

**REPUBLIC OF KENYA**



**COUNTY ASSEMBLY OF SIAYA**

**FIRST ASSEMBLY– FOURTH SESSION**

**THE SECTORAL  
COMMITTEE ON TRADE, INDUSTRY, LABOUR AND  
COOPERATIVES**

**AMENDMENTS ON THE  
THE SIAYA COUNTY ALCOHOLIC DRINKS  
CONTROL BILL, 2015**

**CLERKS DEPARTMENT  
COUNTY ASSEMBLY SIAYA  
SIAYA ASSEMBLY BUILDINGS**

**MARCH, 2016**

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## **1.0 PREFACE**

**Mr. Speaker Sir,**

It is my honour and pleasure to present to this Honourable House, the report of the Committee on Trade, Industry, Labour and Cooperatives on the Siaya County Alcoholic Drinks Control Bill, 2015.

## **2.0 COMMITTEE MEMBERSHIP**

The Committee on Trade, Industry, Labour and Cooperatives was constituted by the House on Tuesday 30<sup>th</sup> April, 2013. The Committee comprises of the following Members:-

| <b>NO</b> | <b>NAME</b>           | <b>DESIGNATION</b>  |
|-----------|-----------------------|---------------------|
| 1.        | HON. JAMES MUNDA      | CHAIRPERSON         |
| 2.        | HON. ERIC NDONJI      | VICE<br>CHAIRPERSON |
| 3.        | HON. JOHN GARE        | MEMBER              |
| 4.        | HON. PETER OMBEE      | MEMBER              |
| 5.        | HON. BEATRICE OBONDO  | MEMBER              |
| 6.        | HON. WILLIS OCHIENG   | MEMBER              |
| 7.        | HON. NICHOLAS WERE    | MEMBER              |
| 8.        | HON. ANJELINE OCHIENG | MEMBER              |
| 9.        | HON. WILLIAM ANGUL    | MEMBER              |
| 10.       | HON. TERESA OSORE     | MEMBER              |
| 11.       | HON. KESIA SIWA       | MEMBER              |

## **3.0 COMMITTEE MANDATE**

The Committee on Trade, Industry, Labour and Cooperatives is one of the Sectoral Committees established under Standing Order No.191 read together with the Second Schedule of the County Assembly Standing Order.

The Committee Mandate includes but not restricted to:

- i) Study and review all county legislation referred to it
- ii) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation

**Mr. Speaker Sir,**

Article 185(1) of the Constitution of Kenya, 2010 stipulates that the legislative authority of a County is vested in, and exercised by the County Assembly. Article 185 (2) further provides that a County Assembly may make any laws that are necessary for or incidental to the effective performance of the functions and exercise of the powers of the County Government under the Fourth Schedule. The Fourth Schedule of The Constitution of Kenya, 2010 distributes functions between the National and County Governments. Part 2 of the schedule allocates the functions and powers of a County Government amongst which include; (1) Public entertainment and public amenities including liquor licensing, and (2) Trade development and regulations including trade licenses and fair trading practices. Article 187 (2a) of the Constitution stipulates that *“If a function or power is transferred from a government at one level to a government at the other level, the constitutional responsibility for the performance of the function or exercise shall remain with the government to which it is assigned by the Fourth Schedule.”*

The County Government of Siaya, therefore, in furtherance to the aforementioned statutes, has developed the Siaya County Alcoholic Drinks Control Bill, 2015 to primarily provide for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising of alcoholic drinks.

**Mr Speaker Sir,** the Siaya County Alcoholic Drinks Control Bill, 2015 has core objectives as listed below;

- i. Protecting individuals’ health in relation to excessive consumption of alcohol
- ii. Protecting children from negative impact on health and social development from exposure to adverts
- iii. Protect consumers from misleading inducements
- iv. Protecting health of children by preventing access
- v. Ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks

- vi. Eliminate illicit trade

#### **4.0 EXECUTIVE SUMMARY**

**Mr. Speaker Sir,**

The Siaya County Alcoholic Drinks Control Bill, 2015 went through its first reading on Wednesday, 10<sup>th</sup> February 2016 and was committed to the Committee on Trade, Industry, Labour and Cooperatives. The committee organized a pre-public participation bill exposure meeting with technical stakeholders on 4<sup>th</sup> March 2016 at the Siaya Agricultural Training Center, during which insightful deliberations occurred between the committee membership, NACADA regional manager, the Director of Trade who doubles up as the Siaya County acting Chief Officer and a representative from the Deputy County Commissioner's office.

**Mr. Speaker Sir,**

County Assembly Standing Order 121(1) clearly spells out that A Bill having been read a First Time shall stand committed to the relevant Sectoral Committee without question put. Standing Order 121 (3) read together with Article 118 (1) (b) of the Constitution of Kenya, 2010 further elucidates that the Sectoral Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the County Assembly. In this regard, the Committee took the Bill to the Public in all the six sub-counties; these were (1) Bondo (Bondo Sub county town hall) (2) Rarieda ( Ruma Women Group Hall) (3) Ugenya (Sega Polytechnic) (4) Ugunja (Sidindi Secondary School) (5) Gem ( Wagai Resource Center) and (6) Alego Usonga ( Siaya ATC). The public participation exercise took place between 9<sup>th</sup> and 11<sup>th</sup> March 2016.

**Mr. Speaker Sir,**

During deliberations the committee noted that there were considerable interests in section (5) of Part II of the Bill on 'Administration' with regard to how funds from the established Siaya County Alcoholic Drinks Control Fund should be allocated. The public indicated that a reasonable per centum of the monies should be allocated to the established Directorate.

NACADA, according to the public, were to get a reduced proportion. The motivating factor in this bearing was the immense responsibility bestowed on the Directorate in implementing provisions of this proposed Act.

It was also imperative, according to the public that the composition of the established Sub-county committee in Section 9 be enhanced to include law enforcement officers from the national government. This informs the proposed amendments in the mentioned section that will be laid before this house in a short while.

**Mr. Speaker Sir,**

Allow me to again draw your attention to Section 35 (3) dealing with “sale of alcohol in sachets” of the bill where there were emotional deliberations and suggestions from the public. The bill, in this section, proposes a fine and an imprisonment terms for subsequent contravention as stated. A section of the members of the public felt that the fine and the sentence are too lenient hence proposed harsher terms. However, guidance at this point is given pursuant to Article 191(2) of the Constitution of Kenya, 2010 regarding the pecking order of legislations at the National and County government levels. The National Government Alcoholic Drinks Control Act No 4 of 2010 Section 31(3) proposes a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or both, for a similar offence. Since this is a matter that could end up in judicial processes, it is down to wisdom that we retain the proposals in the bill as they are. Our judicial system is not devolved and as such, we cannot propose sentences and fines that contradict the provisions in the national laws.

**Mr. Speaker Sir,**

A contention was raised, and might still come up on the floor of this house, as concerns the minimum capacity of packaging of alcoholic drinks as implied in Section 35(2a) of this Bill. The confusion was on whether the minimum capacity should be 250ml, or 205ml or 200ml.

This committee hereby gives a considered opinion based on previous judicial orders that was given by Justice Isaac Lenaola on 27<sup>th</sup> February 2013 in a case pitting ten petitioners against NACADA and other four respondents, in petition no 320 of 2011 in the High Court of Kenya at Nairobi. The Judge declared that, “*section 31(2)a) of the Alcoholic Drinks Control Act, 2010*

*(No 4 of 2010) is inapplicable and non-existent in as far as it was impliedly repealed by the provisions of section 91A (1) of the Customs and Excise Act pursuant to the Finance Act amendment of 2010”*

Section 91A (1) of the Customs and Excise Act referred to in the above judgement reads, “*No person shall pack or sell an alcoholic beverage in a container, the capacity of which is two hundred milliliters or less*”.

This committee therefore amended the said section of the Bill by deleting “250ml” and inserting “200 milliliters” in conformity with the judicial orders.

**Mr. Speaker Sir**

This bill in its present form does not contain express regulations on the alcoholic drink popularly known as *Chang’aa*. This notwithstanding, *Chang’aa* remains the most common uncontrolled distilled alcoholic drink in this county, whose effects have been devastating on our social structures and norms. While *Chang’aa* was previously considered an illicit brew, the repealing of *Chang’aa* Prohibition Act Cap 70 of 1980, and Liquor Licensing Act Cap 121 as contained in Section 69 of Alcoholic Drinks Control Act No 4 of 2010 legalized it. It would therefore defeat the objectives of this Bill if we do not put forth clear legislations that cover this type of drink. This committee therefore has come up with inclusions and amendments to the Bill to fulfill the core objects of this legislation on the issues related to processing and sale of *Chang’aa*.

**Mr. Speaker Sir,**

I now present the specific amendments arising from our interaction with the public and other experts.

## **THE SIAYA COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2015**

Bill committed to the Committee on Trade, Industry, Labour and Cooperatives

### **AMENDMENTS FROM THE COMMITTEE AND MEMBERS OF THE PUBLIC**

#### **PART I – PRELIMINARY**

##### **Section 2: Interpretation**

Insert after the definition of “cinema”, “Chief Officer” meaning a county chief officer in charge of trade, appointed under section 45 of the County Government Act 2012”

**Section 2** of the Bill is amended in the interpretation of the word ‘Executive Member’ by deleting “alcohol control” and inserting “Trade”.

#### **PART II – ADMINISTRATION**

##### **Section 6: Establishment of the Fund**

Section 6 of the Bill is amended in Sub-section (5) by deleting the word “fund” in the first sentence and inserting the word “licence and other fees payable under this Act”

Further sub-section (5a) is amended by deleting “70%” and inserting “50%”

Sub-section (5b) is amended by deleting “20%” and inserting “15%”

Sub-section (5c) is amended by deleting “10%” and inserting “35%”

##### **Section 7: Administration of the Fund**

Section 7, sub-section (1), of the Bill is enhanced by inserting ‘in consultation with the Directorate’ after the word, “Director”, to read; The Fund shall be administered by the Director in consultation with the Directorate.

Section 7, sub-section (2), is further enhanced by inserting the word ‘Directorate and’ between the word “the” and “Executive Member” in the first line, to read; The Director shall with the approval of the Directorate and Executive Member.....

## **PART III – LICENSING**

### **Section 9: Establishment of the Sub-County Committee**

Section 9 Sub-section 4(f), fourth line is enhanced by inserting the word ‘the other’ between the word “and” and “a person”

Section 9 of the Bill is further enhanced in sub-section 4 by adding two parts (g) and (h) to include;

- (g) the officer commanding Kenya Police in the Sub-County
- (h) the officer commanding administration police in the Sub-County

### **Section 10: Review Committee**

Section 10 of the Bill is amended in sub-section 2(a) by capitalizing letter C in the word ‘chief’, ..... Chief Officer’

Section 10 of the Bill is amended in sub-section 2(g) by deleting the word “three” and inserting “six” and further amended by deleting “of whom shall be a youth” in the last line and inserting ‘from each sub-county’

Section 10 is also amended by adding two parts (h) and (i) in sub-section 2 to include;

- (h) the officer commanding Kenya Police Services in the County
- (g) the officer commanding administration police in the County

### **Section 11: Application for licence**

Section 11 subsection 1 of the bill is amended by deleting the word ‘import’ .....importation of alcoholic drink constitutes an aspect of International Trade which falls within the jurisdiction of the National Government

Section 11 of the Bill sub-section 4 is enhanced by adding the word “the County public health officer” after the word “police” in the first line.

In section 11 subsection 15 delete ‘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’. (this provision is superfluous because the determination of what constitutes sufficient reasons to quash a decision rests with the preceding judicial officer.)



#### **Section 14: Licence for premises**

Section 14 of the Bill sub-section 1(c) is enhanced by inserting the word “meant” in between the word “learning” and “for” in the fourth line.

#### **Section 21: Types of licences**

Section 21 of the Bill Sub section 3 is amended by inserting the word “not” between the words “shall” and “apply” in the last sentence, to read.....A licence granted to one corporate body shall not apply to more than one premise.

#### **Section 23; Removal of Licence**

Section 23 of the bill is amended by deleting the word ‘removal’and inserting ‘renewal’ in the short title

### **PART IV- GENERAL REQUIREMENTS**

**Section 31 (1):** Add the word “possess” between the words “shall” and “manufacture” in the first line

#### **Section 35: Selling in sachets**

Section 35 of the Bill sub-section 2(a) is amended by deleting digit ‘250’ and insering digit ‘200’

Section 35 Subsection (2)b) is amended by inserting the words “The alcoholic drink known as *Chang’aa*, or”.... at the beginning of the sentence to read, “the alcoholic drink known as *Chang’aa*, or any other distilled or fortified alcoholic drink shall.....

Section 35 of the Bill is further amended in sub- section 2(b) by deleting “and PET bottles” and adding the word “and” between the words “glass” and “Tetra park”

### **PART V: SALE AND CONSUMPTION**

#### **Section 39**

Insert the words “authorized officer or” between the words “such” and “police” in the fourth line.

## **PART VII- ENFORCEMENT**

Insert a new section '51' on the establishment of the Enforcement Committee to read;

“ There is established the County Enforcement Committee which shall consist of;

- (a) The Chief Officer who shall be the chairperson of the committee
  
- (b) One authorized officer appointed under section 50
  
- (c) The officer responsible for coordination of national government functions in the County
  
- (d) The County Public Health Officer
  
- (e) The officer incharge of police services in the County
  
- (f) The officer appointed by Kenya Bureau of Standards
  
- (g) One officer appointed by anti-counterfeit agency
  
- (h) One officer appointed by department of weights and measures

Due to the insertion of a new clause in section 51, the Subsequent sections numbering of the Bill will be amended as follows;

Delete '51' and insert '52'  
Delete '52' and insert '53'  
Delete '53' and insert '54'  
Delete '54' and insert '55'  
Delete '55' and insert '56'  
Delete '56' and insert '57'  
Delete '57' and insert '58'  
Delete '58' and insert '59'  
Delete '59' and insert '60'

Delete '60' and insert '61'  
Delete '61' and insert '62'  
Delete '62' and insert '63'  
Delete '63' and insert '64'  
Delete '64' and insert '65'  
Delete '65' and insert '66'  
Delete '66' and insert '67'

**Section 53: Powers of officers**

In section 53 of the Bill sub-section (1) delete digit '52' and insert '53'

**Section 59 (2):** Correct the word "issue" in line one.

**PART VIII – MISCELLANEOUS**

**Section 67:** Amend the side note to read "Transitional Provisions"

**FIRST SCHEDULE – LICENCE HOURS**

Under the First Schedule of the Licence hours for the "Traditional brew licence" is amended by deleting '2.00pm' and inserting '12.00 Noon' and further deleting '9.00pm' and inserting '6.00pm'

**MEMORANDUM OF OBJECTS AND REASONS**

Finally **Mr. Speaker Sir**, the Bill is amended under Memorandum of Objects and Reasons;

Delete 'Sylvester Madialo' and insert 'James Munda', the part is further amended by deleting, 'delegated legislation, justice and legal affairs' and inserting; 'Trade, Industry, Labour and Cooperatives'

**Mr. Speaker Sir**, I now call upon Honorable Members of this House to adopt this report.

Signed: .....

Date: .....

**Hon. James Munda**

**Chairperson**

**Trade, Industry, Labour and Cooperatives Committee**