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**THE HOMA BAY COUNTY ALCOHOLIC DRINKS
CONTROL ACT, 2015**

No. 8 of 2015

Date of Assent: 10th August, 2015

Date of Commencement: See Section 1

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**THE HOMA BAY COUNTY ALCOHOLIC DRINKS CONTROL
ACT, 2015**

**AN ACT of the County Assembly of Homa Bay to provide for the
Licensing and regulation of production; sale; distribution;
consumption; and outdoor advertisement, of alcoholic drinks and
connected purposes**

ENACTED by the County Assembly of Homa Bay as follows—

PART I — PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Homa Bay County Alcoholic Drinks Control Act, 2015 and shall come into operation fourteen days after publication in the County Gazette and Kenya 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 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 50;

‘cinema’ has the meaning assigned to it in the Cap. 222 Films and Stage Plays Act;

‘Chief Officer’ means the chief officer responsible for alcoholic drinks control

‘County’ means the Homa Bay County;

‘Committee’ means the Alcoholic Drinks Control Committee established under section 4;

‘Day’ means a period of twenty four hours beginning 12:

'Entity' includes a company, corporation, firm, Sole partnership, association, Sole Proprietor society, trust or other business organization, whether incorporated or not;

'Enforcement Committee' means the county Alcoholic Drinks Control Enforcement Coordinating Committee established under section 51;

"Executive Member" means the County Executive member responsible for Trade

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

"Governor" means the Governor of the County Government of Homa Bay

"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, trading centre, 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, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging labelling, 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, including and 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;

“review committee” means the County Alcoholic Drinks Regulation Administrative Review Committee established under section 10;

“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 gain;
- (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.

The Objects and Purpose of the 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 to 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 —

- (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 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 health, social and economic 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) Promote fair trade practices.

PART II—ADMINISTRATION

Establishment of Committee

4. (1) There is established a committee to be known as the Alcoholic Drinks Control Committee which shall be in the department of Trade, Industrialization, Cooperatives and Investment.

- (2) The Committee shall consist of the following—
 - (a) The Chief Officer, Department of Trade, Industrialization, Cooperatives and Investment who shall be the chairperson
 - (b) The officer for the time being in charge of County Public Health;
 - (c) The officer commanding Kenya Police services in the County;
 - (d) The officer responsible for coordination of national government functions in the county;
 - (e) One officer designated by the Committee who shall be the Secretary who shall be an ex-officio member;
 - (f) The officer for the time being responsible physical planning in the county;
 - (g) One officer designated by the county director of education; and
 - (h) Eight resident of the County, one per sub-county appointed by the Executive member through a competitive process in accordance with the prescribed rules, one of whom shall be

youth provided that not more than two thirds shall be of the same gender

- (3) The functions of the committee 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 that relate to alcoholic drinks control in accordance to the framework for citizen participation established under County Government and National Government legislations;
 - (d) Facilitate and promote 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; and maintain a register of alcoholic license within the County;
 - (f) Develop in collaboration with other County and National government departments strategies and plans for implementing this Act and any other relevant National legislation relating to control of alcohol abuse and coordinate and support their implementation;
 - (g) Advise the executive member generally on the exercise of his/her powers and functions under this Act, and in particular on County policies 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 and County assembly;
 - (i) Recommend to the executive member the formulation of laws and regulations related to alcoholic drinks;
 - (j) Monitoring and evaluating the implementation of this Act including the operation of the sub-county committees and

advising the executive member on the necessary measures to be adopted;

- (k) In collaboration with the county sub-committee and the enforcement committee prepare and submit to the executive on quarterly basis, an alcohol abuse control status report containing such matters as may be specified by the executive member;
- (l) Carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform other such functions as may, from time to time, be assigned by the executive member.

Powers of the Committee

5. The committee shall have the power to review any decisions of the Sub-county committees established herein, and exercise any such other powers that may be necessary carry out its functions effectively under this Act

Rehabilitation Facilities and Programs

- 6. The committee shall—
 - (a) in collaboration with other relevant county and national government agencies establish treatment and programs for persons dependant 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 treatment and rehabilitation services are designed in a manner that is accessible and affordable to people dependant on alcoholic drinks.

Establishment of the Fund

7. (1) There is established 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 received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
 - (d) monies earned or arising from any investment of the fund;
 - (e) all other sums which may in any investment of the fund;

- (f) 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 chairperson shall deal with the property in such a manner as he/she thinks fit including selling the property and using the proceeds of sale for the purposes for which the fund is established.

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

- (a) carrying out the functions of the committee stipulated under section 4;
- (b) assisting in the operations of the sub-county committees;
- (c) any other matter incidental to the matters stated in paragraph (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

8. (1) The Fund shall be administered by the chairperson of the committee.

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

(3) The administrator of the fund 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 requirements concerning use of expenditure;
- (c) ensure the earnings of, or accruals to the fund are retained in the fund, unless the county executive member for finance and economic planning direct otherwise;
- (d) ensure that money held in the fund, including any earnings or accruals in paragraph (c) is spent only for the purposes for which the fund is established;
- (e) 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 Funds;

- (f) prepare, sign and transmit through the executive member for finance to the Auditor General in respect of each financial year and within three (3) months after 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;
- (g) furnish such additional information as may be required for examination and audit by the Auditor General or under any law;
- (h) ensure that the accounts of the fund and annual financial statements relating to those accounts comply with the accounting standards prescribed and established by the Accounting Standards Board from time to time;
- (i) present financial statements to the County Assembly;
- (j) designate such staff as may be necessary to assist in the management of the Fund provided that such staff shall work in the department of Trade, Industrialization, Cooperatives and Investment; and
- (k) Publish and publicize the fund and usage of money through the fund

PART III – LICENSING

Control of Alcoholic Drinks

- 9. (1) No person shall—**
- (a) brew or otherwise produce;
 - (b) sell, distribute or dispose of, or deal with; any alcoholic drink in the County except under and in accordance with license issued under this Act.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence.
- (3) 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;
 - (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 sell of medicine by a medical practitioner, veterinary surgeon registered under the veterinary surgeons Act or a pharmacist registered under cap

244; the Pharmacy and Poisons Act, of a medicine containing alcoholic drink;

- (c) the sale of spirituous or distilled perfume or perfumery
- (d) the sale of industrial alcohol;
- (e) the sale by auction by an auctioneer licensed under the Auctioneers Act, 1996, of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink license belonging to a wholesale dealer on the licensed premises of the dealer;
- (f) the sale by deceased persons' legal representative of an alcoholic drink forming part of the estate of the deceased person;
- (g) the sale by a trustee in bankruptcy of alcoholic drinks forming part of the bankrupt's estate; and
- (h) the sale by the liquidator of a company of alcoholic drinks forming part of the company's assets.

Establishment of the sub-county committee

10. (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 to this Act; and
- (b) perform such other functions as may from time to time be assigned to it by the Executive Member

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

(3) In carrying out its functions, the sub-county committee shall—

- (a) ensure that there is effective public participation in accordance with the framework for citizen participation established under county legislations, the County Governments Act, 2012, the Urban and Cities Act, 2011 and any other relevant law;
- (b) collaborate with ward and village administrators and councils appointed under the County Governments Act, 2012 and officers in charge of coordination of the national government functions in the wards and villages;
- (c) collaborate with similar committees in other counties for effective implementation of the Act.

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

- (a) Sub-county administrator appointed under the County Government's Act who shall be the chairperson;
- (b) the ward administrator;
- (c) the sub-county public health officer;
- (d) the officer commanding Kenya Police services in the sub-county;
- (e) one officer designated by the committee who shall be the secretary and ex officio member;
- (f) the officer for the time being responsible for physical planning in the sub-county;

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

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

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

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

(8) The committee shall appoint the secretary to the sub committees.

Review committee

11. (1) The Alcoholic Drinks Control Committee established under section 4(1) of this Act shall adjunct as the review committee.

(2) The committee shall be responsible for reviewing on appeal, decisions made by the sub-county committee.

(3) The conduct of business and affairs of the review committee shall be in such a manner as may be prescribed by the executive member.

(4) The review committee shall appoint a secretary to provide administrative services to the review committee.

Application for license

12. (1) A person intending to produce, manufacture, import or distribute any alcoholic drink in the county or to operate an establishment for the sale of alcoholic drinks 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 sub section (1) shall contain—

- (a) a comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale or distribution.
- (b) an indication as to whether the manufacture or sale of the alcoholic drink is licensed in another county and if the evidence of such license.
- (c) for the manufacturer's license, certification from the Kenya Bureau of Standards.
- (d) such other requirements as may be prescribed.

(3) The sub-county committee shall, within twenty one days after the submission of the application for the license, prepare a notice setting forth the names of the 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 notice to be—

- (a) published at the office of the sub-county and ward 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) sent to the Inspector General of Police, or to such police officer notified to the Governor by the Inspector General to receive it on his behalf;
- (d) sent to the sub-county Public health officer in the sub-county in which the premises or establishment in respect of which the licenses are applied for are situated; and
- (e) sent to the sub-county physical planning officer

(4) The Inspector General of Police or, as the case may be, 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 of all matters which may be relevant to the consideration of the application.

(5) Any person may lodge with the committee an objection to an application.

(6) Every 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 objection on the applicant, personally or by post at least seven(7) 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 on its own motion take notice of any matter or thing which, in the opinion of the committee, constitutes an objection to an application 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 (7) days as the sub-county committee considers necessary to enable the applicant to reply 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 typed applied for and in respect of particular locality for which the application is made.

(10) A sub-county committee may require the personal appearance of the applicant before it, 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 local authority for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.

(13) Where the sub-county committee consider it necessary to take any evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the chairperson shall be empowered to administer the oaths.

(14) For the purposes of chapter XI of the Penal Code (which concerns the offences relating to administration of justice), all the proceedings before the sub-county committee shall 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 evidence given and of the arguments adduced and 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 substantial miscarriage of justice has thereby been occasioned by such omission or error.

(16) The sub-county committee shall within twenty one (21) days of receipt of 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 the business applied for;
- (d) the applicant for license to brew, distil, bottle or manufacture an alcoholic drink possesses necessary qualification and relevant requirements stipulated under the 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.

Grant of License

13. (1) The sub-county committee shall, after considering the application under section 12, indicate in writing whether it objects to the grant of license applied for.

(2) Where the sub-county committee has no objection to the application under section 12 it shall grant a license to the applicant upon payment of a prescribed fee.

(3) The license issued shall be in such a 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 section 11, it may—

- (a) reject the application giving reasons and notify the applicant accordingly within thirty (30) days of the decision to reject; or
- (b) make comments and recommendations thereon and return it to the applicant within fourteen (14) days.

(5) The applicant to whom the application is returned under sub section (4)(b) may resubmit a revised application within thirty (30) days of the date of notification.

(6) On receipt of any revised application under sub section

(5), the sub-county committee shall, within thirty (30) days determine the application in accordance with this Act and upon such determination, if satisfied issue a license.

(7) Where a license is granted under this section by the sub-county committee, it shall be published in the County Gazette.

Provisional license

14. (1) Notwithstanding the provisions of section 12 and 13, the sub-county committee may issue provisional license for the manufacture or sale of an alcoholic drink for such a period not exceeding six (6) months as may be appropriate where the committee is satisfied that the applicant for the license has demonstrated to the satisfaction of the committee that the manufacture or sale of the alcoholic drink is licensed in another county but the issuance of the provisional license shall be subject the applicant complying with the provisions of section 12 and 13 within the provisional period.

(2) Where the premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being use for the sale of alcoholic drinks or consumption thereof on such premises, any 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, a license of the type to be specified in the application will be granted in respect of such premises.

(3) The provisions of section 11 and 12 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(4) The sub-county committee may, subject to such reasonable conditions as it may therein include, give to the applicant assurance in the prescribed form that, on the completion of the premises, a license of the

type specified therein will be granted or it may refuse to give such assurance

(5) Where such an assurance has been given under subsection (4), the sub-county committee may, on any date, on being satisfied that the premises have been completed in accordance with the signed plan submitted under sub section (3) and that any condition which may have been imposed in the assurance have been complied with, issue to the applicant a license of type specified in the assurance in respect of the premises.

(6) Any assurance given under subsection (4) shall become ineffective and the sub-county committee shall not issue a license if, between the date of the giving thereof and the date of completion of the premises, the applicant becomes a person to whom in accordance with section 16, a license may not be granted.

License for Premises

15. (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 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, provided that no license shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools.
- (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 (300) meters from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen (18) years.

(2) The sub-county committee shall not grant a license for the sale of an alcoholic drink in—

- (a) a supermarket or such 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 (18) years;
- (b) in an outlet or premises located within a fuel station

(3) Notwithstanding provision under subsection (1), the sub-county committee may issue a license to a premises 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 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 premises 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 outdoor alcoholic drinks promotion or advertisement;
- (d) the applicant does not engage in activities that interfere with learning in the institution or activities that calculated to attract persons under the age of eighteen (18) to the premises;

Persons not eligible for License

16. (1) The sub-county Committee shall not grant new license to any person who—

- (a) has failed to satisfy the sub-county committee, when called upon to do so, of his/her good character
- (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 (6) 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 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 licence; or
- (b) the licensee has been convicted of three offences under this Act or any Act at any time in force regulating the manufacture, distillation, distribution sale of an alcoholic drink for more than three times within one year;
- (c) the licensee has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period exceeding six (6) months;

- (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;
- (e) the conditions of the license have not been satisfactorily fulfilled; or
- (f) the premises to which the license relates are not in 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 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

17. (1) Except as otherwise provided in this Act, a sub-county committee 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.

(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 on thirty first day of December each year;
- (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 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 reached a decision thereon, such license shall continue in force until the decision of the sub-county 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.

Review

18. (1) An applicant whose application for a new license, to renew or transfer a license has been refused or whose license has been cancelled, may within fourteen (14) days of such refusal or cancellation, request in writing the review of such refusal or cancellation to the review committee.

(2) Upon receipt of a request under this section, the review committee shall notify the sub-county committee of the pending review.

(3) The review committee shall within twenty-one (21) days consider and make a final determination on the request for review.

(4) The review committee may –

- (a) Dismiss the request for review if in its opinion, the request is frivolous or vexatious;
- (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;
- (e) Make any other declaration as it may deem fit.

Appeals to court

19. Notwithstanding section 18, an applicant whose application for a new license, to renew or transfer a license has been refused or license has been cancelled may within twenty-one (21) days of such refusal or cancellation appeal to the county court.

Licenses to body corporate

20. (1) A license issued to a body corporate shall be issued in the name of the body corporate provided that the sub-county committee 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.

Types of licenses

21. (1) The licenses which shall be granted under this Act shall be those specified in the second schedule, and the provisions of this Act and rules made herein this Act shall have effect in relation to the respective licenses therein specified.

(2) No license may be granted so as to be applicable to more than one premise.

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

Transfer of license

22. (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 for the transfer of his/her license to the purchaser or lessee or otherwise of such premises, and the sub-county committee 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 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 of a license either personally or by agent approved by the sub-county committee.

(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 temporally transferred was valid for a period of more than six (6) months.

(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 (2), shall possess all the rights, liabilities and/or obligations of the original licensee.

Renewal for Purpose of Disposition

23. 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.

License to be Displayed

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

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

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

Employment for sale of Alcoholic Drinks

25. (1) No licensee shall employ a person under the age of eighteen (18), 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 license permits another person to manage, superintend or conduct the day-to-day business of the premises in respect of which he is licensed, the licensee shall not be relieved of his duties and obligations under this Act.

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

Drunken Behaviour

26. (1) A licensee, his/her agent or employee 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, his/her 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, his/her 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.

Debt from sale of Alcoholic Drink

27. 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 the sale or unless the person to whom it was sold or supplied at the time of the sale a lodger on such premises.

Access by Person under Age of Eighteen

28. (1) No person holding a license to manufacture, store or sell alcoholic drinks under this Act shall allow a person under the age of eighteen (18) years to enter or gain access to the area in which the 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) Any person who contravenes the provisions of subsection (1) and (2) commits an offence.

Reports by Public Health Officers and Police officer

29. (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 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 the provisions of this Act or of his/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 (3) is required.

Cancellation of License

30. (1) Upon receipt of a report made under subsection 28 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 (30) days therefrom, 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 sub-county public health officer 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, 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 sub-county committee, is necessary.

(4) Any person aggrieved by the decision of the sub-county committee upon any report may within twenty-one (21) days appeal against the decision to review committee.

(5) The review committee, on an appeal under this section, 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 review committee or court as the case may be, 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 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 sub-county committee or of the court as the case may be

PART IV – GENERAL REQUIREMENTS

Conformity with Requirements

31. (1) No person shall manufacture, or distribute or sell an alcoholic drink in the County 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 manufacture, distribution and importation of an alcohol drink commits an offence and shall be liable to a fine not exceeding two million

shillings, or to imprisonment for a term not exceeding five years, or to both.

(3) A person who contravenes the provisions 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 to imprisonment for a term not exceeding one year or both.

Supply to Young Persons

32. (1) No person shall sell, supply or provide knowingly 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 one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year or to both.

(3) 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 believe, on reasonable grounds, that the documentation was authentic.

(4) for the purpose 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

33. (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; and

(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 (6) months, or to both.

Vending Machines

34. (1) No person shall 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 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

35. (1) No person shall sell, manufacture, pack or distribute an alcoholic drink in sachets or such other forms as may be prescribed under this Act or any as may be prescribed under this Act or any other relevant written law.

(2) Notwithstanding the provisions subsection (1)—

- (a) no person shall manufacture, pack, distribute or sell in the county an alcoholic drink in a container of less than 200 millilitre;
- (b) any other distilled or fortified alcoholic drink shall only be manufactured, packed, sold or distributed in glass and plastic 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 to both.

PART V — SALE AND CONSUMPTION

Sale to Intoxicated Person

36. 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.

Disorderly Conduct

37. (1) Any 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) 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) 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 once in accordance with provisions of the Community Service Orders Act, 1998.

(4) Despite sub-section (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.

(5) 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

38. (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 on his 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 (9) months, or to both;

- (b) for a second or subsequent offences, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both,
 - (c) to forfeit all the alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink in addition to any penalty imposed under paragraph (a) or (b) order,
- (2) Except as may be provided for in this Act, no person shall-
- (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;
 - (b) 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) Any person who contravenes the provisions of subsection (2) commits an offence and shall be liable to the penalties specified under subsection (1).

Sale to Authorized Officer

39. (1) 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 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.

Non-Disclosure of Conviction

40. 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

41. (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 serves 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 hire, 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 Drinks

42. (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 under 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

43. (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

44. (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 labelled 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

45. Every licensee who is convicted of an offence under this Act shall produce his/her license to the court convicting him/her, 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

46. 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; 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/her 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

Prohibited Advertisement and Promotion

47. (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 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 place demarcated under any written law as residential areas or within a distance of three hundred meters from nursery, primary, secondary school, or other institution of learning for persons under the age of eighteen years or a place of worship, health facility or 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 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 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.

Promotion at Underage events

48. (1) No person shall promote an alcoholic drink—

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

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(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.

(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

49. (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 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 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 protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks and also for the purpose of protecting person 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

50. (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 every person appointed under his 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; and
- (b) officers appointed as enforcement officers under the National Police Service Act, Standards Act, Weights and Measures Act and Anti-counterfeit Act
- (c) any other person to whom any written law confers upon the authority to maintain law and order.

Enforcement Committee

51. (1) The Governor may establish a County Alcoholic Drink Control Enforcement Coordinating Committee for the purpose of enforcing this Act.

- (2) The Enforcement Committee shall consist of—
- (a) the chief officer who shall be the chairperson of the Committee
 - (b) one authorized officer appointed under section 49;
 - (c) the County Public Health Officer;
 - (d) the officer in charge of Kenya Police Services in the county;
 - (e) one officer appointed by Kenya Bureau of Standards;
 - (f) one officer appointed by Anti-Counterfeit Agency;
 - (g) one officer appointed by Department of Weights and Measures;
 - (h) any other officer as the Governor may designate.

(3) The secretary to the county committee shall provide secretariat services to the Enforcement Committee.

Function of the Enforcement Committee

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

- (a) coordinate 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 ensuring effective enforcement and compliance with the Act;
- (d) carry out any other related function as may from time to time be assigned by the Governor.

Places authorized officer may enter

53. (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/her under section 50 (2).

(3) Pursuant to Article 24(2) of the Constitution, the right to privacy set out in Article 31 of the Constitution is limited to be 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

54. (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 any person in such place to open any container or package found in the place that the officer believes on reasonable grounds contains 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 Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified 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

55. (1) In carrying out an inspection in a place, an authorized officer may—

- (a) use of 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.

(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 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 into Dwelling place

56. An authorized officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 57 of this Act.

Court to Issue Warrant

57. (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 53;
- (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 morning and six o'clock in the afternoon of any day of the week.

Use of force

58. An authorized 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 authorized in the warrant.

Certificate of Analysis

59. An authorised officer who has analysed 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

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

Obstruction

61. 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

62. (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 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.

Restoration order by court

63. (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 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 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 no proceedings in respect of an offence under this Act have been commenced before that time.

General Penalty

64. Any person convicted of an offence under this Act for which no other penalty is provided 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.

Nature of Offences

65. (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

66. (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 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 – MISCELLANEOUS**Winding up of the fund**

67. (1) The County Executive Member for Finance and Economic Planning may wind up the fund with the approval of the County Assembly

(2) On winding up the fund—

- (a) the Chairperson of the Committee shall pay any amount remaining in the fund into the County Exchequer Account
- (b) the County Executive Committee Member for Finance and Economic Planning shall with the approval of the County Assembly, pay any deficit in the fund from the County Exchequer Account

Regulations

68. (1) The Executive Member may, on recommendation of the Committee 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 forms of applications, notices, licenses and other documents for use under this Act;
- (c) 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 Interpretation and General Provisions Act and the Statutory instrument Act, 2013.

Transitional Provisions

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

FIRST SCHEDULE – LICENCE HOURS

LICENCE	License Hours, Conditions and Exceptions
General Retail Alcoholic Drink License (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 p.m. to 12.00 p.m.
2. General retail License (off License) Wines and Spirits Retailers (Rural and Sub Urban)	Alcoholic drink the week during the hours of 4:00 p.m. to 8:30 p.m.
3. Supermarket or Franchised retail chain stores (Urban) Alcoholic Drink License (off-License)	Authorized 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/her own consumption and for guests' consumption in the premises at any hour
5. 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. Authorized to sell alcoholic drink any day of the week during the hours of 4.00 p.m. to 6.00 a.m.
Theatre Alcoholic Drink License	Authorized to sell alcoholic drink during the hours of 5.00 p.m. to 11.00 p.m.
Travelers' Alcoholic Drink 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
Railway car Restaurant Alcoholic drinks License.	Authorized to sell alcoholic drink at any hour
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 voyage
Temporary or occasional License	Authorized to sell alcoholic drinks on the day and during the hours stipulated in the license by the sub-county committee for the purpose of specific occasions, ceremonies or events as indicated in the application
Restaurant License	Authorized to sell alcoholic drinks with a meal at any time of the day



SECOND SCHEDULE—TYPES OF LICENCES

The following licenses may be granted under this act

1. Manufacturer's License

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

- (a) Manufacture and store the manufactured alcoholic drink in his depot;
- (b) 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 Drink Control Act 2010; 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 Manufacturer for his trade.

2. Wholesale License/Stockist 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. Distributor License

A distributor license authorizes the licensee to sell and transport to retailers in areas so identified, and store in a specified premise

THIRD SCHEDULE

Type of license	Fees	
	For 12 months	For 6 months or less
General retail alcoholic drink license-		
In respect of premises situated within a city or towns	30,000	18,000
In respect of premises situated within urban towns	20,000	15,000
In respect of premises situated elsewhere rural areas	10,000	7,000
General retail alcoholic drink license (off license)	For 12 months	For 6 months or less
In respect of premises situated within urban	24,000	14,000
In respect of premises situated within urban areas other than towns	18,000	10,000
In respect of premises situated elsewhere than in rural areas	10,000	7,000
Brewers alcoholic drink license For each alcoholic drink or product manufactured:		
One million litres and above per annum	500,000	
Between five hundred thousand (500,000) and nine hundred and ninety nine thousand and ninety nine (999,999) litres per annum	250,000	
Above twelve thousand (12,000) litres but below four hundred and ninety nine thousand nine hundred and ninety nine litres (499,999) per annum	150,000	
Twelve thousand litres (12,000) and below per annum	20,000	
Stockist alcoholic drink license for each premises	30,000	20,000
Distributor license	80,000	60,000
One million litres and above	500,000	
Between five hundred thousand (500,000) and nine hundred and ninety nine thousand nine hundred and ninety nine (999,999) litres	250,000	
Below five hundred thousand (500,000) litres	150,000	



1. Bottlers alcoholic drink license	100,000	60,000
2. Depot license, in addition to sub paragraph (1) per depot	30,000	20,000
1. Distributor alcoholic drink license	30,000	20,000
2. Depot license, in addition to sub paragraph (1) per depot	30,000	20,000
Hotel alcoholic drink license		
In respect of premises situated within a city or municipality	50,000	30,000
In respect of premises situated within urban areas other than city or municipality	30,000	20,000
In respect of premises situated elsewhere than city, municipality and urban areas	20,000	12,000
Where the licensee holds a general retail alcoholic drink license in respect of the same premises	5,000	
Restaurant alcoholic drink license		
In respect of premises situated within a city or a municipality	30,000	20,000
In respect of premises situated within urban areas other than city and municipality	20,000	12,000
In respect of premises situated elsewhere than in the city, municipality and urban areas	10,000	6,000
(1) Club alcoholic drink license (members' club)		
In respect of premises situated within a city or town	50,000	30,000
In respect of premises situated within urban areas other than city and towns	30,000	20,000
In respect of premises situated elsewhere than in a city, town and urban areas	10,000	6,000
(2) Club alcoholic drink license (proprietary club or night club or discotheque)		
In respect of premises situated within a city or a municipality	50,000	30,000
In respect of premises situated within urban areas other than city and town	30,000	20,000
In respect of premises situated elsewhere	10,000	6,000

than in a city, municipality and urban areas		
Supermarket and franchised retail stores alcoholic drink license		
In respect of supermarkets or franchised retail stores for each premises situated within city or towns	80,000	
In respect of supermarkets or franchised retail stores for each premises situated within urban areas other city or towns	30,000	
In respect of supermarkets or retail chain stores for each premises situated elsewhere than in a city, town and urban areas	30,000	
Theatre alcoholic drink license	15,000	
Travelers alcoholic drink license		
Where the licensee does not hold a general retail alcoholic drink license in respect of the same premises	30,000	
Where the licensee holds a general retail alcoholic drink license in respect of the same premises	15,000	
Railway restaurant car alcoholic drink license, per car	5,000	
Steamship alcoholic drink license per steamship	30,000	
Temporary or occasional alcoholic drink license per day	1,000	
For transferring an alcoholic drink license	500	
For removing an alcoholic drink license	500	
For the issuance of an assurance under the act	500	
For the issue of a duplicate license	500	



