

THE ALCOHOLIC DRINKS CONTROL BILL, 2009
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1— Short title and commencement
- 2— Interpretation.
- 3— Object and purpose of Act.

PART II— ADMINISTRATION

- 4— Functions of the relevant agency.
- 5— Establishment of the Fund.
- 6— Administration of the Fund.

PART III— LICENSING

- 7— Control of alcoholic drinks.
- 8— Establishment of the District Committee.
- 9— Application for licence.
- 10— Grant of a licence.
- 11— Provisional licence.
- 12— Licence for premises.
- 13— Persons not eligible for a licence.
- 14— Validity and renewal of licences.
- 15— Appeal to High Court.
- 16— Licences to body corporate.
- 17— Types of licence
- 18— Transfer of licence.
- 19— Removal of licence.
- 20— Display of licence.
- 21— Employment for sale of alcoholic drinks.
- 22— Drunken behaviour.
- 23— Debt from sale of alcoholic drinks.
- 24— Access by persons under the age of eighteen years

25—Reports by medical officers and police officers.

26—Cancellation of licence.

PART IV—GENERAL REQUIREMENTS

27—Conformity with requirements.

28—Supply to young persons.

29—Display of signs.

30—Vending machines.

31—Selling in sachets.

32—Information required on packages.

PART V—SALE AND CONSUMPTION

33—Disorderly conduct.

34—Breach of licence.

35—Sale to authorized officer.

36—Non disclosure of conviction.

37—Sale without licence.

38—Sale of adulterated alcoholic drinks.

39—Proof of sale.

40—Burden of Proof.

41—Endorsement of conviction on licence.

42—Forfeiture of licence upon conviction.

PART VI —PROMOTION

43—Prohibition of promotion.

44—False promotion.

45—Promotion by advertisement.

46—Communication media.

47—Display of notices.

PART VII—ENFORCEMENT

48—Authorised officers.

49—Places authorized officers may enter.

50—Powers of officers.

51—Use of records.

52—Entry of dwelling place.

- 53—High Court to issue warrant.
- 54—Use of force.
- 55—Certificate of analysis.
- 56—Assistance of officers.
- 57—Obstruction.
- 58—Seizure.
- 59—Restoration of seized product or thing.
- 60—General penalty.
- 61—Nature of offences.
- 62—Nature of evidence in proceedings.

PART VIII—EDUCATION AND INFORMATION

- 63—Government to undertake information, education and communication.
- 64—Integration of alcohol matters into syllabuses.
- 65—Integration of alcohol matters into health care.

PART IX—MISCELLANEOUS

- 66—Regulations.
- 67—Repeal of Caps 70 and 121
- 68—Transitional.

FIRST SCHEDULE—Types of Licences.

SECOND SCHEDULE—Warning Messages.

THE ALCOHOLIC DRINKS CONTROL BILL, 2009**A Bill for**

AN ACT of Parliament to provide for the regulation of the production, sale and consumption of alcoholic drinks, to repeal the Chang'aa Prohibition Act, the Liquor Licensing Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Alcoholic Drinks Control Act, 2009 and shall come into operation on such date as the Minister may, by notice in the Gazette appoint, which date shall not exceed ninety days from the date of publication.

Short title and commencement.

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

Interpretation.

“Accounting Officer” means the accounting officer of the ministry for the time being responsible for matters relating to provincial administration;

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

"alcoholic drink" includes alcohol, spirit, wine, beer traditional alcoholic drink, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, 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 48 ;

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

Cap.222

“District Committee” means the District Alcoholic Drinks Regulation Committee established under section 8;

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

“Fund” means the Alcoholic Drinks Control Fund established by section 5;

“harmful constituent” means any constituent of an alcoholic drink which the Minister may, under section 66 prescribe;

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

“illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity;

“ingredients” mean substances used during the alcohol manufacturing process;

“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, labelling, 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;

“Minister” means the Minister for the time being responsible for matters relating to provincial administration;

“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;

“relevant agency” means the department or other public body in charge of matters relating to alcoholic drinks within the ministry for the time being responsible for matters relating to provincial administration;

“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;

“vending machine” means a machine or device that is constructed to contain alcoholic drinks and which can automatically retail any alcoholic drink upon the insertion of a coin, token or similar object into the machine or device.

3. The object and purpose of this Act is to provide for the control of the production, sale, and use of alcoholic drinks, in order to—

Object and purpose
of Act.

- (a) protect the health of the individual in the light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect the consumers of alcoholic drinks from misleading or deceptive inducements and inform

them of the risks of excessive consumption of alcoholic drinks;

- (c) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;
- (d) inform and educate the public on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
- (e) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (f) promote and provide for treatment and rehabilitation programmes for those addicted or dependent on alcoholic drinks; and
- (g) promote research and dissemination of information on the effects of alcoholic drink consumption, in particular the health risks that may arise therefrom.

PART II—ADMINISTRATION

4. The relevant agency shall—

Functions of the relevant agency

- (a) keep statistics on the level of alcoholic drinks consumption and related deaths and carry out research, documentation and dissemination of all relevant information on alcoholic drinks;
- (b) promote national treatment and rehabilitation programmes;
- (c) advise the Minister on the national policy to be adopted with regard to the production, manufacture, sale, and consumption of alcoholic drinks;
- (d) advise the Minister generally on the exercise of his powers and the performance of his functions under this Act, and in particular to –
 - (i) recommend to the Minister the permissible levels of the constituents of alcoholic drinks required to be prescribed under section 66 (2) (a);
 - (ii) advise the Minister on the harmful constituents

and ingredients of alcoholic drinks required to be prohibited under section 66 (2) (b);

- (iii) advise the Minister on the test methods to be used in determining alcoholic drinks in order to test conformity with the requirements of this Act and any regulations made thereunder;
- (iv) advise the Minister on the information that manufacturers shall provide, including information on product composition, ingredients, hazardous properties and brand elements required to be provided under section 66 (2) (c);
- (v) advise the Minister on the packaging, sale and distribution of alcoholic drinks;
- (e) recommend to the Minister and to participate in the formulation of the regulations to be made under section 66;
- (f) 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 Minister.

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

Establishment of the Fund.

- (2) The Fund shall consist of—
 - (a) such licence and other fees as may be payable under this Act;
 - (b) such sums as may be realized from property forfeited to the Government under this Act;
 - (c) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
 - (d) moneys earned or arising from any investment of the Fund;
 - (e) all other sums which may in any manner become payable to, or vested in, the Fund.

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

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

- (a) research, documentation and dissemination of information on alcoholic drinks;
- (b) promoting national cessation and rehabilitation programs; and
- (c) assisting in the operations of the District Committees and civil society programmes in accordance with subsection (5);
- (d) any other matter incidental to the matters stated in paragraphs (a) (b) and (c).

(5) An amount of not less than fifty per cent of the Fund's annual income shall be used to equitably finance the District Committees in their operations and an additional amount of not less than fifteen per cent shall be used to fund relevant civil society programmes.

(6) Unless the Treasury otherwise directs, the receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Fund.

6. (1) The Fund shall be administered by the Accounting Officer.

Administration of the Fund.

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

(3) The Accounting Officer shall—

- (a) supervise and control the administration of the Fund;
- (b) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning use of expenditure;

- (c) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (d) prepare, sign and transmit to the Controller and Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the Treasury may from time to time direct; No 12 of 2003.
- (e) furnish such additional information as may be required for examination and audit by the Controller and Auditor-General or under any law; and
- (f) designate such staff as may be necessary to assist in the management of the Fund.

PART III—LICENSING

7. (1) No person shall—

Control of alcoholic drinks.

- (a) manufacture or otherwise produce;
- (b) sell, dispose of, or deal with;
- (c) import or cause to be imported; or
- (d) export or cause to be exported,

any alcoholic drink except under and in accordance with a licence issued under this Act

(2) For the purposes of subsection (1), an alcoholic drink shall be deemed to have been exported when it is placed on a ship, aircraft, train or any other vehicle within Kenya for the purposes of export.

(3) 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 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;

Cap. 366
Cap. 244.

- (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, 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 Parliament Buildings, if sold with the permission of the Speaker of the National Assembly;
- (i) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces

No.5 of 1996

Provided that this paragraph shall not apply to any such canteen, club, institute, mess or similar institution operated by any person for personal profit.

8. (1) There shall be, for every district, a committee to be known as the District Alcoholic Drinks Regulation Committee which shall—

Establishment of the District Committee.

- (a) issue licenses in accordance with this Act; and
- (b) perform such other functions as may, from time to time be allocated to it by the Minister.

(2) The District 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.

- (3) The District Committee shall consist of—
- (a) the District Commissioner of the district who shall be the chairperson;
 - (b) the District Medical Officer of Health;
 - (c) Officer Commanding Police Division;
 - (d) one person nominated by every local authority in the district;
 - (e) three residents of the district, appointed by the Minister;
 - (f) one person designated by the relevant agency who shall be the secretary to the District Committee.

(4) The authorized officers in charge of the district appointed pursuant to section 48 shall attend the meetings of the District Committee in an ex-officio capacity.

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

(6) The relevant agency shall provide secretariat services for the District Committee

9. (1) A person intending to manufacture or otherwise produce any alcoholic drink in Kenya or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the District Committee in the district where the premise is to be situated and shall pay a prescribed fee.

Application for licence.

- (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;
 - (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) such other matters as may be prescribed.

(3) The District 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 in the Kenya Gazette and at the office of the District Commissioner 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 Commissioner of Police, or to such police officer as the Commissioner of Police may have notified the District Commissioner that he has appointed to receive it on his behalf;
- (d) sent to the medical officer of health of the district in which the premises in respect of which the licences are applied for are situated; and
- (e) sent to the local authority of the area in which the premises in respect of which the licences are applied for are situated.

(4) The Commissioner of Police or, as the case may be, of the police officer appointed by him for that purpose; the medical officer of health; and an officer from the local authority shall, before the hearing of any application under this section, report as fully as possible to the District Committee on all matters which may be relevant to the consideration of the application.

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

(6) Every objection to an application shall be made in writing to the Secretary to the District 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.

(7) A District Committee may of 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.

(8) Where in respect of an application a District 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 District Committee considers necessary to enable the applicant to reply thereto.

(9) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the District Committee, and shall satisfy the District 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.

(10) A District 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.

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

(12) A local authority may authorize, in writing, any person to appear before any District Committee having jurisdiction in any part of the area within the jurisdiction of the local authority for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.

(13) Where a District 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.

(14) For the purposes of Chapter XI of the Panel Code (which concerns offences relating to the administration of justice), all proceedings before a District Committee shall be deemed to be judicial proceedings.

Cap.63

(15) Every District 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 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.

(16) The District 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 district, 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

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

Grant of a licence.

(2) Where the District Committee has no objection to the application under section 9, 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 District Committee may consider fit.

(4) Where the District 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 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 District Committee shall, within three months determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(8) Where the District Committee grants a licence under this section it shall, publish the grant in the Gazette.

11. (1) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction

Provisional licence

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 District Committee 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 section 9 and 10 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(3) The District Committee 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 District Committee may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under sub section (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 District Committee 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.

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

Licence for premises.

- (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 and;

- (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 District Committee 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.

13. (1) The District Committee shall not grant a new licence or transfer a licence to any person who—

Persons not eligible for a licence.

- (a) has failed to satisfy the District 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 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; 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) in the case of a retail licence, is not resident in Kenya; or
- (e) is under eighteen years of age; or
- (f) is an undischarged bankrupt.

(2) The District Committee may refuse to renew an existing licence only when the District 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 sale of an alcoholic drink; 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 District 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 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 District Committee.

14 (1) Except as otherwise provided in this Act, a District 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.

Validity and renewal of licences.

(2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the District 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;
- (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 District 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 District 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 District Committee during the period of six months from the date of such refusal or cancellation, except at the discretion of the District Committee.

15. An applicant whose application for a new licence, to renew or transfer a licence has been refused or cancelled may within twenty-one days of such refusal appeal against such refusal to the High Court.

Appeal to Court.

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

Licences to body corporate.

Provided that the District 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.

17. (1) The several licences which may be granted under this Act shall be those specified in the First 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.

Types of licences

(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 District Committee 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.

18. (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 District Committee for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the District Committee may, if it thinks fit, grant a transfer of such licence.

Transfer of 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 District 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 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 District 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

19. (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 District 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 District 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.

Removal of licence

(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 Minister 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.

20. (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

Licence to be displayed.

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.

21. (1) Notwithstanding 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.

Employment for sale of alcoholic drinks.

(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 District Committee 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.

22. (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.

Drunken behaviour.

(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 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.

23. No suit shall be maintainable to recover any debt alleged to be due in respect of the sale of any alcoholic drink

Debt from sale of alcoholic drinks.

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.

24. (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.

Access by persons under age of eighteen.

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

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

Reports by medical officers and police officers.

(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 Assistant Inspector shall report in writing to the chairperson of the appropriate District Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his licence.

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

26. (1) Upon receipt of a report made under section 25 the District Committee shall—

Cancellation of licence.

- (a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned therewith, informing him that at a meeting of the District 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 District Committee ;
- (b) send a copy of the report to every member of the District Committee and to the Officer Commanding Police Division ;
- (c) inform the medical officer of health or the police officer, as the case may be, of the date upon which the

District 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 District Committee.

(3) The District Committee, 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 District Committee, is necessary.

(4) Any person aggrieved by the decision of the District Committee 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 District Committee.

(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 District 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 District Committee or of the High Court as the case may be.

PART IV-GENERAL REQUIREMENTS

27. (1) No person shall-

- (a) manufacture, import or distribute; or
- (b) possess;

an alcoholic drink that does not conform to the requirements of this Act.

(2) Subsection (1) shall not apply to a person who-

- (a) is authorized under this Act to be in possession of the

Conformity with requirements.

alcoholic drink; or

(b) has possession of the alcoholic drink in a premise licensed under this Act.

(3) The manufacture or distillation of all spirituous liquor prior to this Act referred to as *Chang'aa* shall conform to the prescribed standards or the requirements of this Act.

(4) A person who contravenes the provisions of this section 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.

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

(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 Minister may prescribe.

(5) No person shall manufacture or sell objects including sweets, snacks and toys that resemble or imitate alcoholic drinks.

(6) A person who contravenes the provisions of subsection (5) commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

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

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

(a) be displayed on a surface measuring not less than 12 inches by 8 inches in size;

(b) bear the word “WARNING” in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;

(c) be in English or in Kiswahili.

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

30. (1) No person shall permit an alcoholic drink to be sold by way of an automatic vending machine. Vending machines.

(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.

31. (1) No person shall sell an alcoholic drink in sachets or such other form as may be prescribed. Selling in sachets.

(2) Notwithstanding the provisions of subsection (1), no person shall sell an alcoholic drink in a container of less than 200 millilitre.

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

32. (1) Subject to this section, no person shall— Information required on packages.

- (a) manufacture;
- (b) import;
- (c) sell or distribute

an alcoholic drink unless the package containing the alcoholic drink conforms to the requirements of subsection (2).

(2) Every package containing an alcoholic drink shall—

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

(3) The statement and health warning referred to in subsection (2) shall comprise not less than 30% of the total surface area of the label.

(4) The importer of an alcoholic drink which does not conform to the requirements of subsection (2) shall, at the point of importation, ensure that the imported alcoholic drink bears such sticker containing the warning messages specified under subsection (2) as may be prescribed.

(5) The requirements of this section shall not apply to an alcoholic drink which is manufactured in Kenya for export.

(6) A person who contravenes any of the provisions of this section commits an offence and shall be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

PART V—SALE AND CONSUMPTION

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

Disorderly conduct.

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

(3) Any person convicted under subsection (2) on more than three occasions in any period of twelve months shall be

forthwith reported by the convicting Magistrate to the District Committee, which shall inform such licensees as he deems desirable of such convictions, and thereupon, and until a period of twelve months has passed without any further such conviction in respect of that person, any licensee so informed who knowingly sells or supplies alcoholic drinks to or for delivery to that person commits an offence, and it shall furthermore be an offence for that person to be in possession of any alcoholic drink.

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

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

Breach of licence.

(a) for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or to both;

(b) for a second or subsequent offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both,

and in addition to any penalty imposed under paragraph (a) or (b), the court may order, the forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink.

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

Sale to authorized officer.

36. Any person who is required by any provision of this Act to disclose any conviction and fails to do so when making any application commits an offence.

Non disclosure of conviction.

37. (1) If any person purchases any alcoholic drink from a licensee whose licence does not cover the sale of that alcoholic drink for consumption on the premises, and drinks the alcoholic drink on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcoholic drink or under his control or used by his permission, or on any highway adjoining or near any such premises, and it is proved to the court that the drinking of the alcoholic drink was with the privity or consent of the licensee who sold the alcoholic drink, the licensee commits an offence.

Sale without licence.

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

38. (1) No person shall keep for sale, offer for sale or sell-

Sale of adulterated drinks.

- (a) any alcoholic drink which has been in any way adulterated, or diluted by any person;
- (b) any non alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited by the Minister under section 66.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five million Kenya shillings or to imprisonment for a term not exceeding five years, or to both.

(3) On the conviction of a licensee of an offence under subsection (2), the court may, in addition to any other penalty it may lawfully impose, if it finds that the drink in respect of which the offence was committed was adulterated by a substance or substances which rendered the drink unfit for human consumption, and unless the licensee proves to the satisfaction of the court that he took all reasonable precautions against such adulteration and that such adulteration took place without his

knowledge or consent, order that his licence be forfeited, and no licence shall thereafter be granted or transferred to him.

39. (1) In any proceedings under this Act relating to the sale or consumption of an alcoholic drink, such sale or consumption shall be deemed to be proved if the court is satisfied that a transaction in the nature of a sale took place, whether or not any money has been shown to have passed, or as the case may be, if the court is satisfied that any consumption was about to take place.

Proof of sale.

(2) Evidence of consumption or intended consumption of an alcoholic drink, on licensed premises by some person other than the licensee or a member of his family or his employee or agent shall be *prima facie* evidence that the alcoholic drink was sold by or on behalf of the licensee to the person consuming or about to consume the alcoholic drink.

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

Burden of proof.

(2) The fact that a person not licensed under this Act to sell alcoholic drinks has a signboard or notice upon or near his premises fitted with a bar or other place containing bottles, casks or vessels so displayed as to induce a reasonable belief that alcoholic drink is sold or served therein, or having alcoholic drink concealed, or more alcoholic drink than is reasonably required for the person residing therein, shall be deemed to be *prima facie* evidence of the unlawful sale of alcoholic drink by that person.

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

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

Endorsement of conviction on licence.

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

Forfeiture of licence upon conviction.

(a) whether he was present in the licensed premises or not,

has permitted an unlicensed person to be the owner or part owner of the business of the licensed premises or to have a substantial interest in that business, except with the consent of the District Committee; or

- (b) is convicted of an offence under this Act and a previous conviction within the preceding twelve months of the same or any other offence under this Act or three such previous convictions within the preceding five years is or are proved; or
- (c) is twice convicted within twelve months of selling, offering or keeping for sale any adulterated alcoholic drink,

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

PART VI—PROMOTION

43. (1) No person shall promote an alcoholic drink or an alcohol-related brand element except in accordance with the provisions of this Act.

Prohibition of promotion.

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

44. (1) No person shall promote an alcoholic drink by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink.

False promotion.

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

45. (1) Subject to this Part, no person shall promote an alcoholic drink so as to create a false impression that-

Promotion by advertisement.

- (a) a link exists between consumption of that drink and social or sexual success;
- (b) consumption of that drink is acceptable before or

while engaging in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely;

- (c) that the alcoholic drink has a therapeutic value or that it has the ability to prevent, treat or cure any human disease;
- (d) it is wrong or foolish to refuse that drink.

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

46. (1) No person shall, on behalf of another person, with or without consideration, publish broadcast or otherwise disseminate any promotion that is prohibited by this Part. Communication media.

(2) No person shall, by means of a publication that is published outside Kenya, or a broadcast that originates outside Kenya, or any other communication that originates outside Kenya, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains an alcohol-related brand element in a manner that is contrary to the requirements of this Part.

(3) This subsection does not however apply to programmes or communication thereof which are solely produced and aired from outside Kenya.

(4) Any person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million Kenya shillings or to imprisonment for a term not exceeding three years, or to both.

47. (1) The manager or owner of a place where an alcoholic drink is sold shall cause to be displayed therein, clear and prominent notices in English or Kiswahili stating that drinking of alcoholic drinks is prohibited for persons under the age of eighteen years and the prescribed penalty thereof. Display of notices.

(2) Every notice under subsection (1) shall be in such form and of such size, and shall be posted in such place, as may be prescribed.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand

shillings, or to imprisonment for a term not exceeding six months, or to both.

PART VII- ENFORCEMENT

48. (1) The Minister shall, upon recommendation by the respective District Committee, appoint for each district, any person or class of persons to be authorised officers for purposes of this Act.

Authorised officers.

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

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

Cap.242

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

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

49. (1) For the purposes of ensuring compliance with this Act, an authorised 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.

Places authorized officers may enter.

(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 48(2).

50. In carrying out an inspection in any place pursuant to section 49, an authorised officer may—

Powers of officers.

(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.

51. In carrying out an inspection in a place, an authorised officer may—

Use of records.

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

52. 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 53.

Entry of dwelling place.

53. (1) 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—

Court to issue warrant.

- (a) the dwelling place is a place referred to in section 49;
- (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.

54. An authorised officer executing the warrant issued

Use of force.

under section 53 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

55. 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.

Certificate of analysis.

56. (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 —

Assistance of officers.

- (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.

57. 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.

Obstruction.

58. (1) During an inspection under this Act, 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.

Seizure.

(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 Minister within the prescribed time and in the prescribed manner.

59. (1) The High Court may order that the alcoholic drink or

Order for

thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that- restoration.

- (a) the applicant is entitled to possession of the alcoholic drink or thing seized; and
- (b) the alcoholic drink or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

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

60. 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. General penalty.

61. (1) Offences under this Act, other than the offences specified under Part VI, shall be cognizable offences. Nature of 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.

62. (1) In any prosecution for an offence under this Act, a Nature of evidence

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. in proceedings.

(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 VIII – EDUCATION AND INFORMATION

63. (1) The Government shall promote public awareness about the health consequences, addictive nature and mortal threat posed by excessive alcoholic drink consumption through a comprehensive nation-wide education and information campaign conducted by the Government through the relevant Ministries, departments, authorities and other agencies including the relevant non governmental organizations and civil society.

Government to undertake information, education and communication.

(2) The education and information campaign referred to in subsection (1) shall focus on the family as the basic social unit

and shall be carried out in all schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities in Kenya.

(3) The relevant agency in collaboration with the Government and the relevant civil society groups shall provide training, sensitization and awareness programmes on alcoholic drink control for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons for proper information, dissemination and education on alcoholic drinks.

(4) In conducting the education and information campaign referred to in this section, the relevant agency and Government shall ensure the involvement and participation of individuals and groups affected by misuse of alcoholic drinks.

(5) Every local authority in collaboration with the civil society and the relevant agency, shall conduct education and information campaigns on alcoholic drink within its area of jurisdiction.

64. The relevant agency shall liaise with the Minister responsible for education, to integrate instruction on the health consequences, addictive nature and mortal threat posed by alcoholic drink consumption in subjects taught in public and private schools at all levels of education, including informal and non formal and indigenous learning systems.

Integration of alcohol matters into syllabuses.

65. (1) The relevant agency shall liaise with the Ministry for the time being responsible for health to ensure that alcoholic drink use education and information dissemination shall form part of health care services by healthcare providers.

Integration of alcohol matters into health care.

(2) For the purposes of subsection (1), the relevant agency and the Government shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on alcohol consumption.

PART IX – MISCELLANEOUS

66. (1) The Minister may, on recommendation of the relevant agency, make Regulations generally for the better carrying out of the objects of this Act.

Regulations.

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

- (a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
- (b) prescribe the recommended levels of alcohol in alcoholic drinks which levels shall not exceed the levels set by the World Health Organisation;
- (c) prescribe substances as harmful constituents of an alcoholic drink;
- (d) prescribe the hours within which the sale of alcoholic drinks shall be permitted;
- (e) prohibit the addition or use of any harmful constituent or ingredient in the production of alcoholic drinks;
- (c) prescribe the methods to be used in testing alcoholic drinks;
- (d) prescribe the information that manufacturers shall provide to the relevant agency including information on alcoholic drinks, sales and advertising data, and information on product composition, ingredients, hazardous properties and brand elements;
- (e) subject to this Act, control the labelling, packaging, sale or distribution of alcoholic drinks, so as to-
 - (i) ensure that the purchaser or consumer of an alcoholic drink is not misled as to its quality, quantity, character, value, composition, effect, merit or safety;
 - (ii) prevent injury or harm to the health of the consumer.
- (f) prescribe the forms of applications, notices, licences and other documents for use under this Act;
- (g) prescribe the fees payable under this Act.

67. The Chang'aa Prohibition Act and the Liquor Licensing Act are hereby repealed.

Repeal of Caps 70 and 121.

68. Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act—

Transitional.

- (a) was, in accordance with any law, a manufacturer, importer, exporter, distributor or retailer of any

alcoholic drink shall be deemed to be a manufacturer, importer, exporter, distributor or retailer of any alcoholic drink under this Act;

- (b) was a manufacturer, importer, exporter, distributor or retailer of any alcoholic drink or the owner or manager of any premises contemplated under this Act, shall, within nine months of such commencement, comply with the requirements of this Act.

FIRST SCHEDULE (s.17)
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.

1. Wholesale Licence.

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

2. 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.

SECOND SCHEDULE (s.32)
WARNING MESSAGES

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

- (a) Excessive alcohol consumption is harmful to your health;
- (b) Excessive alcohol consumption can cause liver cirrhosis;
- (c) Excessive alcohol consumption impairs your judgment; do not drive or operate machinery;
- (d) Not for sale to persons under the age of 18 years.

2. The health messages in paragraph 1 or any pictures or pictograms prescribed shall be displayed on every package containing an alcoholic drink in the manner prescribed under section 32 on such rotational basis as may be prescribed.

MEMORANDUM OF OBJECTS AND REASONS

The main object and purpose of this Bill is to provide a legal framework for the control of the production, sale, and consumption of alcoholic drinks, in order to protect the health of the individual.

Firstly, the Bill seeks to legalize the production and consumption of Chang'aa by repealing the Chang'aa Prohibition Act.

Secondly, the Bill seeks to strengthen the licensing regime for alcoholic drinks by repealing and re-enacting with modifications the Liquor Licensing Act.

Thirdly, the Bill seeks to protect the purchasers or consumers of alcoholic drinks from misleading and deceptive inducements to consume alcoholic drinks and consequent dependence or abuse on them.

Fourthly, the Bill seeks to protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks.

Fifthly, the Bill seeks to educate the public about the harmful health, unauthorised ingredients, and environmental, economic and social consequences of the abuse of alcoholic drinks.

Sixthly, the Bill proposes measures to eliminate illicit trade in alcoholic drinks including smuggling, illicit manufacturing and counterfeiting.

Seventhly, the Bill seeks to promote and provide for treatment and rehabilitation programmes for those addicted or dependent on alcoholic drinks.

Lastly, the Bill seeks to promote research and dissemination of information on the effects of alcoholic drinks use, in particular the health risks including addictive characteristics of alcohol consumption

***Part I** of the Bill contains the preliminary provisions*

Part II provides for the administration of the Act.

Clause 4 empowers the Minister to designate a relevant agency to assist him in the administration of the Act. Clause 5 establishes the Alcoholic Drinks Control Fund. Clause 6 provides for the administration of the Fund.

Part III contains provisions relating to the licensing of alcoholic drinks

Clause 8 establishes the District Alcoholic Drinks Committee. Clause 9 contains provisions relating to application for a licence. Clause 10 provides for the grant of a licence whereas clause 11 relates to the grant of a provisional licence. Clause 12 relates to licensing of premises whereas clause 13 specifies the persons not eligible for a licence. Clause 14 sets out the period of validity and renewal of licences and clause 15 provides for appeal by an aggrieved party to High Court. Clause 16 relates to the licensing of body corporate and clause 17 specifies the types of licences.

Part IV contains provisions relating to general requirements for alcoholic drinks

Clause 27 requires alcoholic drinks to conform with the statutory requirements whereas clause 28 prohibits supply and access to alcoholic drinks by persons under the age of eighteen years. Clause 30 prohibits sale by vending machines and clause 31 prohibits selling in sachets.

Part V contains provisions relating to sale and consumption of alcoholic drinks

Clause 33 sets out disorderly conduct whereas clause 38 prohibits sale of adulterated alcoholic drinks.

Part VI contains provisions relating to promotion of alcoholic drinks

Clause 43 prohibits generally promotion of alcoholic drinks. Clause 45 prohibits certain promotions by advertisement. Clause 46 prohibits communication media.

Part VII contains provisions relating to enforcement of the Act.

Clause 48 specifies the authorised officers for purposes of the Act and clause 49 enumerates the places authorized officers may enter. Clause 50 details the powers of authorised officers. Clause 54 specifies the circumstances under which an authorised officer may use force. Clause 58 relates to seizures under the Act.

Part VIII contains provisions relating to education and information

Clause 63 imposes a general requirement on the Government to undertake information, education and communication and clause 63 obligates the Ministry responsible for education to integrate alcohol abuse matters into syllabuses. Clause 65 requires that alcoholic drink control education and dissemination be part of health care.

Part VIII contains miscellaneous provisions

Clause 66 empower the Minster to make regulations for the purposes of the Act whereas clause 67 provides for the repeal of the Changaa prohibition Act (Cap 70) and the Liquor Licensing Act (Cap.121)

The enactment of this Bill shall not occasion additional expenditure of public funds

Dated the 15th September, 2009.

J. N. MUTUTHO,
Member of Parliament.