

(1) A member of a county assembly who intends to move a motion under section 27 shall submit to the Clerk of the county assembly the motion together with a list of the members of the county assembly who support the motion.

(d) by inserting the following new subclauses immediately after the new subclause (1)—

(1A) The list of members under subclause (1) shall be in the form prescribed in the Schedule

(1B) The Clerk of the county assembly shall confirm that the proposed motion—

- (a) specifies the grounds and particulars upon which the proposed motion is made;
- (b) is signed by the member; and
- (c) is signed in support by at least a third of all the members of the county assembly.

(1C) The Clerk of the county assembly shall, within three days of receipt of the proposed motion, submit the motion to the Speaker advising the Speaker of the determination made under subclause (1B).

CLAUSE 33

THAT the Bill be amended by deleting clause 33.

J. **THE DATA PROTECTION BILL (SENATE BILLS NO. 16 OF 2018)

(Chairperson, Standing Committee on Information and Technology)

NOTICE is given that Sen. Gideon Moi, the Chairperson of the Standing Committee on Information and Technology, intends to move the following amendments to the Data Protection Bill (Senate Bills No. 16 of 2018) at the Committee Stage —

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause —

Application.

3. (1) This Act shall apply to —

- (a) the protection of personal data of a data subject in the processing of such data by

—

...../Amendments

- (i) an agency established in the Republic of Kenya; and
- (ii) an agency not established in the Republic of Kenya but processes personal data of a data subject who is a resident of the Republic of Kenya; and

(b) the processing by automated or any other means of personal data which forms or is intended to form part of a filing system.

(2) This Act shall not apply to the processing of personal data –

(a) by or on behalf of a public body responsible for national security the purpose of which is the prevention, detection, investigation or punishment of a crime; or

(b) by a person in the course of a personal or household activity.

(3) Despite the provisions of subsection (2)(a) and except where the security of the country, the life, safety or health of a person, or property is in imminent danger, a public body that intends to process personal data without the consent of the data subject shall make an application *ex parte* to a court for orders to process such data.

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (2) by –

- (a) deleting paragraph (b) and substituting therefor the following new paragraph –
 - (b) the data subject or a guardian, where the data subject is a child or a person who is legally incapacitated, has consented to the collection of the personal data from another source;
- (b) deleting paragraph (c);
- (c) by deleting the words “the interests” appearing immediately after the words “protection of” in paragraph (e)(ii) and substituting therefor the words “fundamental rights and freedoms”;

...../Amendments

(d) deleting paragraph (f) and substituting therefor the following new paragraph –
(f) the life, safety or health of a person or property is in imminent danger.

(e) deleting sub-clause (3) and substituting therefor the following new sub-clause

–
(3) An agency shall collect or process personal data using lawful means that do not intrude to an unreasonable extent upon the privacy of a data subject.

CLAUSE 8

THAT clause 8 of the Bill be amended by –

(a) re-numbering the existing clause as sub-clause (1); and

(b) inserting the following new sub-clause immediately after sub-clause (1) –

(2) Where the data subject is in control of the means of inputting or processing his or her personal data, it shall be the responsibility of the data subject to ensure that personal data is complete, accurate, up-to-date and not misleading.

CLAUSE 9

THAT clause 9 of the Bill be amended by –

(a) deleting paragraph (e) and substituting therefor with the following new paragraph –

(e) the deletion of personal data relating to the data subject which is in possession of an agency; and

(b) inserting the following new paragraphs immediately after paragraph (f) -

(g) be informed of the period within which personal data is to be stored; and

(h) data portability.

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (1) by –

(a) deleting the introductory clause and substituting therefor the following new clause –

(1) Before an agency collects personal data directly from a data subject, the agency shall inform the data subject, in a language the data subject understands, of —

- (b) deleting the word “hold” appearing immediately after the words “agency that will” in paragraph (d) and substituting therefor the words “be in possession of”;
- (c) deleting paragraph (h) and substituting therefor the following new paragraph –
 - (h) the rights conferred on the data subject under section 9 of this Act.

CLAUSE 11

THAT clause 11 of the Bill be amended in sub-clause (1) by deleting the words “in the recent past” appearing immediately after the words “taken those steps” and substituting therefor the words “within the past twelve months”.

CLAUSE 12

THAT clause 12 of the Bill be amended –

- (a) in paragraph (a) by deleting the words “publicly available” and substituting therefor the words “a matter of public record”;
- (b) by deleting paragraph (c); and
- (c) by deleting paragraph (f) and substituting therefor the following new paragraph –
 - (f) compliance would endanger the life, safety or health of a person or endanger property;

CLAUSE 13

THAT clause 13 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

- (1A) Subsection (1) shall not apply to a data subject where the decision is –
 - (a) necessary for entering into, or performing, a contract between the data subject and the agency;
 - (b) authorised by a law to which the agency is subject and which lays down suitable measures to safeguard the data subject’s rights, freedoms and legitimate interests; or
 - (c) based on the explicit consent of the data subject.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “information on” at the beginning of paragraph (b);
- (b) inserting the words “information on” at the beginning of paragraph (c);

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- (c) deleting the word “transmitted” appearing immediately after the words “is to be” in paragraph (d) and substituting therefor the word “disclosed”; and
- (d) deleting the words “processed data” appearing immediately after the words “deletion of” in paragraph (f) and substituting therefor the words “data which has been processed”.

CLAUSE 16

THAT clause 16 of the Bill be amended –

- (a) by re-numbering the existing clause as sub-clause (1);
- (b) in the new clause (1) by –
 - (i) inserting the words “is a breach of security or there” after the words “Where there” in the introductory clause;
 - (ii) deleting the words “as soon as reasonably practicable” appearing at the beginning of paragraph (a) and substituting therefor the words “within seventy two hours”;
- (c) by inserting the following new sub-clauses immediately after the new sub-clause (1) –

(2) The notification under subsection (1)(a) shall set out sufficient information to enable the data subject to take protective measures against potential consequences of the data breach, including —

- (a) description of the nature of the breach;
- (b) description of the likely consequences of the breach;
- (c) description of the measures that the agency intends to take or has taken to address the breach;
- (d) recommendation on the measures to be taken by the data subject to mitigate the adverse effects of the breach; and
- (e) where possible, the identity of the person who may have accessed or processed the personal data.

(3) An agency may delay the issuance of a notification under subsection (1) for the purpose of preventing, detecting or investigating a crime by the relevant public entity.

CLAUSE 17

THAT clause 17 of the Bill be amended –

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause –

...../Amendments

(1) Where an agency is in possession of personal data or where a person believes that an agency is in possession of personal data relating to him or her, that person —

(a) may obtain from the agency a confirmation as to whether the agency possesses such personal data and the purposes for processing the personal data; and

(b) shall have access to that data.

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause

(2) An agency to which an application for access to personal data has been made may charge a prescribed fee for the provision of the personal data and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the data subject.

CLAUSE 18

THAT clause 18 of the Bill be amended —

(a) in sub-clause (1) by deleting the word “holds” appearing immediately after the words “an agency which” and substituting therefor the words “is in possession of”; and

(b) in sub-clause (2) inserting the words “or such other personal data relating to the data subject as the data subject may request” immediately after the words “or misleading data”.

CLAUSE 19

THAT clause 19 of the Bill be amended —

(a) in sub-clause (1) by —

(i) deleting paragraph (c) and substituting therefor the following new paragraph —

(c) the retention of the data is necessary for a lawful purpose related to the function or activity performed by the agency;

(ii) by deleting the words “parties to the contract” appearing immediately after the words “contract between the” in paragraph (d) and substituting therefor the words “the data subject and the agency”;

(b) by inserting the following new sub-clause immediately after sub-clause (3) —

(3A) An agency may, for purposes of subsection (3), anonymise the data retained under subsection (3) in such a manner as to ensure that the data subject is no longer identifiable.

CLAUSE 20

THAT clause 20 of the Bill be amended by deleting the word “holds” appearing immediately after the words “an agency that” and substituting therefor the words “is in possession of”.

CLAUSE 21

THAT clause 21 of the Bill be amended by –

- (a) re-numbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause immediately after the new sub-clause (1)

–

(2) An agency that uses personal data for commercial purposes shall, where possible, anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.

CLAUSE 23

THAT the Bill be amended by deleting clause 23.

CLAUSE 24

THAT clause 24 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “in the case of a data subject who is a child or a person who is legally incapacitated, the guardian” immediately after the words “the data subject” in paragraph (a);
- (b) deleting paragraph (d) and substituting therefor the following new paragraph –

(d) with respect to information that has made public by the data subject.

CLAUSE 25

THAT the Bill be amended by deleting clause 25.

CLAUSE 27

THAT the Bill be amended by deleting clause 27.

CLAUSE 29

THAT clause 29 of the Bill be amended –

- (a) in paragraph (a) deleting the words “or any other person having authority to make decisions on behalf of the child” appearing immediately after the words “parent or guardian”; and
- (b) by deleting paragraph (d) and substituting therefor the following new paragraph

–

(d) in the best interest of the child.

CLAUSE 30

THAT the Bill be amended by deleting clause 30.

CLAUSE 31

THAT clause 31 of the Bill be amended –

- (a) by re-numbering the existing clause as sub-clause (1);
- (b) in the new sub-clause (1) by –
 - (i) deleting the words “third party” appearing immediately after the word “the” appearing at the beginning of paragraph (a) and substituting therefor the words “Commission satisfied that the other country”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph –
 - (c) the transfer is necessary -
 - (i) for the performance or conclusion of a contract between the data subject and the agency;
 - (ii) for the establishment, exercise or defence of a legal claim;
 - (iii) for the protection of fundamental rights and freedoms of a person; or
 - (iv) in the interest of the public.
 - (iii) by deleting paragraph (d); and
- (c) by inserting the following new sub-clause immediately after the new sub-clause (1) –
 - (2) The Commission shall prescribe guidelines for the transfer of personal data outside the country and the filing of reports on personal data transferred outside the country by an agency.

CLAUSE 36

THAT clause 36 of the Bill be amended –

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause –
 - (4) Despite the provisions of this Act, a person whose personal data is collected or processed contrary to this Act or who suffers loss as a result of disclosure of personal data may lodge a claim before a court for an appropriate remedy.
- (b) by inserting the following new sub-clause immediately after sub-clause (4) -
 - (5) In determining a claim under subsection (4) a court shall consider –

- (a) the nature and the seriousness of the breach;
- (b) the categories of personal data affected;
- (c) any benefit gained or loss suffered as a result of the breach;
- (d) the number of previous violations;
- (e) the duration of time over which the breach occurred;
- (f) any action taken by the agency to remedy or mitigate the breach; and
- (g) the nature and status of the agency.

CLAUSE 38

THAT clause 38 of the Bill be amended –

(a) in sub-clause (1) by deleting the words “five hundred thousand” appearing immediately after the words “not exceeding” and substituting therefor the words “one million”; and

(b) by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) Despite subsection (1), where the offence –

(a) committed relates to special personal information the person shall be liable, on conviction, to a fine not exceeding five million shillings or to a term of imprisonment not exceeding ten years; or

(b) is committed by a body corporate, the body corporate shall be liable, on conviction, to a fine not exceeding two million shillings or two percent of its annual turnover, whichever is higher.

NEW CLAUSE 18A

THAT the Bill be amended by inserting the following new clause immediately after clause 18 –

Right to data portability.

18A. (1) A data subject has the right to receive personal data which the data subject has provided to an agency, in a structured, commonly used and machine-readable format.

(2) A data subject has the right to transmit the data obtained under subsection (1) to another agency.

...../Amendments

(3) Where possible, the data subject shall have the right to have the personal data transmitted directly from one data agency to another.

(4) The right under this section shall not apply to circumstances where —

(a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority; or

(b) it may adversely affect the rights and freedoms of another.

(5) An agency shall comply with data portability requests, free of charge and within a period of seven days from the date of the request.

CLAUSE 2

THAT clause 2 of the Bill be amended —

(a) by deleting the definition of the word “data controller”;

(b) by deleting the definition of the word “data subject” and substituting therefor the following new definition —

“data subject” means a natural person to whom personal data relates;

(c) by deleting the definition of the word “disclosure” and substituting therefor the following new definition —

“disclosure”, in relation to personal data, includes the disclosure of information extracted from such data and the transfer of such data to another person but does not include a disclosure made directly or indirectly by an agency to its employee or agent for the purpose of enabling the employee or agent to carry out its duties and, where the identification of a data subject depends partly on the data and partly on other information in the possession of the agency, the data shall not be considered as disclosed unless the other information is also disclosed;

(d) by deleting the definition of the word “exempt information”;

(e) in the definition of the word “personal data” —

(i) by deleting paragraph (d) and substituting therefor the following new paragraph —

(d) the biometrics of a person;

(ii) by deleting paragraph (g); and

- (iii) by deleting paragraph (h);
- (f) in the definition of the word “processing” by inserting the word “storage” immediately after the words “collection, organisation” in paragraph (a); and
- (g) by deleting the definition of the word “special personal information” and substituting therefor the following new definition –

“special personal information” means the personal data of a child or data revealing a natural person’s race, health status or ethnic origin.

SHORT TITLE

THAT the Bill be amended by deleting clause 1 and substituting therefor the following new clause –

Short title and commencement.	1. This Act may be cited as the Personal Data Protection Act, 2018, and shall come into operation six months from the date of assent.
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K. *THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO. 19 OF 2018)

(Sen. Samuel Poghio, MP)

NOTICE is given that the Chairperson of the Standing Committee on Information and Technology, Sen. Gideon Moi, MP intends to move the following amendments to the County Outdoor Advertising Control Bill (Senate Bills No. 19 of 2018) at the Committee Stage –

CLAUSE 4

THAT clause 4 of the Bill be amended –

- (f) in subclause (2)(b) by deleting subparagraph (ii) and substituting therefor the following new paragraph –
 - (ii) the Kenya National Highway Authority or any other entity responsible for the management of road reserves, where the advertisement is to be displayed on a road reserve;
- (g) by inserting the following new subclause immediately after subclause (2) –
 - (2A) The county executive committee member shall keep and maintain a register in which shall be recorded all applications made and licences issued under this Act.

...../Amendments

