
ISIOLO COUNTY LIQUOR LICENCING ACT, 2014.

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Clauses

- 1—Short title
- 2—Interpretation
- 3—Objects and purposes

PART II—ADMINISTRATION OF LIQUOR CONTROL

- 4—Establishment of a Directorate
- 5—Functions of the Directorate

PART III—LICENSING PROVISIONS

- 5—Control of alcoholic drinks
- 6—Application for licence
- 7—Grant of a licence
- 8—Provisional licence
- 9—Licence for premises.
- 10—Persons not eligible for a licence
- 11—Validity and renewal of licences
- 12—Appeal to High Court
- 13—Licences to body corporate
- 14—Types of licences
- 15—Transfer of licence
- 16—Removal of licence
- 17—Licence to be displayed
- 18—Employment of sale of alcoholic drinks
- 19—Drunken behaviour
- 20—Debt from sale of alcoholic drinks
- 21—Access by person under age of eighteen years
- 22—P Reports by medical officers and police officers
- 23—Cancellation of licence

PART IV—ENFORCEMENT

- 24—Places authorized officers may enter
- 25—Powers of officers
- 26—Use of records
- 27—Entry of dwelling place
- 28—High Court to issue warrant
- 29—Use of force
- 30—Certificate of analysis

- 31—Assistance of officers
- 32—Obstruction
- 33—Seizure.
- 34—Order of restoration.
- 35—General Penalty.
- 36—Nature of offences
- 37—Nature of evidence in proceedings

PART V—MISCELLANEOUS PROVISIONS

- 38—Regulations
- 39—Savings and transition

SCHEDULE—TYPE OF LICENCES

A Bill for—

AN ACT of the Isiolo County Assembly to provide for the control and regulation of the production, sale, distribution, consumption and outdoor advertising, of liquor, and for connected purposes.

ENACTED by the Isiolo County Assembly as follows—

PART 1—PRELIMINARY

Short title. **1.** This Act may be cited as the Isiolo County Liquor Licensing Act, 2014.

Interpretation. **2.** In this Act unless the context otherwise requires—

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

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

“authorised officer” means an authorised officer within the meaning of section 4;

“county executive member” means County Executive Committee Member for the time being responsible for matters relating to control of alcohol;

“Directorate” means the Directorate established under section 4;

“entity” includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

“licensee” means a person who holds a licence granted under this Act;

“magistrate” means a magistrate above the rank of resident magistrate;

“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 processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in Kenya;

“manufacturer”, in respect of an alcoholic drink, includes any 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;

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

“sell” includes—

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

commercial gain.

“Sub-county administrator” means the administrator appointed under the county government act at section 50

“ward administrator” means an administrator as appointed at section 51 of the county government

“Village administrator” means an administrator as appointed at section 52 of the county government

Object and purpose.

3. The object and purpose of this Act is to establish a legislative framework to—

- (a) facilitate control and regulation of the production, sale, distribution, consumption and outdoor advertising, of liquor
- (b) give effect to paragraph 14 of Part 2 of the Fourth Schedule to the Constitution; and
- (c) give effect to the objects and principles of devolution set out in Chapter Eleven of the Constitution.

PART II—ADMINISTRATION OF LIQUOR CONTROL

Establishment of a Directorate

4. (1) There is established a Directorate to be known as the Directorate of Liquor Control which shall be a public office in the county government and whose administrative costs and other expenses shall be provided under the vote of the Department for time being responsible for liquor control.

(2) The Directorate shall comprise—

- (a) a Director who shall be appointed by the Governor with approval of the County Assembly;
- (b) six members nominated by the bodies and organizations specified under subsection (3), who shall be appointed by the Governor with approval of the County Assembly

- (c) ex-officio members representing the county departments specified under subsection (4); and
 - (d) the Secretary who shall be an ex-officio member.
- (3) The members referred to under subsection (2) (b), shall be nominated by—
- (a) a cluster representing the association of hotel keepers and caterers;
 - (b) a cluster representing the Pubs, Entertainment and Restaurants Association of Kenya;
 - (c) a cluster representing the Coast Tourism Association;
 - (d) a cluster representing the registered neighborhood associations in the county;
 - (e) a cluster representing the civil society and nongovernmental organizations; and
 - (f) an association representing the private sector in the county.
- (4) The members referred to under subsection (2) (c) shall be senior public officers representing the departments responsible for—
- (a) finance;
 - (b) health;
 - (c) public works;
 - (d) land and environment;
 - (e) education; and
 - (f) planning.

(4) In appointing the Director and members of the Directorate, the Governor and the County Assembly shall ensure that—

(a) the Directorate reflects the regional and ethnic diversity of the people within the county; and

(b) not more than two-thirds of the members are of the same gender.

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

(a) public health officers appointed under the Public Health Act (Cap 242);

(b) medical officers; and

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

(a) (6) For avoidance of doubt, any other person referred to under subsection (3) (c) includes police officers and medical officers.

(7) The officers referred to in subsection 5 (b) shall be paid such allowances as the County Public Service Board shall determine.

Appointment and qualifications of Director and members.

5. (1) The appointment and nomination of the Director and members of the Directorate shall be—

(a) carried out in a competitive and transparent manner;

(b) based on merit; and

(c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as Director or member of the Directorate if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a recognized university;

(c) has knowledge and relevant experience in community service or social work; and

(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) A person shall not be qualified for appointment as the Director or as a member under section (1) if such person—

(a) is declared to be of unsound mind;

(b) is an un-discharged bankrupt; or

(c) has been removed from office for contravening the provisions of the Constitution or any other written law.

Functions of The Directorate

6. (1) The Directorate shall—

(a) receive and consider applications for liquor licenses in accordance with this Act;

(b) carry out public education in collaboration with other public and private players on liquor control in the county;

(c) collaborate with relevant government agencies for effective implementation of the Act;

(d) facilitate citizen participation in matters related to liquor control; and

(e) carry out any other function as may be determined by the County Executive in accordance with this Act.

Powers of the Directorate.

7. (1) The Directorate may do or perform all things or acts as may be necessary for the proper discharge of its functions under this Act or as may lawfully be done by a public office.

(2) Without prejudice to the generality of subsection (1) the Directorate shall have power to—

(a) advice the county executive committee on matters of policy

relating to control and regulation of liquor;

- (b) enter into agreements or arrangements with any institution, association or professional organizations as the Directorate may consider appropriate in furtherance of the purpose for which the Directorate is established;
- (c) enforce set standards regarding control and regulation of liquor;
- (d) manage, supervise, secure and administer the assets of the Directorate in such manner as best promotes the purpose for which the Directorate is established;
- (e) delegate any of its powers to any officer, employee, agent, section or committee of the Directorate; and
- (f) undertake any other activity necessary for the fulfillment of any of its functions under this Act.

Oath or affirmation of office.

8. The Director and members of the Directorate shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

Committees of Directorate.

- 9.** (1) The Directorate may establish committees for the better carrying out of its functions.
- (2) A committee established under subsection (1) may comprise members of the Directorate and such other co-opted persons who may not be more than two as the Directorate may determine.
- (3) No decision of any committee shall be effective unless it has been confirmed by the Directorate.

Term of office.

- 10.** (1) The Director shall be appointed for a term of three years and is eligible for re-appointment for one further term.
- (2) A member of the Directorate shall be appointed for a term of three years and is eligible for re-appointment for one term.

(3) The Director and members of the Directorate other than the ex-officio members shall serve on a full time basis.

Remuneration.

11. (1) The Director and members of the Directorate, shall be paid such allowances and benefits as the County Executive Committee shall, on the advice of the Salaries and Remuneration Commission, determine.

Removal from office.

12. (1) The Director or a member may be removed from office for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) incompetence or negligence of duty;
- (d) bankruptcy;
- (e) is found guilty of professional misconduct by the relevant professional body;
- (f) in any particular case, failure to declare his or her interest in any matter being considered or to be considered by the board or committee; or
- (g) absence from three consecutive meetings of the Directorate without a reasonable explanation.

(2) A member may be removed from office of Director or member of the Directorate on any of the grounds in subsection (1) by—

- (a) the Governor;
- (b) the Directorate, supported by the vote of at least two-thirds of the members of Directorate; or
- (c) upon petition by the residents of a county.

(3) Before a member is removed from office under subsection (2), the member shall be given an opportunity to provide a defence against any of the allegations against him or her.

Vacation of office.

13. A person shall cease to be a member of the Directorate if that person—

- (a) resigns in writing, to the Governor;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity;
- (e) ceases to be a member of the nominating body section 6 (2); or
- (f) dies.

Filling of Vacancy.

14. Where a vacancy occurs in the membership of the Directorate under section 12 or 13, the Governor shall, appoint a new member in accordance with the provisions of this Act.

Secretary.

15. (1) There shall be a secretary to the Directorate who shall be competitively recruited by the County Public Service Board.

(2) A person shall be qualified for appointment as a secretary to the Directorate if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years proven experience at management level;
- (d) has extensive experience in public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall be the chief executive officer of the Directorate and head of the secretariat and shall be responsible to the Directorate.

(4) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

Removal of Secretary.

16. (1) The Secretary may be removed from office in accordance with the terms and conditions of service if the person—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Governor;
- (e) is absent from three consecutive meetings within one financial year without reasonable cause,;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (i) fails to declare his or her interest in any matter being considered or to be considered by the Directorate; or
- (j) engages in any gross misbehaviour or gross misconduct.

(2) Before the Secretary is removed from office under subsection (1), the Secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

Meetings.

17. (1) The business and affairs of the Directorate shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Schedule, the Directorate may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.

(3) The Directorate may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Directorate.

Employees of
the
Directorate.

18. The County Public Service Board may appoint technical staff and other employees as may be necessary for the proper discharge of the functions of the Directorate under this Act, and upon such terms and conditions of service as the County Public Service Board may determine.

Protection
from personal
liability.

19. No matter or thing done by a member of the Directorate or any officer, employee or agent of the Directorate shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Directorate, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

PART II—LICENSING PROVISIONS

Control of
alcoholic drinks.

20. (1) A person shall not—

(a) manufacture or otherwise produce;

(b) sell, dispose of, or deal with any alcoholic drink except under and in accordance with a license issued under this Act ;

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

(a) the *bona fide* administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine by—

(i) a medical practitioner,

(ii) a veterinary surgeon registered under the Veterinary Surgeons Act (Cap. 366); or

(iii) a pharmacist registered under the Pharmacy and Poisons Act (Cap. 244), of a medicine containing alcoholic drink;

- (b) the sale of spirituous or distilled perfume, or perfumery;
- (c) the sale of industrial alcohol;
- (d) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996 (No. 5 of 1996), of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink licence belonging to a wholesale dealer, on the licensed premises of the dealer;
- (e) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (f) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (g) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;
- (h) the sale of alcoholic drink at County Assembly Buildings, if sold with the permission of the Speaker of the County Assembly; and
- (i) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces:

(3) Subsection (2) shall not apply to any such canteen, club, institute, mess or similar institution operated by a person for personal profit.

(4) There shall be no sale and/or consumption of alcohol in any government or public service office within the County, and anyone who does so shall be guilty of an offence under this Act.

Application for licence.

21. (1) A person intending to manufacture or otherwise produce any alcoholic drink in the County or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Directorate specifying where the premises is to be situated and shall pay a prescribed fee.

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

- (a) a comprehensive proposal on the nature, orientation and other justification for the establishment of the alcoholic plant or establishment for sale;
- (b) 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 offence of which he was convicted, of the court by which he was convicted, of the date of the conviction;
- (c) certification from Kenya Bureau of Standards for a manufacturer's license;
- (c) such other matters as may be prescribed.

(3) The Directorate shall, within twenty-one days after the submission of application for a licence, prepare a notice setting forth—

- (a) the names of all applicants;
- (b) the types of licences applied for;
- (c) the premises in respect of which the licences are applied for; and
- (d) the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—
 - (i) published in the *Gazette* and in a newspaper circulating within the county;
 - (ii) posted in some conspicuous place within the Directorate's offices;
 - (iii) sent to the county medical officer of health; and
 - (iv) sent to any other relevant office..

(4) Any person may lodge objection to an application.

- (5) Every objection to an application shall be made in writing to the Director, and the objector shall serve the notice together with the grounds of the objection on the applicant, personally, or by email or post, at least seven days before the hearing of the application.
- (6) The Directorate may of its own motion take notice of any matter or thing which, in the opinion of the Directorate, constitutes an objection to an application, whether or not any objection has been otherwise lodged.
- (7) Every person making an application shall, save as otherwise provided, appear before the Directorate in person or such other manner as the Directorate may allow, and shall satisfy the Directorate that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.
- (11) An objector may appear personally or by an advocate at the hearing of the application.
- (12) A sub county administrator, ward administrator or village administrator may authorize, in writing, any person to appear before the Directorate having jurisdiction in any part of the area within the jurisdiction of the sub county, town or village for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.
- (13) Where the Directorate considers it necessary to take evidence in respect of any question to be determined by the court, such evidence shall be given on oath, and the Director or an officer on delegated authority shall be empowered to administer oaths.
- (14) For the purposes of Chapter XI of the Penal Code (Cap. 63) (which concerns offences relating to the administration of justice), all proceedings before the Directorate shall be deemed to be judicial proceedings.
- (15) The Directorate shall maintain records of all its proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced and the decision of the court thereon.

(16) Despite subsection (15) 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.

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

- (a) the available premises are suitable with regard to the nature of the licence 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; and
- (d) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

Grant of a licence. **22.** (1) The Directorate shall, after considering the application under section 3, indicate in writing whether it objects to the grant of the licence applied for.

(2) Where the Directorate has no objection the application under section 3, it shall grant a licence to the applicant upon payment of the prescribed fee.

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

(4) Where the Directorate is not satisfied with the application under subsection (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 thirty days.

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

(6) On receipt of any revised application under subsection (5), the

Directorate shall, within three months determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

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

Provisional
licence.

23. (1) 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 alcoholic drinks 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 licence of the type to be specified in the application will be granted in respect of such premises.

(2) The provisions of sections 3 and 4 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(3) 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 licence of the type specified therein will be granted or it may refuse to give such an assurance.

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

(5) Any assurance given under subsection (3) shall become ineffective and the Directorate shall not issue a licence if, between the date of the giving thereof and the date of completion of the premises, the applicant becomes a person to whom in accordance with section 13, a licence may not be granted.

Licence
for
premises.

24. (1) The Directorate shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the Directorate is satisfied—

(a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law:

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

(b) that the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements;

(c) that the premises in respect of which the application is made are located at least three hundred meters from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years.

(2) The Directorate shall not grant a licence for the sale of an alcoholic drink in a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years.

Persons not eligible for a licence. **25.** (1) The Directorate shall not grant a new licence or transfer a licence to any person who—

(a) has failed to satisfy the Directorate, if called upon to do so, of his good character and standing in relation to the expectations in this Act;

(b) has been convicted of selling an alcoholic drink without a licence or offering or exposing it for sale, or of any offence against any law for the time being in force relating to the distillation, manufacture, sale or use of industrial alcohol;

(c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months;

(d) in the case of a retail licence, is not resident in Kenya;

(e) is under eighteen years of age; or

(f) is an undischarged bankrupt.

(2) The Directorate may refuse to renew an existing licence only when the Directorate is satisfied that—

- (a) the licensee is not a fit and proper person to hold the licence;
- (b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the sale of an alcoholic drink;
- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months;
- (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 Directorate;
- (e) the conditions of the licence have not been satisfactorily fulfilled; or
- (f) the premises to which the licence relates are not in a proper state of repair, or are not provided with proper sanitary arrangements, or do not comply with the reasonable requirements of the medical officer of health, and the owner of the premises or the licensee refuses or is unable to give satisfactory guarantees that the necessary repairs will be carried out, or due compliance effected, as the case may be, within a time specified by the Directorate.

Validity and renewal of licences.

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

(2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Directorate.

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

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

(4) Where an application for the renewal of a licence has been made and the Directorate has not by the date of expiration of the licence reached a decision thereon, such licence shall continue in force until the decision of the Directorate is made known.

(5) Where an application for a licence has been refused, or a licence has been cancelled, no subsequent application by the former applicant or licensee for a licence of the same description shall be considered by the Directorate during the period of six months from the date of such refusal or cancellation, except at the discretion of the Directorate.

Review
Committee

27. (1) There is established the County Liquor Regulations Administrative Review Committee.

a. The review committee shall consist of -

(a) the County Legal Director who shall be the Chairperson;

(b) the chief operating officer in charge of health;

(c) the county police commander;

(d) the Director who shall be the Secretary;

(e) the chief operating officer in charge of planning;

(h) two residents of the county appointed by the Executive Member, one to represent the youth, the other to represent the business community, and the two shall be of opposite gender.

(i) A person representing the Authority;

(j) A person representing the Tourism Associations, jointly nominated by KAHK, PERAK & KCTA.

(3) The Review Committee shall be responsible for reviewing on appeal decisions made by the directorate.

(4) The conduct of business and affairs of the Review Committee shall be in such manner as may be prescribed.

(5) The Directorate shall provide administrative services to the Review Committee.

Appeal to High Court. **28.** An applicant whose appeal for review has been refused may within twenty-one days of such refusal appeal against such refusal to the High Court with the decision of the High Court being final.

Licences to body corporate. **29.** (1) A licence issued to a body corporate shall be issued in the name of the body corporate.

(2) The Directorate may require prior disclosure of the directorship of the body corporate or refuse to grant a licence to the body corporate if any of the directors does not qualify to be granted the licence individually.

(3) No transfer of a licence 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 licence.

Types of licences. **30.** (1) The several licences which may be granted under this Act shall be those specified in the Schedule, and the provisions of that Schedule and of any regulations made under this Act shall have effect in relation to the respective licences therein specified.

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

(3) The Directorate shall, when a licence is granted, renewed, withdrawn or cancelled, include in the licence 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 licence and to specification of the addresses of all such premises in the licence.

Transfer of licence. **31.** (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his licence, he may apply in writing to the Directorate for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and may, if it thinks fit, grant a transfer of such licence.

- (2) No further fee shall be payable in respect of a licence granted under subsection (3) 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 unsoundness of mind of a licensee, or in any similar event to which the Directorate 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 District 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 Directorate.
- (4) Every person to whom a licence may have been transferred under subsection (1), and every person permitted to carry on a business without a transfer or grant of a licence in pursuance of subsection (3), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

- Removal of licence.
- 32.** (1) If the renewal of a licence is refused, the licensee shall, on payment of the proportionate part of the fee for the appropriate licence, be entitled to a licence of such description and for such period, not exceeding three months, or as the Directorate 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 Directorate at which the renewal of his licence has been refused, or on the day after the termination of his existing licence, whichever day is the later.
- (2) If the renewal of a licence is refused and the licensee appeals against the refusal, the licensee shall, on payment of the fee for the appropriate licence, be entitled, unless the county executive member directs otherwise, to a renewal of the licence which is the subject of the appeal to be valid only until the appeal has been determined, such licence to commence on the day after the determination of his existing licence.
- Licence to be displayed.
- 33.** (1) Every licence shall be prominently and conspicuously displayed on the premises to which it relates, and any licensee who fails or

neglects so to display his licence commits an offence.

- (2) Where a wholesale alcoholic drink licence 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 importing that he is a licensee commits an offence.

Employment of
sale of
alcoholic
drinks.

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

(2) No licensee shall permit any other person to manage, superintend or conduct the day-to-day business of the premises in respect of which he is licensed except with the written consent of the Directorate and every person in respect of whom such consent is given shall be subject and liable to the same duties, obligations and penalties under this Act as the licensee.

(3) The provisions of subsection (2) shall not relieve the licensee of his duties and obligations under this Act.

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

Drunken
behaviour.

35. (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.

a. Any person referred to in subsection (1) who, on being requested by the licensee or his agent or employee, or by a

police officer, to quit the licensed premises, refuses to do so, commits an offence.

- (3) On the demand of a licensee or his agent or employee, a police officer shall expel or assist in expelling from the licensed premises the person referred to in subsection (1).
- (4) A licensee who permits any drunkenness leading to violent, quarrelsome or riotous conduct to take place on the premises to which the licence relates commits an offence.

Debt from sale of alcoholic drinks.

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

Access by person under age of eighteen years.

- 37.** (1) No person holding a licence to manufacture, store or consume alcoholic drinks under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence.

Reports by medical officers and police officers.

- 38.** (1) A medical officer of health within whose jurisdiction the premises falls, shall report to the Directorate any licensed premises which are deficient in their state of sanitary or drainage conditions, or which are in bad repair.
- (2) A medical officer of health or any person authorized by him in writing in that behalf may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.
- (3) A police officer not below the rank of Inspector shall report in writing to the Directorate 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 police officer not below the rank of Inspector may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

Cancellation of licence. **39.** (1) Upon receipt of a report made under section 19 the Directorate shall—

- (a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned, informing him that at a meeting of the Directorate to be held on a date to be specified, but not less than thirty days there from, the report will be considered by the Directorate; and
 - (b) inform the medical officer of health or the police officer, as the case may be, of the date upon which the Directorate 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 Directorate.
 - (3) The Directorate, having duly considered the report and having heard the licensee, if he appears, may, if it thinks fit, cancel the licence of the licensee reported upon, or it may make such an order in respect of such licence or the licensed premises specified therein as, in the opinion of the Directorate, is necessary.
 - (4) Any person aggrieved by the decision of the Directorate upon any such report may within twenty-one days appeal against the decision to the High Court, and the judgment of the High Court on such appeal shall be final.
 - (5) Where a licensee whose licence has been cancelled under subsection (3) appeals to the High Court under subsection (4), his licence shall not be deemed to be cancelled until the decision of the High Court is made known.
 - (6) The High Court, on an appeal under this section, may confirm or reverse the decision of the Directorate.

- (7) If a licence is cancelled and no appeal is filed by the licensee against the cancellation, or if such appeal is dismissed by the High Court, the licensee shall be entitled, on payment of the proportionate part of the fee for the appropriate licence, to a licence of such description and for such period, not exceeding three months, as the Directorate may deem necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such licence to run from the date of the decision of the Directorate or of the High Court as the case may be.

PART III- ENFORCEMENT

Places authorized officers may enter.

- 40.** (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 authorised officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 4.

Powers of officers.

- 41.** In carrying out an inspection in any place pursuant to section 26, an authorised officer may—
 - (a) examine an alcoholic drink or anything referred to in that section;
 - (b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the alcoholic drink or thing;
 - (c) open or require any person in the place to open any container or package found in the place that the officer believes on reasonable grounds contains the alcoholic drink or thing;
 - (d) conduct any test or analysis or take any measurements; or
 - (e) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this

Act.

- Use of records. **42.** In carrying out an inspection in a place, an authorised officer may—
- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
 - (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;
 - (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document; or
 - (d) scrutinize any other record system in use in that place.
- Entry of dwelling place. **43.** An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 26.
- High Court to issue warrant. **44.** Upon an *ex parte* application, a magistrate or judge of the High Court, may issue a warrant authorising the authorised 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 27;
 - (b) entry to the dwelling place is necessary for the administration or enforcement of this Act;
 - (c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.
- (2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.
- Use of force. **45.** An authorised officer executing the warrant issued under section 28 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.
- Certificate of analysis. **46.** An authorised officer who has analyzed or examined an alcoholic drink or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

-
- Assistance of officers. **47.** (1) The owner of a place inspected by an authorised 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 authorised officer to carry out his duties under this Act;
 - (b) furnish the authorised officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.
- (2) The inspecting agent in subsection (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection.
- Obstruction. **48.** No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorised officer who is carrying out duties under this Act or Alcoholic Drinks Control Act, 2010.
- Seizure. **49.** (1) During an inspection under this Act or pursuant to Alcoholic Drinks Act, 2010, an authorised 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 authorised officer may direct that any alcoholic drink or thing seized be kept or stored in the place where it was seized or that it be removed to another place.
 - (3) Unless authorised by an officer, no person shall remove, alter or interfere in any manner with any alcohol, alcoholic drink or other thing seized.
 - (4) Any person from whom an alcoholic drink or thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the County Executive Member within the prescribed time and in the prescribed manner.
- Order of restoration. **50.** (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 or the Alcoholic Drinks Act, 2010.

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

General
Penalty.

51. 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.

52. (1) Offences under this Act, other than the offences specified under this Act 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.

- 53.** (1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be proof of its contents.
- (2) Subject to this Part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.
- (3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report.
- (4) The party against whom the certificate or report provided for under subsection (3) is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.
- (5) In a prosecution for a contravention of this Act—
- (a) information on a package indicating that it contains an alcoholic drink is, in the absence of evidence to the contrary, proof that the package contains an alcoholic drink; and
 - (b) a name or address on a package purporting to be the name or address of the person by whom the alcoholic drink was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

PART IV—MISCELLANEOUS PROVISIONS

Warnings for Display

- 54.** (1) Every retailer shall post, in the prescribed place and manner, warnings in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of liquor to a

person under the age of eighteen years is prohibited by law.

a. 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/ONYO” in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;

(c) be in English and Kiswahili;

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

Sale of Alcohol
from Vending
Machines
Prohibited

41. (1) No person shall sell or permit liquor 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.

Regulations.

42. (1) The County Executive Member may, on recommendation of the Directorate, make regulations generally for the better carrying out the objects of this Act.

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

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

- (b) prescribe the hours within which the sale of alcoholic drinks shall be permitted;
- (c) prescribe the forms of applications, notices, licences and other documents for use under the Act;
- (d) prescribe the fees payable under the Act.

Savings and transition. **43.** Without prejudice to the provisions of this Act, the Alcoholic Drinks Control Act, 2010 shall continue to be in force relating to all other aspects of alcoholic drinks control.

SCHEDULE

section 14

TYPES OF LICENCES

The following licences may be granted under this Act—

1. Brewer’s Licence

Subject to the conditions specified in the licence, a brewer’s licence authorizes the holder to—

- (a) brew and store the brewed alcoholic drink in his depot;
- (b) sell the product of his brewery by wholesale in accordance with the conditions that are for the time being, applicable to a holder of a wholesale licence or by delivery from depot throughout Kenya; and
- (c) bottle the alcoholic drink subject to such conditions as may be prescribed.

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

2. Wholesale Licence

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

3. Retail Licence

A retail licence 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 licence.

MEMORANDUM OF OBJECTS AND REASONS

The main object of this bill is to establish a legislative framework for the control of production, manufacture, sale, labelling, promotion, sponsorship and consumption of alcoholic drinks by the county government. This shall give effect to paragraph 14 of part 2 of the Fourth Schedule to the Constitution and shall in conformity of the objects and principles of devolution set out in Chapter Eleven of the Constitution.

PART I of the bill has preliminary provisions i.e. Short title, Interpretation, Objects and purpose and the Establishment of a Directorate for the control; of liquor licensing.

PART II of the bill comprises of the institutional framework that will facilitated the administration of the licensing function through the establishment of a Liquor Control Directorate.

PART III has provisions relating to the licensing. It provides for the framework for applications, requirements for the grant of provisional or full licence and their renewal or cancellation. It outlines the persons not eligible for a licence and provides for an appeal to the high court on matters of refusal to grant a licence. It also provides the type of licences, their transfer or removal and a special provision for licensing of body corporate. In addition, it provides for requirement of, display of the licence and reports by medical officers and police officers and restriction to access by person under age of eighteen years or persons who are drunk.

PART III of the bill sets out an enforcement mechanism for this act. The part provides for an authorized officer’s power, use of records in carrying out inspection, entry of dwelling place only with consent of the owner or through a warrant issued by High Court and the use of force when necessary. It also provides for the issuance of a certificate on inspection and the assistance of the officers by the police on obstruction offence. It also provides for the power of seizure of goods and a remedy through an order of restoration. It outlines the general penalties their nature and the nature of evidence in proceedings.

PART IV of the bill contains miscellaneous provisions. It provides for the power of the County Executive Member to make regulations on licensing and savings and transitional on matter relating to the pervious Alcoholic Control Act 2010.

The enactment of this Bill shall occasion additional expenditure which shall be provided for through the budgetary estimates.

Dated the..... Day..... of2013