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NATIONAL COUNCIL FOR LAW REPORTING

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The Marijuana Control Bill, 2016

THE MARIJUANA CONTROL BILL, 2016

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The Marijuana Control Bill, 2016

THE MARIJUANA CONTROL BILL, 2016

A Bill for

AN ACT of Parliament to decriminalize the growth and use of Marijuana, to establish a system for the registration and licensing of Marijuana growers and users and for connected purposes.

ENACTED by the Parliament of Kenya, as follows-

PART I –PRELIMINARY

- | | |
|--|--|
| <p>1. This Act may be cited as the Marijuana Control Act, 2016 and shall come into operation 60 days from the date of publication.</p> | <p>Short title and Commencement.</p> |
| <p>2. In this Act, unless the context otherwise requires-</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health;</p> <p>“Council” means the Marijuana Control Council established under Section 4;</p> <p>“Marijuana” means cannabis sativa;</p> <p>“User” includes a person who smokes, ingests or injects marijuana;</p> | <p>Interpretation</p> |
| <p>3. The objects and purpose of this Act are to-</p> <p>a) ensure an effective registration system for marijuana growers and users;</p> <p>b) ensure an effective licensing system for marijuana growers and users;</p> <p>c) decriminalize the growth and use of marijuana;</p> <p>d) promote public awareness about the growth and use of marijuana; and</p> <p>e) encourage the use of marijuana for medicinal purposes.</p> | <p>Objects and Purpose of the Act</p> |

PART II – THE MARIJUANA CONTROL COUNCIL

- | | |
|---|--|
| <p>4. (1) There is hereby established a Council to be known as the Marijuana Control Council.</p> <p>(2) The Council shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of-</p> <p>a) suing and being sued;</p> <p>b) acquiring, holding, charging and disposing of movable and immovable property;</p> <p>c) borrowing and lending money; and</p> <p>d) doing or performing all such other things or acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act.</p> | <p>Establishment of the Council</p> |
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5. (1) There is hereby established a Council to be known as the Marijuana Control Council.

**Establishment
of the Council**

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of-

- a) suing and being sued;
- b) acquiring, holding, charging and disposing of movable and immovable property;
- c) borrowing and lending money; and
- d) doing or performing all such other things or acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act.

6. The functions of the Council shall be to-

**Functions of the
Council**

- a) establish centers for the awareness on growth and use of Marijuana;
- b) register Marijuana growers and users;
- c) issue licenses to Marijuana growers and users;
- d) develop awareness programs on the growth and use of Marijuana; and
- e) encourage the use of Marijuana in modest proportions.

7. (1) The Council shall be administered by a board to be known as Board of Trustees of the Council.

**Board of the
Council**

(2) The Board of the Council shall consist of the following persons appointed by the Cabinet Secretary-

- a) the chairperson;
- b) the principal secretary for the time being responsible for matters relating to health or his designate alternate not being below the level of Deputy Secretary;
- c) one man and one woman nominated by the registered Marijuana Planters Associations;
- d) one person nominated by the Kenya Medical Practitioners and Dentists Board;
- e) one person nominated by the National Authority Campaign against Alcohol and Drug Abuse;

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- f) one person nominated by the Kenya Medical Research Institute;
- g) one person nominated by the Kenya Agricultural Research Institute;
- h) one person nominated by the Law Society of Kenya;
- i) the Attorney General or his representative who shall be an ex-officio member; and
- j) the Chief Executive Officer who shall be an ex-officio member and secretary to the Board.

7. (1) The conduct and regulation of the business and the affairs of the Board shall be provided in the Schedule. **Conduct of the Business and affairs of the Board.**

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

8. (1) The Board shall have all powers necessary for the proper performance of its functions under this Act. **Powers of the Board**

(2) Without prejudice to the generality of the subsection (1), the Board shall have power to –

(a) control, supervise and administer the assets of the Council in such manner as best promotes the purpose for which the Board is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;

(d) open such banking accounts for the funds of the Board as may be necessary;

(e) invest any funds of the Council not immediately required for its purpose;

(f) establish such departments and County centers of the Council to deal with such specific matters as may be necessary; and

(g) undertake any activity necessary for the fulfillment of any of the functions of the Council.

(3) Without prejudice to the generality of paragraph (f) of subsection (2), the Board shall decentralize its services to all counties of the Republic.

9. The Board shall pay its members and staff such remuneration or allowances as it may determine upon the advice of the Salaries and Remuneration Commission.

Remuneration of Board members and staff of the Council.

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- 10.** (1) There shall be a Chief Executive Officer of the Council who shall be competitively appointed by the Board, and whose terms and conditions of service shall be determined by the Board, upon the advice of the Salaries and Remuneration Commission; **Chief Executive Officer**
- (2) A person shall not be appointed under this section unless such person has-
- (a) a masters degree in matters relating to health from a recognized university; and
- (b) at least seven years' post qualification managerial working experience;
- (3) The Chief Executive Officer shall-
- (a) be the secretary to the Board;
- (b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Council.
- 11.** The Council may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine. **Staff of the Council**
- 12.** The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act or under any other written law. **Delegation by the Board**
- 13.** (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever. **Protection from personal liability**
- (2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.
- 14.** (1) The common seal of the Council shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board. **Common seal**
- (2) The affixing of the common seal of the Council shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.
- (3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

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- (4) The common seal of the Council when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III- THE MARIUJANA GROWERS, PRODUCERS AND SELLERS REGISTER

- 15.** (1) The Council shall cause to be kept and maintained a register containing the particulars as follows-
- Marijuana Growers, Producers and Sellers Register**
- (a) name of a marijuana grower, producer and seller;
- (b) national identification number of a marijuana grower, producer and seller;
- (c) age of a marijuana grower, producer and seller;
- (d) location within which marijuana grower, producer and seller operates; and
- (e) such other matters as the Board may prescribe.
- (2) All particulars under sub-section (1) and changes in such particulars shall be entered in the Register by the Chief Executive Officer as soon as is practicable after receiving notification thereof.
- (3) The Chief Executive Officer may supply a copy of any entry in the Register upon payment of such fees the as the Board may prescribe.
- 16.** (1) The register contemplated in section 15 shall be kept in the custody of the department of registration to be constituted by the Council.
- Custody of the Register**
- (2) The register shall be open for inspection by a member of the public during office hours without payment.
- 17.** A person who does not present the particulars required for registration under section 15(1) commits an offence and shall liable upon conviction to imprisonment for a term of six months or a fine not exceeding Kshs. 5000 or both.
- Punishment**

PART IV- LICENSING

- 18.** (1) The Council shall set up a department of licensing which shall be headed by a licensing manager.
- Department of licensing**
- (2) The department set up under subsection (1) shall have an office in all the forty-seven counties which shall be headed by assistant licensing manager.
- 19.** (1) The department of licensing may issue a license to a person who satisfies the conditions set out in section 21.
- Process of licensing**

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(2) A person applying for a license shall be required to present to the department of licensing certified copies of the following-

- (a) National Identity Card;
- (b) Certificate of good conduct from the Criminal Investigation Department;
- (c) A recommendation from the National Authority for Campaign Against the Abuse of Drugs and Alcohol; and
- (d) A recommendation from a medical practitioner of not less than five years' experience.

20. A license contemplated in section 19 may be issued to the following-

Issuing license

- (a) a grower of marijuana;
- (b) a producer of marijuana;
- (c) a seller of marijuana; and
- (d) a recreational user of marijuana.

21. A person who applies for a license shall fulfill the following conditions-

Conditions for licensing

- (a) must be of age of majority in case of a natural person;
- (b) must be of sound mind; and
- (c) must have a written authority from National Authority for Campaign Against Abuse of Drugs and Alcohol.

Provided that a person who contravenes the provisions of this part commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding twenty thousand shillings or both.

PART V- THE MEDICAL AND RECREATIONAL USE OF MARIJUANA

22.(1) Licensed medical practitioners shall be the only persons permitted to issue marijuana for medical purposes.

Medical use

(2) (1) A person who seeks to get a dosage of marijuana for the first time for medical use must have a written authorization from a licensed medical practitioner before he can be issued with that dose of marijuana.

(2) A person who seeks to renew their prescription of marijuana must have a written authorization from a licensed medical practitioner before he can be issued with that dose of marijuana.

(3) Marijuana for medicinal use shall be obtained only from the following premises-

- (i) a hospital whose medical practitioner has been duly licensed;

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- (ii) a clinic or hospital which has been duly authorized, permitted and licensed to prescribe marijuana for medical use;
- (4) Marijuana for medical use shall only be issued to a person or patient who has a written prescription from a duly licensed medical practitioner-
- Provided that such person produces the written prescription before a duly licensed seller or producer.
- (5) Any person who contravenes the provisions of this section shall be liable to a fine not exceeding five thousand shillings.
- 23.** (1) (a) A person shall not use marijuana for recreation without a license from the Council; **Recreational use**
- (b) (i) A license contemplated in subsection (1) may be obtained on a daily, weekly, monthly or yearly basis;
- (ii) To qualify for such license a person has to-
- (a) be of the age of majority
- 24.** (1). A person shall not use marijuana for recreational purposes in the company of another person without a license. **Recreational use in the company of other persons**
- (2). The recreational use of Marijuana may include-
- (i) the smoking of marijuana;
- (ii) the mixture of marijuana into pastries;
- (iii) tablets; or
- (iv) any other form in which marijuana may ingested into the body.
- (3). Any person who contravenes the provisions of this section shall be liable upon conviction to a fine not exceeding five thousand shillings. **Punishment.**

PART VI- GROWING PRODUCTION AND SALE

- 25.** (1) A person shall not grow Marijuana on a land exceeding two acres. **Acreage**
- (2) A person who contravenes subsection 1 shall be deregistered and the license revoked.
- (3) The Cabinet Secretary may effect rules to vary the provision under subsection 1.
- 26.** (1) A person shall not produce Marijuana near the following places- **Production**
- (a) a school;

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- (b) a church;
- (c) a hospital; and
- (d) any government institution.

(2) A person who uses any building, ground or structure for the production of Marijuana shall obtain an approval from the County Government.

(3) A producer of Marijuana shall take all necessary steps and action to prevent any disturbance to the environment.

27. (1) A person who sells Marijuana shall obtain a license from the County Government. **Selling.**

(2) A person who uses any building, ground or structure for the sale of Marijuana shall obtain approval from the County Government.

28. A person who contravenes the provisions of this part commits an offence and shall be liable upon conviction to a fine no less than 50,000 shillings. **Punishment.**

Provided that any person under this Act shall obtain a certificate of compliance from the licensing department on a quarterly basis.

29. (1) The Council shall set up an inspection committee which shall be chaired by Chief Inspector. **Inspection**

(2) The Committee shall establish an office in all the forty-seven counties.

(3) The inspection Committee may carry out inspection on any registered and licensed person.

(4) The purpose of the inspection under subsection 3 shall be to ensure compliance with the provisions of this Act.

PART VII- DUTIES OF GROWERS, PRODUCERS AND SELLERS

30. A person who grows Marijuana shall have the following duties-

Duties of growers

- (i) grow marijuana within the acreage stipulated by the Council;
- (ii) maintain a current and valid license;
- (iii) grow marijuana within the amounts provided by this Act; and
- (iv) pay the prescribed fees for licensing and registration.

31. A person who produces Marijuana shall have the following duties-

Duties of Producers

- (i) produce Marijuana within the amounts provided for under this Act;

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- (ii) operate within the parameters of their license;
- (iii) maintain a valid license for producing marijuana;
- (iv) pay the prescribed fees for licensing and registration; and
- (v) pay the prescribed fees for approval by the County Government.

32. A person who sells Marijuana shall have the following duties –

Duties of sellers

- (i) have a valid license for the sale of marijuana;
- (ii) sell the type of marijuana allowed by the Council;
- (iii) sale marijuana to the extent that the license allows tallies with the license they have obtained; and
- (iii) comply with the selling guidelines and standards provided for by the Council under this Act.

PART VIII- FINANCIAL PROVISIONS

33. (1) The funds of the Council, shall comprise of-

Funds of the Council

- (a) grants, gifts or donations that the Council may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions;
- (b) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law;
- (c) All monies from any other lawful source provided for or donated or lent to the Board;
- (d) fines collected from penalties; and
- (e) such sums as may be appropriated by Parliament for the purposes of the Council.

(2) The funds of the Council and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes for which the Council is established.

34. The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

Financial Year

35. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that financial year.

Annual estimates

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(2) The annual estimates shall make provisions for all estimated expenditure of the Council for the financial year concerned, and in particular shall provide for the-

(a) payment of salaries, allowances and other charges in respect of the staff of the Council;

(b) payment of pensions, gratuities and other charges in respect of former staff of the Council;

(c) proper maintenance of the buildings and grounds of the Council;

(d) maintenance, repair and replacement of the equipment and other property of the Council;

(e) payment of allowances of the members of the Council and the members of the Board; and

(f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

36. (1) The Council shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Council.

Accounts and Audit

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

(a) a statement of income and expenditure during that financial year; and

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

(3) The accounts of the Council shall be audited and reported upon in accordance with the Public Audit Act, 2003.

37. The Board may invest any of the funds of the Council in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

Investment of funds

PART IX- AMENDMENT

38. This Act hereby amends the Narcotic Drugs and Psychotropic Substances (Control) Act of 1994 by-

Amendment

(a) deleting the word cannabis from the list of narcotic drugs; and

(b) deleting section 3 subsection 2(a).

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TRANSITIONAL PROVISIONS

- 39.** A person convicted immediately before the commencement of this Act for being in possession of cannabis sativa shall continue to serve the sentence passed by the court. **Transition.**

PART X- PROVISIONS ON DELEGATED POWERS

- 40.** The Council may, with the approval of the Cabinet Secretary, make regulations generally for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations-
- (a)** prescribing the manner and conduct of promoting public awareness about growth, production, sale and consumption of marijuana;
- (b)** prescribing the manner of registration, licensing and inspection; and
- (c)** prescribing the manner of conducting research on the use of marijuana for medical purposes. **Regulations**

SCHEDULE PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL (s.7)

- 1.** The chairperson or a member of the Board other tenure of office than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for reappointment for one further term. **Tenure of office**
- 2.** A member, other than an *ex officio* member, may-
- (a)** at any time resign from office by notice in writing to the Cabinet Secretary;
- (b)** be removed from office by the Cabinet Secretary on recommendation of the Board if the member-
- (i)** has been absent from three consecutive meetings of the Board without the Board's permission;
- (ii)** is convicted of a criminal offence that amounts to a felony under the laws of Kenya;
- (iii)** is incapacitated by prolonged physical or mental illness for a period exceeding six months;
- (iv)** ceases to be a registered person under this Act; or
- (v)** is otherwise unable or unfit to discharge his functions. **Vacation of office**
- 3. (1)** The Board shall, at its first meeting, elect a vice-chairperson from amongst its members.

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- (2) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
 - (3) Notwithstanding subparagraph (2), the chairperson of the Board may convene a special meeting of the Board at any time for the transaction of the business of the Board, upon requisition in writing by at least five members of the Board.
 - (4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
 - (5) The quorum for the conduct of the business of the Board shall be seven members.
 - (6) The chairperson or in his absence, the vice chairperson, shall preside at every meeting of the Board but the members present shall elect one of their number to preside whenever the chairperson and vice-chairperson are absent, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.
 - (7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
 - (8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
 - (9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.
4. (1) A member who has an interest in any contract, or other matter, present at a meeting shall, at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
 - (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.
 - (3) A member of the Board who contravenes subparagraph (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings.
 5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

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MEMORANDUM OF OBJECTS AND REASONS

The use of marijuana in Kenya has been an illegal affair pursuant to the Narcotic Drugs and Psychotropic Substances Act. This has however not made any attempt to prevent the growth, sale and use of marijuana. This is the reason why it is prudent to allow the growth, sale and use of marijuana but in monitored and controlled levels.

The principal object of this Bill therefore is to legalize the growth, sale and use of marijuana but at the same time to control.

The Bill further seeks to set out a legal framework for the registration and licensing of marijuana growers, producers and sellers and also their inspection.

The Bill further seeks to provide for the medical and recreational use of marijuana and how to obtain the requisite license.

PROVISIONS ON DELEGATED POWERS

This law when enacted will confer on the Council and other organs of the Council to be specified in the Act, the authority to make provisions having the force of law in Kenya in terms of Article 94 (6) of the Constitution of Kenya, 2010.

LIMITS OF THE DELEGATED AUTHORITY

The regulations made under this Act by the Cabinet Secretary will be limited to bringing into effect provisions of this Act and will therefore facilitate the promotion of public awareness about the growth, sale and use of marijuana in controlled measures.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

DATED THE 6TH OCTOBER 2016

NDOM KABANGI
Chairperson Committee on Health.