

THE MURANG'A COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2022

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A Bill For —

AN ACT of the County Assembly of Murang’a to repeal the Murang’a County Alcoholic Drinks Control Act, 2014 and enact to the Murang’a County Alcoholic Drinks Control Act, 2022, provide for the regulation of the production, sale and consumption and outdoor advertising of alcoholic drinks, creation of offences and for connected purposes.

ENACTED by the Murang’a County Assembly, as follows —

PART 1 – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Murang’a County Alcoholic Drinks Control Act, 2022.

Repeal of Act No. 2 of 2014

2. The Murang’a County Alcoholic Drinks Control Act, 2014 is hereby repealed.

Interpretation.

3. 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 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 of this Act;

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

“Chief Officer” means the chief officer responsible for health;

“committee” means the Murang’a County Liquor Committee under Section 10 of the Act;

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“county executive committee member” means the County Executive Committee Member responsible for health;

“directorate” means the Alcoholic Drinks Control Directorate established under Section 5 of the Act;

“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;

“manufacture” means the brewing, distilling, tapping or any processing or intermediate processing of an alcoholic drink or a product that pretends or counterfeits 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 or of pretends or counterfeit alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

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

“rehabilitation” means any in or out patient programme aimed at addressing the health related issues arising from consumption of alcoholic drinks and other psychoactive substances

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

“wholesaler” means any person licenced to sell any alcoholic drink to a licenced retailer;

“committee” means the Murang'a County Liquor Licensing Committee;

“traceability” means the ability to track alcoholic products and process owner from production to the final consumer or vice versa.

4. Object and Purpose of the Act

The Objects and Purpose of this Act is to provide for the control of the production, distribution, sale and use of alcoholic drinks in order to —

- (1) safeguard the health of the people from consumption of illegal and uncertified alcoholic drinks;

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- (2) preventing access to alcoholic drinks by persons under the age of eighteen years;
- (3) adopt and reinforce effective measures to eliminate the manufacturing, distribution, sale, smuggling and counterfeiting of illegal alcoholic drinks;
- (4) avail and promote counselling and rehabilitation programs for alcohol addicts;
- (5) promote research and relay information on the effects of alcoholic drinks consumption and in particular the health risks that may arise; and
- (6) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcohol.

PART II – ADMINISTRATION

5. Establishment of an Alcoholic Drinks Control Directorate

(1) There is established in the county the Alcoholic Drinks Control Directorate which shall be an office in the County public service under the Department of Health Services.

(2) The Directorate shall be headed by a director who shall be appointed by the County Public Service Board in consultation with the Executive Member and the approval of the County Assembly.

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

6. Units of the Directorate

(1) The Directorate shall have three units and each shall be headed by a Deputy Director—

- (a) Licensing, Risk Reduction and Compliance Unit;
- (b) Training, Research and Advocacy Unit; and
- (c) Rehabilitation and Treatment Unit.

(2) Each unit shall carry out its mandate and duties as allocated by the Executive Member and shall prepare and present annual reports to the executive committee and the county assembly.

7. Qualifications of the Director.

(1) A person shall be qualified for appointment as the Director of the Alcohol Directorate of the Board if that person has, in addition to the requirements of Chapter 6 of the Constitution —

- (a) at least 10 years' experience; and

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- (b) a degree from a university recognized in Kenya in either—
 - (i) public health;
 - (ii) community health; or
 - (iii) or any other health related qualification.

- (2) A person shall not be qualified for appointment as the Director or Deputy Director if that person —
 - (a) is a member of the County Assembly;
 - (b) is a member of the governing body of a political party;
 - (c) is a County Public Officer.
 - (d) is an undischarged bankrupt; or
 - (e) has been removed from office for contravening the provisions of the Constitution or any other law.

8. Functions of the Directorate

The functions of the Directorate shall be to —

- (1) support and facilitate sub-county Committees in carrying out their functions;

- (2) carry out public education on alcoholic drinks control in the county directly and in collaboration with other public or private bodies and institutions;

- (3) facilitate citizen participation in matters related to alcoholic drinks control in accordance to framework for citizen participation established under the County Government Act, the Urban Areas and Cities Act or any other relevant written law;

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

- (5) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control;

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- (6) develop in collaboration with other county or 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 implementations;
- (7) advise the Executive County 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;
- (8) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive County Member which shall be transmitted to the County Executive Committee, county assembly and the Authority;
- (9) recommend to the Executive Member and participate in the formulation of laws and regulations related to alcoholic drinks;
- (10) monitoring and evaluating the implementation of this Act including the operations of the Board and the sub-county Committees and advising the executive member on the necessary measures to be adopted;
- (11) Publish bi-annually, a list of all the brands of alcohol that are allowed for sale and distribution in the county;
- (12) Ensure that all distributors, wholesalers and retailers of alcoholic drinks comply with the provisions of any national laws, health guidelines, Kenya Bureau of Standards and Kenya Revenue Authority; and
- (13) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the Executive Member.

9. Establishment of Rehabilitation Facilities and Programs.

The Directorate shall—

- (1) 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;
- (2) ensure that the treatment and rehabilitation facilities have the necessary human resources for effective operation and service delivery; and
- (3) ensure that the treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcoholic drinks;

10. Establishment and Functions of a Liquor Committee

- (1) There is established the Murang'a County Liquor Committee.
- (2) The functions of the committee shall be to—
 - (a) receive, review, approve and grant licenses in accordance with applications recommended by the sub-county committees;
 - (b) revoke licenses based on the recommendations of the sub-county alcohol regulation committees;
 - (c) carry out research and retain statistics on the levels of alcohol consumption, related deaths and any other information concerning alcohol in the County;
 - (d) facilitate and promote in collaboration with other County and National Government institutions the establishment of treatment and rehabilitation facilities and programs;
 - (e) recommend to the executive committee member generally on the exercise of his powers and performance of his functions under this Act;
 - (f) monitoring and evaluating the implementation of this Act and advising the executive committee member on the necessary measures to be taken;
 - (g) in collaboration with sub-county committees, relevant county departments and other stakeholders, prepare and submit quarterly alcoholic drinks status report in the

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prescribed manner to the executive member which shall be transmitted to the county cabinet and county assembly; and

(h) carry out such other roles necessary for the implementation of the objects and purpose of this Act.

(3) The licenses issued under subsection (2) of this Section shall be signed by the Director.

11. Composition of the Committee

(1) The executive member shall appoint members of the Liquor Licensing Committee under clause (2) (g), (h) and (i) with the approval of the County Assembly.

(2) The committee shall consist of—

(a) director of the alcoholic drinks control directorate who will be the chairperson;

(b) the county commissioner or his representative;

(c) the county commander of police or his representative;

(d) the county public health officer or his representative;

(e) the county director of physical planning or his representative;

(f) the county director of education;

(g) two representatives from the cluster representing registered liquor dealers' association; and

(h) the chairperson of a representative from the Kenya National Chamber of Commerce & Industry;

(3) The term of office of the officers appointed in sub section (2) (g) (h) and (i) shall be three years only renewable once for a further term.

(4) A member of the Committee shall cease to be a member if —

(a) he or she resigns upon giving one month's notice in writing to the appointing authority;

(b) is removed from office by the appointing authority upon recommendation of the committee to terminate the appointment of the member on any of the following grounds —

(i) has been absent from three consecutive meetings of the committee without the permission of the chairperson;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iii) is convicted of an offence involving dishonesty or fraud;

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- (iv) violation of the constitution or any other law;
 - (v) Gross misconduct, whether in the performance of the member's functions or otherwise;
 - (vi) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (vii) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Committee;
 - (viii) fails to comply with the provisions of this Act relating to disclosure;
 - (ix) goes against or is deemed to have violated contractual agreement of his/her engagement as a committee member; or
 - (x) violates the requirements of the conduct of a public officer as per the laid down rules and regulations.
- (5) Whenever the office of a member becomes vacant before the expiry of the term provided in sub section 5 the appointing authority may within twenty-one days appoint another person to be a member and that other person shall hold office only for the unexpired term of office of the person who vacated such office.
- (6) The executive member shall ensure that there is adequate resources availed to the Committee to enable it carry out the functions assigned under this Act.
- (7) The county public health officer shall serve as the secretary of the County Liquor Committee and shall cause to be kept proper books of account and other books and records in relation to the Fees as well as to all the various activities and undertakings of the Committee.
- (8) The Executive member shall furnish such additional information as may be required for examination and audit by the Auditor-General or under any other law.
- (9) The conduct of business and affairs of the committee shall be in such manner as may be prescribed.
- (10) The quorum of the Committee shall be the Chairperson, the secretary and any other four members.

12 . Establishment of Sub-County Committees

There shall be a sub county Alcohol Regulation committee in every sub-county, which shall—

- (1) receive, review, recommend for renewal or rejection for approval to the liquor licensing committee, applications for license in accordance with this Act;

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- (2) recommend for revoking of a license in writing, listing the grounds of such a revocation to the liquor licensing committee;
- (3) provide quarterly status reports to the liquor licensing committee;
- (4) make inspection or other visits to premises at such times as it may deem appropriate;
- (5) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Governments Act, or any other relevant written law; and
- (6) perform such other functions as directed by the County Liquor Licensing Committee and the Directorate.
- (7) Each report for the recommendation of issuance of alcohol license shall be accompanied by—
 - (a) a report from the County Public Health Officer; and
 - (b) a Security Report.

13. Composition of the Sub-County Committee

- (1) The Sub-County committee shall consist of—
 - (a) sub-county administrator who shall be the chairperson;
 - (b) the officer responsible for coordination of national government functions in the sub county;
 - (c) the subcounty public health officer who shall be the secretary;
 - (d) the subcounty police commander;
 - (e) the officer in charge of matters relating to alcohol control in the in sub-county who shall be the secretary;
 - (f) the officer in charge of social services in the subcounty;
 - (g) the sub-county physical planner; and
 - (h) two representatives of the liquor dealers appointed by the county executive committee member in consultation with the registered liquor dealer's association.
- (2) Members appointed under subsection (1) (g) and (h) above shall possess a minimum qualification of a diploma and shall be in compliance with Chapter 6 of the Constitution.
- (3) The term of office of the officers appointed in sub section (1) (g) and (h) shall be three years only renewable once for a further term;
- (4) 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.

PART III - BUDGETARY ALLOCATION TO SUPPORT ALCOHOLIC DRINKS CONTROL

14 . Allocation for Alcoholic Drinks Control

- (1) The executive member in charge of matters related to alcohol control shall provide for a budgetary allocation to cater for the alcohol control program.
- (2) The executive member shall ensure that the program is incorporated in the county planning framework.
- (3) The monies appropriated under sub-section (1) shall be used for meeting the capital and recurrent expenditure relating to —
 - (a) carrying out the functions of the directorate;
 - (b) assisting in the operations of the liquor licensing committee, the sub-county committees or any other committee established under this Act; and
 - (c) any other authorized expenditure under this Act.

15. Education And Information

- (1) The County Government shall promote public awareness and communicate about
 - (a) health consequences,
 - (b) addictive nature; and
 - (c) mortal threat posed by excessive alcoholic drink consumption through a comprehensive countywide education and information campaign conducted by the County Government.
- (2) The programs and initiatives under subsection (1) above shall be conducted through the subcounty committee, departments, authorities and other agencies including the relevant non-governmental organizations and civil society, operating in the County.

PART IV – LICENSING

16. Control of Alcoholic Drinks

- (1) No person shall manufacture or otherwise produce, promote, sell, distribute or deal with; any alcohol in the county except under and in accordance with a license issued under this Act.
- (2) This sub section shall not apply to sale for purely medical and industrial purposes by an authorized practitioner, and any other that the directorate may deem appropriate to exempt.

17. Application for a License

- (1) A person intending to produce, manufacture, import, and or distribute any alcohol in the county or to operate an establishment for the sale of alcohol shall make an application in a prescribed form detailing the license under the First Schedule to the committee and shall pay the prescribed fee.
- (2) The application under sub section (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, distribution or sale of the alcohol 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; and
 - (d) a disclosure as to whether the applicant has been previously convicted of an offence under this Act or any Act at any time in force relating to the manufacture, sale or consumption of an alcoholic drink, giving full particulars of the offense of was convicted.
- (3) The Committee shall, within twenty-one days after the submission of application for a license, prepare a notice setting forth the names of all applicants, the types of licenses applied for, the premises in respect of which the licenses are applied for and shall forthwith cause a copy of the notice to be —
 - (a) published at the office of the sub county administrator; and
 - (b) posted in some conspicuous place at or near the applicant's premises.
- (4) Licenses under this act shall be issued annually in January of every year.

18. Objection to Application

- (1) Any person may lodge objection to an application.
- (2) Every objection to an application shall be made in writing to the secretary to the committee, and the objector shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.
- (3) The 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, whether or not any objection has been otherwise lodged.
- (4) Where in respect of an application the committee acts in pursuance of sub section (3), the committee shall inform the applicant of the nature of the objection, and shall, if the applicant so

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requests, remove that application from the list for such period, not being less than seven days, committee considers necessary to enable the applicant to reply thereto.

(5) The committee may require the personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary.

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

(7) The committee may authorize, in writing, any person to appear before it, 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.

(8) Where the committee considers it necessary to take evidence respecting any question to be determined by the committee, such evidence shall be given on oath, and the chairman shall be empowered to administer oaths.

(9) For the purposes of chapter xi of the penal code (which concerns offences relating to the administration of justice), all proceedings before the committee shall be deemed to be judicial proceedings.

(10) The 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 thereon.

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

19. Suitability of Premises

(1) The committee shall, within twenty-one days of receipt of the application under section 15, record the application and assess the same on the basis of the objections received if any and the interests of the sub county, and shall ensure that—

- (a) the available premises are suitable with regard to the nature of the licenses 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 alcohol possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law; and
- (e) the premises have sufficient number of competent staff in line with such norms as may be prescribed.

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(2) A landlord shall not allow the manufacture, distribution, promotion or sale of any alcoholic drinks that have not been licensed in a premises.

20. Grant of a License

(1) The committee shall, after considering the grant of a license application under section 17, indicate in writing whether it objects to the grant of the license applied for.

(2) Where the committee has no objection to the application under section 17, it shall recommend for a license to be granted 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 committee may consider fit.

(4) Where the committee is not satisfied with the application under sub section (1), it may—
(a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or
(b) make comments and recommendations thereon and return it to the applicant within fourteen days.

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

(6) On receipt of any revised application under sub section (5), the committee shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, recommend for issuance of a license.

21. Provisional Permit

(1) Despite the provisions of sections 17 and 20, the directorate may issue a provisional permit for the sale of an alcohol for such period not exceeding seven days as may be appropriate where the Committee is satisfied that the applicant for the license has demonstrated to the satisfaction of the directorate that the manufacture or sale of the alcohol is licensed in another county but the issuance of the provisional licence shall be subject to the applicant complying with the provisions of sections 17 and 20 within the period of the provisional license.

(2) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being used for the sale of alcohol for consumption on such premises, any person having an interest in the premises may apply in the prescribed form to the directorate 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.

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- (3) The provisions of section 17 and 20 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.
- (4) The directorate may, subject to such reasonable conditions as it may therein include, give to the applicant an 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 an assurance.
- (5) Where such an assurance has been given under sub section (4), the directorate may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under sub section (3) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of the type specified in the assurance in respect of the premises.
- (6) Any assurance given under sub section (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 17, a license may not be granted.

22 . License for Premises

- (1) The committee shall not recommend grant of a license for the sale of alcohol to be consumed 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 —
 - (a) 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;
 - (b) 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 committee shall not recommend grant a license for the sale of an alcohol in a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the premises in which the sale is to take place is not accessible to persons under the age of eighteen years.

23. Persons Not Eligible for a License

- (1) The Committee shall not recommend for grant a new license or transfer a license to any person who—

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- (a) has failed to satisfy the committee, if called upon to do so, of his good character and standing in relation to the expectations in this Act; or
- (b) has been convicted of an offence under this Act or of any offence 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) is under eighteen years of age; or
- (d) is an undischarged bankrupt.

(2) The committee may recommend an existing licence not to be renewed only when the committee is satisfied that—

- (a) the licensee is not suitable to hold the licence in accordance to this Act; or
- (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, sale of alcohol for more than three times within one year; or
- (d) the business to which the licence 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 committee; or
- (e) the conditions of the license have not been satisfactorily fulfilled; or
- (f) the premises to which the licence 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.

24. Validity and Renewal of Licenses

(1) Except as otherwise provided in this Act, the 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 committee.

(3) Every grant of a license or its every renewal or transfer shall —

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- (a) be subject to the payment of such fee or fees as may be prescribed;
- (b) expire at the end of twelve months from the date of issue; and
- (c) specify in the license the hours within which the sale of alcohol is permitted.

(4) Where an application for the renewal of a license has been made and the 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 committee is made known.

(5) Where an application for a licence has been rejected, 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 committee during the period of two months from the date of such refusal or cancellation, except at the discretion of the committee.

25. Review

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

(2) A person aggrieved by the decision of the sub county committee to grant a new license or to renew a license may request in writing the review of such decision.

(3) Upon receipt of a request under this section, the committee shall undertake a review.

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

(5) The committee may —

- a) dismiss the request for review if in its opinion, the request is frivolous or vexatious;
- b) uphold the decision of the committee
- c) annul the decision of the 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.

26. Right to Review

The right to request for review under section 23 does not prohibit a person from seeking any other legal remedy a person may have.

27. Appeals to Court

(1) Notwithstanding section 23, an applicant whose application for a new license, to renew or transfer a licence has been refused may within twenty-one days of such refusal appeal against such refusal to court.

(2) An applicant under section 23 who is not satisfied with the decision of the committee may within twenty-one days appeal to the High Court.

28. Licenses to Body Corporates

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

29. Types of licences

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

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

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

(4) A licence 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.

30. Transfer of a License

(1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his license, may apply in writing to the committee or the transfer of his license to the purchaser or lessee or otherwise of such premises, and the Committee may recommend, if it deems fit, grant a transfer of such license.

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(2) No further fee shall be payable in respect of a license granted under subsection (1) if, at the date of the grant, the licence which was temporarily transferred was valid for a period of more than six months.

(3) In the event of the death, bankruptcy or mental illness of a licensee, or in any similar event to which the 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 of the estate, 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 licence either personally or by an agent approved by the committee.

(4) Every person to whom a license may have been transferred under sub section (1), and every person permitted to carry on a business without a transfer or grant of a license in pursuance of sub section (2), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

31. Removal of a License

If the renewal of a license is declined, 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 committee may consider necessary for the purpose of disposing of the alcohol or apparatus on the premises, such period to commence on the day after the last sitting of the committee at which the renewal of license has been declined, or on the day after the termination of existing license, whichever day is the latest.

32. License to be Displayed

(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 alcohol 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 premises or on premises under his control any words, letters or sign falsely purporting that he is a licensee commits an offence.

33. Employment for Sale of Alcohol

(1) Notwithstanding the provisions of any other written law, no licensee shall employ a person under the age of eighteen years, to sell, control or supervise the sale of alcohol or to have the custody or control of alcohol on licensed premises.

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(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 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.

34. Drunken Behaviour

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

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

(3) On the demand of a licensee or his agent or employee, a law enforcer shall expel or assist in expelling from the licensed premises the person referred to in sub section (1).

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

35. Debt from Sale of Alcohol

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

36. Access by Persons Under the Age of Eighteen

(1) No person holding a license to manufacture, store or sell alcohol under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcohol is manufactured, stored, sold or consumed.

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

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

37. Reports by Public Health Officers and Law Enforcers

(1) A Public Health officer within whose jurisdiction the premises fall shall report to the committee any licensed premises which are deficient in their state of sanitary or drainage conditions, or which are in bad repair.

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(2) A 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 sub section (1) is required.

(3) A law enforcer shall report in writing to the chairperson of the 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 licence.

(4) A law enforcer may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under sub section (1) is required.

PART IV — GENERAL REQUIREMENTS

38. Conformity with Requirements

(1) No person shall manufacture, distribute or sell alcohol in the county that does not conform to the requirements of this Act or any other written law regulating alcohol.

(2) A person who contravenes the provisions of this section in relation to manufacture, distribution and importation of alcohol 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 both.

(3) A person who contravenes the provisions of this section in relation to sale of an alcohol 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.

39. Supply to Under age

(1) No person shall sell, supply or provide knowingly an alcohol to a person under the age of eighteen years.

(2) Subject to sub section (3), a person who contravenes the provisions of sub section (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 both.

(3) Notwithstanding the provisions of sub section (1), it shall be a defense to an offence under this section if it is established that the accused person verified the age of the young person to above eighteen years on reasonable grounds.

(4) For the purposes of sub section (3), either of 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.

40. Display of Signs

(1) Every retailer shall post, in the prescribed display of signs 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 alcohol to a person under the age of eighteen years is prohibited by law.

(2) Every sign required to be posted under sub section (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.

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

41. Warnings.

Every package containing an alcoholic drink shall—

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

42. Vending Machines

(1) No person shall sell or permit an alcohol to be vending machines 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 both.

43. Selling in Sachets

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

(2) Notwithstanding the provisions of sub section (1)—

- (a) no person shall manufacture, pack, distribute or sell in the county alcohol in a container of less than 250 milliliters; or

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(b) any other distilled or fortified alcohol shall only be manufactured, packed, distributed or sold in glass bottles of the kind specified in paragraph (a) or as may be prescribed in the national legislation related to the control of alcohol.

(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

44. Sale to Intoxicated Persons

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

45. Disorderly Conduct

(1) Any person found by a law enforcer to be 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 disorderly in or near a place referred to in sub section (1) shall be liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or 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.

(4) Despite sub section (3), any person convicted under sub section (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 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 alcohol 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 alcohol.

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

46. Breach of License

(1) Any person who sells alcohol or offers or exposes it for sale or who bottles an alcohol except under and in accordance with, and on such premises as may be specified in a licence issued in that behalf under this Act commits an offence and is liable—

(a) for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or 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 both, and in addition to any penalty imposed under paragraph (a) or (b), the court may order, the forfeiture of all alcohol found in the possession, custody or control of the person convicted, together with the vessels containing the Alcohol.

(2) Except as may be provided for in this Act, no person shall—

(a) sell, an alcohol 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 alcohol in an alcohol selling outlet after the expiry of the hours for which the outlet is licensed to sell the alcohol.

(3) Any person who contravenes the provisions of sub section (2) commits an offence and shall be liable to the penalties specified under sub section (1).

47. Sale to Authorized Officer

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

48. Non-disclosure of conviction

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.

49. Sale without a License

(1) If any person purchases any alcohol from a licensee whose license does not cover the sale of that alcohol for consumption on the premises, and drinks the alcohol on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcohol 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 alcohol was with the privities or consent of the licensee who sold the alcohol, the licensee commits an offence.

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

50. Sale of adulterated drinks

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

(a) any alcohol which has been in any way adulterated, or diluted by any person;

(b) any non-alcohol which has been in any way adulterated with alcohol, or which contains any of the substances prohibited under the Alcohol 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 both.

(3) On the conviction of a licensee of an offence under sub section (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 licence be forfeited, and no license shall thereafter be granted or transferred to him.

51. Proof of Sale

(1) No person or entity shall sell alcohol, either retail or wholesale without a receipt.

(2) In any proceedings under this Act relating to the sale or consumption of an alcohol, 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.

(3) Evidence of consumption or intended consumption of an alcohol, 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 alcohol was sold by or on behalf of the licensee to the person consuming or about to consume the alcohol.

52. Traceability.

(1) The Directorate shall issue guidelines that will ensure the traceability of all alcoholic drinks sold and distributed in the county, in particular the origin, composition and address of the manufacturer.

(2) Sale and distribution of alcohol that cannot be traced shall be an offence.

53. Burden of Proof

(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 alcohol 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 alcohol is sold or served therein, or having alcohol concealed, or more alcohol than is reasonably required for the person residing therein, shall be deemed to be prima facie evidence of the unlawful sale of alcohol by that person.

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

54. Endorsement of Conviction on License

Every licensee who is convicted of an offence under this Act shall produce his licence to the court convicting him, and the court shall endorse every such conviction on the licence and the relevant administrative officer of the court shall inform the relevant subcounty committee.

55. Forfeiture of License upon Conviction

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

(1) 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

(2) 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

(3) is twice convicted within twelve months of selling, offering or keeping for sale any adulterated alcohol;

then the court may, in addition to any other penalty which it may lawfully impose, order that his licence be forfeited, and that no licence shall be issued or transferred to him for such period as the court may order.

PART VI—ADVERTISEMENT AND PROMOTION

56. Prohibited Advertisement and Promotion

(1) No person shall promote an alcohol 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 alcohol;

(b) through painting or decorating a residential building with the name of the alcohol or manufacturer, colour and brand images or logos associated with a manufacturer or an alcohol 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 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 property.

(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 both.

(3) Pursuant to Article 34 (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 alcohol from misleading or deceptive inducements to use alcohol; and

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

57. Promotion and Underage Events

(1) No person shall promote alcohol —

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

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

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(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 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 alcohol.

58. Encouraging Consumption

(1) No person shall promote any alcohol in such a manner as to encourage more consumption of alcohol in order to win an award or prize.

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

(3) The county committee may also institute other stiff penalties including withdrawal of licence to the contravener of section 55 (2) of this Act.

PART VII —ENFORCEMENT

59. Authorized Officers

(1) The Executive Committee Member shall, upon recommendation by the committee, appoint for each sub county, a person or class of persons to be authorized enforcement officers for purposes of this Act.

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

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

(a) public health officers appointed under the Public Health Act;

(b) officers appointed as enforcement officers;

(c) officers under; national Police Service Act, Standards Act, Weights and Measures Act and Anti-counterfeit Act;

(d) any other person whom the Executive Member shall appoint; or

(e) any other officer appointed under written law whose functions are the maintenance of law and order.

60. Places authorized enforcement officers may access

(1) For the purposes of ensuring compliance with this Act, an authorized enforcement 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 under this Act.

(3) Pursuant to Article 24 (2) of the Constitution, the right to privacy set out in Article 31 of the Constitution is limited to the extent specified in this section for the purpose of protecting consumers of alcohol by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcohol as specified in this Act.

61. Powers of Enforcement Officers

(1) In carrying out an inspection in any place pursuant to section 56, an authorized officer may—

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

(b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the alcohol 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 alcohol or thing;

(d) conduct any test or analysis or take any measurements; or

(e) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act.

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

62. Use of Records

(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;

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(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 alcohol by ensuring fair and ethical business.

63. Entry of Dwelling Place

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 62.

64. Issuance of Warrant

(1) Upon an ex-parte application, the 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 61;

(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 declined.

(2) The time of such entry shall be between 6.am to 6.pm of any day of the week.

65. Use of Force

An authorized officer executing the warrant issued under section 62 shall not use force unless such officer is accompanied by a police officer the rank of an inspector or above and the use of force is specifically authorized through a warrant.

66. Certificate of Analysis

An authorized officer who has analyzed or examined an alcohol 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.

67. Assistance of Officers

(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 —

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

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

68. Obstruction

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

69. Seizure

(1) During an inspection under this Act, an authorized officer may seize any alcohol 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 enforcement officer may direct that any alcohol or thing seized be kept or stored in the place where it was seized or that it be moved to another place.

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

(4) Any person from whom an alcohol 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 alcohol by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcohol as specified in this Act.

70. Order for Restoration

(1) The Court may order that the alcohol 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 alcohol or thing seized; and

(b) the alcohol 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 alcohol 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 alcohol 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 has been commenced before that time.

71. General Penalty

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 both.

72. Nature of offences

(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.

73. Nature of Evidence

(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.

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(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 sub section (3) is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.

(5) In a prosecution for a contravention of this Act—

(a) information on a package indicating that it contains an alcohol is, in the absence of evidence to the contrary, proof that the package contains an alcohol; and

(b) a name or address on a package purporting to be the name or address of the person by whom the alcohol was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person

PART VIII—MISCELLANEOUS

74. Regulations

(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 sub section (1), the Regulations may —

(a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited; and

(b) prescribe the forms of applications, notices, licences 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 Committee 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.

75. Transition

(1) Notwithstanding any other provision of this Transitional Act to the contrary, a person who, immediately before the commencement of this Act was in accordance with the Act was a manufacturer, importer, distributor or retailer of any alcohol in the under that Act shall be deemed to be a manufacturer, importer, distributor or retailer of any alcohol under this Act.

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

FIRST SCHEDULE

(s.17)

TYPES OF LICENCES

The following licenses may be granted under this Act —

1. Manufacturer's Licence

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 the County; and
- (c) bottle the alcoholic drink subject to such conditions as maybe prescribed.

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

2. Wholesale Licence.

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 Licence

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.

SECOND SCHEDULE

(s.41)

WARNING MESSAGES

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

(a) Excessive alcohol consumption is harmful to your health;

(b) Excessive alcohol consumption can cause liver cirrhosis;

(c) Excessive alcohol consumption impairs your judgment; do not drive or operate machinery;

(d) Not for sale to persons under the age of 18 years.

The Murang'a County Alcoholic Drinks Control, 2022

MEMORANDUM OF OBJECTS AND REASONS

This Bill of the County Assembly of Murang'a to repeal the Murang'a County Alcoholic Drinks Control Act, 2014 and enact to the Murang'a County Alcoholic Drinks Control Act, 2022, provide for the regulation of the production, sale and consumption and outdoor advertising of alcoholic drinks, creation of offences and for connected purposes;

PART I of the Bill provides for preliminary matters including the short title, repeal of Act No. 2 of 2014, commencement and the interpretation of words and expressions used in the Bill and the objects and purpose and application of the Bill.

PART II of the Bill contains provisions the administration of alcohol control, including the establishment of the directorates, functions of the directorates, establishment of rehabilitation programs, establishment of a liquor licensing control committee, and composition of the committee.

PART III of the Bill provides budgetary allocation to support alcoholic drinks control including allocation for alcoholic drinks, education and information, licensing provisions, reviews, drunken behaviour, access to persons under the age of eighteen, and reports by Public Health Officers and Law Enforcers.

Part IV of the Bill is on general requirements specifically conformity with requirements, supply to underage, display of signs, warnings, vending machines and selling in sachets.

Part V of the Bill contains provisions of sale and consumption of alcohol to intoxicated persons, disorderly conduct, breach of license, sale without license, burden of proof, endorsement of conviction of license and forfeiture of a license upon conviction. .

Part VI of the Bill contains provisions on advertisement and promotions specifically prohibition of advertisement and promotion, promotion at underage events, and encouraging consumption.

Part VII of the Bill contains enforcement including authorized officers, use of records, certificate of analysis, obstruction, order for Restoration, provisions on general penalty, nature of offences and nature of evidence.

Part VIII of the Bill contains miscellaneous provisions on regulations and transitional provisions.

The Murang'a County Alcoholic Drinks Control, 2022

This Bill is NOT a money Bill within the meaning of Section 21(4) of the County Governments Act, 2012 and its enactment shall NOT occasion additional expenditure of public funds.

The Bill does not contain provisions limiting the fundamental rights and freedoms set out under the Constitution.

HON. DANIEL CHEGE MWANGI
Chairperson, Health Services Committee
County Assembly of Murang'a