



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – THIRD SESSION**

**THE NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, FEBRUARY 27, 2019 (AFTERNOON)**

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker

4. **PAPERS LAID**

The following Papers were laid on the Table –

- a) Annual Reports and Financial Statements in respect of the following Institutions for the Financial year 2017/2018: -
  - (i) National Police Service Commission;
  - (ii) Teachers Service Commission;
  - (iii) National Gender and Equality Commission (NGEC);
  - (iv) Public Procurement Regulatory Authority; and,
  - (v) Kenya Ports Authority.
- b) The Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June, 2018 and the certificates therein: -
  - (i) University of Nairobi Enterprises and Services Limited;
  - (ii) Drought Resilience and Sustainable Livelihood Programme by the Ministry of Agriculture, Livestock, Fisheries and Irrigation;
  - (iii) Regional Pastoral Livelihoods Resilience Project by the Ministry of Agriculture, Livestock, Fisheries and Irrigation;
  - (iv) Strengthening Fertilizer Quality and Regulatory Standards in Kenya Project by the Ministry of Agriculture, Livestock, Fisheries and Irrigation;
  - (v) Rice-Based Market Oriented Agriculture Promotion Project by the Ministry of Agriculture, Livestock, Fisheries and Irrigation;
  - (vi) Agricultural Sector Development Support programme by the Ministry of Agriculture, Livestock, Fisheries and Irrigation; and,
  - (vii) Standards and Market Access Programme by the Ministry of Agriculture, Livestock, Fisheries and Irrigation.

*(The Leader of the Majority Party)*

- (viii) Delegation Report to the Sessions of the African, Caribbean and Pacific (ACP) Parliamentary Assembly and the African, Caribbean and Pacific-European Union (ACP-EU) Joint Parliamentary Assembly -
- (ix) Reports of the Kenya delegation to the Sessions of the African, Caribbean and Pacific (ACP) Parliamentary Assembly and the African, Caribbean and Pacific-European Union (ACP-EU) Joint Parliamentary Assembly on: -
- a) The 50<sup>th</sup> Session of the ACP Parliamentary Assembly and the 35<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium from 13<sup>th</sup> to 20<sup>th</sup> June, 2018;
  - b) The 51<sup>st</sup> Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium from 9<sup>th</sup> to 11<sup>th</sup> October, 2018; and,
  - c) The 52<sup>nd</sup> Session of the ACP Parliamentary Assembly and the 36<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Cotonou, Benin, from 25<sup>th</sup> November, 2018 to 5<sup>th</sup> December, 2018.

*(The Hon. Ali Dido Rasso, MP - Member of the Delegation)*

- (x) Report of the Public Accounts Committee (PAC) on its examination of the Report of the Auditor General on the Financial Statements for the Independent Electoral and Boundaries Commission for the year ended 30<sup>th</sup> June 2017.

*(The Hon. Opiyo Wandayi - Chairperson, Public Accounts Committee)*

5. **NOTICES OF MOTION**

The following Notices were given –

- (a) **Notice of Motion - Reports of the Kenya delegation to the Sessions of the African, Caribbean and Pacific (ACP) Parliamentary Assembly and the African, Caribbean and Pacific-European Union (ACP-EU) Joint Parliamentary Assembly**

**THAT**, this House **notes** the Reports of the Kenya delegation to the Sessions of the African, Caribbean and Pacific (ACP) Parliamentary Assembly and the African, Caribbean and Pacific-European Union (ACP-EU) Joint Parliamentary Assembly laid on the Table of the House on Wednesday, February 27, 2019 as follows: -

- (i) Report of the 50<sup>th</sup> Session of the ACP Parliamentary Assembly and the 35<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium from 13<sup>th</sup> to 20<sup>th</sup> June, 2018;
- (ii) Report of the 51<sup>st</sup> Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium from 9<sup>th</sup> to 11<sup>th</sup> October, 2018; and,

- (iii) Report of the 52<sup>nd</sup> Session of the ACP Parliamentary Assembly and the 36<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Cotonou, Benin, from 25<sup>th</sup> November, 2018 to 5<sup>th</sup> December, 2018.

*(Hon. Ali Dido Rasso - Member of the Delegation)*

(b) **Notice of Motion - Report on the examination of the Report of the Auditor General on the Financial Statements for the Independent Electoral and Boundaries Commission**

**THAT**, this House **adopts** the Report of the Public Accounts Committee on its examination of the Report of the Auditor General on the Financial Statements for the Independent Electoral and Boundaries Commission for the year ended 30<sup>th</sup> June 2017, laid on the Table of House on Wednesday, February 27, 2019

*(Chairperson, Public Accounts Committee, Hon. Opiyo Wandayi)*

(c) **Notice of Motion - Diagnostic Testing, Screening and Treatment of Diabetes in Workplaces and Community Settings**

**THAT**, aware that the prevalence of diabetes in the country has been on the increase with approximately 458,900 cases reported in Kenya according to the International Diabetes Federation Report of 2017, representing two per cent of the total adult population; deeply concerned that many people with diabetes continue to lose their lives each year due to lack of awareness of the disease, inability to afford management of the condition and the expensive medication; noting that people living with diabetes can live longer and lead comfortable life if they receive the right medical care and support to help them manage the disease; further noting that there remains inadequate funding for the implementation of the effective strategy for the prevention, detection and management of diabetes thus hindering Kenya's achievement of the Sustainable Development Goal 3 and Vision 2030; recognizing the importance of early diagnosis of diabetes, aiding treatment, monitoring treatment progress, monitoring recovery and preventing life threatening and expensive complication, **this House urges** the Government to institutionalize diagnostic testing for diabetes in work places and community settings, provide for education, prevention and subsidized routine diabetes screening and treatment and put in place measures to ensure an effective diabetes care system at all levels of health care.

*(Hon. Ruweida Mohamed Obo)*

(d) **Notice of Motion - Development and Implementation of Regulations for Management of Fares charged by Public Service Vehicles**

**THAT**, aware that road transport is the most widely used means of transportation in Kenya; further aware that *Matatus*, motor omnibuses and buses provide service to millions of people a day and are the backbone of Kenya's public road transport services; cognizant that the National Transport and Safety Authority Act is mandated by law to among other things, come up with conditions as it may consider fit for the purposes of ensuring that the fares imposed for the carrying of passengers are reasonable and ensure fair competition within the transport industry; concerned that companies,

associations or Savings and Credit Co-operatives (SACCOs) and under whose umbrella the said public service vehicles (PSVs) operate, and who are required to prescribe fares for its Members, tend to take advantage of the non-existence of regulatory policies in the sector thus prescribing exorbitant fares which puts a lot of strain on customers; further concerned that for a long time, commuters have suffered at the hands of PSVs crew who on many occasions increase commuter fare on whimsical grounds including changes in weather; this **House resolves** that the Government develops and implements regulations prescribing the amount of fare to be charged by PSVs for their services to protect customers from exploitation and volatility of the PSV services.

*(Hon. Didmus Barasa)*

## 6. QUESTIONS

The following Questions were asked –

- (i) Question No. 057/2019 by the Member for Isiolo County (Hon. Rehema Dida Jaldesa) to the Cabinet Secretary for Lands regarding the status of implementation of the High Court judgement of 6<sup>th</sup> June, 2017 on Constitutional Petition No. 511 of 2015 concerning the boundary between Isiolo and Meru Counties and actions taken by the Ministry and the National Land Commission to resolve the dispute. Question referred for response before the Departmental Committee on Lands.
- (ii) Question No. 059/2019 by the Nominated Member (Hon. (Prof.) Jacqueline Oduol to the Cabinet Secretary for Labour and Social Protection regarding actions by the Ministry to ensure that children in need of care and protection are placed in “family-based” care. Question referred for response before the Departmental Committee on Labour and Social Welfare.
- (iii) Question No. 060/2019 by the Member for Kinango (Hon. Benjamin Dalu Stephen Tayari) to the Cabinet Secretary for Lands regarding adjudication process at Maji ya Chumvi area in Kinango Constituency. Question referred for response before the Departmental Committee on Lands.
- (iv) Question No. 061/2019 by the Member for Kiambu County (Hon. Gathoni Wamuchomba) to the Cabinet Secretary for Agriculture, Livestock, Fisheries & the Blue Economy regarding importation of eggs into the Country. Question referred for response before the Departmental Committee on Agriculture and Livestock.
- (v) Question No. 062/2019 by the Member for Mathare Constituency (Hon. Anthony Tom Oluoch) to the Cabinet Secretary for Health regarding statistics of patients and bodies detained by private and public hospitals, and mortuaries for non-payment of medical bills or mortuary fees. Question referred before the Departmental Committee on Health.
- (vi) Question No. 063/2019 by the Member for Kilifi North Constituency (Hon. Owen Baya Yaa) to the Cabinet Secretary for National Treasury and Planning regarding status of all projects funded through the Equalization Fund for the FY 2017/2018 and the expected disbursements for the FY 2018/2019. Question referred for response before the Departmental Committee on Finance and Planning.

The following Questions were deferred –

- (i) Question No. 055/2019 by the Member for Molo Constituency (Hon. Francis Kuria Kimani) to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development regarding the poor state of Nakuru-Njoro-Molo road.
- (ii) Question No. 056/2019 by the Member for Kamukunji Constituency (Hon. Yusuf Hassan) to the Cabinet Secretary for Interior and Coordination of National Coordination regarding security of Ethics and Anti-Corruption Commission (EACC) officials while carrying out their duties.
- (iii) Question No. 058/2019 by the Member for Runyenjes Constituency (Hon. Eric Muchangi Njiru) to the Cabinet Secretary for Transport and Infrastructure regarding status of the construction of Kyeni-Kathanjuri-Karurumo road in Runyenjes Constituency.

7. **COMMUNICATION FROM THE CHAIR**

The Speaker issued the following Communication:

**Communication from the Chair regarding the Second Reading of the Constitution of Kenya (Amendment) Bill National Assembly Bill No. 4 Of 2018**

**Honourable Members**, as you are all aware, this afternoon the House will be taking a vote on the question for the Second Reading of the Constitution of Kenya (Amendment) Bill National Assembly Bill No. 4 of 2018, as provided for in Article 256 of the Constitution. Article 256 provides that a Bill to amend the Constitution shall be passed by the House, if it is supported by not less than two-thirds of all the Members of that House at the Second Reading.

**Honourable Members**, you may also be aware that on 17<sup>th</sup> October 2018, I guided the House on procedure for voting on a similar matter during the Second Reading of Constitution of Kenya (Amendment) (No. 2) Bill, National Assembly Bill No. 5 of 2018, by the Member for Kiminini, the Hon. Chris Wamalwa. For avoidance of doubt allow me to further explain the procedure as follows: -

- (i) To ascertain the Members present, I will cause the Division Bell to be rung for 10 minutes.
- (ii) At the end of 10 minutes, the doors shall be locked and the bar drawn. *No member shall enter or leave the House after this stage.*
- (iii) I will then request all Members present in the Chamber to log out of the system.
- (iv) During this log out step, I will require Members without their cards to stand by the public servants benches to be recorded manually by Clerks-at-the-Table and continue staying there until the end the voting process.
- (v) Members with their cards will have 60 seconds to log into the system.
- (vi) Members without cards will be recorded manually.
- (vii) The number of Members present shall displayed on the screens, while the number of Members recorded manually will be tallied by the Clerks-at-the-Table.
- (viii) Both the total Members present as displayed on the screens and Members recorded manually will be tallied.
- (ix) If not less than 233 Members are in the House, the House shall proceed with the Voting. If less than 233 Members, voting shall not proceed.

Honourable Members, to vote electronically, the following will happen-

- (i) I will request all Members to log out of the system.
- (ii) I will thereafter request Members to log into the system. In this case, Members will have 60 seconds to do so.
- (iii) Members without their cards standing by the public servants benches shall have their votes recorded manually by Clerks-at-the-Table by stating whether there are "in favour of" or "against" or "abstains" from the Question, and continue staying there until the end the voting process.
- (iv) I will thereafter put the Question for the Second Reading of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4 of 2018).
- (v) I will therefore allow the system to take count of the members present for 60 seconds before voting.
- (vi) Thereafter, Members will have 60 seconds to vote.
- (vii) All Members shall cast their votes by pressing either the "Yes" "No" or "Abstain" buttons. No Member shall fail to vote either of the two options or record their abstention.
- (viii) As voting is going on, the results of the electronic vote will be displayed on the screens and shown with a "positive" (+) being "Yes", "a negative" (-) being "No" and a "Zero" being Abstention".
- (ix) Results of electronic votes as appearing on the screens and votes recorded manually shall be tallied.
- (x) I shall forthwith announce the results and guide on the next course of action, depending with the result of the vote taken.  
Please be advised accordingly".

8. **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2018)**

Motion Made and Question Proposed -

THAT, the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4 of 2018) be now read a Second Time

*(The Leader of the Majority Party – 20.11.2018)*

Mover relied;

Debate on the Second Reading having been concluded;

Thereupon, the House proceeded to a Division pursuant to Standing Order 72(2) as a Bill to amend the Constitution shall be passed in the House, in both its Second and Third Readings, if it is supported by not less than two-thirds of all Members of the House as provided for in Article 256 of the Constitution.

And the Speaker having directed the Division Bell to be rung for ten minutes to ascertain whether there was the prerequisite number of two-thirds of all Members to enable the House to proceed to an electronic vote;

And upon the expiry of ten minutes, and the doors having been locked and the bar drawn;

And the Speaker having ordered that all Members present in the Chamber to remove and then insert their voting cards into the electronic system in order for the electronic system to record the number of Members present in the Chamber;

And Members present without their cards or whose cards were defective having been recorded manually by the Clerks-at-the-Table;

And both the number of Members recorded electronically and number of Members recorded manually having been tallied;

And the Speaker not satisfied with the accuracy of the electronic system due cases of frequent system experienced in the recent, the Speaker directed the House to proceed to have Members recorded manually;

There being a total of 174 Members ascertained to be present, recorded manually;

And the House having not attained the two-thirds (233) of all Members of the House required to proceed to an electronic vote in support of the Motion for Second Reading of the Bill pursuant to the provisions of Article 256(1)(d) of the Constitution, the Bill was **lost** at Second Reading.

9. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The Third Chairperson in the Chair

**The Insurance (Amendment) Bill (National Assembly Bill No. 21 of 2018)**

Clause 3 - amendment proposed -

**THAT**, clause 3 of the Bill be amended in the proposed new section 5A by -

(a) deleting subsection (1) and substituting therefor the following subsection—

(1) Where an insurer is part of a group, the Commissioner may direct the principal officer to provide any information necessary for effective group-wide supervision.

(b) inserting the following subsection immediately after subsection (2) -

(3) In this section, “group” means an entity carrying on any other business in addition to insurance business.

*(Chairperson, Departmental Committee on Finance and National Planning)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 - further amendment proposed -

**THAT**, the Bill be amended by deleting the proposed new section 5A and substituting therefor the following new section—

Power of the Commissioner on group-wide supervision.

5A. (2) Subject to subsection (1), where the group is a regulated entity, the Commissioner shall request the information through the respective regulator.

(3) The information required under subsection (1) shall be limited to information necessary for safeguarding the policyholders’ interests.

(4) The provisions of the section shall not limit the Commissioner from requesting for information relating to a group’s capital adequacy levels or any other relevant information.

*(Hon. Kimani Ichung’wah)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Clause 3 - as amended agreed to

Clauses 4, 5, 6, 7, 8 & 9 - agreed to

Clause 10 - amendment proposed -

**THAT**, the Bill be amended by deleting clause 10 and substituting therefor the following new clause-

**10.** The principal Act is amended by repealing section 156 and replacing it with the following new sections—

Advance payment of premiums.

**156.** (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed, or unless and until a deposit, of a prescribed amount, is made in advance in the prescribed manner.

(2) Where an insurer engages or, is approached by an intermediary intending to transact insurance business and receive premiums for that insurer, the insurer shall enter into a contract with the particular intermediary.

(3) A contract made between an insurer and intermediary under subsection (2) shall contain such mechanisms or terms as to guarantee that the premiums received by the intermediary are remitted to the insurer.

(4) A premium collected by an intermediary or a cheque received by an intermediary shall be deposited with, or dispatched and received by the insurer within thirty days of receipt by the intermediary.

(5) An intermediary who contravenes subsection (4) shall be guilty of an offence and shall pay a penalty equivalent to twenty percent of the unremitted premiums on each contravention, payable to the Policy Holder Compensation Fund.

(6) A director or employee of an intermediary who contravenes subsection (4) shall on conviction be liable to a fine not exceeding one hundred thousand or to imprisonment for a term of three months or to both.

(7) The Cabinet Secretary may make regulations to give effect to this section.

*(Chairperson, Departmental Committee on Finance and National Planning)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - further amendment proposed -

**THAT**, the Bill be amended by deleting the proposed section 156 and substituting therefor the following new section-

Advance payment of premiums. 156. (1) An insurance broker who receives money for payment of premiums on behalf of an insurer shall remit the premiums to the insurer within thirty days of receiving the money.

(2) An insurer shall only assume risk upon receipt of a first installment of the premiums, which shall not be less than fifteen percent of the total premiums payable by the insured.

Further amendment dropped;

Clause 10 - as amended agreed to

Clause 11 - agreed to

Clause 12 - amendment proposed -

**THAT**, clause 12 of the Bill be amended in the proposed section 204A in subsection (1) by inserting the word “written” immediately after the words “lodge a”;

*(Chairperson, Departmental Committee on Finance and National Planning)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 12 - as amended agreed to

New Clause 7A proposed –

**THAT**, the Bill be amended by inserting the following new clause-

**7A.** Section 87 of the principal Act is amended in subsection (2) by inserting the words “or email or other electronic or telecommunication mode” immediately after the word “post”.

*(Chairperson, Departmental Committee on Finance and National Planning)*

Motion made and Question proposed -

THAT, the New Clause 7A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed -

THAT, the New Clause 7A be Part of the Bill

Debate arising;

Question put and agreed to;

New Clause 10A proposed –

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 10-

10A. The principal Act is amended by inserting the following new section immediately after section 156-

Payment of intermediary insurance commission.

**156A.** (1) An insurer shall pay an intermediary insurance commission within thirty days of receipt of premiums.

(2) An insurer who contravenes this section shall be guilty of an offence and shall pay a penalty equivalent to twenty percent of the unpaid intermediary insurance commission on each contravention.

(3) A penalty under this section shall be paid into the Policy Holders Compensation Fund.

*(Chairperson, Departmental Committee on Finance and National Planning)*

Motion made and Question proposed -

THAT, the New Clause 10A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed -

THAT, the New Clause 10A be Part of the Bill

Debate arising;

Question put and agreed to;

New Clause 11A proposed -

**THAT** the Bill be amended by inserting the following new clause immediately after clause 11-

**11A.** Section 119 of the principal Act is amended by inserting the words “or email or other electronic mode”

*(Chairperson, Departmental Committee on Finance and National Planning)*

Motion made and Question proposed -

THAT, the New Clause 11A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed -

THAT, the New Clause 11A be Part of the Bill

Debate arising;

Question put and agreed to;

Clause 2 - amendment proposed -

**THAT**, clause 2 of the Bill be amended -

(a) by deleting the definition of the term “insurance fraud”;

(b) by deleting paragraph (b) and substituting therefor the following paragraph-

(b) in the definition of “insurance business” by inserting the following new paragraph immediately after paragraph (d)-

(e) micro-insurance business;

(f) social insurance schemes.

*(Chairperson, Departmental Committee on Finance and National Planning)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - Further amendment proposed –

**THAT**, clause 2 of the Bill be amended—

(a) in paragraph (a) by inserting the following definitions in the proper alphabetical sequence-

“independent agent” means a person who not being a salaried employee of an insurer or reinsurer and in consideration of a commission solicits or procures insurance business for one or more insurers, brokers or insured persons;

“tied agent” means a natural person who not being a salaried employee of an insurer or reinsurer and in consideration of a commission solicits or procures insurance business for a single insurer or single insurance group and owes a fiduciary duty to the insurance company or insurance group.

(b) by inserting the following new paragraphs immediately after paragraph (b) –

(c) by deleting the definition of the term “ broker” and substituting therefor the following new definition-

“broker” in relation to an insurer or reinsurer means a person –

- (a) who carries on the business of arranging contracts of insurance whether or not the business is the person’s principal business or is carried on in connection with any other business;
- (b) who is not the employee of the insurer or reinsurer;
- (c) who is not appointed, under a signed agreement as the agent for the insurer for the purposes of receiving money due to the insurer from the insured or from the insured to the insurer; and
- (d) whose fiduciary duty is to the client.

(d) by deleting the definition of the term “intermediary” and substituting therefor the following new definition-

“intermediary” means a broker, an independent agent or tied agent;

*(Hon. (Dr.) Robert Pukose)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Clause 2 - as amended agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

10. **HOUSE RESUMED** - the Second Chairperson in the Chair

**The Insurance (Amendment) Bill (National Assembly Bill No. 21 of 2018)**

Bill to be reported with amendments.

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

*(The Leader of the Majority Party)*

Question of Third Reading deferred to another day

11. **MOTION – REPORT OF THE BUDGET AND APPROPRIATIONS COMMITTEE ON THE 2019/2020 BUDGET POLICY STATEMENT**

Motion made and Question proposed –

**THAT**, this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement and the Debt Management Strategy for 2019/2020 and the Medium-Term, laid on the Table of the House on Wednesday, February 27, 2019.

*(Chairperson, Budget & Appropriations Committee)*

Debate arising;

And the time being Seven O'clock, the Second Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

12. **HOUSE ROSE** - at Seven O'clock

**M E M O R A N D U M**

The Speaker will take the Chair on Thursday, February 28, 2019 at 2.30 p.m.

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