



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2012/13 SESSION

22 March 2012

Fifth Sitting of the Third Meeting

(pages 765–782)

**Hon Mary J Lawrence, MBE, JP
Speaker**

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PRESENT WERE:

THE SPEAKER

Hon Mary J Lawrence, MBE, JP.

MINISTERS OF THE CABINET

Hon Juliana Y O'Connor-Connolly, JP, MLA	<i>The Premier</i> , Minister of Finance, District Administration, Works, Lands and Agriculture
Hon Rolston M Anglin, JP, MLA	<i>Deputy Premier</i> , Minister of Education, Financial Services and Employment
Hon Cline A Glidden, Jr, MLA	Minister of Tourism and Development
Hon J Mark P Scotland, JP, MLA	Minister of Health, Environment, Youth, Sports and Culture
Hon Dwayne S Seymour, MLA	Minister of Community Affairs, Gender and Housing

OFFICIAL MEMBERS OF THE CABINET

Hon Franz Manderson, JP	<i>Deputy Governor</i> , ex officio Member responsible for Internal and External Affairs and the Civil Service
Hon Jacqueline Wilson	Temporary Attorney General, ex officio Member responsible for Legal Affairs

ELECTED MEMBERS

OPPOSITION MEMBERS

Mr Moses I Kirkconnell, JP, MLA	<i>Deputy Leader of the Opposition</i> , First Elected Member for Cayman Brac and Little Cayman
Hon W McKeeva Bush, OBE, JP, MLA	First Elected Member for West Bay
Capt A Eugene Ebanks, JP, MLA	Fourth Elected Member for West Bay
Hon D Kurt Tibbetts, OBE, JP, MLA	First Elected Member for George Town
Mr Michael T Adam, MBE, JP, MLA	Second Elected Member for George Town
Mr Ellio A Solomon, MLA	Fourth Elected Member for George Town
Hon Anthony S Eden, OBE, JP, MLA	<i>Deputy Speaker</i> , Second Elected Member for Bodden Town
Mr V Arden McLean, JP, MLA	Elected Member for East End

INDEPENDENT MEMBER

Mr D Ezzard Miller, JP, MLA	Elected Member for North Side
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ABSENT

Hon Alden M McLaughlin, MBE, JP, MLA	<i>Leader of the Opposition</i> , Third Elected Member for George Town
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OFFICIAL HANSARD REPORT
THIRD MEETING 2012/13 SESSION
FRIDAY
22 MARCH 2013
12.15 PM
Fifth Sitting

The Speaker: Good afternoon.

I will ask the Honourable Deputy Governor, Ex-Officio Member responsible for Internal and External Affairs and the Civil Service, to say Prayers.

PRAYERS

The Deputy Governor, Hon. Franz Manderson: Let us pray.

Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Legislative Assembly now assembled, that all things may be ordered upon the best and surest foundations for the glory of Thy Name and for the safety, honour and welfare of the people of these Islands.

Bless our Sovereign Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established among us. Especially we pray for the Governor of our Islands, the Speaker of the Legislative Assembly, Official Members and Ministers of Cabinet and Members of the Legislative Assembly, that we may be enabled faithfully to perform the responsible duties of our high office. All this we ask for Thy great Name's sake.

Let us say the Lord's Prayer together: *Our Father, who art in Heaven, Hallowed be Thy Name. Thy Kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the Kingdom, the power and the glory, forever and ever. Amen.*

The Lord bless us and keep us. The Lord make His face shine upon us and be gracious unto us. The Lord lift up the light of His countenance upon us and give us peace, now and always. Amen.

The Speaker: Please be seated.
 Proceedings are resumed.

ADMINISTRATION OF OATHS OR AFFIRMATIONS

OATH OF ALLEGIANCE

Hon. Jacqueline Wilson
[Administered by the Clerk]

The Speaker: Please stand.

Hon. Jacqueline Wilson: I, Jacqueline Wilson, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors according to law, so help me God.

The Speaker: On behalf of this honourable House, I welcome the Honourable Acting Attorney General responsible for Legal Affairs to be the Temporary Second Ex-Officio Member, and ask her to take her seat at this time.

Please be seated.

READING BY THE HONOURABLE SPEAKER OF MESSAGES AND ANNOUNCEMENTS

The Speaker: I have no messages or announcements.

PRESENTATION OF PAPES AND OF REPORTS

Standing Business Committee Report—Third Meeting of the 2012/13 Session of the Legislative Assembly

The Speaker: First Elected Member for West Bay, [Chairman of the Standing Business Committee].

Hon. W. McKeeva Bush, First Elected Member for West Bay: Thank you, Madam Speaker.

Madam Speaker, I beg to lay on the Table of this honourable House the [Report](#) of the Standing Business Committee for the Third Meeting of the 2012/13 Session of the Legislative Assembly.

The Speaker: So ordered.

Does the Honourable Member wish to speak thereto?

Hon. W. McKeeva Bush: No, Madam Speaker. I suspect that will be the last one for this parliament.

The Speaker: Thank you.

STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

The Speaker: I have notice of statements which will be made later in this Sitting today by the Honourable Minister of Education. I just thought I would let the House be aware of it at this point. I have agreed for him to make them later on today.

The Deputy Premier, Minister of Education, Financial Services and Employment, Hon. Rolston M. Anglin: Madam Speaker.

The Speaker: Honourable Minister.

Suspension of Standing Order 14 (1)

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, whilst we have done this in the past, out of an abundance of caution I move the [suspension of the] relevant Standing Order to allow us to change the order of business, and allow the statement to happen at a later point in this Sitting.

The Speaker: That is Standing Order 14 (is it?), which allows for variation of the—

[Inaudible interjection]

The Speaker: Pardon me.

[Inaudible interjection]

The Speaker: Okay.

The motion that is on Standing Order, can you tell me the Standing Order please? Is it [No.] 14 that varies the . . . I need some help from the Clerk in this.

[Inaudible interjection]

The Speaker: Fourteen?

The question is that Standing Order 14 [(1)] be [suspended] to allow the reading of the statements by the Honourable Minister of Education at a later time during this sitting.

All those in favour, please say Aye. Those against, No.

Ayes and one audible No. *[Hon. D. Kurt Tibbetts]*

[Inaudible interjection]

The Speaker: We are suspending Standing Order 14 to vary the order of business. So, I will put the question again, that Standing Order 14 be suspended to allow the Order Paper to be varied in order to allow

the Minister of Education to present his statements at a later time in this Sitting.

All those in favour, please say Aye. Those against, No.

Ayes and one audible No. *[Hon. D. Kurt Tibbetts]*

Hon. W. McKeeva Bush: Madam Speaker, it looks like you have doubts in your mind as to whether the Ayes have it or the Noes have it. Can we have a division?

The Speaker: Yes, we can.

The Clerk:

Division No. 20

Ayes: 9

Hon. Rolston M. Anglin
Hon. Cline A. Glidden Jr.
Hon. Dwayne S. Seymour
Hon. J. Mark P. Scotland
*Hon. W. McKeeva Bush
Capt. A. Eugene Ebanks
Mr. Ellio A. Solomon
Mr. Moses I. Kirkconnell
Hon. Anthony S. Eden

Noes: 1

Hon. D. Kurt Tibbetts

***Hon. W. McKeeva Bush:** *I'm here.*

The Speaker: *Yes or No.*

Hon. W. McKeeva Bush: *Yes.*

Absent

Hon. Juliana Y. O'Connor-Connolly
Hon. Alden M. McLaughlin, Jr.
Mr. Michael T. Adam

Abstention

Mr. D. Ezzard
Mr. V. Arden McLean

The Speaker: The result of the division, 9 Ayes; 1 No; 2 abstentions, and 3 persons absent.

The vote is in favour of suspending Standing Order 14 [(1)] to allow the Minister to read his statements at a later time during this sitting.

Agreed by majority on division: Standing Order 14(1) suspended.

Suspension of Standing Order 46(1) and (2)

The Clerk: Government Business/Bills, Suspension of Standing Order 46(1) and (2) to enable the Elections (Amendment) Bill, 2013, to be given a first reading.

The Speaker: Yes, Member for North Side.

Mr. D. Ezzard Miller, Member for North Side: Madam Speaker, Standing Order 49 (1) reads: "**When a Bill has been read a second time it shall stand committed to a committee of the whole House,**

unless the House on motion made refers it to a select committee. Such a motion shall be made immediately after the Bill has been read a second time and may be moved by any Member.”

Madam Speaker, in accordance with that Standing Order, I seek to move a motion that a Bill entitled, A Bill for a Law to establish a Human Tissue Transplant Council for the purposes of—

The Speaker: Wait a minute. Member for North Side, there is a motion on the floor for suspension of Standing Order 46 (1) and (2).

Mr. D. Ezzard Miller: I was trying to do it before you got to that, Madam Speaker.

The Speaker: Well, we have to take care of that motion first.

[Inaudible interjections]

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I beg to move the suspension of Standing Order 46(1) and (2) to enable the Elections (Amendment) Bill, 2013, to be given a first reading.

The Speaker: The question is that Standing Order 46(1) and (2) be suspended to enable the Elections (Amendment) Bill, 2013, to be read a first time.

All those in favour please say Aye—

Hon. W. McKeeva Bush: Madam Speaker, I think that is a motion put to the House, and I desire to say something on it. We are moving a motion for the suspension of the Standing Order.

Madam Speaker, there was a motion by the Member for North Side, and I am not quite sure what happened in that motion before we got to the suspension of the Standing Order. I desire to speak on the suspension of the Standing Order, but I need to know what is happening to the motion that was put by the Member.

The Speaker: The motion that that Member is going to put will follow this one. This motion was called by the Clerk, and I called on the Minister of Education to [move] the motion for the suspension of the Standing Orders.

If you wish to speak on the motion you may do so.

Hon. W. McKeeva Bush: Madam Speaker, just briefly, that the Elections (Amendment) Bill is a new Bill that we haven't seen—that did not come to Business Committee. And I said earlier in the presence of the Deputy Governor, the First [Ex-Officio] Member, that if this matter is coming, and if the Government is desirous of having observers in the country, that there should be some rule and regulation within our current

law (which is before us for amendment) to guide and to have some safeguards for the country in it. And I would hope that he would take that into consideration and that we should look at it for a couple of minutes to see if there are things that we can put in.

Now I don't know whether or not the Government is going ahead; I have not heard that. I am saying “if they are.”

The Speaker: Are you telling the Chair that you have not seen this Bill? You do not know the contents of this Bill? Is that what Members are saying?

Hon. W. McKeeva Bush: No, we did not get the Bill before. This is the first time.

I am not going to object to it, Madam Speaker. I am not objecting to the Bill. I am only saying . . . and I am giving due time to the [Ex-Officio Member], if they are going to go ahead with this, if they are going to go ahead with the admittance of observers for this general elections, just seven weeks away, that there be some safeguards put into the Elections Law. We have no safeguards in that Law for it, and that is all I am asking.

The Speaker: Okay.

Hon. W. McKeeva Bush: I did say so in his presence earlier this morning.

The Speaker: Does any other Member wish to speak on this motion? [pause] Does any other Member wish to speak on this motion? [pause] Does any other Member wish to speak on this motion? [pause].

If not, I will put the question.

The question is that Standing Order 46 (1) and (2) be suspended to enable the Elections (Amendment) Bill, 2013, to be read a first time.

All those in favour, please say Aye. Those against, No.

Ayes and one audible No. [Hon. W. McKeeva Bush]

The Speaker: Madam Clerk, I think we need a division again.

Hon. W. McKeeva Bush: Yes.

Why can't somebody just say what you are doing?

The Clerk:

Division No. [Not completed]

Ayes

Hon. Juliana Y. O'Connor-Connolly

Hon. Rolston M. Anglin

Hon. Cline A. Glidden Jr.

Hon. Dwayne S. Seymour

Hon. J. Mark P. Scotland

*Hon. W. McKeeva Bush

[Division discontinued]

***Hon. W. McKeever Bush:** Madam Speaker, I *[inaudible]*. I am seeking an explanation from the Government as to what their intentions would be. I think I have that indication from the Deputy Governor that they will look at it and that is good enough for me to allow the Bill to go through.

The Speaker: But when I called for the vote there was only one voice on either side of the House. We need to have a clear record in the House of how the vote went. So, we are in the middle of doing a division at the present time. We will finish the division and then we will proceed.

The Premier, Hon. Juliana Y. O'Connor-Connolly: But who asked for the division?

The Speaker: I called for the division because when I called for the vote only one voice from this side answered and only one voice from the other side answered. If you want to vote for something or vote against something, please make it clear.

Hon. W. McKeever Bush: Well, you heard my vote clear enough so that I could get my explanation, and I think that got it, so I am satisfied.

The Speaker: Madam Clerk, please proceed.

[Inaudible interjections]

The Speaker: I am going to put the question again because there seems to be some confusion among the membership as to what their stand is on this issue.

I will put the question again. [The question is that] Standing Order 46 (1) and (2) be suspended to enable the Elections (Amendment) Bill, 2013, to be read a first time.

I want a clear indication from both sides of this House how they are voting on this issue. If there are four I want indication from four too.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: Standing Order 46 (1) and (2) suspended.

The Speaker: The Member for North Side was also in the process of moving a motion, and I would like him to present it at this time.

Mr. D. Ezzard Miller: Madam Speaker, the Standing Orders do not allow me to move the motion now. Thank you very much.

The Speaker: I'm sorry. I did not get what you said. I did not clearly understand what you were saying.

Mr. D. Ezzard Miller: The Standing Orders do not allow me to move the motion that I wished to move earlier, now, Madam Speaker. So, I accept the ruling of the House.

[Pause]

The Speaker: I'm waiting on the Clerk.

GOVERNMENT BUSINESS

BILLS

FIRST READING

Elections (Amendment) Bill, 2013

The Clerk: The Elections (Amendment) Bill, 2013, First Reading.

The Speaker: The Bill has been read a first time and is set down for Second Reading.

SECOND READINGS

Mental Health Commission Bill, 2013

The Clerk: The Mental Health Commission Bill, 2013, Second Reading.

The Speaker: Honourable Minister of Health.

Hon. J. Mark P. Scotland, Minister of Health, Environment, Youth, Sports and Culture: Madam Speaker, I beg to move the Second Reading of a Bill entitled the Mental Health Commission Bill, 2013.

The Speaker: The Bill has been duly moved. Does the Minister wish to speak thereto?

Hon. J. Mark P. Scotland: Yes, Madam Speaker.

Madam Speaker, the Mental Health Commission Bill, 2013, is companion legislation to the Mental Health Bill, 2013 (which will be given a second reading later in this Meeting).

The Mental Health Commission, once established with the passage of this legislation, focuses on key issues and makes recommendations to government, service providers and other stakeholders, on how best to improve the systems which are directly related to mental health care. The membership of the Commission will consist of a broad range of individuals who will bring their expertise and knowledge to the Commission.

Madam Speaker, I will now outline some of the details in the various clauses.

Clause 1—short title and commencement, gives the title to the Bill and allows the law to come into force on the date which will be appointed by Cabinet. Please note that the Mental Health Law, 2013, and the Health Practice (Amendment) Law, 2013, will need to come into force before the commencement of the Mental Health Commission [Law].

Clause 2—the definitions included are: “commissions” (which are established under the law); “member,” any member of the commission which includes the chairman and the deputy chairman; and “prescribed” which refers to the prescribed regulations made under the law.

Clause 3—is the establishment of the Mental Health Commission. This clause allows for that to happen under this Law.

Clause 4 is the Constitution and membership et cetera, of the Commission, and this clause specifies the makeup of the Commission which shall consist of nine persons, all appointed by Cabinet. The nine members are two attorneys-at-law, two registered practitioners who are registered under the Nursing and Midwifery Council, pharmacy or professions allied with medicine, one registered psychiatrist, a registered medical doctor with training or experience in mental health, and three lay persons. All registered practitioners appointed will have training and experience in mental health.

Madam Speaker, it is proposed to have a chairman and two deputy chairpersons, at least two of whom must be an attorney-at-law, a psychiatrist or registered practitioner of the professional schedule of pharmacy, nursing and midwifery or professions allied with medicine.

Members should also hold office for a period not exceeding three years and are eligible for reappointment. Members can hold and vacate office in accordance with the terms of their appointment, and if a member ceases to be a member before the expiration of his office, Cabinet may appoint another person to hold that office until the time the member’s office would have expired.

Clause 5 refers to meetings of the Commission, meetings to be held at least four times per year with a quorum of three members including the chairman or one of the deputy chairpersons. The chairman, in his absence, can designate one of the two deputy chairpersons to preside at the meeting. And, if neither of the two is available, the chairman should designate another member to preside. This clause further allows for one of the deputy chairpersons or a member to preside at a meeting in the event that the chairman is able to designate someone. The chairman shall have a casting vote where there is a tie among members present in a matter which is to be decided. And further powers given to the Commission will allow it to delegate any of its function to members of the Committee.

However, should the functions be delegated to persons other than members of the Committee, approval will be required through Cabinet.

Members who have any financial or monetary interest in the matter being considered by the Commission shall be required to disclose this information or else they will be subject to a fine and even imprisonment.

Madam Speaker, confidentiality is a concern for many residents of the Cayman Islands, particularly in matters of mental health. And all matters discussed by the public will be held in strict confidence unless it directly affects the public.

Madam Speaker, the secretary to the Commission will be a newly established position. Initially the law will allow for a part-time secretary to be appointed by the Chief Officer in the Ministry of Health, and this secretary will record and keep minutes of the meetings.

The functions of the Mental Health Commission are outlined in the Bill, and are broadly categorised into three areas: Quasi-judicial, recommendations to health practice commissions and councils, and general.

Clause 7 outlines the quasi-judicial functions of the Commission which include hearing and determining appeals under the emergency detention order, the observation order, the treatment order and the assisted outpatient treatment order under the Mental Health Law, 2013. It also conducts reviews for persons detained three times in 30 days under the emergency detention order.

Clause 8 details the function of the Commission with respect to making recommendations to the Health Practice Commission and Councils. Under this clause the Commission will be required to submit an annual report to the Minister of Health on the needs and performance of the Mental Health system which will be tabled in the Legislative Assembly. They will also be required to work closely with the relevant councils to advise on scopes of practice and code of ethics for registered practitioners and provide policy advice on minimum requirements for registration; to advise the HPC on mental health facilities and medical research and clinical trials in mental health.

Clause 9 outlines the general functions of the Commission. In addition to the functions outlined above, the Commission will also have more general functions of ensuring the promotion of mental health and wellbeing so that every resident of these Islands can achieve the best possible mental health. Some of the more specific functions under clause 9 are to obtain and compile statistics on mental illness, to oversee and deliver mental health training and sensitisation sessions for prison officers, constables and other persons. This component is very important as oftentimes the person who is mentally ill that have committed offences are incarcerated, or persons are taken off the street, or from their home, by the police and

placed in the confines of a police lockup where the officer might not be sensitive enough to the behavior of mentally ill persons.

[The Commission] will also approve a list of overseas mental health facilities. Again, Madam Speaker, until we are able to see the development and construction of a residential facility to accommodate our mental health patients who require long-term care, we have no alternative but to send our patients overseas. Madam Speaker, the Government is working diligently to change this as we need to bring our patients home to where they belong. Another function is to review the progress of persons transferred overseas, and also to establish and maintain a programme which provides information to the general public concerning mental illness and co-occurring disorders.

Madam Speaker, again, another function is to review and offer advice to the Elections Office regarding the eligibility of mental health patients. Under the existing Elections Law, the Chief Medical Officer is required to submit to the Supervisor of Elections the name, contact details and date of any person who has been certified to be insane or of unsound mind under the Mental Health Law. The responsibility will be the remit of the Mental Health Commission that will provide this information to the Chief Medical Officer.

Madam Speaker, a further function is to review the progress of remand prisoners deemed unfit to plead every six months.

Clause 10 outlines the incidental powers and cautions of the Commission. This will allow collaborating with an agency or entity to assist with the collection of information, and the information provided shall not provide the identity of any individual person. Madam Speaker, this has been an issue in the past.

Clause 11—Delegations of functions: This clause further gives the Commission power to perform any of its functions delegated.

Clause 12—Advice of Commission to Health Practice Commission and Councils: I've stated before the Commission offers advice to the Health Practice Commission and the Health Practice Council in relation to professions dealing with mental health.

Clause 13 makes provision to allow the Minister responsible for Health after consultation with the Mental Health Commission to give policy directions to the Commission when it is in the public interest.

Clause 14 provides for regulations to be developed for those sections of the law requiring particular information on the operations and procedures of the law.

Madam Speaker, this Bill represents the establishment of a body which focuses on advocacy, training, research programmes to reduce stigma and discrimination, and to monitor report and advise the Minister of Health in the area of mental health. The Commission will work with various health practice councils to ensure that continuing education opportunities for mental health professionals are available.

Madam Speaker, a significant amount of time and effort has gone into the preparation of this Bill and I am very confident that along with the approval of the Mental Health Bill, the creation of the Mental Health Commission under this Bill, the rights of a mental health patient and their families will be very well protected.

Madam Speaker, I would certainly like to express my sincere thanks and gratitude to the hard work and dedication of the Mental Health Task Force, the Legislative Drafting Department, my Chief Officer and the entire staff of the Ministry for their efforts in putting this together. I look forward to the support from all Members of this honourable House.

Thank you.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Does any other Member wish to speak?

If not, I will put the question . . . Honourable Minister, do you wish to reply?

Hon. J. Mark P. Scotland: Madam Speaker, just to thank Members for their silent support of this Bill. We anticipate that there will be a small committee stage amendment in the Bill, which we will discuss at that point. But I thank Members for their silent support.

The Speaker: The question is that a Bill for a Law to establish a Mental Health Commission be given a second reading. All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: The Mental Health Commission Bill, 2013, given a second reading.

Mental Health Bill, 2013

[Deferred]

The Clerk: The Mental Health Bill, 2013, Second Reading.

The Speaker: Are we going to proceed now?

Hon. J. Mark P. Scotland: Madam Speaker, I have an engagement at one o'clock so I would not be able to continue right now.

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I beg to draw to your attention that we had raised Standing Order 14 [(1)] to allow us to rearrange the business on the Order Paper. And I think it is the wish of Members, since the Minister has to leave, and since we know the urgency, and that time

is against us, and I don't believe that there is anybody in this House who wants to be back here next week, that, we rearrange the order of business and move to the next bill.

The Speaker: Are you making a motion or are you assuming that we will continue under the first rearrangement of the Order Paper?

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I presume that since we had already done so that we could, under that same suspension which the House allowed, go a little further at this stage, and Members seem to be nodding in agreement to move past this item and come back to that perhaps at the end of the bills.

Suspension of Standing Order 14 (1)

The Speaker: Out of abundance of caution, let's raise the relevant Standing Order.

Minister of Education, please move the Standing Order.

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I move the further suspension of Standing Order 14 (1) to allow us to rearrange the bills and take the Mental Health Bill at a later point in this sitting.

The Speaker: The question is that Standing Order 14 (1) be [suspended] to allow the Mental Health Bill to be read at a later point in this sitting. All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: Standing Order 14 (1) suspended.

Development and Planning (Amendment) Bill, 2013

[Withdrawn—Standing Order 58]

The Clerk: The Development and Planning (Amendment) Bill, 2013, Second Reading.

The Speaker: Honourable Minister for Tourism.

Hon. Cline A. Glidden, Jr., Minister of Tourism and Development: Madam Speaker, after having consultation with my colleagues on the other side of the floor, it is the Government's intention to beg leave of the House to withdraw this Bill.

The Speaker: The question is that the Development and Planning (Amendment) Bill, 2013, be withdrawn.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: The Development and Planning (Amendment) Bill, 2013, withdrawn.

Notaries Public Bill, 2012

The Clerk: The Notaries Public Bill, 2012.

The Speaker: Honourable Temporary Acting Attorney General.

Hon. Jacqueline Wilson, Acting Attorney General: Madam Speaker, I beg to move the Second Reading of a Bill entitled the Notaries Public Bill, 2012.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

Hon. Jacqueline Wilson, Acting Attorney General: Yes, Please, Madam Speaker.

Madam Speaker, and Members of the Legislative Assembly, I wish to present to this honourable House the Notaries Public Bill, 2012.

In many common law jurisdictions a notary public is a practitioner trained in the drafting and execution of legal documents. Most of the legislation originally enacted in the Overseas Territories of the United Kingdom was based on 19th Century legislation applicable to England and Wales.

This legislation did not require notaries to be solicitors or to hold practicing certificates as applied in England and Wales at the time. In some Overseas Territories the regulation of notaries public has kept pace with the regulation of legal practitioners. Notably, the British Virgin Islands and Bermuda have included stringent qualification requirements for notaries public, and the stipulation that they must be a qualified attorney with a period of post qualification experience.

The current law in the Cayman Islands provides for a wide range of professional persons to be registered as notaries public, but does not require any universal qualifications that may be necessary for the functions of a notary public to be carried out satisfactorily. Additionally, Madam Speaker, there are no guidelines for notaries public with regard to the carrying out of their functions. These functions have considerable legal import and the lack of an up-to-date regulatory system could have far-reaching significance for the Cayman Islands, especially in light of the risk of persons becoming unintended parties to transactions in furtherance of financial crime and other unlawful activity.

It is against this background, Madam Speaker, that a review of the system of appointment and regulation of notaries public was carried out.

Madam Speaker, in the Cayman Islands some notaries public are currently functioning in a manner similar to that of a justice of the peace, while others who may be qualified attorneys carry out the authentication of documents relating to foreign commercial transactions. In effect, every notary public, when appointed, is authorised to take certain functions that are highly specialised. Some of these functions are very likely to be beyond the experience of the lay person appointed as a notary public. This has the potential of leaving at risk members of the public who use the services of a notary public in the belief that every notary is competent to carry out any type of transaction.

This Bill brings the legislative framework regulating notaries public in line with modern standards and sets more stringent qualification standards for persons applying to be appointed as notaries public.

Madam Speaker, eligibility for appointment as a notary public will now be limited to persons who are Caymanians or permanent residents who are ordinarily resident in the Islands. The applicants must also be a person who has never been convicted of a crime punishable with imprisonment, or found guilty of conduct that constitutes misconduct in a professional respect. The applicants are required to have completed the prescribed training programme for notaries public. All applicants will be subject to vetting with the opportunity for the Governor or the Attorney General to request further information from an applicant.

The Bill addresses any changes to the applicant's fitness to function as a notary public and places the onus on the applicant to give an undertaking that he will file with the Clerk a notice setting out any changes to: a) his name; b) country of residence; c) status as a Caymanian or permanent resident; or d) whether he has subsequently committed a crime or was declared bankrupt.

The Bill provides for the Clerk of the Court to endorse changes in the standing of a notary public in the register. For example, where the appointment lapses by virtue of the failure to pay annual fees by January 31st of a given year, for more than six months, the Clerk is required to revoke the appointment.

Madam Speaker, the Bill makes provision for the periodic publication on the relevant government websites of the current list of notaries public, and similarly, the suspension or revocation of an appointment in order that members of the public may be able to easily ascertain the names of notaries public who are in good standing. Where the appointment has lapsed, the law requires the payment of \$250 for the reinstatement of the appointment. The Bill provides that it is a criminal offence for a notary public to perform any notarial act during any period in which his appoint-

ment lapses. The offence is punishable with a fine of \$5,000.

The Bill empowers the Governor in Cabinet to make regulations that provide for the conduct of notaries public, including the manner in which records are kept, and any practice directions to be issued to notaries. The Bill also provides for the accreditation of persons or institutions for the delivery of the programme of training, and for the body that will generally advise on the standards of conduct for notaries public.

Finally, Madam Speaker, the Bill makes provision for persons who are currently appointed as notaries public. Their appointments will be treated as valid where they successfully complete the prescribed training programme within the set time periods. Where a current notary public does not complete the programme within twelve months of the coming into force of this law, his appointment will be revoked.

Madam Speaker, and Members of the Legislative Assembly, the time is right for us to put in place measures that will modernise the eligibility requirements and regulation of notaries public in the Cayman Islands. I now seek the approval of this honourable House in passing the Notaries Public Bill, 2012.

Thank you, Madam Speaker.

The Speaker: Thank you, Honourable [temporary Attorney General].

Does any other Member wish to speak? [pause].

Member for North Side.

Mr. D. Ezzard Miller: Thank you, Madam Speaker.

I wish to make a short contribution on [the Second Reading of] a Bill for a law to provide for the appointment of notaries public and the regulation of their practice; to repeal and replace the Notaries Public Law (2006 Revision); and for incidental and connected purposes.

Madam Speaker, I support most of the provisions of the Bill. I certainly support the idea of people being properly trained, and for those people who are currently notaries public, to be given a six-month period to receive the training. What I do not support in the Bill is the increase in fees for notaries public.

Madam Speaker (to the Government), these fees may sound small to a lawyer working in one of the big law firms earning hundreds of thousands of dollars per year and notarising documents for the law firm. But in my constituency notaries are often not in a position to charge for their services because the person for whom they are notarising documents is not in a position to pay. And there are instances where documents, in particular documents from other jurisdictions, that the signature of a justice of peace is not accepted. I know at least three notaries public, one of whom is my constituent, who have [told] me that on an annual basis they do not collect enough fees from the people for whom they notarise documents to pay the

existing [notaries public] fee, much less this increase in fee.

I have no problem with the Government finding a way to segregate those people who are getting large incomes from the services of a notary, and having them pay a substantial fee. But, Madam Speaker, unless the Government is prepared to keep the fee at the current level, or come up with some formula, whether it is based on the annual income of the person, that they pay a certain fixed fee with certain incremental increases, if the Bill is taken to the Third Reading in the present form, unfortunately, Madam Speaker, I cannot support the Bill. The people whom I represent will not be in a position to renew their notaries public once the fees come in as it is not to their advantage to do so. It will deprive many of the people whom I represent from getting the services of a notary public when they need one for free. We know that if they go into one of these big multi-storey firms in George Town to get the services done it is going to cost them the fee.

Madam Speaker, there is also another matter not covered in the Bill. There are a few people, of whom I am aware, that are both justices of the peace and notaries public. I have had people report to me that in cases where the person believes that they can pay, although a justice of the peace would be acceptable, for instance, on a land transfer document, because the person has a notary public seal, they tell the people that the justice of the peace cannot sign it and they have to pay them \$25 to sign it as a notary public.

I know that that is difficult to control. But it does happen. I just want to raise it [for] the public and the people who are being abused by these “dually certified” (for want of better terminology) notaries public/justices of the peace who are charging when the free signature of a justice of the peace would be adequate. They often tell them, *Well, you know, you need a stamp on this and I do not have a stamp as a justice of the peace but I have a seal as a notary public. If I use this it will cost you \$25 to \$30 (whatever the fee is).* Madam Speaker, the public in Cayman needs to know—particularly if the document says on it that it can be signed by a notary public or justice of the peace.

In fact, I had one case reported to me quite recently where the Government, for reasons unbeknown to me, currently requires people who get pensions to submit their birth certificate and marriage certificate and passport and complete a form in order to continue to get their pension (although they were getting it last year so that they can continue to get it now). That document says on the bottom that it can be signed by notaries public, justices of the peace, minister of religion, members of the Legislative Assembly, and the person was told [the notary], *I need to put my notary public seal on that*, and they were charged \$25.

Madam Speaker, the people need to know that if it says “justice of the peace” and the person is a justice of the peace and a notary public, the person should be honest enough to sign it as a [justice of the peace].

Madam Speaker, the fee for people who do not operate in offices where there are opportunities to get returns and charge these big fees for the notary seal, when they are doing out of communities like North Side and East End where people cannot afford to pay, I cannot support the proposed increase in fee.

I support the idea that they must be properly trained, and I have always disagreed, when they amended the law earlier, to say that you had to be an accountant or lawyer, or one or two other professions that that was narrowing it too narrow, and that we should have put in place some sort of academic course.

Now, what I would like to see happen, Madam Speaker, is that this academic course is put at the Community College so that anybody who wants to be a notary public can go there, do the course, complete it and then apply to be a notary public. Once you have completed [the course], it does not matter who you are because you have completed it with a certain passing grade, and you pay the fee, then you should be made a notary public.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? [pause]

We will take a suspension until 2.30. I ask Members to please be back in the Chamber at that time. We got a very late start this morning and we have a lot of business to get through before tonight.

Proceedings suspended at 1.15 pm

Proceedings resumed at 3.28 pm

The Speaker: Proceedings are resumed. Please be seated.

When we took the break the Notaries Public Bill, 2012, was being debated.

Does any other Member wish to speak? [pause].

Member for East End

SECOND READING

Notaries Public Bill, 2012

[Continuation of debate thereon]

Mr. V. Arden McLean, Member for East End: Thank you, Madam Speaker.

Madam Speaker, I rise to make a short contribution to the Notaries Public Bill, [2012], which is currently being debated.

I did have some major concerns with this Bill because, repealing the old law which required in section 3, **“The Governor may authorise any person who- (b) has been employed as an attorney-at-law for a period of three years or more;”** which I assume, and I think safely so, that it was within the Cayman Islands.

Under this [clause] 3 (b) the [amending] Bill, [it states]: **“has been employed as, or has practised as, an attorney-at-law for a period of three or more years in the Islands, in any Commonwealth country or Ireland or in any other British Overseas Territory;”**

Madam Speaker, I believe the first one, with no . . . it says: **“[clause] 3(1) A Caymanian or any permanent resident of the Islands who- (b) has been employed as, or has practised as, an attorney-at-law for a period of three or more years in the Islands, in any Commonwealth country or Ireland or in any other British Overseas Territory.”**

Now, Madam Speaker, we know the debacle right now with the Legal Practitioners Law and people practising overseas who are not qualified to practise Cayman Islands’ law. But there is a provision; [clause] 3(2) says: **“A person described at subsection (1)(b)”** (which is that) **“or at section 3(1) of the Legal Practitioners Law (2007 Revision) is exempt from the requirement to complete the prescribed training programme”**

Madam Speaker, I spoke to the Madam Attorney [General] and she has allayed some of my fears, somewhat, but I still have my own concerns about it. My major concern is that lawyers will be coming in here straight out of a Commonwealth country (could be from anywhere), Ireland or any other British Overseas Territory, and being qualified to be a notary public. Now, I do not understand if they have to be Caymanian or resident, which I trust is in accordance with the Immigration Law to become a resident (which is eight, nine years or whatever it is, are under the other provisions), if that is the case, why are we saying that they can come from these other territories?

Madam Speaker, if we have an American who comes here and is qualified to practice law in our country, and becomes a resident, or a Caymanian for that matter, they do not qualify. There is something that just does not strike me . . . and I am sure the Acting Attorney General can explain that when she responds. But it just strikes me as odd that . . . unless, of course, we talk about the qualifications for that American having been gained here, or anyone else for that matter. But if we choose just the Commonwealth countries, Ireland or any other British Overseas Territory, it only qualifies those there.

I guess that can be explained. But, Madam Speaker, I wanted to make sure that we can’t have someone walking off of a plane and becoming a notary public. It’s obvious they have to have practiced here—and I hope that is the case—for three or more

years, and be Caymanian or a permanent resident by virtue of the Immigration Law. And I do not see that here, but I guess that is the case.

So, I will leave the Acting Attorney General, Madam Speaker, to respond to that in her knowledgeable way.

The other one, Madam Speaker, I believe needs attention is that we have increased the annual fee from \$500 to \$800 in this Bill. We are proposing to increase that. Nevertheless, we have not increased the fees that can be charged.

Madam Speaker, I understand that these are professionals and they should be earning sufficient to do that over a one-year period, if they are notarising a number of documents. But I have looked at the possibility of a Caymanian being in a profession in a professional environment and [clause] 3(e) says: **“is of good character, and is considered by the Governor to be qualified, by virtue of his professional or business experience, to carry out the duties of a notary public.”** So, immediately he or she has the business experience but leaves that business and goes to form their own business.

We talk a lot about us, as Caymanians, becoming entrepreneurs by starting our own consulting businesses. We find ourselves discouraging our own people from becoming the middle class by virtue of the many fees that we continue to pile on the possibility of opening a little business. Madam Speaker, whichever Government is to be elected in the coming months, there is lots of work to do. First of all we need to look at the possibility of encouraging Caymanians to start businesses where we develop a robust middle class. We have lost much of the middle class, Madam Speaker. I am speaking to the middle class in business, now. We have a good middle class, but everybody works for one or two people in this country. That is not what we need.

Whilst we need that, there is a necessity for that, and what drives a country is a middle class that drives the small businesses. And every week, every few months, we put another fee on as opposed to assisting them and exempting them from some of these fees. Whichever Government is elected (no disrespect to any past or current Government) . . . that must be one of the priorities for moving forward. We need to assist our people.

Say what we want to say about successive Members of Parliament from Cayman Brac, but they have fought to ensure in many instances that half of the fees we pay here are what they pay in Cayman Brac. We need to do it across the board to assist our people. But here we are. . . I can think, Madam Speaker, of a number of small businesses that now have two little rooms, a consultancy (and I trust no one decides what I am about to say or make it their own determination as to who I am speaking about), but small businesses now that consult on immigration

matters. I went to one of those recently to apply for my British Passport.

Madam Speaker, I hear the groaning and the moaning in here because I have always said that I would not get it. Well, my son is in school in England and I need to get to him real quickly. That's it!

But, Madam Speaker, there are two persons in that, the owner and she has a secretary, or a PA or something. Now I am sure that person finds herself in a situation where she needs to notarise documents. Those are the types of people we need to assist. Those are the [businesses] this country should concentrate on from hereon in. We need to ensure that whilst we are doing this and making these changes, that it does not affect the small businesses in this country. It is extremely important that we do not react to a big law firm making a lot of money and can afford to pay it. We need to ensure that we take note of the small businesses and try to encourage them.

Madam Speaker, I am not saying this \$300 per year more is going to break the back of a little small business, but this could very well be the straw that breaks the camel's back, in that it discourages people from opening a business because this is an additional fee. This one is additional, that is additional; those are the types of things I am talking about.

Madam Speaker, I am very happy to see some of my colleagues indicating that we will deal with it at committee stage. And if that is the case, I trust now that it is going to be done at that stage because I am concerned about the small businesses to develop our business sector or middle class.

Thank you very much, Madam Speaker.

The Speaker: Thank you, Member for East End.

Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause] Does any other Member wish to speak?
[pause]

Fourth Elected Member for George Town.

Mr. Ellio A. Solomon, Fourth Elected Member for George Town: Thank you, Madam Speaker.

Madam Speaker, just a very short contribution, and some of it will be at least an echo of one of the points raised already.

Firstly, let me say that it is good to see the actions being taken insofar as working to secure the position in terms of Caymanians being notary publics.

I remember taking a trip not too long ago. I think we went as far as Hong Kong. There are a lot of persons throughout this country, as well as other countries around the world, which are representing the Cayman Islands. And it was good to see Caymanians or a Caymanian there as well as far as it is in Hong Kong, and understanding that there are many different reasons why Caymanians continue to play an integral role in these firms, and that is inclusive of their qualifications, their skills as well as other assets,

Madam Speaker. And also when we look at things such as this particular Bill as it relates to notaries public, this, I believe, carries us in that same direction as well.

Clearly, if we are talking about 500 notaries public, for example, I think we can definitely find those persons within our borders. There is no doubt about that. I think it is to stress as well, that when we talk about the Caymanians, we are talking about, as we would say "born Caymanians", we are talking about status holders, we are talking about permanent residents. I think when you have a pool as wide as that, there should be no doubt that you should be able to source those persons locally. So again, Madam Speaker, just applauding, I think it is a step in the right direction. It chimes a bit with at least one of those bills we are going to be discussing a little later.

I do want to raise the concern and hope that the Member could address it, and that is the issue as has been raised, I join chorus to find out exactly what the specifics are as it would relate to persons coming from other Commonwealth areas. What I suppose is the need is insofar as this particular piece of legislation, why it is that that particular gap or provision has to exist in the legislation as it relates to persons from the Commonwealth? Are we then saying that within the pool of persons, whether they be permanent residents, status, or as we say, "born Caymanians", are we saying that we do not have the persons we need within those numbers? I would dare say, Madam Speaker, I think we should have that.

I think all of the issues, for example, training is a very positive thing. I would love to know . . . I think that is perhaps determined within the regulations. But insofar as the training is concerned, naturally that is also a positive thing. I hope it is not going to be a case where the cost of that training is going to be in any way at all prohibitive.

Madam Speaker, very quickly, those four points, again, if we could get some clarification as it relates to the cost of the training and a bit about the training, just to make sure there was not going to be an issue there, would like to have the Member address what is the reasoning behind having to allow and permit from Commonwealth areas (that's not to say it is no necessary but would like to hear the reasoning for that). And again, applauding the steps taken in the right direction, I believe that we have within our borders some very intelligent persons within this country, persons who have the resources, who have the assets we need in terms of moving forward. And definitely, as it relates to notaries public.

I wish to be able to show that again this particular piece of legislation is not in any way divisive or one that marginalises or disenfranchises anyone. I think this is the Cayman Islands and we are being very inclusive as I see it in terms of the legislation. It is a matter that, whether it is a new Caymanian or otherwise, it is a case that if you are a Caymanian per-

manent resident status or a born Caymanian, it is a case where those persons are being looked out primarily if not solely, as persons who will form and be notaries public.

With that, Madam Speaker, I hope the Member will address those questions and concerns. Thank you.

The Speaker: Thank you, Fourth Elected Member for George Town.

Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Does any other Member wish to speak?

If not, I call on the mover of the Bill to make the concluding remarks.

Hon. Jacqueline Wilson, Acting Attorney General: Thank you, Madam Speaker.

Madam Speaker, I would like to thank the honourable Member for East End and the Fourth Elected Member for George Town for their very insightful comments and thoughts on the Bill

To respond to some of the concerns raised regarding the eligibility requirements, in the draft Bill the scope of eligible applicants is limited to Caymanians and persons holding permanent residency as defined in the Immigration Law (2012 Revision). So, it has been narrowed to those two classes of persons. Persons outside those categories are not eligible to apply for appointment as notaries public.

Once those requirements as to eligibility are fulfilled, then professional qualifications and experience requirements are prescribed, and these are listed in clause 3 (1)(a) through (d). These provisions relate, as I indicated, to professional experienced persons who have been employed in management positions, who have practised as attorneys-at-law in specified jurisdictions, persons who have been employed as certified public accountants, and so on.

With respect to the jurisdictions that have been listed, those are relevant only insofar as they relate to the jurisdiction in which the applicants would have practised. So, that does not mean that an attorney who does not meet the requirements regarding Caymanian status or permanent residency, and who has practised in the jurisdictions listed in paragraph (b) would be entitled to apply. These are additional requirements provided that the prerequisites as to eligibility are first satisfied. And those jurisdictions are mentioned only because they are relevant insofar as eligibility for appointment as legal practitioners in the Cayman Islands. These requirements are consistent with the requirements under the Legal Practitioners Law. And that is the only relevance that certain jurisdictions have been mentioned in this clause to the exclusion of others.

With respect to training, the draft Bill makes provisions for regulations to be prescribed. And the parameters of the training would be detailed in those

regulations, including the persons who would be qualified to provide that training. The nature and the scope of the training would be fleshed out in the regulations which would be issued almost contemporaneously with the law, I am advised.

So, I hope this addresses the concerns raised and clarifies the—

[Inaudible interjection]

Hon. Jacqueline Wilson Acting Attorney General: Sorry?

[Inaudible interjection]

Hon. Jacqueline Wilson, Acting Attorney General: All the relevant details with respect to training have been left for the regulations so they are not set out in the law. The whole framework of training, including the cost, the scope of it, and the persons who would be eligible to provide that training, would be left for the regulations.

Thank you, Madam Speaker.

The Speaker: Thank you, [Acting Attorney General.]

The question is that the Notaries Public Bill, 2012, be given a second reading.

All those in favour, please say Aye. Those against, No.

Ayes.

Agreed: The Notaries Public Bill, 2012, given a second reading.

Insurance (Amendment) Bill, 2013

The Deputy Clerk: The Insurance (Amendment) Bill, 2013, Second Reading.

The Speaker: Honourable Minister of Education.

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I beg to move the Second Reading of a Bill shortly entitled, The Insurance (Amendment) Bill, 2013.

The Speaker: The Bill has been duly moved. Does the Minister wish to speak thereto?

The Deputy Premier, Hon. Rolston M. Anglin: Yes, Madam Speaker.

Madam Speaker, my comments on this Bill will be brief. And, we have before us a Bill that seeks to amend the Insurance Law, 2010, to create a new class of insurer, to permit the registration of portfolio insurance companies, and to provide for incidental and connected purposes.

Madam Speaker, portfolio insurance companies, it is believed that in the global captive insurance industry the Cayman Islands is now being placed at a competitive disadvantage compared to captive domiciles that offer Incorporated Cell Companies (ICC), or similar structures such as the Delaware Series LLC. This is principally because certain of the benefits that ICCs can offer cannot currently be provided by a Cayman Islands Segregated Portfolio Company (or SPC), making us a less attractive jurisdiction for captive sponsors and their consultants when considering a Cell company structure.

Further, to careful consideration by industry experts, CIMA, and the Ministry of Financial Services, it was concluded that it would not be appropriate for the Cayman Islands to introduce ICCs into its legislation, but, instead, certain improvements should be made to the existing regime for segregated portfolio companies licensed under the Insurance Law. It is believed that the proposed amendment to the Insurance Law will achieve all the benefits available to an ICC, but would be a better solution for the Cayman Islands in three important aspects: Firstly, the model proposed operates squarely within fundamental and well-understood principles of corporate law, and does not involve the highly creative and untested jurisprudence involved in an incorporated cell company.

The model proposed is a natural extension of Cayman's existing SPC regime and would therefore not lead to the SPC regime being potentially perceived as an inferior version of the ICC regime.

Lastly, Madam Speaker, the model proposed is more efficient and cost effective than introducing standalone ICC legislation. This should contain costs when doing business within the Cayman Islands.

Madam Speaker, the proposed amendment to introduce portfolio insurance companies into the legislation is designed to maintain the Cayman Islands current position as a leading Cell Company Domicile. And, secondly, to increase the attractiveness of the Cayman Islands segregated portfolio companies to captive sponsors and their consultants, and hence increase its market share of Cell Company Captives.

Some of the main advantages of portfolio insurance companies are that they can be offered over an SPCR. A Cell of a portfolio insurance company is a separate legal entity compared to the segregated portfolio of an SPC, which is not a separate legal entity. Hence a Cell of a portfolio insurance company may have greater ease of dealing with counterparties than the segregated portfolio of a segregated portfolio company. Unlike a segregated portfolio of an SPC, a Cell of a portfolio insurance company can contract with another Cell of its own portfolio insurance company, or with the portfolio insurance company itself.

Thirdly, because each Cell is a separate legal entity, there should be less risk of inadvertent commingling of assets between Cells.

Fourthly, it is possible to wind-up a single Cell of a portfolio insurance company without affecting the portfolio insurance company or other Cells of the respective entity. This is not possible within the segregated portfolio company structure.

Madam Speaker, another feature of this Bill is the creation of a new category of insurer, a Class B (iv). Essentially, at present, there is very little difference between a Class B (iii) and a Class D licence, except that the fee is \$12,000 for a Class B (iii), and \$84,000 for a Class D. Also the Class D licence requires a physical presence which brings economic activity. As such, new reinsurance may be tempted to start a new Class B (iii), and, unfortunately, insurance managers would have an incentive to encourage this structure by creating a Class B (iv) licence built around net earned premiums, it will be possible to segregate small commercial insurance into B (iii) and put startup commercial reinsurers onto the B (iv) structure, thereby charging a much higher fee and requiring a physical presence for the Class D insurers.

Madam Speaker, the provisions introduced by this Bill anticipate to make Cayman's financial industry more attractive and increase economic activity in the sector. This in turn will have a positive impact on the local job market, and, of course, government revenue. This amendment Bill has been produced from the assistance of the Cayman Islands Monetary Authority, and the working group from the Financial Services Legislative Committee (FSLC).

The detailed amendments which are now being proposed in the Insurance (Amendment) Bill, 2013, are as follows:

Clause 1 of the Bill sets out the short title.

Clause 2 of the Bill provides for the insertion of the definitions of the words: "Class B (iv) insurer", "gross premium written", "net earned premium", "net written premium" and "reinsurance premium ceded" in section 2 of the Insurance Law, 2010.

Clause 3 of the Bill provides for the amendment of various subsections of section 4 of the Insurance Law, 2010, which would permit the introduction of the Class B (iv) insurers with net written premiums equal to or greater than sixteen million four hundred thousand dollars, and to amend references to "net premiums written" to "net written premiums."

Clause 4 of the Bill amends section 9 of the Insurance Law, 2010, to allow for the introduction of Class B (iv) insurers and to allow for the transfer by way of continuation of Class B and Class C insurers.

Clause 5 of the Bill provides for the insertion of Part 4A (sections 28A and 28S) in the Insurance Law, 2010. Part 4A provides for the registration of an exempted company as a portfolio insurance company, and for the exemption of a portfolio insurance company from the requirement of a licence to carry on insurance business that is within the scope of the licence held by its controlling relevant insurer.

Part 4A requires that a portfolio insurance company must be controlled by the relevant insurer and provides for other relevant matters such as the issuance, transfer and disposal of shares requirement for a registered office, powers and duties of the Authority, registration where the relevant segregated portfolio carries on insurance business, and, lastly, for deregistration.

Madam Speaker, this Bill is the culmination of work that was started right around two years ago now, in 2011, and, certainly, it is good that it has reached this stage. It is one that is going to cause an increase in the business in our financial services industry. There are already entities that are lined up that are going to take up this new feature. So, this is not one where the industry is saying that they believe it is going to create business; there are actually entities as we speak, that are awaiting the passage of legislation so that they can then utilise the Cayman vehicle that will be created by this legislation.

Madam Speaker, I commend the Insurance (Amendment) Bill, 2013, to all Members of this honourable House.

The Speaker: Thank you, Honourable Minister of Education and Financial Services.

Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause].

If not, I call on the mover of the Bill to make his concluding remarks.

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, just to thank all Members for their tacit support.

Certainly, it is fair to say that the pieces of legislation passed by this honourable House over the last ten days have been critically important pieces of legislation, all of which have been the culmination of work that has been going on for some time to ensure that we continue to strengthen the industry, and to also ensure that we are able to protect the industry in some instances. So, Madam Speaker, I thank Members for their tacit support.

The Speaker: Thank you, Honourable Minister.

The question is that the Insurance (Amendment) Bill, 2013, be given a second reading.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: The Insurance (Amendment) Bill, 2013, has been given a second reading.

Mental Health Bill, 2013

The Deputy Clerk: The Mental Health Bill, 2013, Second Reading.

The Speaker: Honourable Minister of Health.

Hon. J. Mark P. Scotland: Madam Speaker, I beg to move the Second Reading of a Bill shortly entitled, The Mental Health Bill, 2013.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak thereto?

Hon. J. Mark P. Scotland: Thank you, Madam Speaker.

Madam Speaker, as all Members of this honourable House would know that while not very widespread throughout our community, we have instances of persons suffering from mental illness. And so, while we have legislation now which has been in place for over 30 years, the time has come for what is essentially a new [Law], because we are going to repeal the existing [Law] and substitute with this new Bill.

Madam Speaker, when we look at mental health and talk about statistics, just looking at statistics from some of the larger countries, it can be seen that one in four persons in their lifetime will experience some kind of mental health problem. About 10 per cent of children have a mental health problem at any one time. And when we look at persons who are incarcerated, only one in ten prisoners does not have some type of mental disorder. So, as I said, mental health is in our society and if it is not dealt with, the prevalence of mental health illnesses will certainly increase.

This Bill will go a long way in addressing some of those issues. Obviously, we know that having a residential facility is much needed in our community as well. And, there are initiatives afoot to address that issue, but, obviously, addressing the legislation first and foremost will go a long way as well.

Madam Speaker, after taking office in 2009 with the responsibility for Health, I recognised the need of those amendments for the Law to be updated (so to speak). There was some work already started, and I credit the previous Minister of Health (now the Second Elected Member for Bodden Town) for the work started on the review of the Mental Health legislation. As I said, the original Mental Health Law goes back to 1979. Some minor amendments were made in 1997. But for the most part, the law has remained the same as the old 1979 Law.

So, Madam Speaker, in 2009 there was a PAHO [Pan American Health Organization] mental health workshop conducted here in the Cayman Islands, under the previous Minister of Health. And subsequent to that, in 2010, I established a Mental Health Taskforce [MHT] to address the objectives that were

identified in that workshop. The taskforce consisted of a cross section of key stakeholders from the Ministry of Education, DCFS [Department of Children and Family Services], from the Prison, the Health Services Authority, private mental health counselors and practitioners, the National Drug Council, the RCIP, Department of Counseling Services, Legal Department and the Department of Community Rehabilitation. Since that time this taskforce continues to work, meeting very regularly and working very diligently to accomplish the objectives that were set out by that taskforce in the workshop in 2009.

The first task agreed by the taskforce, and probably the most important, is what we are doing here today—to revise the Mental Health Law. As I said, some revisions were done in 1997, but it was still in need of major review and revision, as it currently does not adequately meet the needs of our mental health patients, and, most importantly, in today's context, was not compliant with the Human Rights provisions in the 2009 Constitution.

Madam Speaker, we looked at other work that was done. A report that was commissioned in 2001, again, indicated the inadequacy of the Mental Health Law, and, in particular, that it did not provide adequate safeguards for detained patients and did not reflect advances in psychiatric treatments in the last 25 years. So, Madam Speaker, with all of that in mind, and then the work which has been carried on since 2010, when looking at all of the revisions that would have been needed, it was decided that we repeal the old Law and replace it with the Bill being tabled today.

Madam Speaker, the new Bill includes new detention orders, treatment orders, temporary holding power, revised and updated definitions, and also the establishment of a Mental Health Commission (which we just approved on the Second Reading of the Mental Health Commission Bill earlier); all of which has been introduced in this new legislation.

Also, the new legislation includes the following: clause 1, the Title, "Mental Health Law, 2013".

In clause 2 there have been many new definitions introduced, such as, "assisted outpatient treatment," which is a definition for patients who are unlikely to participate in treatment voluntarily following a period of hospitalisation. This assisted outpatient treatment order will ensure that a patient receives the necessary treatment to prevent a relapse or a repeated hospitalisation or an arrest, and possibly even incarceration. The order can only be made by a responsible medical officer or by the courts on the recommendation of the responsible medical officer. This order is meant to help patients and is a means of getting services to those who refuse or will not consistently comply with voluntary treatment.

Madam Speaker, "developmental disability" is a definition which was introduced to capture patients who have or suffer conditions related to a brain injury, premature birth, and autistic spectrum disorders.

Madam Speaker, the definition of "medical officer" refers to a psychiatrist or a clinical psychologist registered under the Health Practice Law. The clinical psychologist must possess a doctoral qualification and both the psychiatrist and the clinical psychologist should be employed by government or a government company or have working privileges at a government facility.

The "Mental Health Commission" (MHC), as we heard earlier today, the Bill allows for the establishment of a body to hear appeals from patients or the nearest relatives, among other functions. A separate Mental Health Commission Bill has already been tabled, Madam Speaker.

"Mental impairment" and "serious mental illness": These two definitions have been introduced to replace "mentally defective" and "mentally disordered." The older definitions do not adequately capture the broad areas of mental health needs while the newer updated definitions are in accordance with International Best Practice and World Health Organization guidelines.

The definition of "nearest relative" has been expanded to meet modern times. Madam Speaker, for example, a patient may be living with a partner but is unmarried, or the patient may have a close friend who he or she shares or does not share accommodation with. The nearest relative could also be someone not living here in the Cayman Islands. Some of the new additions to this definition are: "common law partner," "legal guardian," "social worker," "attorney" and "mental health professional."

A place of safety has been a very topical issue of recent. A "place of safety" has been defined as a residential accommodation which may be provided by the government and may include a hospital, police station, a prison, a home any other suitable place designated by the Mental Health Commission. So, Madam Speaker, while the preferred place of safety is a hospital or a residential facility for psychiatric patients, the police station could be used in exceptional circumstances.

Madam Speaker, more details will be provided in the Mental Health Regulations, but I wanted to touch on this subject. We know there was a report from the Complaints Commissioner in 2009 on an investigation into the unreasonable or unjust operation of the Mental Health Law. The recommendation at that time was that the Ministry should research and develop a process to administer the designation for a place of safety giving due consideration to the preservation of patient privacy. Madam Speaker, the provisions of this Bill combined with the creation of the Mental Health Commission and the regulations to be established have addressed the Complaints Commissioner's concerns in this matter.

The definition of "responsible medical officer" is the person responsible for the observation, care and treatment of a patient. Under existing legislation,

the Chief Medical Officer (CMO) is the responsible medical officer, but this updated law will allow the responsible medical officer to assume most of the clinical duties while the CMO will have oversight for administrative duties and will continue to recommend to the Governor the places approved for treatment outside the Islands by the Mental Health Commission.

Certainly, the current definition of “treatment” in the existing Law is not reflective of the changes that have been made over the past 25 years. The definition has been expanded to include internationally accepted standards of treatment for mental illness, psychological treatment and rehabilitation. The revised definition also includes the types of treatment plan that can be administered under an assisted outpatient treatment order.

Clause 3—Application: The law is not applicable to persons who have voluntarily sought treatment for a mental illness, serious mental illness or mental impairment.

Clause 4—The guardian’s authority takes precedence. In a case where a patient has a guardian assigned, the authority of a guardian takes precedence over the authority of any other person.

Clause 5—Request for review. The existing request for observation order has been replaced with request for review. This revised wording allows for a nearest relative who is of the opinion that a person may be suffering from a serious mental illness, mental impairment, or is not compliant with treatment, to report the matter to the medical officer and make a request for the patient to be assessed.

Clause 6—Emergency detention order replaces the observation period which is in the current Law. This order is initiated by the medical officer if he is of the opinion that the person is, or may be, suffering from a serious mental illness or mental impairment and poses a danger to themselves or others. The patient will be detained in the hospital or other place of safety for up to 72 hours instead of the previous 48 hours. The Mental Health Commission will be notified and the patient or the nearest relative within 24 hours of the order being made request a second opinion from another medical officer.

In addition, the patient detained under this order may file an appeal with the Mental Health Commission from the making of the order, and up to 14 days from the expiration of the order. Under the emergency detention order, treatment may be administered without the patient’s consent if it is in their best interest. If there are instances where patients are detained under this order several times within a month, the Mental Health Commission may review the patient’s files and records and make recommendations in relation to the care of the patient that they think fit.

Clause 7—Apprehension of a person suspected to be a danger. This section has been amended to allow for a patient apprehended by the constable to be brought before a medical doctor within 12 hours

after being detained, if the medical doctor is the attending physician in the emergency department of a healthcare facility.

[Clause 8]—Observation order: This new order would last up to 14 days and is implemented by the medical officer in consultation with the mental health professional, a social worker, a probation officer or the nearest relative. The order would allow for the patient to be assessed in the hospital to determine whether the patient would benefit from further treatment. Patients detained under this order may file an appeal with the Mental Health Commission from the time of the making of the order and up to seven days after the expiration of the order. Under this order, treatment may be administered to the patient with his or her consent if it is in his or her best interest.

Clause 9—Treatment order, would basically replace the old section 7 of the existing Law, which is called “a certification and detention.” This order can last for up to six months and is renewable. It is made where a patient is under an observation order but persists in their serious mental illness or mental impairment, therefore requiring further detention.

It may also be invoked where a patient violates an assisted outpatient treatment order and is initiated by the responsible medical officer in consultation with another medical officer. Under this order, treatment may be administered with the patient’s consent, if it is in their best interest. The Mental Health Commission will be notified of the making of the order and may affirm, revoke, or vary the order. The patient may also file an appeal to the Mental Health Commission for the making of the order, and up to 30 days after the expiration of the order.

Clause 10—Temporary holding power: There are times when patients seek voluntary psychiatric care, or are patients of the medical or surgical ward and become acutely mentally ill and may try to leave the hospital when unfit to do so. This new provision will empower the registered nurse in charge to lawfully prevent the patient from leaving the hospital if they have indicated if they wish to leave and cannot be persuaded to stay. The patient can be detained for no longer than six hours, at which time a formal assessment can be made by a medical doctor. Once the patient is assessed, the holding power may be converted to an emergency detention order.

Clause 11—Emergency medical treatment order: This order is required for those patients who are unable to make sound decisions should they require urgent treatment for a medical condition such as a leg amputation for a diabetic patient or a patient who requires eye surgery which is necessary to prevent blindness. This provision allows for the medical doctor to administer treatment as long as it is in the best interest of the patient to save their life or to preserve health.

Madam Speaker there are only about 20 something clauses in this Bill.

Clause 12—Assisted outpatient treatment order. This clause is being introduced to require patients to comply with treatment while allowing them to live in the community. And this is a less restrictive environment than being detained in the hospital. As I outlined in the definition section, this order has been introduced to get services to those patients who may refuse voluntary treatment that is necessary to keep them stabilised in an outpatient situation. It is also required for those involuntarily detained inpatient who do not necessarily meet the threshold to be involuntary committed but requires treatment. Initially, the order is made for a year and may be renewed as often as necessary in order to achieve its intended objective.

Clause 13—[Prisoners remanded by unfit to plead]. This provision allows for the court to deal with prisoners who are mentally ill in a manner as it thinks fit.

Clause 14—[Treatment outside the Islands] talks about the establishment of a long term facility. And while we have talked about that matter previously, and we hope to have the facility in the very near future, currently, patients are sent overseas for treatment.

Clause 15—Enforcement of orders: This provision remains the same as the existing legislation.

Clause 16—[Postal restrictions]: An amendment made to this section will allow the detained patient the right to appeal to the Mental Health Commission against decisions by the medical officer to withhold information sent to the patient by post.

Clauses 17, 18, and 19 refer to the power of the youth court, jurisdiction of the Grand Court over the property of patients and persons under guardianship.

Clause 20—[Regulations]: Under the existing Law, the forms prescribed form part of the law. This can be onerous if changes are to be made as the law must come to the Legislative Assembly for tabling. Regulations will declare a place of safety prescribing the forms to be used under the law and the procedures to be used in the administration of the law. With the revision and an update to the Mental Health Law, the appropriate forms will form part of the revised mental health regulations.

Clauses 21 and 22 speak about the penalties, the effects of certain provisions of the Criminal Procedure Code.

This represents a brief overview of the proposed Mental Health legislation. This legislation deals with patients who are sectioned or detained involuntarily. As you can see, the Law is primarily concerned with the protection and treatment of individuals who are suffering from mental impairment or serious mental illness, as well as the protection of others who may be at the risk of harm from them.

The Law also includes the procedures for the various orders and provides adequate safeguards to

protect human rights, and provides for periodic reviews of the detained patient. This revised legislation is in line with international best practice, and I believe the Cayman Islands would be considered among the leaders in the region with this updated legislation.

I should also mention that a sole diagnosis of alcoholism or drug abuse should not be viewed as suffering from serious mental illness. However, if there is suspicion of a mental illness the patient should not be denied an assessment.

Madam Speaker, I should also add that with the new enhance Standard Health Insurance Contract, persons will now benefit from a lifetime maximum of \$25,000 for mental health care as an inpatient. Some may say this is not adequate or enough, but we also have to balance increase in premiums to the insured, and bear in mind that this former plan had no mental health benefits at all.

Madam Speaker, I would like to take the opportunity to offer sincere thanks to my Chief Officer, the rest of the Ministry staff, Ms. Myrtle Brandt and Mr. Bilika Samamba of the Legislative Drafting Department, and to all the members of the Mental Health Taskforce for all of their work over the years. I certainly believe this Mental Health Bill, 2013, is a significant achievement. I am extremely proud of the work that has been accomplished. I commend this Bill to this honourable House and look forward to the support of all Members.

Thank you.

The Speaker: Thank you, Honourable Minister.

Does any other Member wish to speak?
[pause].

Second Elected Member for Bodden Town.

Hon. Anthony S. Eden, Second Elected Member for Bodden Town: Thank you, Madam Speaker.

As we approach the hour of adjournment, I will not take long.

The Speaker: I can call for the motion to carry on the business of the House after 4.30.

Suspension of Standing Order 10(2)

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I beg to move the suspension of Standing Order 10(2) in order to allow the House to go beyond the hour of interruption.

The Speaker: The question is that Standing Order 10(2) be suspended to allow the House to continue business after the hour of 4.30.

All those in favour, please say Aye. Those against, No.

Ayes and Noes.

Hon. W. McKeever Bush: Divide, Madam Speaker. Please.

[Inaudible interjection]

Hon. W. McKeever Bush: No, I can go home and do my work. I have a party conference tomorrow.

[Inaudible interjection]

Hon. W. McKeever Bush: No!

The Speaker: I am waiting for a clear call.

All those in favour of continuing the business of the House after 4.30, please say Aye. Those against, No.

Ayes and Noes.

The Speaker: The Ayes have it.

[Inaudible interjections]

Hon. W. McKeever Bush: Please divide.

The Clerk:

Division No. 21

Ayes: 5

Hon. J. Y. O'Connor-Connolly
Hon. Rolston M. Anglin
Hon. Cline A. Glidden
Hon. Dwayne S. Seymour
Hon. J. Mark P. Scotland

Noes: 8

Hon. W. McKeever Bush
Capt. A. Eugene Ebanks
Hon. D. Kurt Tibbetts
Mr. Michael T. Adam
Mr. Elvio A. Solomon
Mr. Moses I. Kirkconnell
Hon. Anthony S. Eden
Mr. D. Ezzard Miller

Abstention: 1

Mr. V. Arden McLean

Absent: 1

Hon. A. M. McLaughlin, Jr.

The Speaker: The result of the Division, 5 Ayes, 8 Noes, 1 Abstention, and 1 Absentee.

The motion to continue the business of the House has failed.

Negated by majority on division: Suspension of Standing Order 10(2) failed.

The Speaker: I call for a motion for the adjournment.

[Inaudible interjections]

The Speaker: The motion was to suspend the Standing Order to allow the business of the House to continue. We have voted against that motion. I now need a motion to adjourn the business of the House, until!

ADJOURNMENT

The Deputy Premier, Hon. Rolston M. Anglin: Madam Speaker, I beg to adjourn this Honourable House until Monday, 25th March, at 10.00 am.

The Speaker: The question is that the business of this House be adjourned until 10.00 am Monday, 25th March.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

At 4.35 pm the House stood adjourned until 10.00 am, Monday, 25 March 2013.