

THE VIHIGA COUNTY BETTING, LOTTERIES AND GAMING BILL, 2018

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THE VIHIGA COUNTY BETTING, LOTTERIES AND GAMING ACT, 2018

AN ACT of the Vihiga County to provide for the licensing and regulation of betting and gaming activities and premises; for authorizing of public lotteries in the county; and for connected purposes

ENACTED by the Vihiga County Assembly as follows –

PART 1 – PRELIMINARY

Short title and commencement

1. This ACT may be cited as the Vihiga County Betting, Lotteries and Gaming act, 2018 and shall come into operation on the date of publication in the gazette.

Interpretation

2. In this ACT, except where the context otherwise requires –
“**CEC**” means the county executive committee ;
“**premises**” includes any place, and any vessel;
“**the Board**” means the Betting, Lotteries and Gaming and Licensing and Regulation Board established by part II;
“**to bet**” means to wager or stake any money or valuable thing by or on behalf of any person or expressly or impliedly to undertake, promise or agree to wager or stake by or on behalf of any person, any money or valuable thing on a horse race, or other race, fight, game, sport, lottery or exercise or any other event or contingency;
“**Betting premises**” means premises to which the public has or may have access and which are kept or used (whether on one occasion or more than one) for the purpose of betting.
“**betting transaction**” includes the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker;
“**gaming**” means the playing of a game of chance for winnings in money or money’s worth;
“**gaming machine**” means a machine for playing a game of chance, being a game which requires no Action by a player other than the Actuation or manipulation of the machine;
“**gaming premises**” means premises which are kept or used (whether on one occasion or more than one) for gaming, and to which the public has or may have access for the playing therein of a game of chance, whether the game of chance be an unlawful game or not;
“**gaming revenue**” means gross turnover less the amount paid out to customers as winnings;

“instruments of gaming” means cards, dice, counters, coins, tickets, gaming tables, boards, boxes, or other things devised, or birds and animals used, for the purpose of gaming;

“licensed betting premises” means premises duly licensed in terms of this ACT as premises wherein bets may be made and settled;

“licensed gaming premises” means premises licensed under this bill as premises to which the public may resort for the purpose of gaming; **“licensee”** means a person issued with a licence under any of the sections.

“lottery” includes a sweepstake, a raffle and any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the withdrawing of tickets, cards, lots, numbers or figures, or by means of a wheel, or otherwise howsoever;

“permit-holder” means the holder of a permit issued under any sections 16,17,18, 19;

“the Board” means the Betting Control and Licensing Board established by section 6;

"Chief Officer" means the Chief Officer for the time being responsible for matters relating to Trade, Tourism, Industrialization and Entrepreneurship;

“unlawful game” means a game of chance the chances of which are not alike favorable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet;

“Winnings” includes winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

Application of the bill restricted to the county

3. This act shall apply to all betting, lotteries and gaming activities within the Vihiga County

Application of the national betting, lotteries & Gaming bill

4. (1) The provisions of the national Betting, Lotteries and Gaming act shall apply to any matter relating to betting, lotteries and gaming to the extent that this bill does not make provision for any such particular matter.

(2) Without prejudice to the generality of subsection (1), the national legislation shall apply in respect to –

a) Offences created under the national legislation and the punishment prescribed for such offences in such national legislation;

- b) prohibitions against certain types of activities;
- c) the regulation of certain activities, except that such regulation shall be carried out solely by the institutions of the Vihiga County where such activities fall within the boundaries of county.

Objects of the bill

5. The objects of this bill are to –

- a) give further effect to paragraph 4 of the Fourth Schedule to the Constitution which mandates the county government with the function of betting lotteries and gaming regulation and licensing;
- b) to ensure that the national government policy on the regulation of betting, lotteries and gaming as set out in the national legislation is implemented at the county level in accordance with the requirements of the Constitution to the effect that Government at either shall among other things, as appropriate, implement the legislation of the other level of government; and
- c) to provide for the county institutions and for procedures applicable to the regulation and licensing of betting, lotteries and gaming within the county.

PART II – COUNTY BETTING LICENSING AND REGULATION BOARD

Establishment of the board

6. There is established the Vihiga County Betting Licensing and Regulation Board.

(1) The Board shall comprise –

- (a) a chairperson, appointed by the CEC;
- (b) the chief officer responsible for trade;
- (c) the head of the county inspectorate services;
- (d) Three persons appointed by the CEC who shall be persons conversant with trade and financial matters respectively.

(2) The CEC shall appoint a county public officer with legal background to be secretary to the Board for a period of three years.

(3) Before the CEC makes an appointment under this section, the CEC may require the person to be so appointed to declare whether the

Tenure of office	person has any, or if so what, interest in any betting, lotteries or gaming undertaking operating in Kenya.
Meeting of the board	<p>7. The members referred to in paragraphs (a) and (d) of subsection (1) shall hold office for a period of three years from the date of their appointment but shall be eligible for re-appointment.</p> <p>8. (a) In the event of the chairperson being absent from any meeting of the Board, the members present shall choose one of their number to act as chairperson for that meeting.</p> <p>(b) At all meetings of the Board, the chairperson or the person chosen to act as chairperson under subsection (a) together with three other members of the Board shall form a quorum.</p> <p>(c) Meetings of the Board shall be held at least once in every month and at such other times and places as the chairperson may determine.</p>
Appointment of the board	<p>9. (a) The chairperson or the person chosen to act as chairperson under subsection (8a) shall have a deliberative vote and, in the case of equality of votes, shall also have a casting vote.</p> <p>(b) The Board may co-opt to attend any person or persons whose assistance or advice it may require, but a person so co-opted shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.</p>
Remuneration	<p>10. The board shall be paid such allowances in accordance with established county public service policy.</p>
Functions of the Board	<p>11. The functions of the Board shall be to –</p> <p>Advise the CEC generally on;</p> <p>a) Betting, lotteries and gaming regulation and licensing policy within the Vihiga County.</p> <p>b) Liaise with the county inspectorate and the Kenya Police Service to ensure the enforcement of the law as contained in this bill;</p> <p>c) Generally, administer this bill and any relevant provision on betting, lotteries and gaming regulation and licensing;</p>

- d) Perform any other function given by this bill or by any other written law.
- e) All permits and licenses issued under this bill and all communications from the Board shall be under the hand of the chairperson or of some person duly authorized by the chairperson, notification of that authorization being published in the Gazette under the hand of the chairperson.
- f) The chairperson shall submit to the CEC for publication a quarterly report of the proceedings of the Board containing particulars with respect to such matters as the CEC may direct.
- g) No member of the Board, nor any officer or servant thereof, shall be personally liable for any act or default done or omitted to be done in good faith in the course of his duties under this Bill.

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Powers of the board.

12. (1) The Board shall have power –

- a) to ensure licenses and permits in accordance with this bill and any regulations made thereunder;
- b) during the subsistence of a license or permit, to vary, or for good cause to suspend or cancel it; but the Board shall not suspend a license or permit for more than fourteen days and shall not vary or cancel a license or permit without giving the licensee or permit holder opportunity to show cause against the variation or cancellation; and
- c) to inquire into complaints against licensees or permit-holders.

(2) Subject to this Act and to any general or special direction by the CEC, the Board shall regulate its own procedure.

(3) The Board may authorize the chairperson to exercise on its behalf, at any time when it is not meeting, such of its powers as it may from time to time specify; but the exercise of those powers shall, to the extent required by the Board, be reported by the chairperson without unreasonable delay to a meeting of the board.

Provision of license and permits.

13. (1) Every licence or permit issued under this act shall state the precise location and extent of the premises, if any, to which it relates and shall be endorsed with every condition imposed by the Board under this bill.

(2) A licensee who wishes at any time to transfer the conduct of his business to premises other than those authorized in terms of his licence may apply to the Board for authority to do so.

(3) Upon receipt of an application in accordance with subsection (2) the Board may vary the licence so as to authorize the conduct of the licensee's business at the premises the subject of the application in substitution for the premises previously licensed.

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| Display of license and permit and surrender of the same on suspension or cancellation. | 14. (1) Every licence or permit issued by the Board under this act shall, during the period of its validity, be prominently displayed by the licensee or permit-holder at his principal place of business, if any, in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the licensee or permit-holder.
(2) On notification to a person that his licence or permit has been cancelled or suspended, that person shall forthwith surrender his licence or permit, as the case may be, to the Board.
(3) A person who without reasonable cause or excuse fails to comply with this section, or who displays a licence or permit which is not currently valid, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both. |
| Duration of license and permit. | 15. Every licence or permit issued under this act shall, unless therein otherwise provided, expire on the 30th June next following the date of issue. |
| Licenses and permits not to be transferred | 16. No licence or permit issued under this act shall be transferable to any person, and a person who transfers or purports to transfer a licence or permit shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both. |
| Fees | 17. There shall be paid to the Board for every license and permit issued by the Board such fee as may be prescribed. |

PART III CONTROL LICENSING OF BETTING

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| Offences relating to unlicensed betting premises | 18. (1) Subject to this bill, a person who— (a) being the owner or occupier or having the use temporarily or otherwise thereof, keeps or uses unlicensed betting premises; or (b) permits premises of which he is the owner or occupier, or of which he has the use temporarily or otherwise, to be used as unlicensed betting premises; or (c) has the care or management of, or in any manner assists or is engaged in the management of, premises kept or used as unlicensed betting premises; or (d) announces or publishes or causes to be announced or published, either orally or by means of any print, writing, design, sign or otherwise, that premises are opened, kept or used as unlicensed betting premises, or in any manner invites or solicits any person to bet in unlicensed betting premises; or (e) advances, furnishes or receives money for the purpose of establishing or conducting the business of unlicensed betting premises, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both. |
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(2) A person who bets in unlicensed betting premises shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to a term of imprisonment for a term not exceeding six months, or to both; and a person found in unlicensed betting premises or found escaping therefrom on the occasion of their being entered under this act shall be presumed, until the contrary is proved, to be or to have been betting therein.

(3) A person who occupies or has the use temporarily of premises which are kept or used by another person as unlicensed betting premises shall be presumed, until the contrary is proved, to have permitted that place to be so kept or used.

(4) In this section, “unlicensed betting premises” means betting premises in respect of which no licence is issued under this Part.

Betting with
young persons
an offence

19. (1) A person who— (a) bets with a young person; or (b) employs a young person on licensed betting premises or in connection with a pool betting scheme or in the effecting of any betting other than— (i) the effecting of betting by post; or (ii) the carriage of a communication relating to betting for the purpose of its conveyance by post; or (c) receives or negotiates a bet through a young person; or (d) sends to a young person any circular, notice, advertisement, letter or other document relating to betting, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both. (2) In this section, “young person” means a person— (a) who is under the age of eighteen years and whom the person committing an offence in relation to him under this section knows, or ought to know, to be under that age; or (b) who is apparently under that age.

PART IV GAMING

Gaming
machines

20. A person who—
- (a) uses or permits the use of an unauthorized gaming machine; or
 - (b) knowingly allows premises to be used for the purpose of gaming by means of an unauthorized gaming machine; or
 - (c) knowing or having reasonable cause to suspect that premises would be used for gaming by means of an unauthorized gaming machine—
 - (i) caused or allowed the machine to be placed on the premises; or
 - (ii) let the premises, or otherwise made the premises available, to a person by whom an offence in connection with the machine was committed, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to

imprisonment for a term not exceeding six months, or to both.

(2) In this section, “unauthorized gaming machine” means a gaming machine in respect of which a permit has not been issued under section 16.

Board may authorize use of gaming machine

21. (1) The Board may, subject to any regulations made under this bill, issue a permit authorizing the use of a gaming machine on premises approved by it.
- (2) A permit issued under this section shall be subject to such conditions as the Board may impose and to the following conditions—
- (a) not more than two gaming machines are made available for play in any one building or, where different parts of a building are occupied by two or more different persons, in the part or parts of the building occupied by any one of those persons; and
- (b) The premises on which the gaming machine is used are not wholly or mainly used by persons under the age of eighteen years.
- (3) A person who contravenes any conditions provided for in subsection (2) or imposed by the Board shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Gaming in public places an offence

22. (1) Subject to this bill, a person who takes part in gaming in a street or other place to which, whether on payment or otherwise, the public have or may have access, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.
- (2) A police officer may arrest without warrant anyone whom he finds in a street or other place referred to in subsection (1) and whom he suspects, with reasonable cause, to be committing an offence under this section.

PART V – BETTINGS, ETC. LICENSING AND REGULATION

Application for licenses and permits

23. (1) A person who desires to obtain, renew or vary a license or permit under this bill shall make application to the Board in the form and manner prescribed.
- (2) On receipt of an application under subsection (1), the Board may make such investigations or require the submission of such declaration or further information as it may deem necessary in order to enable it to examine the application.

(3) After making investigations and considering any information or declaration as may have been required in terms of subsection (2), the Board may either grant, renew or vary a license or permit or refuse a license or permit or renewal or variation thereof without reason given. Provided that no license or permit shall be issued, under this Act unless and until the Board has satisfied itself that the applicant is a fit and proper person to hold the license or permit and that the premises, if any, in respect of which the application is made are suitable for the purpose;

(4) A person who knowingly makes a false statement or declaration in any application for, or a renewal or variation of, a license or permit shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

Grant of a license

24. The Board shall, after considering the application under section 9, indicate in writing whether it objects to the grant of the license applied for.

(2) Where the Board has no objection the application under section 9, it shall, within twenty days of the application, grant a license to the applicant upon payment of the prescribed fee.

(3) The license issued shall be in such form as may be prescribed and subject to such conditions as the Board may consider fit.

(4) Where the Board is not satisfied with the application under subsection (1), it may –

- a) reject the application giving reasons and notify the applicant accordingly within twenty-one days of the decision or reject; or
- b) make comments and recommendations thereon and return it to the applicant within thirty days.

(5) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within six months of the date of notification.

(6) On receipt of any revised application under sub section (5), the Board shall, within one month determine the application in accordance with this Act and upon such determination, if satisfied, issue a license

(7) Where the Board grants a license under this section it shall, publish the grant in the Gazette.

Objects of the bill

25. (1) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being used for betting on such premises, any person having an interest in the premises may apply in the prescribed form to the Board for an assurance that, on the completion of the construction or reconstruction, a license of the type to be specified in the application will be granted in respect of such premises.

(2) The provisions of sections 9 and 10 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(3) The Board may, subject to such reasonable conditions as it may therein include, give to the applicant an assurance in the prescribed form that, on the completion of the premises, a license on the type specified therein will be granted or it may refuse to give such an assurance.

(4) Where such an assurance has been given under subsection (3), the Board may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under subsection (2) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a license of the type specified in the assurance in respect of the premises.

(5) Any assurance given under subsection (3) shall become ineffective and the Board shall not issue a license if, between the date of the giving thereof and the date of completion of the premises, the applicant becomes a person to whom in accordance with section 9 (3), a license may not be granted.

PART VI – MISCELLANEOUS.

Regulations on obtaining of money by cheating at lawful gaming or by

26. A person who, by any fraud or unlawful device or ill-practice in playing at or with an instrument of gaming, or in taking a part in the stakes or wagers, or in betting on the sides or hands of those that are playing, or in wagering on the event of a game, sport, pastime or exercise, wins from another person for himself, or for or on behalf of another person, a sum of money or valuable thing shall be guilty of

wagering on any event an offence	an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.
Appeals from decision of board	27. A person aggrieved by a decision of the Board made under this bill may, within twenty-one days of the decision, appeal to the High Court, and a decision of a judge of the High Court shall not be the subject of appeal.
Power to enter and inspect premises	<p>28. It shall be lawful—</p> <p>(a) for a person authorized in writing in that behalf by the Board, on production of his authority if demanded;</p> <p>(b) for a police officer of or above the rank of Assistant Inspector, to enter without warrant and inspect premises (including a racecourse) in which he has reason to believe that an offence under this bill, or under any regulations made thereunder, has been or is about to be committed, and therein to—</p> <p>(i) examine and take copies of books, accounts and documents relating or appearing to relate to any betting transaction, lottery or gaming;</p> <p>(ii) seize, remove or detain a book, account or document which he has reasonable cause to suppose will afford evidence of an offence under this act or any regulations made thereunder;</p> <p>(iii) require the owner or occupier of the premises to render such explanation and give such information relating to any betting transaction, lottery or gaming as may be reasonably required by him in the performance of his duties.</p> <p>(2) The power to bill under subsection (1) shall only be exercised without warrant if the person so acting has reasonable cause to believe that the delay occasioned in obtaining a search warrant would seriously hinder him in the performance of his duties, and the power shall be exercised only by or under the directions of a police officer of or above the rank of Inspector unless the person authorized in writing by the Board or the Permanent Secretary has reasonable cause to believe that the delay occasioned in summoning a police officer would, or would tend to, defeat the purposes of this section.</p> <p>(3) A person who resists, hinders or obstructs a person acting in pursuance of any of the provisions of this section, or who on a requisition under subsection (1) wilfully withholds information, or gives information knowing or having reason to believe it to be false or misleading, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both: Provided that no person may be</p>

required to answer any question the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

(4) Before removing anything under subsection (1), the person removing it shall furnish the person in whose custody or possession the article is at the time of removal with a written receipt therefore.

(5) Every seizure under this section shall be reported without unnecessary delay to a magistrate.

Regulations.

29. The Minister may, after consultation with the Board, make regulations generally for the better carrying out of the purposes and provisions of this bill, and, without prejudice to the foregoing generality, any such regulations may provide for—

(a) the procedure to be followed by the Board in exercising any powers conferred upon it by this bill;

(b) the procedure to be followed in the making of an application for the issue, renewal or variation of a licence or permit issued under this bill;

(c) the advertisement of an application for a licence or permit under this bill and of proceedings of the Board to consider and determine any such application;

(d) the right of a person interested to object to an application for the issue, renewal or variation of a licence or permit under this bill, and for the form and manner of any such objection;

(e) the form and manner in which returns or statements of accounts shall be furnished to the Board;

(f) Securing the payment of any fee.

Transitional.

30. The executive committee members responsible for trade and the executive committee member responsible for finance shall take joint action to ensure expeditious transition to enable the full operationalization of this bill and for that purpose shall jointly make the necessary regulations and put in place the necessary administrative arrangements in regard thereto.