



THE REPUBLIC OF KENYA

THE SEXUAL ENTERPRISES BILL, 2018

A Bill for,

**AN ACT of Parliament to provide for the regulation of commercial sexual enterprises and
for connected purposes.**

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. Short title and commencement.

This Act may be cited as the Sexual Enterprises Act, 2018 and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette appoint, which date shall not exceed ninety days from the date of publication.

2. Interpretation.

In this Act, unless the context otherwise requires-

“**Authority**” means the Sexual Enterprises Authority of Kenya established by Section 4;

“**Board**” means the board of the authority pursuant to section 6;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to trade;

“**Client**” means a person who receives, or seeks to receive, commercial sexual services;

“**Commercial sex**” means sexual services that—

- a) Involve physical participation by a person in sexual acts with, and for the gratification of, another person; and
- b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

“**Commercial Sex Worker**” means a person licensed under this Act to offer sexual services;

“**County Committee**” means the county licensing committee established by section 13;

“**Fund**” means the Sexual Enterprises Control Fund established by section 10;

“Licensing Authority” means the Authority;

“Manager” means a person operating a studio and registered under this Act; and

“Medical examination report” means a report issued by a doctor after screening for HIV/AIDs and other Sexually Transmitted Diseases has been done pursuant to this Act;

3. Object and purpose of the act.

The object and purpose of this Act is to provide for the regulation of commercial sex work, in order to-

- (a) provide a mechanism to protect the rights of commercial sex workers;
- (b) promote health standards in the country and especially among providers and consumers of commercial sex with the aim of reducing the spread of HIV/AIDS and STIs, through requirement of regular and mandatory screening of workers, use of condoms during any sexual act;
- (c) to generate revenue for the government through taxation of commercial sex workers and establishments and also through license fees;
- (d) to reduce the rate of unemployment and poverty in the country through decriminalization of living off the proceeds of commercial sex work and recognition of commercial sex work as a form of employment;
- (e) To provide mechanisms for the reduction of sexual exploitation of minors, human trafficking and forced commercial sex work through regulation of the trade; and
- (f) Develop local communities in which commercial sex enterprises operate creating harmony and education on alternative sources of revenue.

PART II- ADMINISTRATION

4. Establishment of the authority.

- (1) There is established an Authority to be known as the Sexual Enterprises Authority of Kenya.
- (2) The Board is a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of-
 - a) Suing be sued;
 - b) Taking, purchasing or otherwise acquiring, holding charging and disposing of property;
 - c) Borrowing and lending money;
 - d) Entering into contracts;
 - e) Receiving grants and gifts for commercial sex work related projects; and
 - f) Performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

5. Functions of the authority.

- (1) The authority shall-
 - (a) advice the Cabinet Secretary on matters relating to commercial sex work;
 - (b) keep and maintain a register of all licensed commercial sex workers currently practicing in the country;
 - (c) keep and maintain a register of licensed sexual establishments licensed in the country;
 - (d) recommend to the Cabinet Secretary and to participate in the formulation of the regulations to be made under this Act; and
 - (e) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as May, from time to time, be assigned by the Cabinet Secretary.

6. Board of the authority.

- 1) The management of the Authority shall vest in a board which shall consist of-
 - (a) a non-executive chairperson appointed by the cabinet secretary;

- (b) the principal Secretary in the Ministry responsible for Trade;
- (c) the Principal Secretary in the Ministry responsible for Health;
- (d) the Principal Secretary in the Ministry responsible for Finance;
- (e) the Principal Secretary in the Ministry responsible for Social Services;
- (f) the Principal Secretary in the Ministry responsible for interior and Coordination;
- (g) a representative from the Aids Control Council;
- (h) a representative from the Consumer Federation of Kenya;
- (i) a representative from the Kenya Sex workers Alliance;
- (j) a representative from the Central Organization of Trade Unions; and
- (k) the Director General who shall be the secretary to the Board and Chief Executive Officer of the Authority.

2) A person appointed as a member of the Board under subsection (1)(a) Shall—

- (a) Be a person who—
 - i. holds a degree from a university recognized in Kenya; and
 - ii. Has knowledge and experience in Finance, law, administration, human resource management or such other expertise as the appointing authority may consider relevant;
- (b) Be appointed through a competitive recruitment process;
- c) Serve for a term of five years and shall be eligible for re-appointment once for a further term of five years.

7. Removal from office.

- 1) A person appointed to the Board shall be removed from office if-
 - a) the member resigns from office by notice in writing to the Cabinet Secretary;
 - b) Has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - c) Is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - d) Is convicted of an offence involving dishonesty or fraud;
 - e) fails to comply with the requirements of Chapter Six of the Constitution;
 - f) Is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or

- g) Is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board.

8. Remuneration of members of the board.

The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

9. Director- general.

- (1) There shall be a Director General who shall be the Chief Executive Officer of the Authority to be recruited by the Board of the Authority through a competitive process.
- (2) The appointment of the Director-General of the Authority under subsection (1) shall be done by the Cabinet Secretary.
- 3) The Director-General shall hold office for a period of not more than five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for one further term.
- 4) The Director-General shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

10. Duties of the Director-General.

- 1) The Director-General shall—
 - (a) subject to the direction of the Board, be responsible for the day to day management of the Authority;
 - (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Authority; and
 - (c) be the secretary of the Board.

11. Delegation of power by the Director-General.

- (1) The Director-General may, from time to time, in writing, either generally or particularly, delegate the exercise of any powers or the performance of any duties conferred on him under

this Act to such person or persons as he may think fit, but such delegation shall not affect the exercise of such powers or performance of such duties by the Director-General.

(2) Any act done pursuant to a power delegated under subsection (1) shall have the same effect as if done by the Director-General.

(3) Every officer purporting to act pursuant to any delegation under this section, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of such delegation.

12. Appointment of Secretary to the Board.

1) There shall be a Secretary to the Authority who shall be appointed by the Board.

2) The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

3) In the performance of his or her duties under this Act, the Secretary shall be responsible to the Director-General.

4) The Board may in the absence of the Secretary appoint any member of the Board or staff of the Authority to temporarily perform the functions of the Secretary under subsection (2).

5) Functions delegated under subsection (3) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine.

13. STAFF

The Board may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine.

14. Seal of the Authority

(1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Secretary to the Authority.

(2) The affixing of the seal shall be authenticated by the Director-General and the Secretary or some other person authorised in that behalf by a resolution of the Board.

(3) A contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without

seal on behalf of the Authority by the Secretary or a person generally or specifically authorised by the Board in that behalf.

(4) A document purporting to be a document under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved

PART IV- LICENSING

15. Commercial sex establishments

(1) Commercial sex business and services shall be conducted in premises known as studios.

(2) The establishments referred to in subsection (1) shall be-

- (a) licensed under this Act;
- (b) managed by a manager registered under this Act;
- (c) located at least four hundred meters from public buildings, schools and places of worship;
- (d) equipped with condoms and lubricants; and
- (e) display a notice informing clients of the obligation to use a condom during sexual intercourse.

16. The licensing committee.

1) There shall be a committee to be known as the Commercial Sex Licensing Committee which shall—

- (a) issue licenses in accordance with this Act; and
- (b) perform such other functions as may, from time to time be allocated to it by the cabinet secretary.

2) The Licensing Committee shall, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate.

- 3) The Licensing Committee shall consist of —
- a) the police Commissioner of the who shall be the chairperson;
 - b) the Medical Officer of Health;
 - c) Officer Commanding Police Division;
 - d) one person nominated by every local authority in the county;
 - e) three residents of the county, appointed by the Board at least two of whom shall be women; and
 - f) One person designated by the relevant agency who shall be the secretary to the Licensing Committee.
- 4) The authorized officers in charge of the county appointed pursuant to section 50 shall attend the meetings of the Licensing Committee in an ex officio capacity.
- 5) The conduct of business and affairs of the Licensing Committee shall be in such manner as may be prescribed.
- 6) The relevant agency shall provide secretariat services for the Licensing Committee.

17. Licence for premises.

- 1) The Licensing Committee shall not grant a new licence for Commercial sex to be conducted on the premises unless the Licensing Committee is satisfied —
- a) that it would be in the public interest for provision to be made on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law:

Provided that no licence shall be granted to any premise in any institution of basic education including primary and secondary schools or any residential area as have been demarcated by or under the relevant written laws;

b) that the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements; and

c) that the premises in respect of which the application is made are located at least four hundred metres from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years.

18. Validity and renewal of licences.

1) Except as otherwise provided in this Act, the license Committee shall, subject to this Part, grant , renew , transfer or remove a licence, and shall embody therein such conditions as it will deem appropriate , or refuse to grant , renew , transfer , withdraw or cancel a licence.

2) Every licence renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Licensing Committee.

3) Every grant of a licence or its every renewal or transfer shall—

a) be subject to the payment of such fee or fees as may be prescribed; and

b) expire at the end of twelve months from the date of issue;

4) Where an application for the renewal of a licence has been made and the Licensing Committee has not by the date of expiration of the licence reached a decision thereon, such licence shall continue in force until the decision of the Licensing Committee is made known.

5) Where an application for a licence has been refused, or a licence has been cancelled, no subsequent application by the former applicant or licensee for a licence of the same description shall be considered by the Licensing Committee during the period of six months from the date of such refusal or cancellation, except at the discretion of the Licensing committee.

19. Appeal to High Court.

An applicant whose application for a new licence, to renew or transfer a licence has been refused or cancelled shall within twenty -one days of such refusal appeal against such refusal to the High Court.

20. Transfer of licence.

(1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his licence, he may apply in writing to the District Committee for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the Licensing Committee may, if it thinks fit, grant a transfer of such licence.

(2) No further fee shall be payable in respect of a licence granted under subsection (3) if, at the date of the grant, the licence which was temporarily transferred was valid for a period of more than six months.

(3) In the event of the death, bankruptcy or unsoundness of mind of a licensee, or in any similar event to which the Licensing Committee declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager , as the case may be or any other person approved by the Licensing Committee , to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the licensing Committee .

(4) Every person to whom a licence may have been transferred under subsection (1) , and every person permitted to carry on a business without a transfer or grant of a licence in pursuance of subsection (3) , shall possess all the rights and be liable to all the duties and obligations of the original licensee .

21. Display of licence.

- 1) A licence shall be prominently and conspicuously displayed on the premises to which it relates;
- 2) A licensee who fails or neglects so to display his licence commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings two hundred thousand.
- 3) A person causing or permitting to be on his premises or on premises under his control any words, letters or sign falsely importing that he is a licensee commits an offence and shall be liable upon conviction to a fine not exceeding Kenya shillings two hundred thousand or an imprisonment term not exceeding twelve months or both.

22. Registration of a commercial sex worker.

- (1) A person is eligible for registration as a commercial sex worker if that person -
 - (a) is above eighteen years of age;
 - (b) is unmarried;
 - (c) has the right to live and work in Kenya;
 - (d) is free from HIV/AIDS and any Sexually Transmitted Disease; and
 - (e) does not suffer from mental illness or drug addiction.

- (2) The application under subsection (1) shall contain-
 - (a) The proposed name and address of the establishment;
 - (b) Name, address of the owner(s) of the establishment
 - (c) A valid trade business license.
 - (d) Security plan for the establishment;
 - (e) Details of employees working in the establishment; and
 - (f) Current bank statement

23. Application for practicing license.

- 1) A person intending to offer commercial sex services shall make an application to the County committee in the county where they are premised in the prescribed Form in Schedule 1 and shall pay a prescribed fee as per Schedule 2.
- 2) The application under subsection (1) shall contain-
 - (a) Certified copy of birth certificate or identity card;
 - (b) A recent medical examination report;
 - (c) Kenya Revenue Authority PIN Certificate; and
 - (d) Certificate of good conduct.
- 3) The medical examination report in subsection (2) (b) shall-
 - (a) be issued by a qualified and registered medical practitioner; and
 - (b) The examination should be conducted at least one month prior to application.

24. Grant of a practicing License.

- (1) The licensing Committee shall, after considering the application under section 14, indicate in writing whether it objects to the grant of the license applied for.
- (2) Where the licensing Committee has no objection to the application under section 14, it shall grant a license to the applicant upon payment of the prescribed fee.
- (3) Where the licensing Committee is not satisfied with the application under subsection (1), it may-
 - (a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or
 - (b) make comments and recommendations thereon and return it to the applicant within thirty days.
- (4) A person dissatisfied with decision of the Licensing Committee may Appeal to the Authority for review.
- (5) A license issued under this section shall be valid for a period of one year from the date of issue

PART V – INSPECTION AND ENFORCEMENT

25. Authorised officers.

- 1) The cabinet secretary shall, upon recommendation by the Authority, appoint for each county a person or class of persons to be authorised officers for purposes of this Act.
- 2) The Cabinet Secretary shall issue a certificate of appointment to every person appointed under this section.
- 3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act—
 - a) Medical health officers appointed under the Medical Practitioners Act (Cap. 242);
 - b) police officers employed under the National Police Service Act
 - c) other person upon whom any written law vests functions of the maintenance of law and order.

26. Places authorized officers may enter

- 1) For the purposes of ensuring compliance with this Act, an authorised officer may, at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of this Act.
- 2) An authorised officer entering premises under this section shall, if so required , produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 18 (2) .
- 3) For the purposes of the inspection, the inspector shall—
 - a) conduct reasonable inspections:

- b) take photographs and measurements and make sketches and recordings:
 - c) require the following persons to provide information or assistance reasonably required by the inspector:
 - d) a person who operates the business of prostitution, or an employee or agent of that person;
 - e) a sex worker or client of the business of commercial sex; or
 - f) take copies of the information referred to in paragraph (c).
- 4) An inspector shall seize and retain anything in premises entered under this section that the inspector has reasonable grounds to believe will be evidence of the commission of an offence under this Act.
- 5) An inspector shall take a person acting under the inspector's direct supervision into the premises to assist him or her with the inspection.

27. Powers of officers

- 1) In carrying out an inspection in any place an authorised officer shall—
- a) inspect the premises or anything referred to in that section;
 - b) require a person in such place to produce for inspection, in the manner and form requested by the officer;
 - c) conduct medical examinations or tests on commercial sex workers; or
 - d) require a person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act.

28. Entry of dwelling place

- 1) An authorised officer shall not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 22.

29. High Court to issue warrant

1) Upon an ex parte application, a magistrate or judge of the High Court, shall issue a warrant authorising the authorised officer named in the warrant to enter and inspect a dwelling place, subject to the conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that —

- a) the dwelling place is a place referred to in section 28;
- b) entry to the dwelling place is necessary for the administration or enforcement of this Act; and
- c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

2) The time of such entry shall be between six o' clock in the forenoon and six o'clock in the afternoon of any day of the week.

30. Requirements when carrying out inspection.

1) An authorised officer shall, on entering premises under section 27 and when reasonably requested at a subsequent time, produce—

- a) evidence of his or her designation or appointment as an inspector;
- b) evidence of his or her identity; and
- c) if entering a home under a warrant issued under section 27(2), that warrant.

2) If the owner or occupier of the premises is not present at the time an inspector enters and inspects the premises, the inspector must—

- a) leave in a prominent location at those premises a written statement that includes the following information;
- b) the time and date of the entry;
- c) the name of the person who entered the premises;
- d) the fact that the person is an inspector;
- e) the reasons for the entry;
- f) the address of the office of the authorised ministry to which enquiries should be made; and

- g) take all other reasonable steps to give that information to the owner or occupier of the premises.

31. Use of force.

An authorised officer executing the warrant issued under section 29 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

32. Assistance of officers.

1) The owner of a place inspected by an authorised officer under this Act or the person in charge of the place and every person found in the place shall—

- a) provide all reasonable assistance to enable the authorised officer to carry out his duties under this Act; or
- b) furnish the authorised officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

2) The inspecting agent in subsection (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection.

33. Obstruction of officers

A person who obstruct, or knowingly make a false or misleading statement to an authorised officer carrying out duties under this Act commits an offence and shall be liable upon conviction to a fine of five hundred thousand or imprisonment to a term not exceeding one year.

PART VI - HEALTH PROVISIONS

34. Mandatory medical examination.

- 1) It shall be the duty of the licensee to ensure that all persons employed in commercial sex undergo periodic medical examinations by the Designated Health Practitioner.
- 2) Registered commercial sex workers shall be required to undergo mandatory medical examination before application for registration.
- 3) The medical examination shall be conducted every six months.

35. Health card to be issued

- 1) A health card shall be issued upon successful medical examination indicating that one is free from HIV/AIDS and STIs.
- 2) Commercial sex workers shall be required to carry the health card with them at all times during work.

36. Designated hospitals.

- 1) Medical examination shall be conducted in duly registered level five hospitals within the country.
- 2) The fees to be charged by the designated health practitioner shall be as prescribed by the director.

37. Results of examination .

- 1) Results of the examinations shall be entered into each individual's medical record by the designated health practitioner and shall be updated with each examination whenever repeat tests are carried out.

(2) Summary report forms shall be recorded in the prescribed form after medical examination and shall be submitted within 30 days to the director and a copy sent to the employer.

38. Health and safety requirements.

1) Licensed operators of businesses of commercial sex must adopt and promote safer sex practices

2) Every operator of a business of commercial sex shall—

- a) take all reasonable steps to ensure that no commercial sexual services are provided by a sex worker unless a condom is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections;
- b) take all reasonable steps to give health information (whether oral or written) to sex workers and clients;
- c) if the person operates a commercial sex establishment, display health information prominently in that establishment;
- d) not state or imply that a medical examination of a sex worker means the sex worker is not infected, or likely to be infected, with a sexually transmissible infection; and
- e) take all other reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections.

3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Kenya shillings five hundred thousand.

4) The obligations in this section apply only in relation to commercial sexual services provided for the business and to sex workers and clients in connection with those services.

5) In this section, health information means information on safer sex practices and on services for the prevention and treatment of sexually transmissible infections.

39. Sex workers and clients to adopt safer sex practices.

- 1) A person shall not provide or receive commercial sexual services unless he or she has taken all reasonable steps to ensure that a condom or other appropriate prevention is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections.
- 2) A person shall not, for the purpose of providing or receiving commercial sexual services, state or imply that a medical examination of that person means that he or she is not infected, or likely to be infected, with a sexually transmissible infection.
- 3) A person who provides or receives commercial sexual services must take all other reasonable steps to minimise the risk of acquiring or transmitting sexually transmissible infections.
- 4) Every person who contravenes subsection (1), subsection (2), or subsection (3) commits an offence and is liable on conviction to a fine not exceeding Kenya shillings two hundred thousand.

40. Refusal to provide commercial sexual services.

- 1) Notwithstanding provisions for contract for the provision of commercial sexual services, a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to another person.
- 2) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if he or she does not consent, or withdraws his or her consent, to providing a commercial sexual service.
- 3) However, nothing in this section affects a right (if any) to rescind or cancel, or to recover damages for, a contract for the provision of commercial sexual services that is not performed.

40. Protection of persons under 18 years.

- 1) Persons under the age of eighteen shall not engage in commercial sex.

- 2) No person shall assist person less than eighteen years of age in providing commercial sexual services
- 3) No person shall cause, assist, facilitate, or encourage a person under 18 years of age to provide commercial sexual services to any person.
- 4) No person shall receive earnings from commercial sexual services provided by person under 18 years
- 5) No person shall receive a payment or other reward that he or she knows, or ought reasonably to know, is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age.
- 6) a person shall not contract for commercial sexual services from, or be client of, person under 18 years
- 7) a person shall not enter into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for that person or another person.
- 8) a person shall not receive commercial sexual services from a person under 18 years of age.

Offence to breach prohibitions on use in prostitution of persons under 18 years

- 9) a person who contravenes the above commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years

41. Restrictions on advertising commercial sexual services

- 1) Advertisements for commercial sexual services shall not be—
 - a) broadcast on radio or television;
 - b) published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical; or
 - c) screened at a public cinema.

2) A person who contravenes the provisions of subsection (1), , commits an offence and is liable on conviction to a fine not exceeding Kenya shillings two hundred thousand ;

3) In this section, advertisement means any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.

PART VIII- TAXATION

42. Commercial sex levy.

1) There shall be established a tax to be known as the commercial sex levy chargeable on the net gains of the income earned from commercial sex.

2) The levy shall be paid to government of Kenya through the Kenya revenue authority.

The levy shall apply to-

- a) Commercial sex Services;
- b) Income earned by commercial sex workers; and
- c) The net gains made by licensed commercial sex establishments.

43. Requirement of a Kenya revenue authority identification pin.

It shall be a requirement upon application for registration and licensing that applicants for commercial sex obtain a KRA PIN number for purposes of taxation.

Rate of taxation.

The rate of the commercial sex levy shall be prescribed by the cabinet secretary upon recommendations by the Authority and in compliance with taxation laws in the country.

44. Period of taxation

The levy shall be paid monthly on all income earned from commercial sex work.

45. Deductions allowable

1) In computing the chargeable income for commercial sex establishments, the following deductions shall be allowed-

- a) The expenses incurred in generating the income
- b) Bad and doubtful debts

PART VII -FINANCES OF THE AUTHORITY

42. Establishment of the fund.

- (1) There is established a fund to be known as Sexual Enterprises Control Fund.
- (2) The fund shall consist of-
 - (a) such license and other fees as may be payable under this Act;
 - (b) such sums as may be realized from property forfeited to the Government under this Act;
 - (c) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
 - (d) moneys earned or arising from any investment of the Fund; and
 - (e) All other sums which may in any manner become payable to, or vested in, the Fund.
- (3) An amount of not less than fifty per cent of the Fund's annual income shall be used to equitably finance the County Licensing Committee in their operations and an additional amount of not less than fifteen per cent shall be used to fund relevant civil society programmes.
- (4) Unless the Treasury otherwise directs, the receipts, earnings or accruals of the Fund 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 of the Fund.
- (5) The Fund Shall be administered by the Director General.

43. Financial year

The financial year of the Authority shall be the period of twelve months ending on the twentieth June in each year.

PART VIII- MISCELLANEOUS PROVISIONS

44. Nature of offences

- 1) Offences under this Act, other than the offences specified under Part shall be cognizable offences unless otherwise provided by law.
- 2) Where a person, his agent or employee commits an offence and shall, on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the person, whether or not such person has been prosecuted.
- 3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.
- 4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.

45. General penalty

- 1) A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

46. Offences and penalties

- 1) the following are the offences under this Act-

- a) A person operating a commercial sex premise without a valid license granted by the licensing Authority commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to imprisonment of a term not exceeding five years or both;
- b) A person who makes a false statement when making an application under section 14 shall be liable upon conviction to a fine not exceeding fifty thousand or to imprisonment of a term not exceeding three months;
- c) A person who makes a false statement when making an application under section 18 commits an offence and shall be liable upon conviction to a fine not exceeding two hundred thousand or to imprisonment of a term not exceeding one year;
- d) A person who knowingly engages in public solicitation of commercial sex commits an offence and shall be liable upon conviction for a fine not exceeding Kenya shillings fifty thousand or an imprisonment term not exceeding six months or both; and
- e) A manager who allows an unlicensed practitioner to work in their premise commits an offence.

47. REGULATIONS.

- 1) The Cabinet Secretary may, on recommendation of the Authority, make Regulations generally for the better carrying out of the objects of this Act.
- 2) Without prejudice to the generality of subsection (1), the Regulations may—
 - a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
 - b) prescribe the recommended minimum rates and service charge for commercial sex work;
 - c) prescribe the licence fees; and
 - d) prescribe the hours within which commercial sex business shall be permitted;

48. TRANSITIONAL

- (1) Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act—

- (a) Was practicing commercial sex shall be deemed to be a licensed commercial sex worker under this act;
 - (b) Was operating a commercial sex establishment shall within one month of commencement of this Act comply with the requirements of this Act.
- (2) This Act repeals section 153, 154, 155 and 156 of the Penal Code CAP 63 laws of Kenya.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons.

The objective of this Bill is to establish a regulatory framework for commercial sex enterprises.

Over the years commercial sex has attracted quite a number of workers and clients generating income for the workers which remains untaxed. The Bill seeks to ensure the regulation of commercial sex enterprises through licensing and registration, provide mechanisms for the protection of the rights and fundamental freedoms of commercial sex workers, promoting health standards in the commercial sex industry and taxation. This will help prevent harassment of commercial sex workers by authorities, help reduce the spread of HIV/AIDS and sexually transmitted diseases, raise revenue for the government through taxation

Part 1 provides the preliminary matters including the definition of certain terms and phrases used in the legislation. This part also sets out the objectives of the Act

Part II Establishes and contains functions of a Sexual Enterprise Authority, provides for management of the Authority which shall vest in the Board of the Authority.

Part III (clauses 15- 24) contain provisions on licensing and registration of commercial sex enterprises.

Part IV (clauses 25- 33) provides for health requirements for commercial sex workers.

Part v contains provisions on taxation

Part V (clauses 42 - 43) is on financial provisions. It establishes the sexual enterprises fund.

Part VII (Clauses 44- 48) contains the miscellaneous provisions

This Bill seeks to repeal sections of the penal code by deleting the provisions under sections 153, 154, 155 and 156 of the Penal Code CAP 63 laws of Kenya that criminalize living off the proceeds of commercial sex. This is intended to allow commercial sex workers to benefit from the proceeds of their work, create jobs, generate income and a source of revenue for the government through taxation and license fees.

Statement as to whether the bill concerns County Governments.

This is not a bill concerning county governments.

Statement as to whether the Bill is money Bill within Article 114 of the Constitution.

The enactment of this bill shall occasion additional expenditure of public funds.

Statement on limitation of rights and fundamental freedoms.

This bill shall not limit any fundamental rights or freedoms

Dated on 18th October 2018

E8 AND E18 STUDENTS

SEXUAL ENTERPRISES (MARKETING AND ADVERTISEMENT) RULES, 2018.
ARRANGEMENT OF RULES.

1. Short Title.
2. Advertising.
3. Contents of an Advertisement.
4. Forms of advertisement.
5. Time of advertisement.
6. Public activities
7. Offences.

IN EXERCISE of powers conferred by section x(insert section) of the Sexual Enterprises Act, No. 20 of 2018, the Cabinet Secretary for the time being responsible for Labour and Social Protection, on recommendation of the Sexual Enterprises Authority and upon consultation with lead agencies, and in fulfillment of the requirement of public participation makes the following Rules.

SEXUAL ENTERPRISES (MARKETING AND ADVERTISEMENT) RULES, 2018.

[L.N./....]

1. Short title.

These Rules may be cited as the Sexual Enterprises (Marketing and Advertisement) Rules, 2018.

2. Interpretation.

Unless the context otherwise requires-

“**advertisement**” means a notice or announcement in public medium promoting sexual business.

3. Advertisement.

A Sexual Practitioner shall not advertise their services other than in accordance with these Rules.

4. Contents of an advertisement.

(1) A Sexual Practitioner may only provide the following information in and advertisement-

- a) Identity of a Sexual Practitioner;
- b) Identity of the Sexual Practitioner's Sexual Establishment;
- c) Statement that the practitioner holds a valid licence;
- d) Statement that the practitioner is medically fit;
- e) Hours of business of the practitioner or the practitioner's Sexual Establishment; or
- f) Period of experience

(2) A practitioner shall not provide the following information in an advertisement under this Rules-

- (a) name or identity of a client of the Practitioner or the Practitioner's Establishment
- (b) picture or description of the practitioner's skin complexion or body orientation;
- (c) types of sexual services the Sexual Practitioner offers; or
- (d) a demonstration of the services the Practitioner offers.

5. Forms of Advertisement.

(1) A practitioner may advertise under these Rules in the following forms-

- (a) website requiring authentication by national identification number for access;
- (b) television;
- (c) radio; and
- (d) booklets maintained inside Sexual Establishments.

(2) A practitioner shall not advertise under these Rules in a newspaper, magazine or in the form of an illuminated billboard.

6. Time of advertisement.

An advertisement in section 5 1 (b) and (c) shall only take place between 23 Hours and 0004 Hours both hours inclusive.

7. Public activities.

A practitioner attending a public activity may only indicate in a publication, their name and the fact that they are Sexual Practitioners.

8. Misconduct

A practitioner commits an offence under these Rules if they do any Act attracting clients contrary to the provisions of these Rules.

DATED this 18th day of October 2018.

UkurYattani,
Cabinet Secretary for Labour and Social Protection.

THE SEXUAL ENTERPRISES (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

Clause

1. Short title.
2. Register of Practitioners' licences.
3. Register of Sexual Establishments' licences.

THE SEXUAL ENTERPRISES (AMENDMENT) BILL, 2018

A BILL for,

**AN ACT of parliament to provide for the maintenance of Sexual Practitioner's licences,
Sexual Establishments licences; and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows-

1. This Act may be cited as the Sexual Enterprises (Amendment) Act, 2018.
2. The Principle Act is amended by inserting the following new subsections immediately after section 36.

36A. Register of Practitioners' licences.

- (1) The Board shall keep a register, in such form as it may determine, of all Sexual Practitioner's licences issued under this Act and shall enter therein in respect of every licence—
 - (a) the full names and identity card number of the practitioner;
 - (b) the place of business in respect of which the licence is granted;
 - (c) a unique identification number of a practitioner;
 - (d) the date of expiry of the licence;
 - (e) particulars of any amendment to the licence;
 - (f) particulars of any revocation or suspension of the licence;
 - (g) any other particulars the Board may require to be recorded.
- (2) Any person may, during working hours and on payment of the prescribed fee, inspect the register of licences:

Provided that a person who is—

- (a) a member of the police force or a public officer acting in the course of his duty;
- (b) a licensed practitioner;
- (c) a Sexual Enterprises Inspectors; or
- (d) authorized in writing by the Board, may inspect the register without payment of any fee.

36B. Register of Sexual Establishments' licences.

- (3) The Board shall keep a register, in such form as it may determine, of all Sexual Establishments' licences issued under this Act and shall enter therein in respect of every licence—
 - (a) the full names and identity card number of the proprietor of the establishment;
 - (b) name of the establishment;
 - (c) geographical location of the Establishment;
 - (d) a unique registration number for the establishment;
 - (e) the total number of licensed practitioners operating in the establishment and their unique identifying numbers;

- (f) the date of expiry of the licence;
 - (g) particulars of any amendment to the licence;
 - (h) particulars of any revocation or suspension of the licence;
 - (i) any other particulars the Board may require to be recorded.
- (4) Any person may, during working hours and on payment of the prescribed fee, inspect the register of Sexual Establishment licences:

Provided that a person who is—

- (e) a member of the police force or a public officer acting in the course of his duty;
 - (f) a licensed practitioner;
 - (g) proprietor of a licensed Sexual Establishment;
 - (h) a Sexual Enterprises Inspectors; or
 - (i) authorized in writing by the Board, may inspect the register without payment of any fee.
- 3.** Section 29 of the Principal Act is amended by deleting the word “Board” wherever it occurs in the section and substituting thereof with the words “Appels Committee.”
- 4.** The Principle Act is amended by deleting section 30.

Dated the 19th October, 2018.

E8,
Leader of the Majority Party.