

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2017

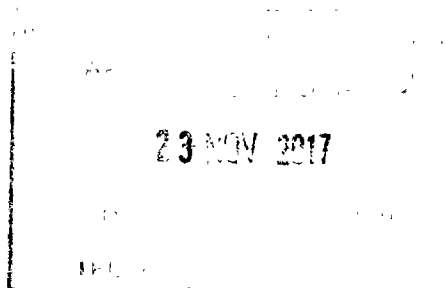
NAIROBI, 2nd November, 2017

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**THE NATIONAL FLAG, EMBLEMS AND NAMES
(AMENDMENT) BILL, 2017**

A Bill for

AN ACT of Parliament to amend the National Flag, Emblems and Names Act to allow members of the public to fly the National Flag in their places of residence, work and business; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Flag, Emblems and Names (Amendment) Act, 2017.

Short title.

2. The National Flag, Emblems and Names Act, (in this Act referred to as the “principal Act”) is amended in section 2 by inserting the following new definition immediately before the definition of the word “motor vehicle”—

Amendment of section 2 Cap. 99.

“Cabinet Secretary” means any Cabinet Secretary responsible for matters relating to the National Flag, Emblems and Names;

3. Section 3 of the principal Act is amended—

Amendment of section 3 Cap. 99.

(a) in the introductory phrase to subsection (1) by deleting the word “Minister” appearing immediately after the words “permission of the” and substituting therefor the words “Cabinet Secretary”; and

(b) in subsection (3) by deleting the word “Minister” appearing immediately after the words “conditions as the” and substituting therefor the words “Cabinet Secretary”.

4. The principal Act is amended by inserting the following new section immediately after section 4A—

Insertion of new section 4B.

Display of the National Flag in private residences.

4B. (1) Despite any other provision of this Act, during a public holiday, a person may, as a sign of patriotism, display the National Flag, at any private residence or

any place of work or business, provided that the display of the National Flag does not undermine the authority or reputation of the State.

(2) The Cabinet Secretary may make rules on the display of the National Flag under subsection (1).

5. Section 8 of the principal Act is amended by deleting the word "Minister" appearing before the words "may, by notice" and substituting therefor the words "Cabinet Secretary".

Amendment of
section 8 Cap. 99.

6. Section 9 of the principal Act is amended in the introductory phrase by deleting the word "Minister" appearing immediately after the word "the" and substituting therefor the words "Cabinet Secretary".

Amendment of
section 9 Cap. 99.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

Patriotism is a national value and principle of governance under Article 10(2)(a) of the Constitution. In this respect, the Bill seeks to allow members of the public to express their patriotism by flying the National flag in their private residence and place of work or business provided this does not undermine the State.

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

The Bill does not delegate legislative power and does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Implementation of the national values and principles under Article 10 of the Constitution is a responsibility of both the National and County Governments. Further, promotion of patriotism has a positive effect on governance at the county level and promotes national cohesion.

The Bill therefore concerns county governments in terms of Articles 110 (1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 17th October, 2017.

MUTULA KILONZO JUNIOR,
Senator.

Section 2 of Cap. 99 that the Bill proposes to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“**motor vehicle**” has the meaning assigned to it in the Traffic Act (Cap. 403);

“**the National Anthem**” means the national anthem, the words and music of which are set out in the Third Schedule to this Act;

“**specified emblem**” means any emblem, seal, flag, pennant, insignia, ensign or coat-of-arms of a kind specified in Part I of the First Schedule to this Act;

“**specified likeness**” means any photograph, drawing or other pictorial representation of the person for the time being holding any of the offices or dignities specified in Part III of the First Schedule to this Act;

“**specified name**” means any of the names and words specified in Part II of the First Schedule to this Act, and includes any abbreviation of any such name;

Section 3 of Cap. 99 that the Bill proposes to amend—

3. Prohibition of improper use of emblems, names and likenesses

(1) Notwithstanding anything contained in any law for the time being in force, no person shall, except with the written permission of the Minister—

- (a) use any specified emblem, specified name or specified likeness, or any colourable imitation thereof, in furtherance of, or display the same as an advertisement for, any trade, business, calling or profession; or
- (b) use any specified emblem, specified name or specified likeness, or any colourable imitation thereof, in the title of any patent, or in any trade mark or design; or
- (c) manufacture or import any article or goods bearing any specified emblem, specified name or specified likeness, or any article or goods on which any title, trade mark or design is used in contravention of paragraph (b) of this subsection.

(2) The provisions of subsection (1)(a) of this section relating to the use of a specified likeness shall not apply to the publication of a *bona fide* news item (whether in a newspaper or by any other medium) or to the publication in a newspaper of any article connected with any *bona*

fide news item other than a news item in the furtherance of, or as advertisement for, any trade, business, calling or profession.

(3) Any permission given under subsection (1) of this section may be given subject to such conditions as the Minister may deem fit.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

Section 8 of Cap. 99 that the Bill proposes to amend—

8. Power to amend First Schedule

The Minister may, by notice in the *Gazette*, amend the First Schedule to this Act.

Section 9 of Cap. 99 that the Bill proposes to amend—

9. Regulations

The Minister may make regulations—

- (a) prescribing the occasions upon which, the persons by whom and the manner in which the National Flag or the Armorial Ensigns may be flown or displayed, as the case may be;
- (b) prohibiting, controlling or restricting the use of any specified emblem, specified likeness or specified name;
- (c) regulating the manner in which application may be made to him for his permission under section 5 of this Act, prescribing the form of any licence by which such permission may be given and fixing any fee for such application and licence;
- (d) generally for carrying this Act into effect.

