Bill for Introduction into the County Assembly of Makueni—

The Makueni County Khat Control and Utilisation Bill, 2016

PAGE 1
THE MAKUENI COUNTY KHAT CONTROL AND UTILISATION BILL, 2016

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY

Clauses
1—Short title.
2—Interpretation.
3—Object and Purposes.

PART II—LICENSING

4—Obligations of the County Government.
5—Application for a license.
6—Power on application.
7—Duration and Renewal of license.
8— Licence to be displayed
9—Transfer of License.
10—License to body corporate.
11—Revocation of license
12—Hours and Places of sale.
13—Employment for sale of Khat.
14—Access by minors.
15—Display of signs.

PART III—MISCELLANEOUS PROVISIONS

16—Offences.
17—Regulations.
18—Savings and Transitions.
THE MAKUENI COUNTY KHAT CONTROL AND UTILISATION BILL, 2016

A Bill for

AN ACT of the County Assembly of Makueni to regulate the supply, distribution, sale, use and possession of Khat, and for connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Makueni County Khat Control and Utilisation Act, 2016

Interpretation

2. In this Act—
   “county” means the County Government of Makueni;
   “county executive committee member” means the County Executive Committee Member responsible for Trade
   “khat” means the leaves, stems and shoots of the plant of the species Catha edulis commonly referred to as “Miraa”;
   “licensee” means a person who holds a license granted under this Act

Object and Purposes

3. The object and purpose of this Act is to provide for the regulation of the possession, cultivation, sale, trafficking and use of Khat in order to—

   (a) ensure the health of the individual in light of the dangers of excessive use of Khat;
   (b) protect the consumers of Khat from misleading or deceptive inducements and inform them of the risks of excessive use of Khat;
   (c) protect the health of persons under the age of eighteen years by preventing their access to Khat;
   (d) inform and educate the public on the harmful health, economic and social consequences of the Use of Khat;
(e) define the times of the day within which Khat can be consumed in the County;
(f) adopt and implement effective measures to eliminate illicit trade in Khat;
(g) define the places within which Khat can be displayed, sold and consumed;
(h) promote research and dissemination of information on the health and social effects of Khat.

Obligations of the County Government

4. The County Executive Committee Member shall—
(a) keep statistics on the level of Khat use and related health, social and economic effects;
(b) designate places in market centres where people can consume Khat;
(c) formulate and implement policies on the cultivation, sale, and use of Khat.

PART II—LICENSING

Application for a license

5. (1) A person who intends to supply, sale or offer for sale, distribute or otherwise deal with Khat in the county shall only do so in accordance with a licence issued by the county executive committee member.

(2) An application for a licence under sub-section (1) shall be made in the prescribed form and accompanied by a prescribed fee.

Power on application

6. (1) The County Executive Committee Member may—
(a) grant the application;
(b) grant the application upon the fulfilment of certain conditions; or
(c) reject the application.

(2) Where an application for a licence has been rejected, or a licence has been revoked, the county executive committee member shall only consider an application for a license of the same description after the expiry of six months from the date of rejection or revocation.
(3) A license issued under section 5 shall remain in force for a period of twelve months from the date of the license.

Licence for premises

7. (1) The County Executive Committee shall not grant a new licence for the sale or distribution of Khat to unless he is satisfied—

(a) that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law;

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

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

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

Duration and Renewal of license

8. (1) A person shall, at least two months before the expiry of a license issued under section 5, make an application for renewal of the license in the prescribed form and upon payment of a prescribed fee.

(2) Where the county executive committee member has not reached a decision on an application under sub-section (1), by the date of expiration of the licence, the licence shall continue in force until a decision on the application is rendered by the county executive committee member.

(3) Where an application under sub-section (1) is rejected, the county executive committee member may issue a provisional license to the applicant for purposes of disposing of the Khat he is in possession of.

(4) A provisional license issued under subsection (3) shall not exceed a period of three months from the date of issue.
License to be displayed

9. (1) A holder of a license shall display the license conspicuously and prominently on the premises to which it relates, and any licensee who fails or neglects so to display his licence commits an offence.

(2) A holder of a license applicable to more than one premises shall display the license in the premises first named in the license and display copies of the license in the other premises.

(3) A person who fails to display a license at a premises that sells, distributes or supplies Khat commits an offence.

(4) 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.

Places designated for Khat consumption

10. (1) The County Executive Committee Member shall designate a place(s) in markets where Khat can be consumed in addition to the licensed premises;

(2) The places designated shall be covered by a roof and shall meet proper sanitary conditions and with sufficient equipment for disposal of the twigs and garbage;

(3) The place(s) so designated shall be marked at a noticeable place and in block letters that it is the place designated for chewing Khat;

(4) It will be an offence to chew Khat in public places and in non-designated places.

Transfer of License

11. (1) A person who holds a license under this Act and wishes to sell, lease or otherwise dispose of the premises or business specified in the licence, may make an application to the county executive committee member for the transfer of the licence to the purchaser or lessee of such premises, and the county executive committee member may grant a transfer of the licence.

(2) The County Executive Committee Member shall not prescribe any fees to accompany an application made under sub-section (1).

Hours of sale and Consumption

12. (1) A person who holds a license under this Act shall sell Khat to consumers on weekdays during the hours of 4.00 pm to 11.00 pm;
(2) On weekends and public holidays between the hours of 2.00 pm and 11.00 pm;

(3) Distributors and suppliers of Khat to retailers may be allowed to supply them outside the hours in (1) and (2) above, provided the same is indicated in the licence; and

(4) Any person found consuming Khat outside the hours in (1) and (2) above commits an offence and shall upon conviction be liable to a fine not exceeding one hundred shillings or imprisonment of a term not exceeding one year.

License to body corporate

13. (1) The County Executive Committee Member shall not prescribe any fees to accompany an application made under sub-section (1).

(2) The County Executive Committee Member 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.

Revocation of license

14. (1) The County Executive Committee Member may revoke a license issued under section 5 if the holder of the license—

(a) fails to comply with the provisions of this Act or any conditions attached to the license; or

(b) has been convicted of any offence relating to the cultivation, sale or use of Khat.

(2) The County Executive Committee Member shall, before revoking a license pursuant to sub-section 1(a), issue a notice to the holder of a license to comply.

(3) A notice issued under sub-section (2) shall indicate the period within which the holder of the license should comply and the consequences of non-compliance.

Hours and Places of sale

15. The County Executive Committee Member shall—

(a) determine the hours of sale of Khat;

(b) designate areas within the county where Khat may be sold and chewed; and
(c) determine the packaging of Khat for sale including any health warnings to be displayed on the packaging.

**Employment for sale of Khat**

16. (1) A holder of a license under this Act shall not employ a person below the age of eighteen to sell, offer for sale, distribute or supply Khat.

(2) A person who contravenes the provisions of sub-section (1) commits an offence.

**Access by minors**

17. (1) A holder of a license or a person operating a premises for the sale or distribution of Khat shall not allow a person below the age of eighteen years to access such premises.

(2) A person who contravenes the provisions of sub-section (1) commits an offence.

**Display of signs**

18. (1) A person who operates a premises at which Khat is sold or offered for sale 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 Khat to a person under the age of eighteen years is prohibited by law.

(2) Every sign required to be posted under sub-section (1) shall—

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

(b) be in English or in Kiswahili.

**PART III—MISCELLANEOUS PROVISIONS**

**Offences**

19. (1) A person who supplies, distributes, offers for sale or sells Khat without a license commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding two years or a fine not exceeding two hundred thousand shillings or to both.

(2) A person who sells or offers to sell Khat to a person below the age of eighteen years commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding five years or to a fine not exceeding four hundred thousand or to both.
(3) Notwithstanding the provisions of sub-section (2), 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 sub-section (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 sub-section (3), 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;
(c) any other documentation as the County Executive Committee
Member may prescribe.

(5) A person who sells or offers for sale Khat outside the hours of
sale or at a place not designated for the sale of Khat commits an offence
and shall be liable upon conviction to a term of imprisonment not
exceeding three years or to a fine not exceeding one hundred and fifty
thousand or to both.

(6) A person who manufactures, sells, or offers for sale any item
including sweets, snacks or toys that resemble or imitate Khat commits an
offence and shall be liable upon conviction to a to a term of imprisonment not
exceeding two years or to a fine not exceeding two hundred thousand
shillings or both.

Regulations

20. (1) The County Executive Committee Member shall make
Regulations for the better carrying out of this Act.

(2) Without prejudice to the foregoing, the county executive shall—

(a) make regulations as to the permissible quality of Khat to be sold
or offered for sale in the county;
(b) prescribe forms and fees to be used; and
(c) make regulations on the information that cultivators shall
provide.

Savings and Transitions

21. (1) A person who immediately before the commencement of this
Act was supplying, distributing, selling or offering Khat for sale shall
lodge an application for a license under section 5 within six months of the commencement of this Act; and

(2) may continue supplying, distributing, selling or offering Khat for sale for the duration within which the County Executive Committee Member considers and dispenses with the application.
MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and reasons for the Bill

The principal purpose of this Bill is to provide a legal framework for the regulation of the cultivation, distribution, sale and use of Khat. The cultivation, distribution and use of Khat is an important source of revenue for certain private individuals in that industry and provides employment to many. However at the same time Khat is considered a substance that may have certain physiological implications on a person and may affect a person’s health and family due to the odd hours during which it is consumed. It is therefore necessary to develop a legal framework to ensure that there is a balance between commercial enterprise and ensuring public health and safety.

This Bill is also concerned with ensuring that persons under the age of eighteen are protected from the effects of Khat by proscribing the sale of Khat to such persons. The Bill further requires that any person who wishes to distribute, supply, sell or offer Khat for sale applies to the county executive for a license. The Bill also proposes to define places where khat can be sold and limit the hours in a day during which Khat may be sold.

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

The Bill delegates legislative power to the county executive committee member responsible for matters relating to health to ensure the better carrying out of the provisions of the Act. The Bill does not limit any fundamental rights or freedoms.

Dated the 10th February, 2016.

COSMAS KALELI,
Member of County Assembly.