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EMBU COUNTY ACTS, 2021

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2021**

No. 1 of 2021

Date of Assent: 26th March, 2021

Date of Commencement: See Section 1

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**THE EMBU COUNTY ALCOHOLIC DRINKS CONTROL ACT,
2021**

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

ENACTED by the County Assembly of Embu, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Embu County Alcoholic Drinks Control Act, 2021 and shall come into operation on the date of publication in the *Gazette*.

Interpretation

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

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

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

“authorized officer” means an authorized officer within the meaning of section 48;

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

“chief officer” means the county chief officer for the time being responsible for the alcoholic drinks control;

“County” means the Embu county;

“Board” means the Alcoholic Drinks Control Board established under section 4;

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

“Executive Member” means the County Executive Committee member for the time being responsible for alcoholic drinks control;

“Governor” means the Governor of Embu County;

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

“hotel” shall have the meaning assigned to it under the Tourism Act, 2011;

“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 licence granted under this Act;

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

“manager” in relation to —

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

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

“manufacturer”, in respect of an alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is

controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“Off-licence” means a licence for the sale of alcoholic drink to be consumed elsewhere than on the premises;

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

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

“sell” includes—

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

“Sub-county committee” means the Sub-county Alcoholic Drinks Regulations Committee appointed under section 7.

Objects and purpose of the Act

3. The object and purpose of this Act is to provide for licensing of alcoholic drinks by the County government pursuant to Part 2 of the Fourth Schedule to the Constitution so as to control the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to—

- (a) protect the health of the individual in light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks
- (c) protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;
- (d) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;

- (e) inform and educate the residents in the county on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
- (f) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (g) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks;
- (h) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumptions of alcoholic drinks; and
- (i) provide for coordination and collaboration with other Government agencies and to support implementation of National policies on Alcoholic drinks control in the County.

PART II—ADMINISTRATION

Establishment of a Board

- 4. (1) There is established a Board to be known as Embu County Alcoholic Drinks Control Board.
- (2) The functions of the Board shall be to—
 - (a) support and facilitate Sub-county Committees in carrying out their functions;
 - (b) carry out public education on alcoholic drinks control in the county directly and in collaboration with other public or private bodies and institutions;
 - (c) facilitate citizen participation in matters related to alcoholic drinks control in accordance to framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act, Embu County Public Participation Act or any other relevant written law;
 - (d) facilitate and promote in collaboration with other county and national government institutions the establishment of treatment and rehabilitation facilities and programmes;
 - (e) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control;
 - (f) develop in collaboration with other county and national government departments strategies and plans for implementing

this Act and control of alcohol abuse and any other relevant national legislation and coordinate and support their implementation;

- (g) advise the executive member generally on the exercise of his powers and performance of his functions under this Act, and in particular on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
- (h) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive Member which shall be transmitted to the county executive committee, the County Assembly and the Authority;
- (i) advise the Executive Member on the necessary regulations related to alcoholic drinks;
- (j) coordinating, monitoring and evaluating the implementation of this Act including the operations of the Sub-county Committees and advising the Executive Member on the necessary measures to be adopted;
- (k) 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.

(3) The Board shall comprise of—

- (a) a chairperson appointed by the Governor with the approval of the county assembly;
- (b) the county chief officer responsible for trade;
- (c) Director responsible for trade who shall be an ex-officio member and secretary to the Board;
- (d) a representative of liquor dealers in the County nominated by licensed liquor dealers and appointed by Executive Committee Member with the approval of the county assembly;
- (e) a representative of religious groups in the County nominated by religious groups and appointed by Executive Committee Member with the approval of the county assembly;
- (f) a representative of Youth groups in the County nominated by the youth groups and appointed by Executive Committee Member with the approval of the county assembly;

(g) a representative of hoteliers in the County nominated by the hoteliers and appointed by Executive Committee Member with the approval of the county assembly; and

(h) a representative of persons with disability in the County nominated by the persons with disability groups and appointed by Executive Committee Member with the approval of the county assembly

(4) In nominating persons under subsection (3) paragraphs (d), (e), (f) (g) and (h), the respective bodies shall nominate two persons of either gender and forward them to the Executive Committee Member for consideration for appointment.

(5) A person shall be qualified for appointment as a chairperson or member of the Board under subsection 3 paragraphs (d),(e).(f),(g) and (h) if that person—

(a) is a citizen of Kenya and a resident of Embu County;

(b) holds a bachelor degree from learning institution recognized in Kenya;

(c) has knowledge and experience either in the public or private sector of at least five years, in case of the Chairperson or three years in the case of a member, in matters relating to the field of Economics, Law, Finance, Accounting, Public administration or any other relevant field; and

(d) meets the requirements of chapter six of the Constitution.

(6) The term of office for the chairperson or a member appointed under subsection 3 paragraphs (d),(e).(f),(g) and (h) shall be three years, which may be renewed for one further term, after which the person shall retire from the Board .

(7) The Chairperson and members of the Board shall serve on the Board on a part-time basis.

(8) Not more than two thirds of the members of the Board under subsection (3) shall be of the same gender.

(9) The office of the Chairperson or a member of the Board shall become vacant at the expiry of the term of contract or if the holder—

(a) dies;

(b) resigns from office by giving a 30 days' notice in writing addressed to the Executive Committee Member; or

(c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months.

(10) The Chairperson or member of the Board may be removed from office on any of the following grounds—

- (a) violation of the Constitution or any other written law;
- (b) gross misconduct;
- (c) physical or mental incapacity that leads to inability to perform the functions of office;
- (d) incompetence;
- (e) bankruptcy;
- (f) absence from three consecutive meetings of the Board without justifiable cause; or
- (g) if the chairperson or member is convicted of a criminal offence and sentenced to imprisonment for a period of more than six months.

Provided that where a position becomes vacant before the expiry of the term of the contract, the appointing authority shall within 60 days ensure the position is filled using the prescribed procedures.

(11) The Executive Member shall ensure that the Board has adequate human resource and other necessary resources to enable it carry out the functions assigned under this Act.

(12) The report referred to in sub section (2) (h) shall contain among others—

- (a) data on status of alcoholic drinks use and impact disaggregated in terms of age, gender, geographical location;
- (b) impact of alcoholic drinks in the county;
- (c) measures adopted to control and reduce negative impact of alcoholic drinks in the county;
- (d) level of public participation in implementing the Act and feedback from residents of the county in relation to appropriate processes for mitigating impact of alcoholic drinks use;
- (e) data on use of treatment and rehabilitation services in each Ward;
- (f) challenges faced in implementation of the Act;
- (g) level of collaboration with other county and national government agencies;
- (h) any matter relevant to the implementation of the Act.

Establishment of rehabilitation facilities and programs

5. (1) The Board shall—

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

PART III—LICENSING**Activities to be licensed**

6. (1) No person shall—

- (a) manufacture or otherwise produce;
- (b) sell, distribute or dispose of, or deal with; any alcoholic drink in the county except under and in accordance with a licence issued under this Act.

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

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

- (a) the importation of alcoholic drinks into the country if the alcoholic drink has been imported to the country pursuant to an import license issued by the Authority;
- (b) the bona fide administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine, by a medical practitioner, a veterinary surgeon registered under the Veterinary Surgeons Act or a pharmacist registered under the Pharmacy and Poisons Act, of a medicine containing alcoholic drink;
- (c) the sale of spirituous or distilled perfume, or perfumery;
- (d) the sale of industrial alcohol;
- (e) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996, of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink

licence belonging to a wholesale dealer, on the licensed premises of the dealer;

- (f) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (g) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (h) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;
- (i) the sale of alcoholic drink at the County Assembly Buildings, if sold with the permission of the Speaker;
- (j) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit.

Establishment of the sub-county committee

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

- (a) grant licenses in accordance with this Act;
- (b) be a quasi-judicial organ with power to enforce the provisions of this Act;
- (c) perform such other functions as may, from time to time be assigned to it by the Board.

(2) The Sub-county Committee may, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate:

Provided that not more than six months shall pass before conducting an inspection on licensed premises.

(3) The sub-county Committee shall issue an inspection report in the prescribed form for each inspection carried out.

- (4) In carrying out its functions, the Sub-county Committee shall—
 - (a) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act, Embu County Public Participation Act or any other relevant written law;
 - (b) collaborate with ward administrators and village administrators and councils appointed under the County Governments Act,

2012 and the officers in charge of co-ordination of national government functions in the wards and villages;

- (c) collaborate with similar committees in other counties for effective implementation of the Act.
- (5) The sub-county committee shall consist of—
 - (a) the Sub-county administrator appointed under the County Governments Act who shall be the Chairperson;
 - (b) a representative of liquor dealers in the Sub-County nominated by licensed liquor dealers and appointed by Executive Committee Member;
 - (c) a representative of religious groups in the Sub-County nominated by religious groups and appointed by Executive Committee Member;
 - (d) A representative of Youth groups in the Sub-County nominated by the youth groups and appointed by Executive Committee Member;
 - (e) a representative of hoteliers in the Sub-County nominated by the hoteliers and appointed by Executive Committee Member;
 - (f) a representative of persons with disability in the Sub-County nominated by the persons with disability groups and appointed by Executive Committee Member;
 - (g) the Director responsible for trade or his or her representative who shall be the secretary to the Committee;
 - (h) the sub-county public health officer;
 - (i) the officer responsible for coordination of national government functions in the sub-county or his/her designated representative who shall be an *ex-officio* member;
 - (j) the officer for the time being responsible for physical planning in the sub-county who shall be an *ex-officio* member;
 - (k) the sub-county enforcement officer;
 - (l) ward administrators in the respective sub-county; and
 - (m) the officer commanding National Police Service in the sub-county who shall be an *ex-officio* member.
- (6) In any quasi-judicial proceedings of the Committee, the chairperson shall prosecute a matter, and an accused person shall not be denied the right of defence, including the right to legal representation.

(7) A person shall not be a member of the Sub-county Committee if such person is—

- (a) undischarged bankrupt;
- (b) a person who has been convicted of an offence under this Act or of a felony.

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

(9) Notwithstanding the generality of subsection (8), where a member of the Sub-County Committee has reasons to believe that his or her presence shall bring conflict of interest, the member shall declare his or her interest before taking part in any deliberation.

Review of sub-county committee decisions

8. The Board shall be responsible for reviewing on application, decisions made by a sub-county Committee.

Application for a licence

9. (1) A person intending to produce, manufacture and distribute any alcoholic drink in the county or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the sub-county Committee in the sub-county where the premise is situate or is to be situated.

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

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

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

- (a) published at the offices of the Sub-county Administrator and Ward Administrator for a period of not less than twenty-one consecutive days;
- (b) posted in some conspicuous place at or near the applicant's premises;
- (c) sent to the National police service commanding officer in the sub-county;
- (d) sent to the sub-county public health officer in the sub-county in which the premises in respect of which the licences are applied for are situated; and
- (e) sent to the sub-county physical planning officer.

(4) The sub-county public health officer; and the sub- county physical planning officer shall within 14 days after receipt of the notice, report as fully as possible to the Sub-county Committee on all matters which may be relevant to the consideration of the application.

(5) The National police service commanding officer in the sub-county shall submit a report to the sub-county Committee on any matter relevant to the application if in his opinion the applicant should not be granted a license.

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

(7) Every objection to an application shall be made in writing to the Secretary to the Sub-county Committee, and the objector shall serve notice of the grounds of 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.

(8) A Sub-county Committee may in 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.

(9) Where in respect of an application a Sub-county Committee acts in pursuance of subsection (7), the Committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, adjourn the hearing for such period, not being less than seven days, as the Sub-county Committee considers necessary to enable the applicant to reply thereto.

(10) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub-county Committee, and shall satisfy the Sub-county Committee that there is need

for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.

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

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

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

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

(15) For the purposes of Chapter XI of the Penal Code (which concerns offences relating to the administration of justice), all proceedings before a Sub-county committee shall be deemed to be judicial proceedings.

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

Provided that no decision shall be quashed on review 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 Sub-county Committee shall, within twenty- one days of receipt of the application under subsection (1), record the application and assess the same on the basis of the objections received if any and the interests of the sub- county, and shall ensure that—

- (a) the available premises are suitable with regard to the nature of the 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;

- (d) the applicant for a licence to brew, distil, bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law; and
- (e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

Grant of a licence

10. (1) The Sub-county Committee shall, after considering the application under section 9, indicate in writing whether it objects to the grant of the licence applied for.

(2) Where the Sub-county Committee has no objection to the application under section 9, it shall grant a licence to the applicant upon payment of the fee as prescribed in the Third Schedule.

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

(4) Where the Sub-county Committee is not satisfied with the application under subsection (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 subsection (4) (b) may re-submit a revised application within thirty days of the date of notification.

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

(7) Where the Sub-county Committee grants a licence under this section it shall, publish the licence so granted in the respective ward administrator's office.

Condition of premises

11. (1) The Sub-county Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the Sub-county committee is satisfied—

- (a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the

particular locality in respect of which the application is made, and that the number of such premises in respect of which such 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:

Provided that no licence shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools or any residential area or premises 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 metres from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years.

(2) The Sub-county Committee shall not grant a licence for the sale of an alcoholic drink in a supermarket or such other related retail chain store, in an outlet or premises located within a bus park, fuel station, or a fast food restaurant unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years.

(3) The Sub-county Committee shall not grant a licence for sale of an alcoholic drink to any person if the proposed location of the business for the sale of an alcoholic drink is not situated in an urban centre, town, commercial centre, shopping center, or a market place within Embu County.

(4) For purposes of subsection (3), an urban centre, town, commercial centre, shopping centre, or a market place means centre registered or classified as such in a national or county legislation.

(5) Despite subsection (1), the Sub-county Committee may issue a licence to a premise located within three hundred metres of any nursery, primary, secondary or other learning institution for persons under the age of eighteen years only if—

- (a) the premises do not share a wall with the institution and are sealed off by a physical and non-transparent barrier that ensures zero visibility of the premise from the locality of the institution;
- (b) the premises displays on its outside any of the prescribed health messages in a clear and visible manner;

- (c) the premises do not bear any outdoor alcoholic drinks promotion or advertisement;
- (d) the applicant does not engage in activities that interfere with learning in the institution or activities that calculated to attract persons under the age of eighteen to the premises;
- (e) in respect of subsection 1(c) and subject to public interest which may come into perspective upon consideration of the Physical Planner's report on government projects," no new nursery, primary or secondary school or any other learning institutions will be licensed if it is within three hundred metres from a licensed alcoholic drinks premises. The officer responsible for the physical planning in the Sub-County shall advice on the existing or record future plans prior to issuing of either licence.

Persons not eligible for a licence

12. (1) The Sub-County committee shall not grant a new licence or transfer a licence to any person who—

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

(2) The Sub-county committee may refuse to renew an existing licence only when the Sub-county Committee is satisfied that—

- (a) the licensee is not a fit and proper person to hold the licence; or
- (b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the manufacture, distillation, distribution sale of an alcoholic drink for more than three times within one year; or
- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or

- (d) the business to which the 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 Sub-county Committee ; or
- (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 Sub-county public health officer and the owner of the premises or the licensee refuses or is unable to give satisfactory guarantees that the necessary repairs will be carried out, or due compliance effected, as the case may be, within a time specified by the Sub-county Committee.

Licensing power of sub-county committee

13. (1) Except as otherwise provided in this Act, a Sub- county Committee 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 Sub-county Committee.

- (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 under this Act;
 - (b) expire on thirty first day of December each year;
 - (c) specify in the licence, the hours stipulated under the First Schedule or as national legislation may provide within which the sale of alcohol is permitted and any other relevant condition.

(4) Where an application for the renewal of a licence has been made and the Sub-county Committee 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 Sub-county Committee 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 Sub- county Committee during the period of six months from the date of

such refusal or cancellation, except at the discretion of the Sub-county Committee.

Appeal and review to the Board.

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

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

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

(4) The Board may—

- (a) dismiss the request for review if in its opinion, the request is frivolous or vexatious;
- (b) uphold the decision of the sub-county committee;
- (c) annul the decision of the sub-county committee
- (d) give directions to the sub-county committee with respect to any action to be taken;
- (e) make any other declaration as it may deem fit.

Exhaustion of statutory mechanism.

15. An appeal to the Board shall constitute a statutory mechanism requiring to be exhausted before appeal to court is made.

Review to Court

16. An applicant under section 14 who is not satisfied with the decision of the Board may within twenty-one days seek judicial Court redress.

Licences to body corporate

17. (1) A licence issued to a body corporate shall be issued in the name of the body corporate:

Provided that the Sub-county committee may require prior disclosure of the directorship of the body corporate or refuse to grant a licence to the body corporate if any of the directors does not qualify to be granted the licence individually.

(2) 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

18. (1) The several licences 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 licence may be granted so as to be applicable to more premises than one.

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

Transfer of licence

19. (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in the licence, the licensee may apply in writing to the Sub-county committee for the transfer of the licence to the purchaser or lessee or otherwise of such premises, and the Sub-county Committee may, if it thinks fit, grant a transfer of such 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 Sub-county committee declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager, as the case may be or any other person approved by the Sub-county committee, to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the Sub-county committee.

(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 licences

20. (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, as the Sub-county Committee may consider necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such period to commence on the day after the last sitting of the Sub- county Committee at which the renewal of his licence has been refused, or on the day after the termination of his existing licence, whichever day is the later.

Licence to be displayed

21. (1) Every original 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) 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.

Under age persons not to be employed

22. (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 alcoholic drinks or to have the custody or control of alcoholic drinks on licensed premises.

(2) Where a licensee permits another person to manage, superintend or conduct 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.

Exclusion of drunk and disorderly persons from premises.

23. (1) A licensee or an agent or employee of a licensee may refuse to admit to, and shall expel from, the premises to which the 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 police officer, to quit the licensed premises, refuses to do so, commits an offence.

(3) On the demand of a licensee or licensee 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.

Restrictions on debt from sale of alcoholic drinks.

24. 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 proof of sale as provided for in section 40, is established.

Exclusion of underage persons from premises

25. (1) No person holding a licence to manufacture, store or sell 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, sold or consumed.

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

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

Reports by public health officer

26. (1) A Sub-county public health officer within whose jurisdiction the premises fall shall report to the Sub- county Committee any licensed premises which are deficient in their state of sanitary or drainage conditions, or which are in bad repair.

(2) A Sub-county public health officer or any person authorized by him in writing in that behalf may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

(3) A police officer not below the rank of Inspector shall report in writing to the chairperson of the appropriate Sub-county Committee every case in which a licensee is of drunk and disorderly habits or commits any breach of any of the provisions of this Act or of the 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

27. (1) Upon receipt of a report made under section 26 the Sub-county Committee shall—

(a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned therewith, informing the licensee that at a meeting of the Sub-county Committee to be

held on a date to be specified, but not less than thirty days there from, the report will be considered by the Sub-county Committee;

- (b) send a copy of the report to every member of the Sub-county committee and to the Officer Commanding Police Services in the Sub-county;
- (c) inform the Sub-county public health officer or the police officer, as the case may be, of the date upon which the Sub-county committee will consider the report, and require him to attend on the date specified.

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

(3) The Sub-county Committee, having duly considered the report and having heard the licensee, if the licensee appears, may, if it considers fit, cancel or suspend 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 Sub-county Committee, is necessary.

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

(5) The Board, on an appeal under this section, may confirm or reverse the decision of the Sub- county Committee.

(6) If a licence is cancelled or if on appeal under sub section (5), the appeal is dismissed by the Board, 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 Sub-county committee 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 Sub-county Committee or of the Court as the case may be.

PART IV—GENERAL REQUIREMENTS

Conformity with requirements of the Act

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

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

(3) A person who contravenes the provisions of this section in relation to sale of an alcoholic drink commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Sale to under age persons.

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

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

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

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

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

Display of signs

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

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

- (a) be displayed on a surface measuring not less than 24 inches by 18 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