

NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

SPECIAL ISSUE

Kenya Gazette Supplement No. 225 (National Assembly Bills No. 60)



REPUBLIC OF KENYA

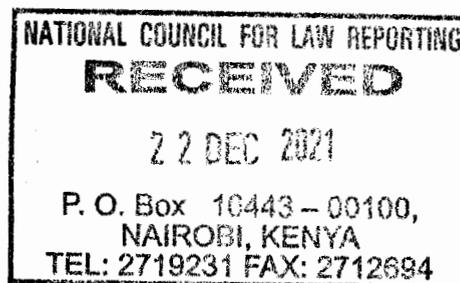
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 3rd December, 2021

CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Traffic (Amendment) Bill, 2021	1791



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;