

SPECIAL ISSUE

Kenya Gazette Supplement No. 85 (National Assembly Bills No. 6)



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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2013

NAIROBI, 18th June, 2013

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THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL, 2013

A Bill for

An Act of Parliament to amend the Insurance (Motor Vehicle Third Party Risks) Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Motor Vehicle Third Party Risks) (Amendment) Act, 2013 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title and commencement.

2. Section 3 of the of the Insurance (Motor Vehicle Third Party Risks) Act is amended by inserting the following definition in its proper alphabetical sequence-

Amendment of section 3 of Cap. 405.

“hand dominance” means the preference to use the right or left hand for fine motor skills.

3. Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act is amended-

Amendment of section 10 of Cap. 405.

(a) by inserting the following proviso immediately after subsection (1)-

Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule.

(b) by inserting the following subsection immediately after subsection (1)-

(1A) The Minister may, in consultation with the Director of Medical Services, prescribe compensation for other categories of disablement not provided for in the Schedule.

Insertion of Schedule
in Cap. 405.

4. The Insurance (Motor Vehicle Third Party Risks)
Act is amended by inserting the following Schedule
immediately after section 18-

SCHEDULE**(s.10)****STRUCTURED COMPENSATION LIABILITY SCHEDULE**

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
A.	DEATH	
	Death as a result of accident	100
B.	BLINDNESS	
1.	Total	100
2.	Partial	
	(a) Acuity 1/20	75
	(b) Acuity 1/10 – 1/20	70
3.	Narrowed Field of Vision	
	(a) Affecting one eye	
	(i) 30-10 degrees from focal point	1 - 5
	(ii) Less than 10 degrees from focal point	5 - 15
	(b) Affecting both eyes	
	(i) 30-10 degrees from focal point	10 - 50
	(ii) Less than 10 degrees from focal point	50 - 60
	(c) Paracentral scotoma	
	(i) Affecting one eye	5 - 15
	(ii) Affecting both eyes	15 - 30
4.	Hemi-anopsia (with central vision)	15 - 25
	(a) Homonymous right or left	5 - 10
	(b) Nasal	50 - 60
	(c) Bitemporal	5 - 10
	(d) Upper	10 - 30
	(e) Lower	5 - 10

DEGREE OF DISABLEMENT				COMPENSATION ^a (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
	(f)	Upper quadrant		10 - 30
	(g)	Lower quadrant		5 - 10
5.	Double Vision (diplopia)			5 - 10
	(a)	Affecting upper field of vision		10 - 20
	(b)	Affecting lower field of vision		10 - 20
6.	Aphakia (loss of lens) – bilateral			25
7.	Aphakia (loss of lens) – unilateral			20
8.	Ectropion/entropion, lagophthalmos (lid-lag)			0 - 5
C. INJURY (GENERAL)				
1.	Bilateral shoulder luxation			10
2.	Unilateral shoulder luxation			5
3.	Chewing impairment			
	(a)	Mild		2 - 10
	(b)	Moderate		10 - 15
	(c)	Severe		15 - 25
4.	Severe, painful functional impairment of vertebral column			90
5.	Quadriplegia (all limbs)			100
6.	Severe lung impairment			50
7.	Severe kidney impairment			
	(a)	One kidney		50
	(b)	Both kidneys		75
8.	Impairment of memory or ability to concentrate			40
9.	Post traumatic epilepsy			
	(a)	One seizure yearly		10 - 15
	(b)	Two seizures yearly		15 - 30
	(c)	More than two seizures yearly		30 - 50
10	Severe psycho-organic syndrome (Loss of speech)			75
11	(a)	Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Right	65
	(b)	Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Left	60
12	(a)	Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Right	50

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
	(b)	Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Left	50
13		Loss of arm between shoulder and elbow (consider hand dominance)		50
14	(a)	Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Right	50
	(b)	Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Left	40
15		Loss of arm between wrist and elbow (consider hand dominance)		50
16		Loss of four fingers and thumb of one hand (by amputation or ankylosis) (consider hand dominance)		60
17		Loss of four fingers (by amputation or paralysis or ankylosis)		40
18		Loss of thumb (consider hand dominance)		
	(a)	One phalanx		5
	(b)	Both phalanges	Right	25
		"	Left	10
19		Loss of index finger		
	(a)	One phalanx		5
	(b)	Two phalanges		10
	(c)	Three phalanges		10
20		Loss of middle finger		
	(a)	One phalanx		2
	(b)	Two phalanges		4
	(c)	Three phalanges		6
21		Loss of ring finger		
	(a)	One phalanx		2
	(b)	Two phalanges		4
	(c)	Three phalanges		4
22		Loss of little finger		
	(a)	One phalanx		1
	(b)	Two phalanges		2

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
	(c)	Three phalanges	3
23	Loss of toes		
	(a)	All	15
	(b)	Great, both phalanges	5
	(c)	Great, one phalanx	2
	(d)	Smaller toes, each	1
24	Loss of eye		
	(a)	Eye off	30
	(b)	Lens damage	30
25	Ears, loss of hearing and associated defects		
	(a)	Hearing loss, one ear	15
	(b)	Hearing loss, both ears	50
	(c)	Unilateral hyperacusis	0 - 12
	(d)	Bilateral hyperacusis	10 - 15
	(e)	Subjective noise in the ears	1 - 2
	(f)	Loss of one ear	10
	(g)	Vertigo (dizziness, rotating feeling, unsteadiness)	2 - 10
26	Monoparesis (Monoplegia)		
	(a)	Right upper limb	50
	(b)	Left upper limb	25
	(c)	Lower limb	50
27	Hemiparesis		
	(a)	Spastic hemiplegia	10 - 50
	(b)	Flaccid hemiplegia without urinary/fecal incontinence	50 - 80
	(c)	Flaccid hemiplegia with urinary and/or fecal incontinence	80 - 90
28	Paraparesis		100
29	Post-traumatic neurosis		10 - 20
30	Post-traumatic dementia		75
31	Loss of voice		

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)	
		(a)	Dysphonia		0 - 10
		(b)	Aphonia		25
	32	Nose and mouth			
		(a)	Defects in smell detection		
		(i)	Hyposmia or anosmia		2 - 5
		(ii)	Nasal defects leading to breathing difficulties		2 - 4
		(iii)	Loss of nose		30
		(b)	Teeth loss (not replaced)		
		(i)	Incisor		1
		(ii)	Premolar		1 - 1.5
		(iii)	Canine and molars		2
		(iv)	Total loss of all teeth		30
		(v)	Loss of pulp vitality of a tooth		1
		(c)	Tongue loss (total or partial)		0 - 10
		(d)	Total permanent unilateral facial nerve paralysis		25
		(e)	Partial unilateral facial paralysis		10
		(f)	Injury to the trigeminal nerve and its branches		
		(i)	Inferior orbital		2 - 4
		(ii)	Lower dental nerve		2 - 4
		(iii)	Lingual nerve		2 - 4
		(g)	Scalp injury - aesthetic damage		1 - 5
	33	Joints			
		(a)	Aggravation of previous arthritis		2 - 5
		(b)	Segmentary neuralgia with slight ligament or bone lesions, stiffness (without neuro-sensory complications) of:-		
		(i)	Cervical column		5 - 15
		(ii)	Dorsal (thoracic) column		5 - 10
		(iii)	Lumbar column		5 - 15
		(c)	Fracture/dislocation of cervical vertebra with stiffness		15 - 20
		(d)	Fracture/stiffness of thoracic/lumbar vertebra		10 - 15
		(e)	Ankylosis		
		(i)	Shoulder joint	Right	30

DEGREE OF DISABLEMENT						COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
				"	Left	25
		(ii)	Elbow joint		Right	20
			"		Left	15
		(iii)	Wrist joint		Right	25
			"		Left	15
		(iv)	Hand (all joints)		Right	50
			"		Left	25
		(f)	Joint stiffness – average stiffness			
		(i)	Shoulder joints		Right	15
			"		Left	10
		(ii)	Elbow joint		Right	10
			"		Left	5
		(iii)	Wrist joint		Right	15
			"		Left	10
		(iv)	Hand (all joints)		Right	25
			"		Left	10
		(g)	Paralysis of various nerves of upper limb			
		(i)	Radial nerve (consider hand dominance)		Right	50
			"		Left	25
		(ii)	Circumflex nerve		Right	25
			"		Left	10
		(iii)	Musculocutaneous		Right	10
			"		Left	8
		(iv)	Subscapular		Right	8
			"		Left	6
		(v)	Median nerve (at arm)		Right	30
			"		Left	25
		(vi)	Median nerve (at wrist)		Right	15
			"		Left	10
		(vii)	Cubital nerve (at arm)		Right	25
			"		Left	20
		(viii)	Cubital nerve (at wrist)		Right	15
			"		Left	10
34	Limbs					
	(a)	Lower limb shortening				
		-	Less than 3 cm			0 – 2
		-	3 – 6 cm			2 – 8
		-	6 – 10 cm			8 – 15

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
	(b)	Total loss by amputation or paralysis	
	(i)	At hip	60
	(ii)	At thigh	58
	(iii)	At knee	50
	(iv)	At leg	45
	(v)	At ankle	30
	(c)	Tarsometatarsal	
	(i)	All toes	15
	(ii)	Great toes	5
	(d)	Ankylosis (fusion in anatomical position)	
	(i)	At the hip	50
	(ii)	At the knee	30
	(iii)	At the ankle	20
	(iv)	At the toes	10
	(e)	Stiffness	
	(i)	At the hip	25
	(ii)	At the knee	10
	(iii)	At the ankle	4
	(iv)	At the toes	2
	(f)	Articular (Joint) instability	
	(i)	At the hip	30 – 35
	(ii)	At the knee	
	-	Loose ligaments (well corrected to allow normal activity)	2 – 5
	-	Loose ligaments (but hampering some activities even after correction)	5 – 10
	-	Loose ligaments hampering walking	10 – 20
	(g)	Heel instability	
	(i)	In form of diastasis without clinical impact	0 – 4
	(ii)	Causing recurrent sprains	4 – 10
	(iii)	Hampering walking	10 – 12
	(h)	Paralysis of nerves of lower limb	
	(i)	Sciatic nerve	20 – 30
	(ii)	Popliteal nerve	10 – 20
	(iii)	Femoral nerve	30 – 50

DEGREE OF DISABLEMENT					COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
			(iv)	Sciatic neuralgia (pains)	10 – 20
		(i)		Total prosthesis of the Hip	10 – 15
		(j)		Arthrodesis of the knee	2 – 5
		(k)		Patellectomy	3
		(l)		Meniscus injury	
			(i)	Without operation	10 – 15
			(ii)	After operation	5
		(m)		Special care of the foot	
			(i)	Some pain while walking – normal or slightly reduced movement	0 – 2
			(ii)	Sporadic pain, moderate limitation of movement, some claudication but foot stable	2 – 5
			(iii)	Pain while walking (subsides on rest); some claudication; limiting walking; circulatory disorders	5 – 10
			(iv)	Ankylosis of tibio-tarsal joint at a functional position	10
			(v)	Severe pains of the foot; equines deformity; moderate trophic disorders; limited walking using a walking stick	10 – 25
			(vi)	Sharp pains on walking or standing; severe stiffness, equinism; trophic disorders requiring two walking sticks or crutches	25 – 30
			(vii)	Sharp pains of the foot interfering with sleep; ankylosis at critical position or severe deformity; walking on crutches	30 – 35

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
		(viii)	Severe pains (continuous); severe deformity; impossible to stand unless on crutches	35 – 40
35	The Pelvis			
	(a)	Pubic symphysis separation or sacro-iliac separation		5 – 10
	(b)	Post injury coccydinia with a fracture detected by radiography		2 – 5
	(c)	Obturator neuralgia		2 – 5
36	Respiratory injuries			
	(a)	Slight respiratory insufficiency (dyspnoea occurring during great strain)		0 – 5
	(b)	Moderate respiratory insufficiency (dyspnoea during moderate strain)		5 – 20
	(c)	Considerable respiratory insufficiency (dyspnoea during normal activities)		20 – 50
	(d)	Dyspnoea at rest		50 - 100
37	Circulatory Injuries			
	(a)	No cardiac insufficiency (subjects leads a normal life but treatment necessary)		0 – 10
	(b)	Mild cardiac insufficiency (treatment necessary -disorders occur during exertion but subject leads a normal life)		10 – 20
	(c)	Moderate cardiac insufficiency (Constant treatment necessary, exertion to be avoided, daily life is interrupted)		20 – 50
	(d)	Aortic prosthesis		20
	(e)	Valvular prosthesis		25
	(f)	Severe Cardiac Insufficiency (treatment needed, rest mandatory, daily activities		50

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)	
			severely disrupted)		
38	Alimentary system and abdominal organs				
	(a)	Biliary hepatic system			
		(i)	Minor disorders without ascites, jaundice or esophageal varices		0 – 10
		(ii)	Marked liver disorders shown by laboratory tests but without nutritional or general disorders, ascites, jaundice or oesophageal varices		10 – 20
		(iii)	Nutritional/general disorders present e.g. ascites, haemorrhages e.g. from oesophageal varices, hepatic coma, recurrent obstructive jaundice		20 – 60
		(iv)	Progressive liver failure: ascites, jaundice, haemorrhage, hepatic coma and nutritional disorders		60 – 100
	(b)	The spleen – splenectomy			10
	(c)	Abdominal wall – hernia			5 – 10
	(d)	Stomach, Small intestines and Pancrease			
		(i)	No operation after effects – normal weight maintained without special diet or treatment		0 – 5
		(ii)	Uptake (absorption) disorders leading to weight loss (less than 10% weight loss)		5 - 15
		(iii)	Weight loss (due to uptake disorder) in range		15 – 30

DEGREE OF DISABLEMENT						COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
				of 10-20% average body weight; electrolyte imbalance		
			(iv)	Weight loss; diarrhea x 4-x 6 daily; abdominal cramps, steatorrhea, electrolyte imbalance		30 - 50
			(v)	Weight loss more than 20%, anaemia, hypoproteinaemia		50 - 60
		(e)	The Colon :			
			(i)	No functional disorder, normal body weight and activity		0 - 5
			(ii)	Weight disorder - moderate pains, but no nutritional disorders		5 - 10
			(iii)	Uptake disorders: sporadic abdominal pains, anemia, weight loss - diet and treatment necessary		10 - 30
			(iv)	Permanent uptake disorders: pains, general disorders - diet and treatment necessary		30 - 50
			(v)	Colostomy done		
			-	Descending colon		50 - 60
			-	Transverse colon		30 - 40
			-	Ascending colon		20 - 30
		(f)	The kidneys and urinary system			
			(i)	Severe nephrotic syndrome and hypertension		50 - 60
			(ii)	Renal colic, with respect to number of attacks		0 - 20
			(iii)	Renal atrophy (total kidney loss)		10
			(iv)	Nephrectomy		10
			(v)	Partial atrophy, normal life		0 - 10

DEGREE OF DISABLEMENT					COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
			(vi)	Renal insufficiency	
			-	Normal life, minor insufficiency – creatinine clearance 80-100ml/min	5 - 10
			-	Normal life on treatment: creatinine clearance 40- 80ml/min: high blood pressure	10 - 20
			-	Creatinine clearance 15- 40 ml/min	20 - 50
			(vii)	Chronic cystitis	5 - 20
			(viii)	Urinary retention	
			-	Mild (weekly catheter)	10 - 15
			-	Moderate (catheter several times a week)	15 - 20
			-	Severe (indwelling catheter)	20 - 40
			(ix)	Cystostomy done	40
			(x)	Urethral stricture requiring manual dilatation (no renal infection)	5 - 40
			(xi)	Urethral stricture requiring frequent dilatation (no renal infection)	15 - 40
		(g)	Genital system and reproductive organs		
			(i)	Mechanical failure in sexual relations	30 - 40
			(ii)	Loss of ovary or testicle (but subject to the next item)	5
			(iii)	Bilateral castration or sterility while functionally healthy	30 - 40
	39	Special conditions			
		(a)	Mild pain/disfiguration		0 - 10
		(b)	Moderate pain/disfiguration		10 - 50
		(c)	Severe pain/disfiguration		50 - 100

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury in line with proposals announced in the Budget for 2013/2014. The object of this Bill is to amend the Insurance (Motor Vehicle Third Party Risk) Act, (Chapter 405 of the Laws of Kenya) to introduce a Schedule of structured payments of compensation under the Act. The Structured Compensation Liability Schedule provides for compensation payable, in respect of death of or bodily injury to any person caused by or arising out of the use of a vehicle on the road, as a percentage of the maximum compensation prescribed under the section 5 (b) of that Act.

This Bill is not a Bill concerning county government.

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

Dated the 18th June, 2013.

BENJAMIN LANGAT,
Chairperson,
Committee on Finance, Planning and Trade.

Section 10 of Cap. 405 which it is intended to amend—

Duty of insurer to satisfy judgments against persons insured.

10. (1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section -

- (a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connexion with any liability if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either -
 - (i) before the happening of the event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
 - (ii) after the happening of the event, but before

the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or

- (iii) either before or after the happening of the event, but within a period of twenty-eight days from the taking effect of the cancellation of the policy, the insurer has notified the Registrar of Motor Vehicles and the Commissioner of Police in writing of the failure to surrender the certificate.

(3) It shall be the duty of a person who makes a statutory declaration, as provided in subparagraphs (i) and (ii) of paragraph (c) of subsection (2), to cause such statutory declaration to be delivered to the insurer.

(4) No sum shall be payable by an insurer under the foregoing provisions of this section if in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within fourteen days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any

person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(5) Deleted by 8 of 2009,s.41.

(6) In this section, "material" means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions; and "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

(7) In this Act, references to a certificate of insurance in any provision relating to the surrender or the loss or destruction of a certificate of insurance shall, in relation to policies under which more than one certificate is issued, be construed as references to all the certificates, and shall, where any copy has been issued of any certificate, be construed as including in reference to that copy.