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NATIONAL ASSEMBLY BILLS, 2021

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THE TRAFFIC (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Traffic Act, *Cap. 403* and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Traffic (Amendment) Act, 2021. Short title.

2. Section 4 of the Traffic Act (in this Act, referred to as “principal Act”), is amended in subsection (2) by inserting the following new definition in its proper alphabetical sequence— Amendment of section 2 of *Cap. 403*.

“Authority” has the meaning assigned to it under the National Transport and Safety Authority Act.” No. 33 of 2012.

3. Section 16 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection— Amendment of Section 16 of *Cap. 403*.

“(2) Every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority.

(3) An inspection under subsection (2) shall be conducted by the Authority or persons authorized in writing by the Authority”.

4. Section 44 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection— Amendment of Section 44 of *Cap. 403*.

“(1). Any person who, when driving or attempting to drive, or in charge of a motor vehicle on a road or other public place, is under the influence of an alcoholic drink or a drug beyond the prescribed limits, shall be guilty of an offence and, liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding two years or to both.”

5. Section 70 of the principal Act is amended by deleting subsection (5B). Amendment of Section 70 of *Cap. 403*.

6. Section 103A of the principal Act is amended by deleting subsection (4). Amendment of section 103A of *Cap. 403*.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of this Bill is to amend the Traffic Act, *Cap. 403* to align it with the Constitution to facilitate implementation of traffic laws and regulations.

The Bill also seeks to provide a framework for development of strategies to ensure that operations in the traffic sector are conducted in compliance with the prevailing regulations.

The Bill further seeks to harmonize the provisions of principal Act, the National Transport Safety Authority Act, *No. 33 of 2012* and the regulations made under the Act with other traffic related laws for the safety of road users and the general public.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill seeks to amend section two of the principal act to provide for the definition of the term “Authority” as provided for under the National Transport and Safety Authority Act.

Clause 3 of the Bill seeks to amend section 16 of the principal Act to anchor the outsourcing of inspection into law by providing that inspection can be done by persons authorized by the Authority other than the Authority itself and to provide the frequency within which inspection shall be done.

Clause 4 of the Bill seeks to amend section 44(1) of the principal Act since Section 44(1) as obtains currently contains a subjective test which may not be easily implemented with such words as “*as to be incapable of having proper control of the vehicle*”. The amendment shall ensure that this test be an objective one by providing for such measurable and scientific applications such as prescribed limits hence the amendment.

Clause 5 of the Bill seeks to amend section 5B of the principal Act to cure the frequent misinterpretation of the section which provides that a person who violates the speed limit prescribed for a road under subsection (1A) by more than twenty kilometers per hour commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than three months, or a fine of not less than twenty thousand, or both.

Some entities interpret section 5B to mean a person does not commit an offence unless the speed limit is exceeded by more than 20km/h, while other entities including the Authority, argue that the section creates a minimum penalty for persons who violate the speed limit by more than 20km/h.

Clause 6 of the Bill seeks to amend the principal Act by deleting section 103A(4) of the principal Act to provide for practicability in operation of the transport industry and ease implementation of the Act.

Statement on delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement on how the Bill affects county governments

This Bill concerns county governments in terms of Article 110 (1) of the Constitution as it affects the functions and powers of county governments as set out under Part 2 of the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill, within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated 26th August, 2021

HON. KASSAIT KAMKET,
Member of Parliament.

Section 2 of Cap. 403 which it is proposed to amend—

In this Act, unless the context otherwise requires—

“authorised officer” means a person appointed as such under section 3(4);

“Authority” means the National Transport and Safety Authority established under the National Transport and Safety Authority Act; “bicycle” means any bicycle or tricycle not self-propelled; “cattle” includes oxen, bulls, cows, horses, camels, mules, asses, sheep, goats and swine;

“certifying officer” means the person appointed to be the certifying officer under subsection (2) of section 3;

“commercial vehicle” means a motor vehicle constructed or adapted for the carriage of goods or burdens of any description in connection with any trade, business or agriculture, but does not include any type or class of motor vehicle which the Authority may, by notice in the Gazette, declare not to be commercial vehicles for the purposes of this Act;

“computerized motor vehicle registration system” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to registration records of motor vehicles and trailers, the licensing of drivers, and the keeping of such records in relation thereto as are required by this Act;

“dealer” means any person who deals by way of business in motor vehicles or trailers; “dealer’s general licence” means a licence issued under section 23;

“deregistration certificate” means a deregistration certificate issued under section 6A(2)

“drive”, in relation to a motor vehicle, includes the steering of a motor vehicle; “driver” means any person who drives or guides, or is in actual physical control of, any vehicle or cattle on any road;

“driving licence” means a licence to drive a motor vehicle issued under this Act, and any document deemed to be a driving licence by any rules made under this Act;

“driving test examiner” deleted by Act No. 18 of 2018, Sch.; “heavy commercial vehicle” means a commercial vehicle whose tare weight exceeds six thousand seven hundred and twenty pounds;

“highway authority” means the Minister for the time being responsible for Public Roads or any other Authority or body to whom the Minister delegates powers subject to such terms and conditions as he may deem appropriate;

“information technology” means any equipment or software for use in storing, retrieving, processing or disseminating information;

“inspection certificate” means a certificate affixed to a vehicle under section 17A; “inspector” means any person appointed to be an inspector of vehicles under subsection (3) of section 3;

“invalid carriage” means a motor vehicle specially designed and constructed for the use of persons suffering from some physical defect or disability;

“licensing officer” means a licensing officer appointed under section 3;

“manufacturer” means a manufacturer of motor vehicles and trailers;

“matatu” means a public service vehicle having a seating accommodation for not more than twenty-five passengers exclusive of the driver, but does not include a motor-car;

“motor-car” means a motor vehicle having seating accommodation for not more than ten passengers excluding the driver, but does not include a motorcycle;

“motorcycle” means a motor vehicle with less than four wheels the weight of which unladen does not exceed eight hundred weights;

“motor omnibus” means a public service vehicle having seating accommodation for more than twenty-five passengers exclusive of the driver;

“motor vehicle” means any mechanically propelled vehicle, excluding any vehicle running on a specially prepared way such as a railway or tramway or any vehicle deriving its power from overhead electric power cables or such other vehicles as may from time to time by rules under this Act be declared not to be motor vehicles for the purposes of this Act;

“owner”, in relation to a vehicle which is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of the vehicle under that agreement;

Section 16 of Cap. 403 which it is proposed to amend—

16. (1) An application for a license under this Part shall be made to a licensing officer in the prescribed form accompanied by the fee payable and the vehicle registration book.

Application for
licence

(2) Every vehicle more than four years old from the recorded date of manufacture shall be subjected to inspection by the motor vehicle inspection unit.

Driving under
influence of drink

44. (1) Any person who, when driving or attempting to drive, or when in charge of a motor vehicle on a road or other public place, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(2) A person convicted of an offence under this section shall, without prejudice to the power of the court to order a longer period of disqualification, be disqualified, for a period of twelve months from the date of conviction, for holding or obtaining a licence.

Section 70 of Cap. 403 which it is proposed to amend—

Traffic signs.

70. (1) Subject to and in conformity with such general or other directions as may be given by the Minister, a highway authority may cause or permit traffic signs to be placed on or near a road.

(1A) Without prejudice to the generality of subsection (1), a highway authority shall cause to be placed on or near a road traffic signs prescribing speed limits on the road.

(2) Traffic signs shall be of the prescribed size, colour and type except

where the Minister authorizes the erection or retention of a sign of another character.

(3) After the commencement of this Act, no traffic signs shall be placed on or near any road except under and in accordance with subsections (1) and (2) of this section:

Provided that—

- (i) nothing in this subsection shall apply to any notice in respect to the use of a bridge;
- (ii) a highway authority or police officer of or above the rank of Inspector may authorize the erection of any traffic sign for any special purpose for a period not exceeding seven days, and such traffic sign shall be deemed to be lawful even though it does not conform to the requirements of this section.

(4) All traffic signs shall be deemed to have been lawfully erected until the contrary is proved.

(5) A highway authority may, by notice in writing, require the owner or occupier of any land on which there is any traffic sign or any object which so closely resembles a traffic sign that it might reasonably be taken to be such a sign to remove it, and if any person fails to comply with such a notice the highway authority may effect the removal, doing as little damage as may be, and may recover as a civil debt recoverable summarily from the person so in default the expense incurred in so doing:

Provided that this subsection shall not apply in the case of any sign or object so long as its retention is expressly authorized by the highway authority.

(5A) The driving licence of a person who has been convicted for the violation of a speed limit prescribed for a road under subsection (1A) shall be invalidated for a period not less than three years—

(a) if the violation of the limit is by more than twenty kilometres per hour; and

(b) the violation is repeated three or more different times.

(5B) A person who violates a speed limit prescribed for a road under subsection (1A) by more than twenty kilometres per hour commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than three months, or a fine of not less than twenty thousand shillings, or both.

Section 103A of Cap. 403 which it is proposed to amend—

Uniforms and
special badge.

103A. (1) Every driver and every conductor of a public service vehicle shall wear a special badge and uniform.

(2) The uniform referred to in subsection (1) shall be prescribed by the Registrar of Motor Vehicles and shall, in the case of a driver, be navy blue in colour and in the case of a conductor, be maroon in colour.

(3) The special badges required under subsection (1) shall be provided by the Registrar of Motor Vehicles upon satisfaction of all requirements and upon payment of the prescribed fee.

(4) Every driver of a public service vehicle shall undergo compulsory testing after every two years to ascertain his or her competence.

(5) Every owner of a public service vehicle shall employ at least one driver and one conductor who shall be the holder of a

certificate of good conduct issued by the relevant authority.

(6) Every conductor or driver of a public service vehicle shall only take up employment as such upon being vetted pursuant to subsection (5) and shall be paid a permanent monthly salary by the owner of the public service vehicle.

(7) A person who contravenes or fails to comply with the provisions of this section commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding twelve months, or to a fine of not less than ten thousand shillings, or both.

