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CONTENT

Bill for Introduction into the Senate—	PAGE
The Public Transport (Motorcycle Regulation) Bill, 2023	859

**THE PUBLIC TRANSPORT (MOTORCYCLE
REGULATION) BILL, 2023**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

3—Application.

PART II — REGULATION OF MOTORCYCLES

4—Establishment of the County Motorcycle Transport
and Safety Board.

5—Composition of the Board.

6—Functions of the Board.

7—Registration of motorcycle riders.

8—Cross-county recognition of registration.

9—Savings and Cooperative Societies membership.

10—Training of riders.

11—Responsibilities of an owner.

12—Responsibilities of a rider.

13—Responsibilities of a passenger.

14—Employment Contracts.

15—Engine capacity.

16—Carriage of Passengers.

17—Carriage of Loads.

18—Motorcycle ambulances.

19—Delivery motorcycles.

20—Unauthorized goods.

21—Protective gear.

22—Insurance.

23—Security.

PART III — OFFENCES AND PENALTIES

24—Carriage of persons intending to commit an offence.

25—Riding on pavements and opposite direction.

26—Ganging up by riders.

27—General penalties.

PART IV — MISCELLANEOUS

28—Powers of inspection and enforcement.

29—Regulations.

**THE PUBLIC TRANSPORT (MOTORCYCLE
REGULATION) BILL, 2023**

A Bill for

**AN ACT of Parliament to provide for the regulation of
the bodaboda industry and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Transport
(Motorcycle Regulation) Act, 2023.

Short title.

2. In this Act—

Interpretation.

“Authority” means the National Transport and Safety
Authority established under section 3 of the National Transport
and Safety Authority Act;

No. 33 of 2012.

“Board” means the County Motorcycle Transport and
Safety Board established under section 4;

“bodaboda” means a motorcycle used for commercial
purposes;

“commercial purposes” means the use of a bodaboda for
any trade or business;

“county executive committee” has the meaning assigned to
it in section 2 of the County Governments Act, 2012;

No. 17 of 2012.

“county government” has the same meaning assigned to it
in the County Governments Act, 2012;

“cubic capacity” means the volume of cylinder of a
motorcycle engine;

“customer care” means the provision of courteous and
professional services to customers;

“designated parking” means parking areas or zones set
aside by county governments for motorcycles;

“delivery motorcycle” means a motorcycle that is designed
or adapted primarily for the transportation of goods or other
items, including any motorcycle that is used for the purpose of
delivery or courier services;

“employment contract” means a written or oral agreement
between the owner of a motorcycle and a rider which provides

for the terms and conditions of employment, including remuneration, working hours, duties and responsibilities, and other relevant matters.

“insurance” means a contract of insurance issued by an insurance company registered under the Insurance Act; Cap. 487

“lane-splitting” means the riding of a motorcycle on a public road at a speed not exceeding fifteen kilometres per hour between rows of stationary motor vehicles or, if the motor vehicles are in motion, at a speed which exceeds the speed of those motor vehicles;

“motorcycle” means any mechanically propelled vehicle with less than four wheels the weight of which unladen does not exceed eight hundred kilograms and operated for commercial purposes;

“owner” means the registered owner of a motorcycle;

“passenger” means a person being transported on a motorcycle for commercial purposes;

“reflective jacket” means a vest or jacket made of reflective material worn by a rider or passenger for visibility purposes; and

“rider” means the person operating or person in control of a motorcycle.

3. This Act shall apply to all motorcycles used for commercial purposes including public transport services. Application.

PART II — REGULATION OF MOTORCYCLES

4. There shall be established in every county, a County Motorcycle Transport and Safety Board. Establishment of the County Motorcycle Transport and Safety Board.

5. The Board shall consist of—

- (a) a chairperson appointed by the county governor;
 - (b) the county executive committee member responsible for matters relating to transport;
 - (c) the county executive committee member responsible for matters relating to finance;
 - (d) the County Attorney;
 - (e) the County Police Commander or a representative designated in writing;
- Composition of the Board.

- (f) four persons appointed by county executive committee member responsible for matters relating to transport; and
- (g) two persons appointed by the county executive committee member responsible for matters relating to transport to represent groups with special interests in the motorcycle transportation industry.

6. (1) The Board shall be responsible for the regulation, management, and coordination of all matters relating to the motorcycle transport sector within the county.

Functions of the Board.

(2) Without prejudice to the generality of sub-section (1), the functions of the Board shall include—

- (a) developing policies, regulations, and guidelines on motorcycle transport and safety matters within the county;
- (b) managing and controlling motorcycle transport services within the county, including registration and licensing of motorcycle riders, designate parking and routes;
- (c) ensuring compliance with the provisions of this Act and any other laws related to the transport sector within the county;
- (d) conducting research and collecting data on transport and safety matters within the county; and
- (e) developing and implementing programs to promote road safety, including training and education of riders and passengers.

7. (1) No person shall use a motorcycle for commercial purposes in a county unless it is registered in accordance with this Act.

Registration of motorcycle riders.

(2) A person who wishes to operate a motorcycle for commercial purposes in a county shall register it with the Board.

(3) An application for registration shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(4) The Board shall issue a certificate of registration to the applicant if it is satisfied that the motorcycle meets the requirements prescribed under this Act.

(5) The certificate of registration shall be renewed annually upon payment of the prescribed fee.

8. (1) Notwithstanding any other provision of this Act, a rider who is registered with a Board in one county shall be recognized as registered by any other Board in any other county.

Cross-county recognition of registration.

(2) The recognizing board shall recognize the registration of the rider in the same category as the registering board.

(3) The recognizing board may request for any relevant information or documentation from the registering board for the purpose of verifying the registration details of the rider.

9. (1) A person who owns or operates a motorcycle for commercial purposes shall register with a Savings and Cooperative Societies recognized under the Cooperative Societies Act.

Savings and Cooperative Societies membership.

No. 12 of 1997.

(2) Each Savings and Cooperative Societies shall provide proof of registration of an owner or rider confirming their membership at the request of the Board.

(3) For the purposes of this Act, the membership of a Savings and Cooperative Societies by a rider of a bodaboda shall not be for the purpose of forming a gang or cartel by the riders.

10. (1) A person shall not operate a motorcycle unless they have successfully completed a training course approved by the Board.

Training of riders.

(2) The Board shall ensure that training courses in authorized driving schools include training on—

- (a) safe and defensive riding techniques;
- (b) traffic laws and regulations;
- (c) customer care and etiquette;
- (d) handling of emergency situations;

- (e) basic motorcycle maintenance; and
- (f) security awareness and precautions.

(3) Upon completion of the training course, a rider shall be provided with a certificate.

11. (1) Every owner of a motorcycle operating for commercial purposes shall not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycles and a valid employment contract.

Responsibilities
of an owner.

- (2) Every owner shall issue to the rider—
 - (a) two helmets which comply with the standards established by the Kenya Bureau of Standards and are of the prescribed colour;
 - (b) two reflective jackets which are of the prescribed colour.

12. (1) Every rider of a two-wheeled motorcycle shall—

Responsibilities
of a rider.

- (a) have a valid driving license issued by the Authority;
- (b) have a certificate of registration issued by the Board;
- (c) ensure that they shall not ride or carry a person on a motorcycle without the prescribed protective gear properly fastened;
- (d) not carry more than one person at a time;
- (e) ensure that passengers are carried on a proper seat with foot rests securely fixed to the motorcycle behind the rider's seat;
- (f) ensure that a passenger sits astride the motorcycle;
- (g) ensure that the headlights of the motorcycle are on at all times when riding;
- (h) ensure that loads exceeding fifty kilograms and passengers are not carried at the same time;
- (i) keep the protective gear in a clean, dry and generally wearable condition;

- (j) ensure that the rear number plates are visible at all times;
- (k) overtake on the right hand side and not overtake in the same lane occupied by vehicle being overtaken;
- (l) observe traffic lights;
- (m) observe all traffic rules as provided under the Traffic Act;
- (n) not park in undesignated areas.
- (2) Every rider of a three wheeled motorcycle shall—
 - (a) not ride a motorcycle unless that person has a valid driving licence issued by the Authority;
 - (b) not ride a motorcycle unless that person has a valid certificate of registration issued by the Board;
 - (c) not ride a motorcycle without properly wearing a seat belt or carry passengers who have not properly worn their seat belts;
 - (d) not carry more than three passengers;
 - (e) ensure that the headlights of the motorcycle are on at all times when riding;
 - (f) overtake on the right hand side and not to overtake in the same lane occupied by the vehicle being overtaken;
 - (g) observe traffic lights;
 - (h) not to lane split where other motor vehicles are traveling at a speed exceeding ten kilometers per hour or in public roads near junctions, interchanges, turnoffs, or highway entries and exits;
 - (i) keep the seat belts in a clean, dry and generally wearable condition;
 - (j) observe all traffic rules as provided under the Traffic Act.

Cap. 403

13. (1) Every passenger on a two-wheeled motorcycle shall —

Responsibilities of a passenger.

- (a) properly wear a helmet and reflective jacket whenever being carried;
 - (b) not board or be carried on a motorcycle that already has a passenger except as provided in subsection (2) (a) and Section 16;
 - (c) not board or be carried on a motorcycle that is carrying any load exceeding fifty kilograms;
 - (d) sit astride in the seat fixed behind the rider's seat.
- (2) For the purposes of this Act—
- (a) a child who is less than nine years old may be carried together with an adult provided the child is seated between the rider and the adult and wears a helmet designed for children;
 - (b) persons with disabilities will be exempted from the requirement to sit astride while being carried on a motorcycle.
- (3) Every passenger in a three wheeled motorcycle shall—
- (a) wear seatbelt whenever being carried; and
 - (b) not board or be carried on a motorcycle that already has the maximum number of passengers prescribed under section 16.
- (4) Every passenger who is carried on a two- wheeled motorcycle without wearing a helmet and reflective jacket commits an offence and is liable under this Act.

14. (1) Every owner of a motorcycle who engages the services of a rider shall enter into a written employment contract with the rider.

Employment
Contracts.

- (2) The employment contract shall provide for—
- (a) the terms and conditions of employment;
 - (b) the duration of the contract;
 - (c) the remuneration and benefits of the rider;
 - (d) the working hours and overtime arrangements; and
 - (e) the procedures for the termination of the contract.
- (3) The Board shall develop model employment contracts for use by owners of motorcycles and riders.

15. No person shall use or operate a three-wheeled motorcycle with an engine capacity exceeding two hundred and fifty cubic capacity on a public road unless authorized by the Board.

Engine capacity.

16. (1) A two-wheeled motorcycle rider shall carry only one passenger.

Carriage of Passengers.

(2) A three-wheeled motorcycle rider shall carry only three passengers.

(3) The passenger capacity in subsection (1) and subsection (2) shall not include a child who is less than nine years old travelling with an adult passenger.

17. (1) A motorcycle rider shall not carry a load —

Carriage of Loads.

(a) whose width projects more than fifteen centimeters beyond the outside end of the handle bars;

(b) whose height is more than two metres from the ground;

(c) whose weight is more than thirty kilograms for a motorcycle whose carrying capacity does not exceed fifty cc and kilograms for a motorcycle whose carrying capacity does not exceed four hundred cc;

(d) which projects to the rear beyond the maximum overall length of the motorcycle more than sixty centimeters. The rear extremity of the load must be plainly indicated by a conspicuous red marker during the day and by a red light at night.

(2) The rider of a motorcycle carrying loads shall ensure that no part of the load carried drags on the road.

(3) For the purpose of this Act the term “load” excludes luggage carried by a passenger provided such luggage does not exceed ten kilograms in weight and does not project more than fifteen centimeters beyond the outside end of the handle bars.

(4) The luggage in sub-section (3) may be carried together with the passenger provided the luggage is properly secured between the rider and the passenger.

18. (1) The County Transport and Safety Board may establish regulations for the use of motorcycle ambulances.

Motorcycle ambulances.

(2) Motorcycle ambulances shall be equipped with medical equipment and supplies approved by the relevant national and county health authority.

(3) Motorcycle ambulances shall be operated by trained medical personnel who hold valid medical licenses and are registered with the relevant national and county health authority.

(4) Motorcycle ambulances shall be fitted with distinctive markings and lights for identification and to alert other road users.

(5) Motorcycle ambulances shall comply with all other provisions of this Act relating to motorcycles, including but not limited to registration, insurance, and safety requirements.

(6) The County Transport and Safety Board shall monitor the use of motorcycle ambulances to ensure compliance with the regulations and requirements set out in this Act.

(7) No person shall operate a motorcycle as an ambulance unless compliant with the provisions of this Act and any relevant laws and regulations.

(8) Any person who violates the regulations and requirements set out in this section commits an offence.

19. (1) Delivery motorcycles shall be distinguished from passenger motorcycles and shall be subject to regulations issued by the Board.

Delivery motorcycles.

(2) The Board may issue special licenses for delivery motorcycles subject to compliance with the requirements for registration, insurance, and safety.

(3) The owner or rider of a delivery motorcycle shall ensure that the motorcycle is fitted with appropriate storage compartments to prevent loss or damage to goods in transit.

(4) Board may designate specific routes and parking areas for delivery motorcycles.

(5) Delivery motorcycle shall not carry passengers or be used for any purpose other than the transportation of goods.

20. (1) A person shall not transport any unauthorized goods including contraband or goods restricted under the Narcotic Drugs and Psychotropic Substances (Control) Act and the Firearms Act on a motorcycle.

Unauthorized goods.

No. 4 of 1994.
Cap. 114.

(2) Any person found to be carrying unauthorized goods on a motorcycle commits an offence and is liable under this Act.

21. A supplier, distributor or person involved in the business of selling motorcycles within the county shall sell, distribute or otherwise convey a motorcycle with two helmets and two reflective jackets which comply with the standards established by the Kenya Bureau of Standards and the bear the prescribed colour.

Protective Gear.

22. Every owner of a motorcycle shall have at the minimum a motor commercial public service vehicle insurance cover.

Insurance.

23. (1) Every owner of a motorcycle shall ensure that the vehicle is fitted with a security device approved by Board.

Security.

(2) The security device referred to in sub-section shall include a tracking device that allows for real-time monitoring of the location of the motorcycle.

(3) The Board shall establish and maintain a database of all security devices approved for use on motorcycle in the county.

(4) The owner or rider of a motorcycle shall ensure that the security device is functional at all times and shall report any malfunction or damage to the device to the Board.

(5) The collection, processing, and use of data obtained through the security device shall be subject to the provisions of the Data Protection Act.

No. 24 of 2019.

PART III – OFFENCES AND PENALTIES

24. (1) Any rider who knowingly and intentionally carries a person or persons who are intending to commit an offence, shall be held strictly liable for any offence committed by the said person or persons.

Carriage of persons intending to commit an offence.

(2) For the purposes of this section, the term “offence” shall include any criminal act or activity as defined by Penal Code or any other relevant law.

(3) The rider shall be liable to pay any fines or penalties arising from the offence committed by the said person or persons, in addition to any penalties imposed by this Act.

(4) This section shall not apply where the rider was unaware or had no reasonable grounds to believe that the person or persons being carried were intending to commit an offence.

25. (1) Any person who rides a motorcycle on a pavement or pedestrian walkway, or in any other area that is not designated for motorcycle use commits an offence.

Riding on pavements and opposite direction.

(2) Any person who rides a motorcycle in the opposite direction of traffic flow on a one-way street or a designated lane commits of an offence.

(3) Any person found guilty of an offence under this section shall be liable on conviction to a fine not exceeding KSh. 20,000 or to imprisonment for a term not exceeding six months or to both.

26. (1) Any rider who participates in ganging up with other riders in an attempt to intimidate, threaten or harm another person in the event of an incident, including but not limited to an accident, commits of an offence.

Ganging up by riders.

(2) Upon conviction, the offender shall be liable to a fine not exceeding KSh. 100,000 or to imprisonment for a term not exceeding one year, or to both.

(3) The County Transport and Safety Board shall work in collaboration with the relevant law enforcement agencies to ensure that any such incidents are investigated and prosecuted in accordance with this provision.

(4) This provision shall apply to all motorcycle riders and passengers operating on public roads within the county.

27. A person who contravenes any provision of these Act and whose penalty is not provided for elsewhere under this Act, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or, both.

General penalties.

PART IV – MISCELLANEOUS

28. (1) The Board and an authorized officer appointed by the Board shall have the power to inspect any motorcycle for the purpose of ensuring compliance with this Act.

Powers of inspection and enforcement.

(2) The owner or rider of a motorcycle shall cooperate with an authorized officer conducting an inspection under this section and shall provide all necessary documents and information.

(3) A rider shall ensure that while operating and prior to inspection by an authorized officer, the motorcycle shall—

- (a) have a valid insurance;
- (b) be mechanically fit;
- (c) have the prerequisite protective gear as defined under section 21 of this Act; and
- (d) any other requirements as may be prescribed by the Board from time to time.

(4) An authorized officer may require the owner or rider of a motorcycle to produce proof of registration, insurance, and any other documents required by this Act.

(5) An authorized officer may issue a notice of non-compliance to the owner or rider of a motorcycle found to be in violation of this Act, specifying the nature of the violation and requiring the violation to be rectified within a specified period.

29. The Cabinet Secretary responsible for matters relating to transport may make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to put in place a legal framework to regulate the use of motorcycles (*bodabodas*) in Kenya by introducing new provisions for their registration, operation, and safety at the county level.

Clauses 1 to 3 of the Bill provide for the title of the Bill, interpretation of various terms used and application of the law. The Act shall apply to regulation of *bodabodas* by the county governments.

Clauses 4 to 6 of the Bill provide for the establishment, composition and functions of the County Motorcycle Transport and Safety Board in every county. The Bill provides that the Board shall be responsible for the regulation, management, and coordination of all matters relating to the *bodaboda* transport sector within the county.

Clauses 7 to 8 of the Bill provide for the registration of *bodaboda* riders. It further provides for cross-county recognition of registration by respective boards in every county.

Clause 9 of the Bill provides for a requirement of Savings and Cooperative Societies membership for both owners and riders of *bodabodas*.

Clause 10 of the Bill provides for training of riders. A person shall not operate a *bodaboda* unless they have successfully completed a training course approved by the Board. The course includes; safe and defensive riding techniques, traffic laws and regulations, customer care and etiquette, handling of emergency situations, basic motorcycle maintenance and security awareness.

Clauses 11 to 13 provide for the responsibilities of the owner, rider and passenger of a *bodaboda*.

Clause 14 gives provision for the requirement of employment contracts between owners and riders. Every owner of a *bodaboda* who engages the services of a rider shall enter into a written employment contract with the rider. It requires that the employment contract shall provide for the terms and conditions of employment, duration, remuneration and benefits of the rider, working hours and overtime arrangements as well as procedures for the termination of the contract.

Clause 15 of the Bill provides for the engine capacity restriction for *bodabodas* used for commercial purposes. No person shall use or operate a *bodaboda* with an engine capacity exceeding 250cc on a public road unless authorized by the Board.

Clause 16 provides for limitation on carriage of passengers. A *bodaboda* rider shall carry only one passenger unless it is a tricycle of which the capacity shall be two passengers.

Clause 17 of the Bill provides for restrictions on the carriage of loads by *bodabodas*.

Clause 19 of the Bill provides for a distinction between delivery *bodabodas* and passenger *bodabodas* .

Clause 20 of the Bill provides for unauthorized goods providing that no person shall transport any unauthorized goods, including contraband, or goods restricted under the Narcotic Drugs and Psychotropic Substances (Control) Act and Firearms Act on a *bodaboda*.

Clause 21 of the Bill provides for the requirement and criteria of protective gear.

Clause 22 of the Bill provides for insurance for *bodabodas*.

Clause 24 to 27 of the Bill provide for offences and penalties.

Clause 28 of the Bill provides for the powers of inspection and enforcement. The Board and an authorized officer appointed by the Board shall have the power to inspect any *bodaboda* for the purpose of ensuring compliance with provisions of the Bill.

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

The Bill therefore delegates legislative powers to the Cabinet Secretary for purposes of implementation of the objectives of the Bill.

The Bill does not however limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill seeks to put in place a legal framework to regulate the use of *bodabodas* for commercial purposes at the county level. 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 per paragraph 5(d) of Part 2 of the Fourth Schedule to the Constitution.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

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

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

Dated the 12th April, 2023.

BONI KHALWALE,
Senator.