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THE KAKAMEGA COUNTY ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2017

A Bill for

AN ACT of the County Assembly of Kakamega to amend the Kakamega County Alcoholic Drinks Control Act, 2014 and for connected purposes

ENACTED by the County Assembly Kakamega County, as follows—

1. This Act may be cited as the Kakamega County Alcoholic Drinks Control (Amendment) Act, 2017.

2. The Kakamega County Alcoholic Drinks Control Act, 2014 (hereinafter referred to as “the principal Act”) is amended in section 2 by—

(a) inserting the following new definitions in their proper alphabetical sequence—

“County Enforcement Officer” means an officer who is for the time being employed by the county government and charged with the responsibility of enforcing county laws;

“Enforcement Officer” means a county enforcement officer or an enforcement officer under the national police service;

“Executive Committee Member” means the county executive committee member responsible for public service and administration;

“License” means a license issued by the alcoholic drinks control directorate to carry on a trade in alcoholic drinks.

(b) deleting the definition of “Chief Officer” and substituting with the new definition as follows “Chief Officer” means the chief officer responsible for public service and administration;

(c) deleting the words “Executive Member” wherever they occur in the Act and substituting therefor the words "Executive Committee Member”;

(d) deleting the definition of the word “Governor” and substituting with a new definition; “Governor” means the Governor of Kakamega County.
3. Section 3 of the Principal Act is amended—

(a) In paragraph (e) by deleting the entire subparagraph and substituting therefor a new paragraph to read as follows;

"inform and educate the residents in the county on the harmful effects of consumption of alcoholic drinks on health, economic and social wellbeing;"

(b) deleting paragraph (h).

4. Section 4 of the principal Act is amended—

(a) in subsection (2) (a) by inserting the words “as provided for under section 9” immediately after the words “sub county committees”

(b) by inserting paragraph (e) to read—

“promote public awareness about the health consequences, addictive nature and mortal threat posed by excessive consumption of alcohol through comprehensive county wide education and information campaigns in collaboration with relevant ministries, county departments and other agencies.”

(c) in subsection (2) (j) by deleting the words “the county sub committee and” appearing immediately before the words the “enforcement committee” and inserting the words “as provided for under Section 51” immediately after the words enforcement committee.

(d) in subsection (3) by deleting the entire sub section and substituting therefor with the following new paragraph—

“(3) The Directorate shall have—

(a) A Director, appointed by the County Public Service Board who shall be the accounting officer and responsible for its direction and management; and

(b) At least three (3) sectional heads appointed by the County Public Service Board to assist the Director in the discharge of his or her duties.”
5. Section 5 of the principal act is amended—

(a) in subsection (1) by deleting the word 'shall' appearing after the words 'The Directorate' and substituting therefor the word 'may';

(b) in sub paragraph (1) (a) by deleting the words "in each ward" appearing at the end of the sub paragraph;

(c) in sub paragraph (1) (b) deleting the word "ensure" and substituting with the word "recommend" at the beginning of the sub paragraph.

6. Section 6 of the Principal Act is amended—

(a) in subsection (2) by deleting the words “the fund shall consist of” and substituting therefor with the words “the sources of funds for the Fund shall include” at the beginning of the sub paragraph.

(b) in subsection (2)(a) by deleting the words “by the County Assembly” and substituting therefor with the words “from the County Exchequer Account”;

(c) in subsection (2) by inserting the words “donations, endowments” immediately after the word gifts and deleting the words “from or by way of testamentary bequest by any person”;

(d) in subsection (3) by deleting the entire sub section;

(e) in sub section 4 (a) by deleting the words "stipulated under section 4’;

(f) in sub section 4 (b) by deleting the entire subsection and substituting therefor the following new subsection—

“assisting in the operations of committees created under this Act and any other incidental matters”.

7. Section 7 of the principal Act is amended—

(a) by deleting the entire subsection (1) and substituting therefor the following new sub section—
“The Fund established under section 6 shall be administered by a fund management committee composed of—

(i) chairperson who shall be a holder of a bachelors degree with experience in finance or management matters appointed by the executive committee member;

(ii) chief officer treasury;

(iii) chief officer Public Service and Administration;

(iv) county attorney;

(v) the director of Alcoholic Drinks Control Directorate who shall be the secretary;

(vi) at least two other members with background and experience in sociology, counseling, psychology, psychiatry, public health or related field appointed by Executive Committee Member.

(b) in subsection (3) by deleting the word “Directorate” and substituting therefor the words “management committee”;

(c) in subsection (3)(b) by deleting the word “personally” appearing immediately after the word “expenditure”;

(d) by inserting a new subsection (4) to read—

“The management committee shall hold at least one meeting in every quarter but not more than eight meetings in a year, to review the progress and performance of the Fund”;

(e) by inserting a new subsection 5 to read—

“The management committee may, with the approval of Executive Committee Member responsible for Public service and administration in writing, call for a special meeting of the committee”;

(f) by inserting a new sub section 6 to read—

“Members of the management committee shall
be paid such allowances as may be determined by the executive committee member in line with Salaries and Remuneration Commission guidelines”

(g) by inserting a new section 7A to read—

7A (1) Before the commencement of each financial year the committee shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year concerned and in particular shall provide for—

(a) the operations of the Fund;
(b) payment of allowances to members of the committee;
(c) maintenance of assets of the Fund; and
(d) the creation of such reserves to meet future or contingent liabilities and in respect of such other matters as the committee in consultation with the executive committee member may determine.

(3) The annual estimates shall be approved by the committee before the commencement of the financial year in which they relate and shall be submitted to the executive committee member for approval and after the executive committee member has given approval the committee shall not increase any sum provided in the estimates without the consent of the executive committee member.

(4) No expenditure shall be incurred for the purposes of the Fund except with the funds voted or appropriated by County Assembly.

(h) by inserting a new section 7B to read—

7B. (1) The committee shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund.

(2) Within a period of three months after the end of each financial year the committee shall submit to the Auditor General the accounts of the Fund in respect of that
year together with—

(a) a statement of income and expenditure of the Fund for that year; and

(b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act No. 34 of 2015.

8. Section 8 of the principal Act is amended as follows—

(a) in the marginal note by deleting the words “control of alcoholic drinks” and substituting therefor the following new marginal note “Trading without a license”

(b) in sub section (2) by inserting the following words immediately after the word offence “and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.”

(c) in sub section 3 (a) by deleting the entire sub section.

(d) in subsection (3) by renumbering the paragraphs accordingly.

9. Section 9 of the principal Act is amended—

(a) In subsection (1) by inserting the words “under the direction of the Alcoholic Drinks Control Directorate” immediately after the words “Sub county Alcoholic Drinks Regulation Committee which shall”;

(b) In sub section (1) (b) by deleting the words “by the Executive member” at the end of the sub section, and substituting therefor with the words “the directorate”;

(c) In sub section (3) (e) by deleting the words “who shall be an ex officio member” appearing immediately before the word “secretary”;
(d) in subsection (5) by *deleting* the entire section;

(e) in subsection (6) by *deleting* and *substituting* therefor a new sub section to read—

“A member of the sub county committee shall not participate in any proceedings of the committee on a matter in which he or she has an interest”.

(f) In subsection (8) by *deleting* the entire sub section and *substituting* therefor a new sub section to read—

“Any person who contravenes the provisions of this section commits an offence”.

10. Section 10 of the principal act is *amended*—

(a) in subsection (2) (a) by *deleting* the words “and in the absence the County Secretary” at the end of the subsection;

(b) in subsection (2) (c) by *deleting* the words “officer commanding administration police in the sub county;”

(c) *inserting* a new subsection 2(d) to read “the officer commanding administration police in the county;”

(d) in subsection 2 (h) by *deleting* and *substituting* therefor the words “the County Attorney.”
11. Section 11 of the Principal Act is amended—
   (a) in subsections (3) by inserting the words “chairperson of the” immediately before the word “sub county;”
   (b) in subsection (3) (c) (d) and (e) by deleting and substituting therefor a new paragraph (c) to read “send to all members of the sub county committee;”
   (c) in subsection (4) by deleting the words “The Inspector—General of Police, County enforcement officer” and substituting therefor the words “sub county Kenya police and administration police commanders, sub county education officer and sub county head of enforcement;”
   (d) in subsection (6) by deleting the words “in writing;”
   (e) in subsection 12 by deleting and substituting with a new subsection to read “a sub county committee may authorize in writing any person to appear before it for the purpose of representing the inhabitants of the sub county in respect of any objection lodged on an application;”
   (f) in subsection 14 by deleting the entire sub section;
   (g) in subsection 15 by deleting the word “court” and replacing therefor with the word “committee.

12. Section 14 of the principal Act is amended—
   (a) in subsection (3) (d) by deleting the words “whereby will begin playing music at five (5pm.)”
   (b) in subsection (4) by deleting the words “is not satisfied with” and substituting therefor with the words “objects to”

13. Section 16 (1) of the principal Act is amended by deleting the words “remove” and replacing therefor with the word “cancel or withdraw”.
14. Section 17 of the principal Act is amended by—

(a) in subsection (1) by deleting the word “of” appearing immediately after the words “fourteen days” and substituting therefor the words “after notification of such;”

(b) in sub section (4) by deleting the word “final” appearing immediately before the word “determination;”

(c) in sub section 5(a) by deleting the words “or vexatious.”

15. Section 19 of the Principal Act is amended by deleting the words “County Court” and inserting the word “High Court.”

16. Section 21 of the Principal Act is amended by deleting and substituting therefor the following new section—

“The licenses which may be granted under this Act shall be those specified in the Regulations.”

17. Section 25 of the Principal Act is amended—

(a) by deleting the marginal note and substituting therefor a new marginal note to read “employment of underage persons;”

(b) in sub section (1) by inserting the words “or apparent age of 18 years” immediately after the word “age;”

(c) in subsection (3) by deleting the words “this section” and substituting therefor the words “sub section (1)”.

18. Section 26(1) of the principal act is amended by inserting the words “due to influence of alcohol” immediately after the words “any person who”.

19. Section 28 of the principal Act is amended—

(a) in subsection (2) by inserting the word “of” immediately after the word “custody;”

(b) in subsection (3) by deleting the word “and” between subsection (1) and (2) and substituting therefor the word “or”
20. Section 29 (3) and (4) is amended by deleting the word “inspector” and substituting therefor the word “Sergeant” appearing immediately after the word “rank”.

21. Section 30 of the principal act is amended—

(a) in subsection (1) (b) by deleting the words “and to the Officer Commanding Police Services in the sub-county;”

(b) in subsection (1) (c) by deleting the entire paragraph;

(c) in subsections (4), (5) and (6) by deleting the word “court” and substituting therefor the words “review committee”.

22. Section 31 of the Principal Act is amended—

(a) in subsection (1) by deleting the words “in the County” appearing immediately after the words “alcoholic drink”

(b) in subsection (2) and (3) by inserting the words “on conviction” immediately after the word “liable”

23. Section 32 (2) of the Principal Act is amended by inserting the words “on conviction” immediately after the word “liable”.

24. Section 37 of the Principal Act is amended—

(a) in subsection (1) by—

(i) deleting the words “a county” appearing immediately before the words “enforcement officer” and substituting therefor the word “an”;

(ii) deleting the words “drunk and incapable or drunk and disorderly “and substituting therefor the words “incapable or disorderly by reason of intoxication by alcohol”.

(b) in sub section (2) by deleting the words “drunk and incapable or drunk and disorderly “and substituting therefor with the words “incapable or disorderly by reason of intoxication by alcohol”;

(c) in sub section (3) by deleting the words “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” and substituting therefor with the words “may recommend committal to a rehabilitation centre of any person convicted of the offence under this section for more than once”;

(d) in subsection (4) by deleting the entire subsection.

25. Section 38 of the Principal Act is amended—

(a) in subsection (1) by deleting the word “person” and substituting therefor the word “licensee”;

(b) inserting the following new subsection immediately after subsection 3.

(4) Any licensee whose license does not cover consumption of alcoholic drinks within the licensed premises and facilitates consumption of the alcoholic drinks in any other premises will be deemed to have intended to evade the conditions of his license and therefore commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

26. Section 41 of the Principal Act is amended by deleting and substituting therefor the following new section—

41A (1) No person shall keep for sale, offer for sale or sell;

(a) any alcoholic drink which has been in any way adulterated or diluted by any person;

(b) any non-alcoholic drink which has been in any way adulterated with alcohol or which contains any of the substances prohibited under Regulations.

(2) Any person who contravenes sub section (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment to a term not exceeding one year or both.
27. Section 46 of the Principal Act is amended by deleting and substituting therefor the following new section—

46A. If in any proceedings before a court it appears that a licensee habitually contravenes conditions of the license, the court may recommend that the license be forfeited for such period as the court shall determine in addition to any other penalty it may impose.

28. Section 47 (1) (a) of the Principal Act is amended by deleting the words “is false, misleading or deceptive” immediately after the words “in a manner that” and substituting therefor the words “encourages abuse”.

29. Section 49 of the principal act is amended—

(a) in subsection 1 (a) by deleting and substituting a new paragraph to read

“award, grant or give to a person an alcoholic drink in a manner that encourages abuse.”

(b) in subsection 1 (b) by inserting the words “in a manner that amounts to abuse in” immediately after the words “consumption of an alcoholic drink.”

30. Section 50 of the Principal Act is amended—

(a) in subsection (1) by deleting and substituting therefor a new subsection

“The county head of enforcement shall appoint for each sub county, county enforcement officers to be authorized officers for the purpose of this Act”;

(b) in subsection (2) by deleting;

(c) in subsection (3) by deleting the word “section” immediately after the words “the provisions of this” and replacing therefor the words “subsection (1)”;

(d) inserting a new subsection (4) immediately after subsection (3) to read, “Administrators appointed under the Kakamega County Decentralized Units Act, 2014 and the County Government Act, 2012.”
31. Section 51 (2) of the Principal Act is amended by—

(a) deleting paragraph (b) and substituting therefor a new paragraph to read “county head of enforcement;”

(b) deleting paragraph (j) and substituting therefor a new paragraph to read “the county attorney;”

(c) inserting a new paragraph (k) immediately after paragraph (j) to read “one officer appointed by the Kenya Revenue Authority;”

(d) inserting a new paragraph (l) to read “the director of the Alcoholic Drinks Control Directorate who shall be the secretary;”

(e) inserting a new paragraph (m) to read “one officer appointed by the governor.”

32. Section 52 (c) of the Principal Act is amended by deleting the words “the governor” and substituting therefor the words “the Executive Committee Member.”

33. Section 53 (2) of the Principal Act is amended by deleting the word “and” and substituting therefor the word “or” immediately after the word “uniformed”

34. Section 54 of the Principal Act is amended by deleting the marginal note and substituting therefor a new marginal note to read “power of authorized officers”

35. Section 61 of the Principal Act is amended by inserting a new sub section (2) to read as follows—

“A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or both.”

36. The Principal Act is amended by inserting the following section 65A immediately after section 65.

65A The Director of Public Prosecutions may appoint public prosecutors for purposes of cases arising under this Act.

37. Paragraph 1 (b) of the First Schedule is amended by deleting 5.00 and substituting therefor 2.00.
MEMORANDUM OF OBJECTS AND REASON

The Fourth Schedule of the Constitution sets out liquor licensing as one the devolved functions. The principal object of this Bill is to amend Section 5 and 51 of the Principal Act are amended to provide for the proper membership of the management and enforcement committees improving the administration structures. The Bill further seeks to amend some sections of the Principal Act whose provisions are provided for in the regulations.

The Purpose of this amendment is therefore to ensure that the proper functionality of the Directorate and county government achieves better and effective administration and delivery of services.

The Bill respects the separation of powers of national and county governments and recognizes the critical role assigned to the County with regard to liquor licensing.

The Bill shall not occasion additional expense to the county government.

REUBEN NYANGWESO,
Chairperson, Public Service and Administration Committee.