

# **The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020**

## **THE THARAKA NITHI COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2020**

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# The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020

## A Bill for

**AN ACT** of the County Assembly of Tharaka Nithi to repeal the Tharaka Nithi County Alcoholic Drinks Control Act, 2015 and enact the Tharaka Nithi County Alcoholic Drinks Control Act, 2020, and for connected purpose

**ENACTED** by the County Assembly of Tharaka Nithi, as follows—

### PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as the Tharaka Nithi County Alcoholic Drinks Control Act, 2020 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 alcohol, and any one or more of such varieties containing one— half of one percent or more of alcohol by volume, including mixed alcohol, 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;

"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

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"Authorized officer" means an authorized officer within the meaning of section 50;

"Cinema" has the meaning assigned to it in the Films and Stage Plays Act;

"Committee" means the Tharaka Nithi County Liquor Licensing Committee;

"Chief Officer" means the chief officer responsible for matters relating to alcohol control;

"County" means the Tharaka Nithi County;

"County Executive Member" means the county executive member responsible for alcoholic drinks control;

"bar area" in relation to a hotel premises means any part of the hotel in which alcoholic drink is ordinarily sold or supplied for consumption in the hotel and does not include a dining area of the hotel;

"dining area" in relation to licensed premises, means a part of the licensed premises used permanently and primarily for the consumption of meals at tables;

"Director" means the Director responsible for matters relating to alcohol control within the County;

"Entity" includes a company, corporation, firm, partnership, association, society, trust or other organization whether incorporated or not;

"Governor" means the Governor of Tharaka Nithi 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" means any premises or commercial establishment classified as such under any written law or any licensed premises whose sole purpose is

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to sell bed occupancy as primary and core business;

"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;

"Executive member" means the County Executive Committee member at the time in charge of matters relating to alcohol control;

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

"manufacture" means the brewing, distilling, tapping or any processing or intermediate processing of an alcohol and includes the packaging, labeling, distribution or importation of an alcohol for sale in the county or anywhere in Kenya;

"Manufacturer", in respect of an alcohol, 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;

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"Package" means the container, receptacle or wrapper in which an alcohol 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 alcohol 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 Alcohol Regulations Committee appointed under section 7.

Object and purpose of Act

3. The object and purpose of this Act is to provide for licensing of alcohol by the County government pursuant to Part II of the Fourth Schedule to the Constitution so as to control of the production, sale, distribution, promotion and use of alcohol and the promotion of research, treatment and rehabilitation for persons dependent on alcohol in order to—
- (a) protect the health of the individual in the light of the dangers of excessive consumption of alcohol;
  - (b) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcohol;
  - (c) protect consumers of alcohol from misleading or deceptive inducements and inform them of the risks of consumption of Alcohol;
  - (d) protect the health of persons under the age of eighteen years by preventing their access to alcohol;
  - (e) inform and educate the residents in the county on the harmful health, economic

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and social consequences of the consumption of alcohol;

- (f) facilitate and enhance community participation in alcoholic drinks control;
- (g) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (h) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcohol; 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;
- (j) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumptions of alcohol.

## PART II — ADMINISTRATION

Establishment of a Directorate.

4. (1) There is established in the county department responsible for alcohol control, the Alcoholic Drinks Control Directorate.

(2) The Directorate shall consist of-

- (i) The County Secretary;
- (ii) The County Executive Committee Member responsible for matters relating to alcohol control;
- (iii) The Chief Officer responsible for matters relating to alcohol control in the county;
- (iv) The director responsible for matters relating to alcohol control who shall be secretary to the Directorate;
- (v) A representative from County Department of Public Health;



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- (vi) A representative from County Department of Physical Planning ;
- (vii) A representative from County Department of Public Service; and
- (viii) A representative from the office of County Attorney.

Functions of the Directorate

5. The functions of the directorate shall —

- (1) be to provide overall strategic directions on matters relating to alcohol control in the county;
- (2) receiving reviewing approving and granting licences in accordance with applications recommended by the sub-county committees;

Appointment and Establishment of Tharaka Nithi County Liquor Licensing Committee

6. (1) The Executive Committee Member in charge of matters relating to alcohol control in consultation with the Governor shall appoint the members of Liquor Licensing committee. with the approval of the County Assembly.

(2)The Executive Committee Member shall cause to be established in the county, the Tharaka Nithi County Liquor Licensing Committee.

(3)The functions of the Committee shall be to—

- (a) carry out public education on alcohol control in the county directly and in collaboration with other public or private bodies and institutions;
- (b) facilitate citizen participation in matters related to alcohol control in accordance to framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;
- (c) 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;

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- (d) 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 alcohol;
  - (e) in collaboration with other relevant county departments, prepare and submit an alcohol status report bi-annually in the prescribed manner to the Executive member which shall be transmitted to the County Cabinet and the county assembly;
  - (f) recommend to the Executive member and participate in the formulation of laws and regulations related to alcohol;
  - (g) monitoring and evaluating the implementation of this Act and advising the executive member on the necessary measures to be adopted;
  - (h) 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.
  - (i) collaborate with ward administrators and the officers in charge of coordination of national government functions in the wards and villages;
  - (j) collaborate with similar committees in other counties for effective implementation of this Act.
- (4) The Committee shall consist of—
- (a) the County Secretary who shall be the chairperson;
  - (b) A representative from the County Commissioner office who shall be the alternate chairperson ;
  - (c) the County Director Public Health officer;
  - (d) the County Police Commander;
  - (e) the County Director responsible for matters relating to alcohol control;

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- (f) the Chief Officer in charge of matters relating to alcohol control who shall be the Secretary;
  - (g) the County Chairperson of the Kenya National Chamber of Commerce & Industry;
  - (h) the County Director physical planner;
  - (i) The County Attorney;
  - (j) the representative of the liquor dealers appointed by the County Executive Committee Member.
  - (k) three residents of the county appointed by the Executive Member in consultation with the Governor, one of whom shall be a youth provided that not more than two persons shall be of the same gender.
- (5) the term of office of the officers appointed in subsection (4) (j) and (k) shall be three years only renewable once for a further term;

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

- (a) He or she resigns upon giving one month's notice in writing to the appointing authority;
- (b) Is removed from office by the appointing authority upon recommendation of the Committee to terminate *the appointment of the member on any of the following grounds—*
  - (i) has been absent from three consecutive meetings of the Committee without the permission of the chairperson;
  - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
  - (iii) is convicted of an offence involving dishonesty or fraud;
  - (iv) violation of the constitution or any other law;

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- (v) Gross misconduct, whether in the performance of the member's functions or otherwise;
- (vi) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
- (vii) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Committee; or
- (viii) Fails to comply with the provisions of this Act relating to disclosure;
- (ix) Goes against or is deemed to have violated contractual agreement of his/her engagement as a committee member; or
- (x) Violates the requirements of the conduct of a public officer as per the laid down rules and regulations

(7) Whenever the office of a member becomes vacant before the expiry of the term provided in subsection 5 the appointing authority may within Twenty one days appoint another person to be a member and that other person shall hold office only for the unexpired term of office of the person who vacated such office .

(8)The Executive Member shall ensure that the Committee has adequate resources to enable it carry out the functions assigned under this Act.

(9)The Executive member shall cause to be kept proper books of account and other books and records in relation to the Fees as well as to all the various activities and undertakings of the Committee;

(10)The Executive member shall furnish such additional information as may be required for examination and audit by the Auditor-General or under any other law; and

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

Establishment of the sub-county committee

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

- (a) receive, review and recommend or reject for approval, applications for licence in accordance with this Act;
- (b) perform such other functions as directed by the County Liquor Licensing Committee and the Directorate.

(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.

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

- (a) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Government Act, or any other relevant written law;
- (b) collaborate with the ward and the officers in charge of co-ordination of national government functions in the ward and villages;
- (c) for effective implementation of the Act;

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

- (a) sub-county administrator appointed under the County Governments Act who shall be the chairperson;
- (b) the officer responsible for coordination of national government functions in the sub county. who shall be the alternate chair person;
- (c) the sub-county public health officer;
- (d) the subcounty Police Commander;

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- (e) the officer in charge of matters relating to alcohol control in the in sub-county who shall be the Secretary;
- (f) the Sub-County physical planner;
- (g) the representative of the liquor dealers appointed by the County Executive Committee Member.
- (h) three residents of the sub-county appointed by the Executive Member, one of whom shall be a youth and a persons with disability provided that no more than two persons shall be of the same gender.

(5) Members appointed under subsection (g) and (h) above representative shall possess such qualifications as may be prescribed.

(6) the term of office of the officers appointed in subsection (5) (g) and (h) shall be three years only renewable once for a further term;

(7)The authorized officers specified under section 50 or any other person designated by the Authority shall attend the meetings of the subcounty Committee in an ex officio capacity.

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

(9)A person shall not be a member of the sub county Committee if such a person is—

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

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

Review Committee

8. (1) The Tharaka Nithi County Liquor Licensing Committee shall be the body responsible for review of any rejected or suspended licences.

(2) The Review Committee shall be responsible for reviewing on appeal decisions made by Directorate.

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- Establishment of rehabilitation facilities and programs
9. The county department responsible for Health may in collaboration with other relevant county departments, national government and programs agencies establish treatment and rehabilitation facilities and programs for—
- (a) persons dependent on alcohol;
  - (b) ensure that the treatment and rehabilitation facilities have the necessary human resources for effective operation and service delivery;
  - (c) ensure that the treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcohol.

### PART III — LICENSING

- Control of alcohol
10. (1) No person shall—
- (a) manufacture or otherwise produce;
  - (b) sell, distribute or dispose of, or deal with; any alcohol 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 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 alcohol;
  - (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 alcohol

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in quantities not less than those authorized to be sold under a wholesale alcohol license 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 alcohol forming part of the estate of the deceased person;
- (f) the sale by a trustee in bankruptcy of an alcohol forming part of the bankrupt's estate;
- (g) the sale by the liquidator of a company of an alcohol forming part of the company's assets;
- (h) the sale of alcohol at the County Assembly Buildings, if sold with the written permission of the Speaker;
- (i) the sale of alcohol to the members of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit:

(4) A person shall not be a member of the 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.

Application for a licence

11. (1) A person intending to produce, manufacture, import, and or distribute any alcohol in the county or to operate an establishment for the sale of an alcohol shall make an application in a prescribed form to the Committee and shall pay the prescribed fee.

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

- (a) comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale;
- (b) an indication as to whether the manufacture or sale of the alcohol is licensed in another



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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 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 office of the sub-county Administrators. for a period of not less than twenty-one consecutive days; and

(b) posted in some conspicuous place;

(c) sent to the County Public Health officer and the sub-county Public Health officer in which the premises in respect of which the licences are applied for are situated; and

(d) sent to the County and sub-county physical planners.

(4) The Inspector-General of Police or, as the case may be, the police officer appointed by him for that purpose; the County Public Health Officer; and the sub-county physical planner shall, before the hearing of any application under this section, report as fully as possible to the Subcounty Committee on all matters which may be relevant to the consideration of the application.

Objection to application

12. (1) Any person may lodge objection to an application.

(2) Every objection to an application shall be made in writing to the Secretary to the Committee, and the objector shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.

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(3)The Committee may on its own motion take notice of any matter or thing which, in the opinion of the Committee, constitutes an objection to an application, whether or not any objection has been otherwise lodged.

(4)Where in respect of an application the Committee acts in pursuance of subsection (3), the Committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, remove that application from the list for such period, not being less than seven days, Committee considers necessary to enable the applicant to reply thereto.

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

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

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

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

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

(10)The Committee shall maintain records of all its proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced and the decision thereon:

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

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(11)The 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 licences 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, distill, bottle or manufacture an alcohol possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law; and
- (e) the premises have sufficient number of competent staff in line with such norms as may be prescribed.

Grant of a licence

13. (1)The Committee shall, after considering the application under section 11, indicate in writing whether it objects to the grant of the licence applied for.

(2)Where the Committee has no objection to the application under section 11, it shall recommend for a licence to be granted 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 Committee may consider fit.

(4)Where the 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.

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(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 Committee shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, recommend for issuance of a licence.

### Provisional licence

14. (1) Despite the provisions of sections 11 and 13, upon recommendation of the Committee the directorate may issue a provisional licence for the manufacture or sale of an alcohol for such period not exceeding six months as may be appropriate where the Committee is satisfied that the applicant for the licence has demonstrated to the satisfaction of the Committee that the manufacture or sale of the alcohol is licensed in another county but the issuance of the provisional licence shall be subject to the applicant complying with the provisions of sections 11 and 13 within the period of the provisional licence.

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

(3)The provisions of section 11 and 13 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(4)The 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.

(5)Where such an assurance has been given under subsection (4), the Committee may, on any date, on being satisfied that the premises have been

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completed in accordance with the signed plans submitted under sub section (3) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of the type specified in the assurance in respect of the premises.

(6) Any assurance given under subsection (4) shall become ineffective and the Sub-county 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 16, a licence may not be granted.

Licence for premises

15. (1) The Committee shall not grant a new licence for the sale of an alcohol to be consumed in any institution of basic education including primary and secondary schools or any residential area as have been demarcated by or under the relevant written laws—

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

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

(2) The Committee shall not grant a licence for the sale of an alcohol in—

(a) a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the premises in which the sale is to take place is not accessible to persons under the age of eighteen years;

Despite subsection (1), the 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—

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- (i) 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;
- (ii) the premises displays on its outside any of the prescribed health messages in a clear and visible manner;
- (iii) 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.

Persons not eligible  
for a license

16. (1) The Committee shall not recommend for grant a new license or transfer a license to any person who—
- (a) has failed to satisfy the Committee, if called upon to do so, of his good character and standing in relation to the expectations in this Act; or
  - (b) has been convicted of an offence under this Act or of any offence of which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or
  - (c) in the case of a retail licence, is not resident in Kenya; or
  - (d) is under eighteen years of age; or
  - (e) is an undischarged bankrupt.
- (2) The Committee may recommend an existing licence not to be renewed only when the Committee is satisfied that—
- (a) the licensee is not 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 alcohol 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

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Act, or any other rules and regulations for the time being in effect, or conditions set by the Committee; or

- (e) the conditions of the 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 Subcounty 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 Committee.

Validity and renewal  
of licences

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

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

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

- (a) be subject to the payment of such fee or fees as may be prescribed;
- (b) expire on thirty first day of December each year;
- (c) specify in the licence the hours stipulated under the First Schedule and as national legislation may provide within which the sale of alcohol is permitted and any other relevant condition.

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

(5) Where an application for a licence has been rejected, or a licence has been cancelled, no subsequent application by the former applicant or

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licensee for a licence of the same description shall be considered by the Committee during the period of two months from the date of such refusal or cancellation, except at the discretion of the Committee.

Review

18. (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, request in writing the review of such refusal by the Committee.

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

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

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

(5) The Committee may —

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

Right of review

19. The right to request for review under section 16 does not prohibit a person from seeking any other legal remedy a person may have.

Appeals to Court

20. (1) Notwithstanding section 16, an applicant whose application for a new licence, to renew or transfer a licence has been refused may within twenty-one days of such refusal appeal against such refusal to Court.



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- (2) An applicant under section 16 who is not satisfied with the decision of the Committee may within twenty-one days appeal to the High Court.
- Licences to body a corporate
21. (1) A licence issued to a body corporate shall be issued in the name of the body corporate: Provided that the Committee may require prior disclosure of the directorship of the body corporate or refuse to grant a 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
22. (1) The 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 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.
- Transfer of licence
23. (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 Committee for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the 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 (1) if, at the date

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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 Committee declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager of the estate, as the case may be or any other person approved by the Sub-county committee, to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the Committee

(4) Every person to whom a licence may have been transferred under subsection (1), and every person permitted to carry on a business without a transfer or grant of a licence in pursuance of subsection (3), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

Removal of licence

24. 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 Committee may consider necessary for the purpose of disposing of the alcohol or apparatus on the premises, such period to commence on the day after the last sitting of the Committee at which the renewal of 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

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

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

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

Employment for sale  
of alcohol

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

(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.

Drunken behavior

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

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

(3) On the demand of a licensee or his agent or employee, a police officer shall expel or assist in expelling from the licensed premises the person referred to in subsection (1).

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

Debt from sale of  
alcohol

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

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supplied was at the time of the sale a lodger on such premises.

Access by persons under age of eighteen

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

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

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

Reports by Public Health officers and police

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

(2) A Public Health officer or any person authorized by him in writing may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

(3) A police officer not below the rank of Inspector shall report in writing to the chairperson of the Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his licence.

(4) A 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.

### PART IV — GENERAL REQUIREMENTS

Conformity with Requirements

31. (1) No person shall manufacture, or distribute or sell an alcohol in the county that does

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not conform to the requirements of this Act or any other written law regulating alcohol.

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

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

Supply to young persons

32. (1) No person shall sell, supply or provide knowingly an alcohol 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

33. (1) Every retailer shall post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of an alcohol to a

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

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

- (a) be displayed on a surface measuring not less than 12 inches by 8 inches in size;
- (b) bear the word "WARNING" in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;
- (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

Vending machines

34. (1) No person shall sell or permit an alcohol to be sold by way of an automatic vending machine.

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

Selling in sachets

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

(2) Notwithstanding the provisions of subsection (1),

- (a) no person shall manufacture, pack, distribute or sell in the county an alcohol in a container of less than 250 millilitre;
- (b) any other distilled or fortified alcohol shall only be manufactured, packed, sold or distributed in glass bottles of the kind

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specified in paragraph (a) or as may be prescribed in the national legislation related to control of alcohol.

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

## PART V— SALE AND CONSUMPTION

Sale to intoxicated persons

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

Disorderly conduct

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

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

(3) Upon conviction under subsection (2), the convicting Magistrate may issue an order for community service to any person convicted of the offence under this section for more than one time in accordance with provisions of the Community Service Orders Act, 1998.

(4) Despite subsection (3), any person convicted under subsection (2) on more than three occasions in any period of twelve months shall—

(a) be ordered by the convicting Magistrate to undergo at his own cost, such rehabilitation programme as may be appropriate in a Public Health institution;

(b) be forthwith reported by the convicting Magistrate to the 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

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licensee so informed who knowingly sells or supplies alcohol to or for delivery to that person commits an offence, and it shall furthermore be an offence for that person to be in possession of any alcohol.

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

Breach of licence

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

(a) for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or 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 alcohol found in the possession, custody or control of the person convicted, together with the vessels containing the Alcohol.

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

(a) sell, an alcohol in any workplace, office, factory, public park or any public recreational facility, public transport vehicle, public beach, sports stadium or public street;

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

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

Sale to authorized officer

39. (1) Any person who knowingly sells, supplies or offers an alcohol to a police officer in uniform or who harbors or suffers to remain on licensed premises any such police officer except for the purpose of keeping or restoring order or otherwise



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in the execution of his duty, commits an offence and is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.

Non-disclosure of conviction

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

Sale without a Licence

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

(2) If a licensee whose licence does not cover the sale of alcohol to be consumed on his premises himself takes or carries, or employs or suffers any other person to take or carry, any alcohol out of or from his premises for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place (whether enclosed or not, and whether or not a public thoroughfare) other than the licensed premises, with intent to evade the conditions of the 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.

Sale of adulterated drinks

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

- (a) any alcohol which has been in any way adulterated, or diluted by any person;
- (b) any non-alcohol which has been in any way adulterated with alcohol, or which contains

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any of the substances prohibited under the Alcohol Control Act, 2010.

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

Proof of sale

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

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

Burden of proof

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

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

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

Endorsement of  
Conviction on licence

45. 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 Sub-county committee.

Forfeiture of licence  
upon conviction

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

- (a) whether he was present in the licensed premises or not, has permitted an unlicensed person to be the owner or part owner of the business of the licensed premises or to have a substantial interest in that business, except with the consent of the Subcounty 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 alcohol, then the court may, in addition to any other penalty which it may lawfully impose, order that his licence be forfeited, and that no licence shall be issued or transferred to him for such period as the court may order.

### **PART VI—ADVERTISEMENT AND PROMOTION**

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Prohibited  
Advertisement and  
Promotion

47. (1) No person shall promote an alcohol by way of outdoor advertisement—

- (a) in a manner that is false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcohol;
- (b) through painting or decorating a residential building with the name of the alcohol or manufacturer, colour and brand images or logos associated with a manufacturer or an alcohol or any other related form: and
- (c) in places demarcated under any written law as residential areas or within a distance of three hundred metres from nursery, primary, secondary school, or other institution of learning for persons under the age of eighteen years or a place of worship, health facility or a public property.

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

(3) Pursuant to Article 34 (2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of—

- (a) protecting consumers of alcohol from misleading or deceptive inducements to use alcohol; and
- (b) protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcohol

Promotion at  
underage events

48. (1) No person shall promote an alcohol—

- (a) at any event or activity associated with persons under the age of eighteen years;
- (b) using such things or materials that are associated with persons under the age of eighteen years.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shilling or

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imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcohol.

Encouraging  
consumption

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

(2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both. The county committee may also institute other stiff penalties including withdrawal of licence to the contravener of this subsection of the Act.

## PART VII—ENFORCEMENT

Authorized officers

50. (1) The Executive Committee Member shall, upon recommendation by the Committee, appoint for each Sub-county, any person or class of persons to be authorized officers for purposes of this Act.

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

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

- (a) public Health officers appointed under the Public Health Act; and
- (b) officers appointed as enforcement officers;
- (c) national Police Service Act, Standards Act, Weights and Measures Act and Anti-counterfeit Act
- (d) any other person whom the Executive Member shall appoint

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

Places authorized officers may enter

51. (1) For the purposes of ensuring compliance with this Act, an authorized officer may, at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of this Act.

(2) An authorized officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 50 (2).

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

Powers of officers

52. (1) In carrying out an inspection in any place pursuant to section 50, an authorized officer may—

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

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

### Use of records

53. (1) In carrying out an inspection in a place, an authorized officer may—
- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
  - (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;
  - (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document;
  - (d) scrutinize any other record system in use in that place.

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

### Entry of dwelling place

54. An authorized officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 55.

### Court to issue warrant

55. (1) Upon an ex-parte application, a magistrate or judge of the High Court, may issue a warrant authorizing the authorized officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—
- (a) the dwelling place is a place referred to in section 51;

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(b) entry to the dwelling place is necessary for the administration or enforcement of this Act;

(c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

Use of force

56. An authorized officer executing the warrant issued under section 55 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorized in the warrant.

Certificate of analysis

57. An authorized officer who has analyzed or examined an alcohol or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

Assistance of officers

58. (1) The owner of a place inspected by an authorized officer under this Act or the person in charge of the place and every person found in the place shall —

(a) provide all reasonable assistance to enable the authorized officer to carry out his duties under this Act;

(b) furnish the authorized officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

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

Obstruction

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

Seizure

60. (1) During an inspection under this Act, an authorized officer may seize any alcohol or thing by



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means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

(2) The authorized officer may direct that any alcohol or thing seized be kept or stored in the place where it was seized or that it be removed to another place.

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

(4) Any person from whom an alcohol or thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the Executive Member within the prescribed time and in the prescribed manner.

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

Order for restoration

61. (1) The High Court may order that the alcohol or thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

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

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

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- General penalty
62. Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.
- Nature of offences
63. (1) Offences under this Act, other than the offences specified under Part VI, shall be cognizable offences.
- (2) Where a corporation, registered society or other similar legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall, on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.
- (3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.
- (4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.
- Nature of evidence in proceedings
64. (1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be proof of its contents.
- (2) Subject to this Part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.
- (3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is

## The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020

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

### **PART IX—MISCELLANEOUS**

Regulations

65. (1) The Executive Member may, on recommendation of the Committee make Regulations generally for the better carrying out of the objects of this Act.

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

- (a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
- (b) prescribe the forms of applications, notices, licences and other documents for use under this Act;
- (c) prescribe the fees payable under this Act.

(3) Pursuant to Article 94 (6) of the Constitution, the legislative authority delegated to the Executive Member in this section shall be exercised only for the purpose and intent specified in this section and in accordance with the principles and standards set out in the Interpretation and General Provisions Act and the Statutory instrument Act, 2013

Transitional

66. (1) Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act was in

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accordance with the Act a manufacturer, importer, distributor or retailer of any alcohol in the under that Act shall be deemed to be a manufacturer, importer, distributor or retailer of any alcohol under this Act.

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

### FIRST SCHEDULE: LICENCE HOURS

Licences	Licence Hours, Conditions and Exceptions
1. Own – Bar Alcohol Licence	Authorized to sell alcohol: (a) From Monday to Friday during the hours 5.00p.m to 11.00p.m. (b) During weekends and public holidays during the hours of 2.00p.m to 11.00 p.m.
2.General retail alcohol licence (off licence) wines and spirits retailers (rural or sub-urban)	Authorization to sell alcohol on any day of the week during the hours of 5.00 p.m.to 8.30 p.m.

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3 Supermarket of franchised retail stores (urban)alcohol licence (off-licence)	authorized to sell alcohol on any day of the week during the hours of 10.00a.m to 8.30p.m
4.Hotel Alcohol Licence	Authorized to sell alcohol on any day of the week to a lodger for his own and his guest's consumption on the premises, at any hour.
5.Bar and Restaurant Alcohol Licence	<p>(a) Authorized to sell alcohol on any day of the week to persons taking meals in the restaurant, for consumption with such meals</p> <p>(b) Authorized to sell alcohol from Monday to Friday during the hours of 5.00p.m. to 11.00p.m</p> <p>(c) Authorized to sell alcohol during weekends and public holidays during the hours of 2.00 p.m. to 11.00p.m.</p>
6. Club Alcohol Licence (a) Members club	Authorized to sell alcohol to members on any day of the week at any hour.
(b)Proprietary club (including night club)	<p>Authorized to sell alcohol:</p> <p>(a) From Monday to Friday during the hours of 7.00p.m to 3.00a.m.</p> <p>(b)During weekends and public holidays during the hours of 7.00p.m to 3.00a.m</p>
11.Temporary or occasional Licence	Authorized to sell alcohol on the day and during the hours stipulated in the Licence by the County Committee for the purposes of specific occasions, ceremonies or events as indicated in the application.

### SECOND SCHEDULE: TYPES OF LICENCES

The following licences may be granted under this Act

#### 1. Manufacturer's Licence

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

- (a) manufacture and store the manufactured alcohol in his depot;

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- (b) sell the product of his manufacturing plant by wholesale in accordance with the conditions that are for the time being, applicable to a holder of a wholesale licence or by delivery from depot throughout Kenya in accordance with the Alcoholic Drinks Control Act, 2010; and
- (c) bottle the alcohol subject to such conditions as may be prescribed.

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

### **2. Wholesale Licence**

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

### **3. Retail Licence**

A retail licence authorizes the licensee to sell an alcohol on the premises, at the hours and subject to such other conditions as are specified in the licence.

Other licences

- (a) Music copyright.
- (b) Betting and control licences.
- (c) Information Licence.
- (d) NEMA.

The county Government will collect fees for the above licence on behalf of the respective bodies

### **WARNING MESSAGES**

1. The following health messages shall be displayed on every package containing an alcohol, sign or advertisement stipulated under the provisions of the 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.

## **THIRD SCHEDULE: LICENCE/ LICENCE APPLICATIONS**

### **FORM 1**

### **ALCOHOL CONTROL ACT**

# The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020

## APPLICATION FOR THE GRANT OR RENEWAL OF AN ALCOHOL RETAIL LICENCE

[To be completed in triplicate]

1. Name of applicant.....
  2. Applicant's postal address.....
  3. Address and plot number of premises.....  
[Give sufficient details adequately to identify premises] Street, phone number.....
  4. Name by which premises known.....
  5. If for renewal, give expiring licence number.....
  6. Licence to run from \_\_\_\_\_ to.....
  7. Type of licence applied .....  
for Date.....
- Signature of applicant.....

Note:-if the application is for a wholesome alcohol license to be applicable to more premises than one, paragraph 3 and 4 must give particulars of all such premises.

## FORM 2 ALCOHOL CONTROL ACT APPLICATION FOR THE GRANT OR RENEWAL OF A LICENCE TO MANUFACTURE OR PRODUCE AN ALCOHOL OR TRADITIONAL LIQUOR

1. Name of applicant.....
2. Type of business.....
  - (a) Sole proprietorship (the business is owned by one .....  
person) Personal identification number.....
  - (b) Partnership.....  
.....
  - (c) Limited liability Company .....  
.....
3. Postal Address.....
4. Physical Address (exact place of manufacture).....
5. Tel.....
6. Fax.....
7. Email.....

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- 8. City, town or Village.....
- 9. Business Registration No\* or certificate of incorporation No\*.....
- 10. Is this a New/Renewal application.....
- 11. Do you have manufacture's certification? Yes\*.....No.....
- 12. List type and brands of alcohol to be manufactured

Alcohol Standards	Certification Number
.....	.....
.....	.....
.....	.....
.....	.....

- 3. Brief description of alcohol(s) .....
  - (a) Unit capacity in milliliters and Cost in Shillings of the alcohol(s) ..... .
  - (b) Alcoholic Content.....
  - (c) Mode of transportation and storage conditions (d) Describe the purpose for which the alcohol(s) will be used (e.g. retail, wholesome or export, etc.)

14. Declaration by applicant.....

Hereby declare and certify that the information given in this application including attachments thereto is true and correct to the best of my knowledge and belief.

Date.....

Signature.....

Official Stamp.....

**FORM 3—ALCOHOL CONTROL ACT  
APPLICATION FOR THE GRANT OR RENEWAL OF A LICENCE TO  
IMPORT OR EXPORT AN ALCOHOL**

- 1. Name of applicant.....
- 2. Postal Address.....
- 3. Physical Address (exact place of manufacture).....
- 4. Tel.....
- 5. Fax.....
- 6. Email.....
- 7. Business Registration No\*.....
- 8. Is this a New/Renewal application?.....
- 9. List type and brands of alcohol to be imported/exported

Alcohol Standards	Certification Number



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.....	.....
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- 10. Brief description of alcohol(s).....
- a) Unit capacity in milliliters and cost in shillings of the alcohol drink(s).....
- b) alcohol content.....
- c) Mode of transportation and storage conditions.....
- d) Describe the purpose for which the alcohol(s) will be used (e.g. retail).....
- 11. Declaration by Applicant: I.....
- Hereby declare and certify that the information given in this application including attachments thereto is true and correct to the best of my knowledge and belief.
- Date.....
- Signature.....
- Official Stamp.....

**FORM 4 —ALCOHOL CONTROL ACT**  
**APPLICATION FOR \*TRANSFER/REMOVAL OF ALCOHOL LICENCE**

[To be completed in triplicate]

- 1. Name of applicant.....
- 2. Applicant's postal address.....
- 3. Type and number of licence held.....
- 4. Address of premises specified therein.....
- 5. Name of transferee/ address of premises to which it is desired to remove licence  
.....
- .....
- .....
- Date.....
- Signature of applicant.....

**FORM 5—ALCOHOL CONTROL ACT**  
**APPLICATION FOR A \*TEMPORARY ALCOHOL**  
**LICENCE/TEMPORARY ALCOHOL**

- 1. Name of applicant.....
- 2. Applicants postal address .....
- 3. Type and number of licence held.....
- 4. Type of licence required.....
- 5. Address to which temporary licence should be made applicable.....
- 6. Period for which temporary licence required.....
- .....

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Date.....

Signature of Applicant.....

\*Delete where not applicable

**FORM 6—ALCOHOL CONTROL ACT  
PARTICULARS CONCERNNG CLUBS**

[to be completed in BLOCK CAPITALS]

These particulars relate to an application which has been made for the grant of

a. [Particulars of type of licence.....

[Full names of applicant] who intends to hold such licence on behalf of a club] PARTICULARS

1. Name of club concerned.....
2. Address and situation of club premises.....
- 3 State whether the club is registered or exempted from registration under the provisions of the law for the time being relating to companies or societies.....
4. Registration No.....
5. Particulars of types or categories of membership existing.....
6. Total membership of club.....
7. State whether entrance fees or subscriptions are payable.....
8. Give details of the objects or purposes for which the club is established.....

9. State whether any persons, other than members' , may pay for or a proprietary club; that is who owns the drink or accommodation offered by the club.....

10. State whether the club is a members' club or a proprietary club; that is who owns the club property, the freehold title to the land upon which the club is situated, and who retains any profits earned or made by the club.

I 1 . State whether any limit is imposed on temporary membership, and whether temporary members are required to pay both entrance fees and subscriptions ..... ..

12. Particulars of the applicant's office or position in the club I..... the applicant, hereby declare that the foregoing particulars are correct in every detail.

Date.....

Signature of Applicant.....

**FORM 7 – ALCOHOL CONTROL ACT  
ALCOHOL LICENSE**

.....

**The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020**

LICENCE NO.....

This alcohol license is granted under the provision of the Alcohol Control Act, 2013 to \_\_\_\_\_ or.....

Being the holder of a \_\_\_\_\_ alcohol license No.....

And authorizes the licence to sell.....

Alcohol at

.....

This licence is valid from \_\_\_\_\_ to.....

This licence is issued subject to the provisions of the Alcohol Bill, 2013 and to the following conditions.....

Fee paid: Ksh.....

Date of

issue.....

Chairman.....

County Committee.....

**FORM 8—ALCOHOL CONTROL ACT  
TEMPORARY ALCOHOL LICENCE**

No.....

This temporary alcohol license is granted under the provisions of the Alcohol control Act, 2014 to..... or ..... Being the holder of a Alcohol license No \_\_\_\_\_ And authorizes the licensee to sell . Alcohol at

This license is valid from ..... To .....

This license is issued subject to the provisions of the Alcohol Act, 2014 and to the following conditions Fee paid: Ksh

.....

Date of issue.....

Chairman .....

County Committee.....

**FORM 9—ALCOHOL CONTROL ACT  
TEMPORARY EXTENSION ALCOHOL LICENCE**

LICENCE No.....

**The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020**

This temporary extension alcohol license is issued to \_\_\_\_\_ being  
 ..... The holder of alcohol..... license No  
 .....and authorizes the licensee to sell..... alcohol at  
 .....

.....from..... o'clock in the afternoon until  
 ..... o'clock in the noon on.....

This temporary extension alcohol license is granted subject to provisions of the  
 Alcohol Control Act, 2013 and to the following conditions;

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Fee paid: Ksh.....  
 Date of issue.....  
 Chairman.....  
 County Committee.....

**FORM IO—ALCOHOL CONTROL ACT  
 ASSURANCE THAT AN ALCOHOL LICENCE WILL BE ISSUED**

County committee\_\_\_\_\_of .....having satisfied me that  
 he has an interest in premises to be built /being built\*.at for the purpose of being  
 used for the sale of alcohol for consumption therein, and having supplied me with a  
 signed copy of the plans of the premises, he is hereby assured that, on completion of  
 the premises in accordance with the signed plans, and subject to the  
 provisions of, the Alcohol Control Act, 2013 he will be granted as \_\_\_\_\_ .  
 . alcohol license.

Fee paid: Ksh.....  
 Date of issue.....  
 Chairman.....  
 County Committee.....

**FOURTH SCHEDULE—LICENCE FEES**

<b>ALCOHOLIC DRINKS RELATED CHARGES -ANNUAL FEES</b>			
Categories	Classification	Classification	Classification

## The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020

	Zone A	Zone B	Zone C	
<b>BREWERS/MANUFACTURES ALCOHOLIC DRINK LICENSE</b>				
(a)	Brewer's/manufactures alcoholic license, for each alcoholic product manufactured	One shilling per liter per annum	One shilling per liter per annum	One shilling per liter per annum
(b)	Distributors license	50,000	50,000	50,000
(c)	Depot License (Additional to distributors license above) per premise	20,000	20,000	20,000
<b>DISTRIBUTOR ALCOHOLIC DRINKS LICENSE</b>				
(a)	Distributors license	50,000	50,000	50,000
(b)	Depot License (Additional to distributors licenses above) per premise	20,000	20,000	20,000
<b>GENERAL ALCOHOLIC DRINKS LICENSE</b>				
(a)	On Bar License	25,000	15,000	10,000
(b)	Bar and Restaurant license	40,000	25,000	15,000
(c)	Hotel Alcoholic Drink License	80,000	60,000	40,000
(d)	Wines and Spirit License	20,000	15,000	12,000

## The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020

(e)	Depot License	50,000	50,000	50,000
(f)	Sub-depot	30,000	30,000	30,000
(g)	Night Clubs License	100,000	80,000	60,000
(h)	Franchise retail stores/super markets alcoholic drink License	100,000	60,000	40,000
(i)	Temporary /occasional alcoholic drinks license - per instance	2,000	2,000	2,000
(j)	Application Fees	2,000	2,000	2,000
(k)	Application for Appeal	1,000	1,000	1,000
(l)	Issuance of a Duplicate License -all categories	1,000	1,000	1,000
(m)	Penalty for operating without a license 50% of annual license Fess - all categories			

### MEMORANDUM AND OBJECTS OF REASON

Firstly, this Bill aims at providing a framework implementing Part 2 of the Fourth Schedule to the Constitution on matters related to alcoholic drinks control. The specific county functions related to alcohol control include promotion of primary healthcare, control of outdoor advertisement, liquor licensing and control of drugs.

Secondly, the Bill provides for mitigation measures for negative impact emanating from abuse of alcoholic drinks. The Bill is in line with the

## **The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020**

Alcoholic Drinks Control Act, 2010. It seeks to control the production and manufacture, distribution, sale, promotion and use of alcoholic drinks.

**PART I** of the Bill provides for preliminary provisions. The Part outlines the purpose of the Bill, which includes protection of health of individuals from excessive consumption of alcohol, protection of persons under the age of eighteen years, promotion of treatment and rehabilitation and research and protection of persons under the age of eighteen years from excessive consumption of alcoholic drinks.

**PART II** of the Bill provides for the Administration matters. It establishes the Directorate, which is an office in the county public service. the Department is charged with the responsibility of supporting committees established under the Act, promoting public education, citizen participation, facilitating establishment of treatment and rehabilitation facilities and programs and research.

**PART III** of the Bill provides for the licensing framework for alcoholic drinks. It provides for the establishment of Sub-county alcoholic drinks Regulation Committee for receiving and reviewing licences, It provides for licensing procedures and the conditions that must be met in order for one to qualify for grant of a licence.

**PART IV** of the Bill provides for general requirements, which are the conditions that a licensee under the Act must comply with. The matters include prohibition of sale, provision or supply of alcoholic drinks to children, prohibition for access to places where alcohol is stored, sold or manufactured and prohibition of sale in sachets.

**PART V** of the Bill deals with sale and consumption matters. it provides for control of matters such as drunkenness and disorderliness, prohibition of sale to already intoxicated persons, prohibition of sale of adulterated drinks among others.

**PART VI** of the Bill provides for advertisement and promotion matters. It provides for control of outdoor advertisements especially in the display of brand elements through paintings and placement of outdoor advertisements within schools and public properties.

**PART VII** of the Bill provides for the enforcement mechanisms. which is responsible for coordinating enforcement of the Act. It also provides for the enforcement processes.

The Bill also provides for license hours under the Second Schedule.

## **The Tharaka Nithi County Alcoholic Drinks Control Bill, 2020**

This Bill will not occasion additional expenditure to the county exchequer.

**Erastus Kinyua Mbogori**  
**Chairperson, Trade and Revenue**