, ceremonies or events as indicated in the application.	10. Temporary Occasional license or

SECOND SCHEDULE (S.28)

TYPE OF LICENSES

1. The following licenses may be granted under this Act.

(a).Manufacturer's License

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

(i) manufacture and store the manufactured alcoholic drink in the depot;

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(ii) sell the product of his manufacturing plant 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 in accordance with the, Alcoholic Drinks Control Act, 2010; and

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

(2) For the purposes of this paragraph "depot" means premises of whatever description which are occupied by a Manufacturer for of his trade.

2. 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.

2. Wholesale License

3. 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.

3. Retail License

4. An import license authorizes the licensee to import an alcoholic drink and to sell the imported alcoholic drink at wholesale in accordance to the conditions that are for the time being, applicable to a holder of a wholesale license.

4. Import License

THIRD SCHEDULE (S 28 (6))

LICENCE FEES

Type of Licence			*Fees*	
1.	Manufacturer's alcoholic drink licence			
	For each alcoholic drink or product manufactured:			
	(a)	one million litres and above per annum	1,000,000	
	(b)	between five hundred thousand (500,000) and nine hundred ninety nine thousand, nine hundred and ninety nine (999,999) litres per annum	500,000	
	(c)	above twelve thousand (12,000) but below four hundred and ninety nine thousand, nine hundred and ninety nine litres (499,999) per annum.....	250,000	
	(d)	twelve thousand litres (12,000) and below per annum	50,000	
2.	Wholesale alcoholic drink licence for each premises		50,000	30,000
3.	Import alcoholic drink licence (wholesale): (a) one million litres and above		1,000,000	
	(b)	between five hundred thousand (500,000) and nine hundred ninety nine thousand, nine hundred and ninety nine (999,999) litres	500,000	
	(c)	below five hundred thousand (500,000) litres	250,000	

Type of Licence			*Fees*	
4.	General retail alcoholic drink licence—		For 12 months	For 6 months or less
	(a)	in respect of premises situate within a City or a municipality	50,000	30,000
	(b)	in respect of premises situate within urban areas other than city and municipality	30,000	18,000
	(c)	in respect of premises situate elsewhere than in a city, municipality and urban areas	15,000	9,000
5.	General retail alcoholic drink licence (off Licence)—		For 12 months	For 6 months or less
	(a)	in respect of premises situate within City or municipality	24,000	14,000
	(b)	in respect of premises situate within urban areas other than city and municipality	18,000	10,000
	(c)	in respect of premises situate elsewhere than in a city, municipality and urban areas	12,000	7,000

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide for the implementation of section 4 (c) of Part 2 of the Fourth Schedule of the Constitution of Kenya on liquor licensing by the county government.

The Bill proposes to integrate the control of alcoholic drinks into the promotion of primary health care, control of outdoor advertisement in accordance with the Fourth Schedule of the Constitution of Kenya.

Further, the Bill seeks to apply the Alcoholic Drinks Control Act, 2010 in line with the devolved government system.

PART 1 of the Bill provides for the preliminaries, which include the interpretation of terms used in the Bill as well as the objects and purpose of the Bill. The objects include protection of persons under the age of eighteen years from the negative impact of alcoholic drinks, promotion of ethical business practices, as well as provision of public education.

PART II of the Bill proposes to create the Alcoholic Drinks Control Directorate, which will be an office in the County Public Service. The Directorate will be responsible for supporting the sub-county committees, carrying out public education, facilitating citizen participation, facilitating establishment of treatment and rehabilitation facilities and programs, carrying out research and advising on policy to be adopted in the county among others. The Bill also proposes the establishment of the Alcoholic Drinks Control Fund, which will consist of money appropriated by County Assembly and license fees payable under the Act. The Fund will be used for financing the implementation of the Act.

PART Ill of the Bill provides for the licensing framework including procedure and conditions related to licensing of alcoholic drinks. The Bill proposes the establishment of sub-county alcoholic drinks control committee to license persons dealing with alcoholic drinks. The Bill also proposes the establishment of Alcoholic drinks Review Committee for reviewing decisions of sub-county committee when disputes arise there from.

PART IV of the Bill provides for general requirements related to sale, manufacture, distribution and consumption of alcoholic drinks.

PART V provides for sale and consumption of alcoholic drinks. The Bill proposes the integration of the Community Services Order Act in dealing with drunkenness and disorderliness as well as control of manufacture of illicit alcoholic drinks.

PART VI proposes control of outdoor advertisements in relation to alcoholic drinks. The Bill proposes prohibition of outdoor advertisements near schools for persons under the age of eighteen years, painting

residential buildings with alcoholic drinks brand names or colours as well as giving of free drinks.

PART VII of the Bill provides for enforcement of the Bill. The Bill proposes appointment of authorized officers to enforce the Bill and proposes the establishment of the alcoholic drinks enforcement committee to provide policy advise and oversight over coordination of enforcement of the law.

PART VIII of the Bill provides for miscellaneous provisions. The Bill proposes to empower the executive member responsible for alcoholic drinks control powers to make regulations for better carrying out purposes of the 8111. The Bill further provides for a transition period of four months.

The Bill also in accordance with the Alcoholic Drinks Control Act proposes the hours of sale of alcoholic drinks that licensed persons under the Act must comply with in accordance with the Second Schedule.

The enactment of the Bill shall occasion additional expenditure of public funds, which shall be provided for in the estimates.

MOKIN ARAP PTANGUNY,
Executive Committee Member for Public Administration.