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**THE MANDERA COUNTY ALCOHOLIC DRINKS CONTROL
BILL, 2021**

A Bill for

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

ENACTED by the County Assembly of Mandera, as follows—

PART I—PRELIMINARY

Short title and commencement

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

Interpretation

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

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

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

“authorized officer” means an authorized officer within the meaning of section 37;

“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;

“County” means the Mandera county Government;

“Department” means the department responsible for matter related to alcohol;

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

“Enforcement Committee” means the County Alcoholic Drinks Control Enforcement Coordinating Committee established under section 37;

“Executive Member” means the county executive member responsible for matters related to alcohol;

“Governor” means the Governor of Mandera 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;

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

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

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

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

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

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

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

“sell” includes—

- (a) barter or exchange without use of money;
- (b) offer or expose for sale, barter or exchange without use of money;
- (c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit;

- (d) supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain.

Object and purpose of Act

- 3.** (1) The object and purpose of this Act is to—
- (a) provide for licensing of alcoholic drinks by the County government pursuant to Part II of the Fourth Schedule to the Constitution.
 - (b) Control of the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons’ dependent on alcoholic drinks in order to—
 - (i) protect the health of the individual in light of the dangers of excessive consumption of alcoholic drinks;
 - (ii) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks
 - (iii) protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;
 - (iv) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;
 - (v) inform and educate the residents in the county on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
 - (vi) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
 - (vii) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks;
 - (viii) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumptions of alcoholic drinks.

PART II—LICENSING

Control of alcoholic drinks

- 4.** (1) No person shall—
- (a) manufacture or otherwise produce;

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

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a penalty not exceeding five hundred and fifty thousand shillings or both.

Duty and power of department

5. The department, for time being responsible for matter related to trade, shall, subject to this Act and the regulations—

- (a) issue, renew, amend, transfer, suspend or cancel licences as provided under this Act;
- (b) specify which regulations apply to a licence so granted;
- (c) supervise the conduct and operation of licenced establishments;
- (d) appoint or designate a person he or she considers advisable as an analyst for the purposes of this Act;
- (e) authorize employees to issue licences and permits under this Act; and
- (f) perform all other acts required to properly and efficiently administer his or her responsibilities as defined by the Executive Committee Member under this Act.

Application for licence

6. (1) A person intending to produce, manufacture, and distribute any alcoholic drinks in the county or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Department and shall pay a prescribed fee.

- (2) The application under subsection (1) shall contain—
 - (a) a comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale;
 - (b) whether the manufacture or sale of the alcoholic drink is licenced in another county and if so the evidence of such licensing;
 - (c) for a manufacturer's licence, certification from Kenya Bureau of Standards;
 - (d) particulars of shareholders;
 - (e) such other matters as may be prescribed.

Grant of a licence

7. (1) The Department shall, after considering the application under section 6, indicate in writing whether it objects to the grant of the licence applied for.

(2) The Department having regard for the public interest, may, issue a licence for the sale of alcoholic drink in the County.

(3) The Department may, in respect of any licence that is being or has been issued, impose such terms and conditions.

(4) Without limiting subsection (3), the terms and conditions referred to in that subsection may—

- (a) limit the type of alcoholic drink to be offered for sale;
- (b) designate the areas of an establishment, both indoor and outdoor, where alcoholic drink may be sold and served;
- (c) limit the days and hours that an establishment is permitted to be open for the sale of alcoholic drink;
- (d) approve, prohibit or restrict games and entertainment in an establishment;
- (e) specify requirements for reporting and record keeping;
- (f) control signs used in or for an establishment,
- (g) specify where alcoholic drink may be stored; and
- (h) require a licensee to take reasonable measures to ensure that the operation of the establishment does not disturb persons in the vicinity of the establishment.

Restrictions on the granting of licences

8. Notwithstanding anything contained in this Act, no person or entity shall be granted a licence under this Act, if the premises in respect of which the application is made are located near mosques, churches, schools whether primary or secondary, hospital or residential area.

Designated area

9. The Department shall issue a licence under section (7) only if the premises in respect of which the application is made are located at—

- (a) military or naval camp;
- (b) police camp;
- (c) administration police camp or
- (d) any other camps designated for the military or police.

Licence for premises

10. The Department shall not grant a licence for the sale of an alcoholic drink to be consumed on the premises, indicated in section (9), unless the Department is satisfied—

- (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 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;
- (c) that the premises display on its outside any of the prescribed health messages in a clear and visible manner;
- (d) that the premises do not bear any outdoor alcoholic drinks promotion or advertisement;
- (e) the applicant does not engage in activities that interfere with learning in the institution or activities that are calculated to attract persons under the age of eighteen to the premises.

Persons not eligible for a licence

11. The Department shall not grant a licence or transfer a licence to any person who—

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

Refusal for renewal

12. The Department may refuse to renew an existing licence only when the Department is satisfied that—

- (a) the licensee is not a fit and proper person to hold the licence; or
- (b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the manufacture, distillation, distribution sale of an alcoholic drink for more than three times within one year; or
- (c) 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 Department; or

- (d) the conditions of the licence have not been satisfactorily fulfilled;
or
- (e) 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 requirements of the Department.

Validity and renewal of licences

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

(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 legislations 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 Department 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 Department 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 Department during the period of one year from the date of such refusal or cancellation, except at the discretion of the Department.

Review

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

(2) The Executive Committee Member may—

- (a) dismiss the request for review if in its opinion, the request is frivolous or vexatious;
- (b) uphold the decision of the Department;

- (c) annul the decision of the Department
- (d) give directions to the Department with respect to any action to be taken;
- (e) make any other declaration as it may deem fit.

Licences to body Corporate

15. (1) A licence issued to a body corporate shall be issued in the name of the body corporate: Provided that the Department 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.

Transfer of licence

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

(2) In the event of the death, bankruptcy or unsoundness of mind of a licensee, or in any similar event to which the Department 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 Department, 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 Department

(3) 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 (2), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

Licence to be displayed

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

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

Employment for sale of alcoholic drinks

18. (1) Notwithstanding the provisions of any other written law, no licensee shall employ a person under the age of majority, to sell, control or supervise the sale of alcoholic drinks or to have the custody or control of alcoholic drinks on licenced 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 licenced, 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 behaviour

19. (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, Enforcement Officer or by a police officer, to quit the licenced 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 licenced 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.

Access by persons under age of eighteen

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

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

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

Reports by public health officers and enforcement officers

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

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

(3) A police officer or enforcement officer shall report in writing to the Department 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 or enforcement officer may without written authority enter and inspect any licenced premises for the purpose of ascertaining whether a report under subsection (1) is required.

Cancellation of Licence

22. (1) Upon receipt of a report made under section 20, the Department 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 licenced premises specified therein as, in the opinion of the Department, is necessary.

(2) Any person aggrieved by the decision of the Department upon any such report may within twenty one days appeal against the decision to the Executive Committee Member.

PART III—GENERAL PROHIBITION**Conformity with Requirements**

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

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

(3) A person who contravenes the provisions of this section in relation to sale of an alcoholic drink commits an offence and shall be liable to a fine

not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Supply to young persons.

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

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

(3) 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

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

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

- (a) be displayed on a surface measuring not less than 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, Kiswahili or in Somali.

(3) A person 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.

Selling in sachets

26. (1) No person shall sell, manufacture, pack or distribute an alcoholic drink 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 alcoholic drink in a container of less than 250 millilitres;
- (b) any other distilled or fortified alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in paragraph (a) or as may be prescribed in the national legislation related to control of alcoholic drinks.

(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.

Sale to intoxicated person

27. 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.

Disorderly conduct

28. (1) Any person found by a police officer or enforcement officer to be drunk and incapable or drunk and disorderly in or near a street, road, licenced 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.

Licence hours

29. (1) Subject to the conditions specified in the licence, It shall be unlawful to offer or consume alcoholic drinks before or after licenced hours specified in the licence.

(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.

Consumption in a public place, public or residential areas

30. (1) It shall be unlawful for a person to offer or consume alcoholic drinks in a public place, public or residential areas.

(2) 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.

Sale in supermarket, shop or hotel

31. (1) Any person who sells an alcohol drinking in supermarket, shop, hotel or such other related retail chain store commits an offence.

(2) 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.

Sale to authorized Officer

32. Any person who knowingly sells, supplies or offers an alcoholic drink to an enforcement officer or to a police officer in uniform or who harbours or suffers to remain on licenced premises any such 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 without licence

33. (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.

(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 licenced 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.

PART IV—ADVERTISEMENT AND PROMOTION

Prohibited Advertisement and Promotion

34. (1) No person shall promote an alcoholic drink 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 alcoholic drink;
- (b) through painting or decorating any building or premises except the interior part of licenced premises with the name of the alcoholic drink or manufacturer, colour and brand images or logos associated with a manufacturer or an alcoholic drink or any other related form; and
- (c) in places demarcated under any written law as residential areas or within a distance of three hundred meters 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 playground or any other public land or property or in public service vehicle.

(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 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—

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

Promotion at underage events

35. (1) No person shall promote an alcoholic drink—

- (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 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 alcoholic drinks.

Encouraging consumption

36. (1) A licensee shall not—

(a) award, grant or give to a person an alcoholic drink for consumption in or outside the licenced premises without any consideration equivalent to the market price of the alcoholic drink; or

(b) promote any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink 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 to both.

(3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks and also 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 alcoholic drinks.

PART V—ADMINISTRATION AND ENFORCEMENT

Authorised officers

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

(2) The Executive 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 authorised officers for the purposes of this Act—

- (a) public health officers appointed under the Public Health Act;
- (b) officers appointed as enforcement officers under the National Police Service Act or any other written law;
- (c) any other person upon whom any written law vests functions of the maintenance of law and order.

Enforcement Committee

38. (1) The Governor shall establish, for each sub-county, a Sub-County Alcoholic Drinks Control Enforcement Coordinating Committee for the purposes of enforcing this Act.

(2) The Enforcement Committee shall consist of—

- (a) the chief officer responsible for matter related to alcoholic drinks who shall be the chairperson of the Committee;
- (b) two authorized officers appointed under section 36;
- (c) the Sub-county administrator;
- (d) the Town Administrator;
- (e) the County Public Health Officer;
- (f) any other officer as the Governor may designate.

(3) The sub-county Administrator shall provide secretariat services to the Enforcement Committee.

Functions of Enforcement Committee

39. The functions of the Enforcement Committee shall be to—

- (a) carry out public education on alcoholic drinks control in the county directly and in collaboration with other public or private bodies and institutions;
- (b) facilitate citizen participation in matters related to alcoholic drinks control in accordance to framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;
- (c) facilitate and promote the establishment of treatment and rehabilitation facilities and programmes;
- (d) carry out research directly or in collaboration with other institutions;

- (e) develop strategies and plans for implementing this Act and control of alcohol abuse;
- (f) advise the executive member generally on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
- (g) prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive Member which shall be transmitted to the county executive committee, county assembly and the Authority;
- (h) recommend to the Executive Member and participate in the formulation of laws and regulations related to alcoholic drinks;
- (i) monitoring and evaluating the implementation of this Act and advising the Executive Member on the necessary measures to be adopted;
- (j) coordinate enforcement of the Act;
- (k) monitor and evaluate the enforcement process and system under the Act;
- (l) conducting surveillance on trends and patterns on alcoholic drinks manufacture, sale and consumption; and
- (m) 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.

Places authorized officers may enter

40. (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.

(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 37 (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 alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Powers of officers

41. (1) In carrying out an inspection in any place pursuant to section 40, an authorised officer may—

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

(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 respectively are limited to the extent specified in this section for the purpose of enforcement of this Act and for protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Use of records

42. (1) In carrying out an inspection in a place, an authorised officer may—

- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
- (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;
- (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document;
- (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 respectively are limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Entry of dwelling place

43. An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under Section 44.

Court to issue Warrant

44. (1) Upon an authorize officer's application, a magistrate or judge of the High Court, may issue a warrant authorizing the authorised officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

- (a) the dwelling place is a place referred to in section 40;
- (b) entry to the dwelling place is necessary for the administration or enforcement of this Act;
- (c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

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

Use of force

45. An authorised officer executing the warrant issued under section 44 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

Certificate of Analysis

46. An authorised officer who has analysed or examined an alcoholic drink or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

Assistance of officers

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

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

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

Obstruction

48. (1) 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.

(2) Any person convicted of being 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

Seizure

49. (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.

(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 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 respectively are limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

General penalty

50. 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.

PART VI—MISCELLANEOUS

Regulations

51. (1) The Executive Member may, on recommendation of the Department 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.

Transitional

52. (1) Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act was in accordance with Alcoholic Drinks Control Act, 2010 a manufacturer, importer, distributor or retailer of any alcoholic drink under that Act shall be deemed to be a manufacturer, importer, distributor or retailer of any alcoholic drink under this Act.

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

MEMORANDUM OF OBJECTS AND REASONS

The object of this Act is to provide for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising of alcoholic drinks and for connected purposes.

Part I of the Act provides for the Preliminary provisions including the Short title, the definition of terms used as well as the objects of the Act.

Part II of the Act provides for the process of licensing of alcoholic any alcoholic business in the County. This involves the process of submitting application, the requirements to be fulfilled before issuance of licences and circumstances under which the county may refuse to issue licences to an undertaking dealing in alcoholic drinks or cancel where one had already been issued.

Part III of the Act provides for general prohibitions imposed on ventures dealing with alcoholic drinks. These include the prohibition of sell to young persons, requirement of display of signs, selling alcohol to intoxicated persons, licence hours and packaging requirements.

Part IV of the Act regulate the advertising and promotion of alcoholic drinks. The Act intends to limits the advertisement and promotion of alcoholic drinks especially in events involving underage persons to avoid the risk of exposing the young to alcoholic drinks.

Part V of the Act provides for administration and enforcement of the provisions of this Act. It proposes to establish Committee and authorised officers for purpose of ensuring compliance with this Act. The Act further sets out the functions of the Committee and the manner in which the authorised officer will conduct their mandate of enforcing the provisions of the Act.

Part VI of the Act provides for miscellaneous provisions authorising the Executive Committee Members to make regulations. The part also provides for transition clause to accommodate persons involved in alcoholic drinks business before the effective date of this Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Act delegates legislative powers to the County Executive Committee Member to make regulations, but it does not limit fundamental rights and freedoms.

Statement as to whether the Act is a money Act within the meaning of Article 114 of the Constitution

The enactment of this Act may occasion additional expenditure of public funds.

Dated the 15th March, 2021.

KULLOW ALIO GUYOW,
*Chairperson, Public Service, Conflict Management,
Cohesion, Integration and Devolved Units Committee.*