

**REPORT OF THE COMMITTEE ON ECONOMIC AFFAIRS AND LABOUR
ON THE LIQUOR LICENSING BILL, N.A.B. NUMBER 14 OF 2011 FOR THE
FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY, APPOINTED ON
THURSDAY, 23 SEPTEMBER 2010**

Consisting of:

Mr C W Kakoma, MP (Chairperson); Ms E M Imbwae, MP; Dr P D Machungwa, MP;
Mr D Matongo, MP; Mr G W Mpombo, MP; Mr W C Simuusa, MP; Mr F R Tembo,
MP; and Mr J K Zulu, MP

Mr G Lubinda, MP was co-opted in your Committee when it faced quorum problems on
Wednesday, 9 March 2011.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Liquor Licensing Bill,
N.A.B. No. 14 of 2011, for the Fifth Session of the Tenth National Assembly, referred to
them by the House on Wednesday, 2 March 2011.

Functions of the Committee

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker,
or any other Order of the House, your Committee is mandated to consider any Bill that
may be referred to it by the House.

Meetings of the Committee

3. Your Committee held five (5) meetings to consider the Bill.

Procedure adopted by the Committee

4. In considering the Bill, your Committee sought both written and oral
submissions from selected witnesses (Appendix II). The presentation and analysis in
paragraphs 6, 7 and 8 of this Report is based on the views of the witnesses.

Object of the Bill

5. Your Committee was informed that the objects of the Bill, is to-

- a) regulate the sale and supply of intoxicating liquors;
- b) repeal and replace the Liquor Licensing Act, 1959; and
- c) provide for matters connected with, or incidental to, the foregoing.

Validation of the Repeal and Replacing of the Current Act

6. Your Committee was informed that the Liquor Licensing Act, Cap 167 of the laws of Zambia was an archaic piece of legislation which had not been reviewed to suit the current business environment. The current Liquor Licensing Act, 1959 was mainly aimed at controlling Africans dealing in or consuming alcohol.

The provisions of the Bill are in conformity with the decentralisation process as it sought to devolve the licensing powers to local authorities. A centralised system has proved costly to traders and difficult to monitor the licensed businesses. It was evident that this has led to the mushrooming of illegal liquor trading premises in many residential areas without any concerns for the danger of social vices at play.

Your Committee was further informed that the Bill addresses the split in the licensing system, between the Provincial Liquor Licensing Board and local authorities, which had made the process long and cumbersome. The Bill provides for a single licensing system with clear regulatory requirements, with a simple application process and data requirements.

Provisions of the Bill

7. The Bill has six parts as set out here below.

A. *Part I – Preliminary, Clauses 1 – 3*

This part contains the short title of the Bill, the interpretation Clause for terms used in the Bill and the provision on the application of the Bill

B. *Part II – Licensing, Clauses 4 - 22*

Clause 4 stipulates the manner in which to apply for a licence and the criteria for considering applications.

Clause 5 empowers persons to oppose the grant, renewal, transfer or removal of a licence and specifies the manner of doing so.

Clause 6 obligates a licensing committee to issue a licence where an application meets the requirements. The validity of a licence is being extended from one to three years.

Your Committee was informed that the extension of the validity of the license will not compromise standards as local authorities will need to step up their enforcement mechanisms. The human resource and financial challenges that local authorities face were acknowledged by many stakeholders.

Your Committee was informed that the Ministry of Local Government and Housing working with other stakeholders such as the Ministry of Health, Zambia Police, brewing companies and Liquor Traders Associations would supplement efforts of local authorities.

This part further provides for restrictions relating to grant of licence, rejection of application for a licence, display of licence, variation of licence, surrender of licence, transfer of a licence, amendments of licences and register of licences.

C. *Part III – Appeals, Clauses 23 - 26*

Clause 23 establishes an Appeals Tribunal for the purpose of hearing appeals under the provisions of the Bill.

Clause 24 allows a person aggrieved by a decision of the Licensing Committee to appeal to the Tribunal.

Clause 25 empowers a person aggrieved with a decision of the Tribunal to appeal to the High Court on a question of law.

Clause 26 empowers the Chief Justice to make rules relating to procedures of the Tribunal.

D. *Part IV – Regulation of Sale of Intoxicating Liquor, Clauses 27 - 43*

The salient features of this Part are the provisions on the sale of intoxicating liquor only under licence, statement on the rules relating to brand reliability and alcohol content, provision that intoxicating liquor will only be sold during permitted hours and prohibits the consumption of liquor only on licensed premises. This Part also prohibits the production or manufacture of liquor contrary to the standards prescribed under the *Standards Act*, and also prohibits the employment of children on premises licensed to sale intoxicating liquor as well as to selling or delivering intoxicating liquor to children or allowing a child to enter or remain in a bar. The Part further prohibits the use of licensed premises as a brothel, empowers the licensee to expel or refuse to admit drunken or violent or disorderly persons from licensed premises.

E. *Part V – Controls and Inspections*

Clause 44 sets out the powers of an authorised officer with respect to the inspection of premises.

F. *Part VI – General Provisions, Clauses 45 - 54*

The salient provisions of this Part are set out below.

Clause 45 prohibits a licensee or an employee of a licensee from allowing any unlawful game or gambling on the licensed premises, and the consumption of liquor outside permitted hours.

Clause 46 lists various acts that constitute general offences.

Clause 49 empowers a magistrate to issue a search warrant to a police officer to enter a place where liquor may not be legally sold by force, if need be.

Clause 50 imposes a penalty or forfeiture on a second or subsequent conviction.

Clause 52 empowers a court to grant a temporary licence to a person whose licence has been forfeited upon conviction and has appealed against that conviction.

Clause 53 empowers the Minister to prescribe, by Statutory Instrument, any matter which is necessary to be prescribed for the purpose of giving effect to this Act.

Clause 54 repeals the Liquor Licensing Act, Cap 167 of the laws of Zambia and preserves the validity of licenses issued under the repealed Act for a period of six months. An application pending before a provincial licensing board or licensing officer immediately before the commencement of this Act, shall be dealt with in accordance with the provisions of this Act.

Stakeholder Views

8. Stakeholders that were invited appreciated the following aspects of the Bill:
- (i) it recognises the need to protect rights of adult citizens to purchase and consume intoxicating liquor in a safe and well regulated manner;
 - (ii) it balances social and economical benefits against harm that could arise from abuse of intoxicating liquor, while at the same time safeguarding public health and social well-being of society;
 - (iii) it imposes stiff penalties on persons selling intoxicating liquor outside the permitted hours, operating without a license or using the licensed premises as brothels; and
 - (iv) it uses one of the proven strategies of curbing underage drinking by restricting the sell and delivery of intoxicating liquor to children and not allowing children to be employed in bars.

The concerns of stakeholders and their suggested solutions are set out below.

- (a) The '*Right of Admission Reserved*' phrase was being used in some social places including lodges to discriminate patrons on the basis of race and not necessarily to keep away persons who can be a nuisance. There is therefore need to ensure that this "Right" is not abused.
- (b) Delays in obtaining approval from the Minister for architectural drawings negatively affect the application process for a liquor license. There is need to make the approval process more efficient.
- (c) The Bill provides that the operating hours will be stipulated in the guiding regulations, these should be issued on the same date that the new legislation takes effect.

Stakeholders' Proposed Amendments

The stakeholders proposed the following amendments:

(i) ***Long Title***

The long title should include "manufacture and possession" of intoxicating liquor in addition to the supply and sale.

(ii) ***Clause 2 - Interpretation***

- (a) The definition of "*authorised officer*" should read "*means an administrative officer, health inspector or a police officer above the rank of sergeant*"

The rank of sub-inspector was abolished in 2010 following restructuring of the Zambia Police Force.

- (b) The definition of Health Inspector should assume the same meaning as in the Public Health Act, Cap 295 of the Laws of Zambia, which is defined thus;

"Health Inspector" means a Health or Sanitary Inspector in the employment of the Government or of any Local Authority, and includes any person appointed by the Director of Medical Services to act as such within the district of one or more Local Authorities".

(iii) **Clause 4 Licensing**

Clause 4 (4) (a) (iii) should include health centres.

(vi) **Clause 24 – Appeal to Tribunal**

Clause 24(8) should read as follows “A licence shall, pending the determination of an appeal against refusal to renew it, be deemed not to remain in force until the determination by the Tribunal”

This will ensure that any premises found unsuitable for the sale and consumption of liquor to the public remains closed until after the Tribunal determines the case.

(v) **Clause 29 - Prohibition of sale, consumption, etc. of liquor except during permitted hours**

Clause 29(2)(b) which allows the licensee to provide intoxicating liquor to friends of the licensee during none permitted hours should be done away with as it is likely to be abused by licensees.

(vi) **Clause 30 - Liquor of kind not authorised by licence not to be kept on premises**

Clause 30(1) should be done away with as it is unreasonable and should be replaced by a provision that will restrict the volume of spirits to be sold from licensed premises. The proposal in this case is a minimum 200mls for take-aways and anything less than 200mls be sold and consumed on the licensed premises.

(vii) **Clause 32 - Consumption of liquor in public place**

This Clause should read as follows:

- (1) *A person shall not consume liquor in a public place other than licensed premises.*
- (2) *A person who contravenes this section commits an offence and shall be arrested without a warrant and is liable, upon conviction, to a fine not exceeding fifty thousand units or six months simple imprisonment, or to both.*

This amendment will assist in enforcing the Act.

(vii) **Clause 34: Prohibited production**

It is proposed that there be a provision for the packaging of spirits. The minimum volume of spirits to be packaged by manufacturers should be limited to a minimum of 200 millilitres. This is aimed at prohibiting the packaging of spirits in sachets of 30 millilitres and less which are grossly abused.

(viii) **Clause 52 - Temporary Licence Pending Appeal**

Clause 52 (1) should be amended so as to disallow the granting of a temporary license once it has been forfeited and pending an appeal to a higher court. This

is to avoid the abuse of the court process as is the case with injunctions that run for years without the court's ruling on the cases.

(ix) ***Clause 54 - Repeal of Cap 167***

The Liquor Licensing Act, 1959 be repealed with the effect that the licence issued under the repealed Act shall continue until the end of the Calendar year in which that Licence is issued.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

9. After considering the submissions from witnesses, your Committee observes that the proposed legislation is mainly aimed at decentralising the licensing process and conferring power on local authorities to enforce the Act which is consistent with decentralisation. There is, however, an underlying assumption that all local authorities are in a position to effectively carry out the enforcement. This is not the case. Most local authorities have human resource and financial challenges that make it difficult for them to perform according to the requirements of the Act.

Your Committee further observes that witnesses are generally in support of the Bill and urges the House to pass it with the following recommendations, to assist in enforcing the Act:

- (a) the Ministry of Local Government and Housing should put measures in place that will ensure that no local authority fails to enforce the provisions of the Act to avoid chaos in the sale and supply of intoxicating liquor;
- (b) the Ministry of Local Government and Housing should ensure that it takes a leading role in engaging other stakeholders such as the Ministry of Home Affairs and Ministry of Health to partner with local authorities in enforcement, particularly in the immediate period when the Act takes effect;
- (c) the Ministry of Local Government and Housing should streamline the process of approving architectural drawings not only to avoid delaying the granting and renewal of licenses, but also minimise corrupt practices;
- (d) the Minister should issue the Statutory Instrument prescribing the permitted hours of selling liquor immediately the Act comes into effect; and
- (e) the proposed amendments by stakeholders in Paragraph 8 of this Report should be considered in relation to:
 - i. the Long Title;
 - ii. Clause 2: Interpretation;
 - iii. Clause 4: Licence;
 - iv. Clause 24: Appeal to Tribunal;
 - v. Clause 29: Prohibition of sale, consumption, etc. of liquor except during permitted hours;
 - vi. Clause 32: Consumption of liquor in public place;
 - vii. Clause 34: Prohibited production;
 - viii. Clause 52: Temporary licence pending appeal; and
 - ix. Clause 54: Repeal of Cap 167.

- (f) the following amendments be further considered:
- i. the position “*Administrative Officer*” in Clause 2 (Interpretation) on the definition of authorised officer, be replaced with “*Principal Officer*” which is defined within the clause;
 - ii. the sale and consumption of intoxicating liquor during traditional ceremonies and other traditional settings should be included in Clause 3 (Non Application of the Act);
 - iii. a license should not be granted when Clause 4 (4) (a) (iii) is not satisfied;
 - iv. the requirement of a plan of the premises to be deposited at the time of renewal of license should be dropped in Clause 16(3);
 - v. the words “*or person whose licence has been forfeited under this Act*” in Clause 35 (1) should be deleted;
 - vi. a provision should be included under Clause 41 to the effect that a licensee shall not employ in the licensed premises, a person whose license has been forfeited under this Act; and
 - vii. for purposes of consistency, a search warrant in, Clause 49 (1), should only be issued to a police officer above the rank of sergeant.

CONCLUSION

10. Your Committee wishes to express its gratitude to all stakeholders for their written and oral submissions. Your Committee also wishes to thank you, Mr Speaker and the Office of the Clerk, for affording it the opportunity to scrutinise the Bill and for the guidance and services that were rendered to it when carrying out the exercise.

We have the Honour to be, Sir, your Committee on Economic Affairs and Labour, mandated to consider the Liquor Licensing Bill, N.A.B. No. 14 of 2011 for the Fifth Session of the Tenth National Assembly.

Mr C W Kakoma, MP
(Chairperson)

Ms E M Imbwa, MP
(Member)

Dr P D Machungwa, MP
(Member)

Mr D Matongo, MP
(Member)

Mr G W Mpombo, MP
(Member)

Mr W C Simuusa, MP
(Member)

Mr F R Tembo, MP
(Member)

Mr J K Zulu, MP
(Member)

Mr G Lubinda MP
(Co-opted Member)

March 2011
LUSAKA

Mr C W Kakoma, MP
CHAIRPERSON

APPENDIX I

List of National Assembly Officers

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Ms M K Sampa, Committee Clerk (FC)
Mr S C Kawimbe, Committee Clerk (SC)
Mr M F Kateshi, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Mrs A S Lloyd, Typist
Ms S Kayawa, Typist
Mr R Mumba, Committee Assistant
Mr C Bulaya, Committee Assistant
Mr S Likunyendo, Parliamentary Messenger

APPENDIX II

WITNESSES

Ministry of Justice (Permanent Witness)

Mrs P Jere, Chief Parliamentary Counsel
Mr A Nkunika, Senior Parliamentary Counsel
Ms P Goma, Parliamentary Counsel
Ms B L Musopelo, Parliamentary Counsel

Zambia Police

Mr G Musamba, Commissioner of Police

Lusaka City Council

Mr A M Musonda, Acting Town Clerk
Mrs M M Chocho, Acting Director of Legal Services

Ministry of Health

Dr E Chizema, Acting Permanent Secretary
Dr Kamuliwo Director PH&R
Mr Mate, Deputy Director PH&R
Mr E M Malikana, Chief Policy Analyst

Lusaka Province Liquor Traders Association

Mr N Sapi, President

Ministry of Local Government and Housing

Mr B B Chirwa, Acting Permanent Secretary
Mr J Chulu, Parliamentary Liaison Officer