

SPECIAL ISSUE

Kenya Gazette Supplement No. 98 (Senate Bills No. 28)



**PARLIAMENT
OF KENYA
LIBRARY**

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 7th May, 2024

CONTENT

Bill for Introduction into the Senate—	PAGE
The Election Offences (Amendment) (No. 2) Bill, 2024	541

**THE ELECTION OFFENCES (AMENDMENT)
(No. 2) BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Election Offences Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Election Offences (Amendment) (No. 2) Act, 2024.

Short title.

2. Section 6 of the Election Offences Act, 2016 is amended —

Amendment of section 6 of No. 37 of 2016.

- (a) in paragraph (h), by inserting the words “or unreasonably delays” immediately after the word “fails”;
- (b) in paragraph (k), by inserting the words “and any other person” immediately after the word “candidate”;
- (c) by inserting the following new paragraphs immediately after paragraph (m) —
 - (n) conducts or holds an election in an ungazetted polling station;
 - (o) knowingly or intentionally interferes, alters or knowingly or intentionally causes another person to interfere or alter declared results;

MEMORANDUM ON OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend section 6 of the Election Offences Act, 2016. The Bill seeks to give effect to recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 sets out the short title of the Bill.

Clause 2 of the Bill amend section 6 of the Act to provide that it shall be an offence for members and staff of the Independent Election and Boundaries Commission to conduct or hold an election in ungazetted polling station. Further, the Clause creates offences for members and staff of the Commission who unreasonably delay in declaring elections results or knowingly alter declared election results

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

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

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

Statement that the Bill is 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.

AARON CHERUIYOT,
Senate Majority Leader.

STEWARTS MADZAYO,
Senate Minority Leader.

Section 6 of No. 37 of 2016 which it is proposed to be amended—

6. Offences by members and staff of the Commission

A member of the Commission, staff or other person having any duty to perform pursuant to any written law relating to any election who—

- (a) makes, in any record, return or other document which they are required to keep or make under such written law, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true;
- (b) permits any person whom they know or have reasonable cause to believe to be able to read or write to vote in the manner provided for persons unable to read or write;
- (c) permits any person whom they know or have reasonable cause to believe not to be visually impaired or a person with disability to vote in the manner provided for persons who are visually impaired or persons with disability, as the case may be;
- (d) wilfully prevents any person from voting at the polling station at which they know or have reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which they know or have reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate which they know or have reasonable cause to believe was not validly cast for that candidate;
- (g) interferes with a voter in the casting of his vote in secret;
- (h) where required under the Elections Act (No. 24 of 2011) or any other law to declare the result of an election, fails to declare the results of an election;
- (i) except in the case of a member, officer or person authorised to do so, purports to make a formal declaration or formal announcement of an election result;
- (j) without reasonable cause does or omits to do anything in breach of his official duty;
- (k) colludes with any political party or candidate for purposes of giving an undue advantage to the political party or candidate;

- (l) wilfully contravenes the law to give undue advantage to a candidate or a political party on partisan, ethnic, religious, gender or any other unlawful considerations; or
- (m) fails to prevent or report to the Commission or any other relevant authority, the commission of an electoral offence committed under this Act,

commits an offence and is liable on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or to both.