

REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT FUND AMENDMENT BILL

(As presented by the Portfolio Committee on Transport (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B 64B—2003]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Road Accident Fund Act, 1996, so as to extend the powers of the Fund regarding the conclusion of agreements; to alter the financial year of the Fund; to make new provisions regarding the Board of the Fund; to further regulate the Fund's obligation to compensate a third party for non-pecuniary loss, for certain hospital or medical expenses, and for loss of income or support; to repeal certain provisions limiting the liability of the Fund to R25 000 in respect of claims; to abolish certain common law claims; to make further provision for the prescription of certain claims; to substitute the provision authorising the Minister to make regulations; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

1. Section 4 of the principal Act is hereby amended—

- (a) by the addition to subsection (2) of the following paragraph:
- “(i) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services contemplated in this Act.”; and
- (b) by the addition of the following subsection:
- “(4) (a) The Fund may conclude an agreement with any other organ of State regarding any matter provided for in this Act in order to improve or ensure—
- (i) the effective management of the Fund;
 - (ii) the efficiency of the Fund;
 - (iii) co-ordination of functions;
 - (iv) co-operative governance contemplated in Chapter 3 of the Constitution.
- (b) The Minister shall, by notice in the *Gazette*, publish a summary of the terms of any agreement concluded under paragraph (a).”.

2. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The financial year of the Fund shall run from 1 [May] April of any year to [30 April] 31 March of the following year[: **Provided that the first financial year of the Fund shall be deemed to have commenced on the 1st of May immediately preceding the commencement of this Act**].”.

Amendment of section 10 of Act 56 of 1996, as amended by section 1 of Act 43 of 2002

3. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 - “Board of Fund[, and executive committee]”;**
- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
 - “(a) the Director-General: Transport or any other senior officer in the Department of Transport, designated by him or her **[for a particular purpose]**; and
 - (b) at least 8, but not more than 12, members appointed by the Minister, **[taking into account the recommendations referred to in subsection (9), if applicable,]** who may not be in the full-time employment of any government, and who shall each command extensive experience in one or more of the fields of insurance, finance, medical service provision, law, accounting and actuarial science, or in matters relating to disabled persons, road users, commuters’ or consumers’ interests.”;
- (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 - “(c) hold office for a period of three years as from the date of appointment of such member and may, subject to nomination contemplated in subsection (9), be reappointed for further terms of office not exceeding three years at a time, provided that such a member may not serve for more than three consecutive terms of office.”;
- (d) by the substitution for subsection (4) of the following subsection:
 - “(4) **[Each]** Only a member of the Board referred to in section (1)(b) shall, subject to subsection (2)(a), have **[one]** a vote on any matter before the Board.”;
- (e) by the substitution for subsections (6) and (7) of the following subsections, respectively:
 - “(6) The **[Board shall as soon as possible]** Minister shall—
 - (a) appoint two of **[its]** the members of the Board as Chairperson and Vice-Chairperson, respectively;
 - (b) **establish an executive committee of the Board, which shall consist of three members of the Board, the Chairperson and Vice-Chairperson of the Board and the Chief Executive Officer**.
 - (7) The Chairperson, or in his or her absence, the Vice-Chairperson, shall at all times preside at meetings of the Board **[and the executive committee]**.”;
- (f) by the deletion of subsection (8);
- (g) by the substitution for subsection (9) of the following subsection:
 - “(9) Whenever it is necessary to appoint a member referred to in subsection (1)(b) to the Board, but subject to subsection (10)[—
 - (a)], the Minister shall—
 - [(i)] (a)** by notice in the *Gazette* and the national news media, **[call for the nomination of]** invite persons or bodies who have an interest in the operations of the Fund to nominate persons who comply with the criteria mentioned in subsection (1)(b);
 - [(ii)](b)** so publish a list of nominees received in response to such **[call; and**
 - (iii) establish a selection committee, constituted as follows:**
 - (aa) **The Director-General: Transport;**
 - (bb) **one member of the Portfolio Committee on Transport (National Assembly), designated by that Committee;**
 - (cc) **one member of the select committee on transport (Senate), designated by that Committee; and**
 - (dd) **two persons who have extensive experience in third party compensation, appointed by the Minister; and**
 - (b) **the selection committee shall hold interviews in public with such of the nominees who are available, and make**

recommendations to the Minister] invitation, which list shall include the names of the relevant nominators.”; and

(h) by the insertion after subsection (9) of the following subsection:

“(9A) The Minister shall cause the name of a member appointed under subsection (1)(b), or reappointed under subsection (2)(c), together with such member’s area of expertise, to be published in the *Gazette*.”.

Amendment of section 11 of Act 56 of 1996

4. Section 11 of the principal Act is hereby amended by the deletion in subsection (1)(a) of subparagraph (iv).

Amendment of section 12 of Act 56 of 1996

5. Section 12 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) The Minister shall upon the recommendation of the Board, appoint the Chief Executive Officer of the Fund on such terms and conditions of employment [as he or she may determine: **Provided that the Chief Executive Officer of the Multilateral Motor Vehicle Accident Fund holding that office immediately prior to the commencement of this Act, shall be deemed to have been appointed as such in respect of the fund in terms of this subsection]** as the Board may determine.”; and

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) The Chief Executive Officer shall[—
 (i) be a person who [commands a knowledge of the management of motor vehicle accidents insurance or motor vehicle accidents compensation matters; and
 (ii) hold office at the Minister’s pleasure] is suitably qualified and experienced to manage the day to day affairs of the Fund.”.

Substitution of section 17 of Act 56 of 1996

6. The following section is hereby substituted for section 17 of the principal Act:

“Liability of Fund and agents

17. (1) The Fund or an agent shall—

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee’s duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

(1A) (a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974).

[(2) Upon acceptance of the amount offered as compensation in terms of subsection (1) the third party shall be entitled to the agreed party and party costs or taxed party and party costs in respect of the claim concerned.]

(3) (a) No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order.

(b) In issuing any order as to costs on making such award, the court may take into consideration any written offer, including a written offer without prejudice in the course of settlement negotiations, in settlement of the claim concerned, made by the Fund or an agent before the relevant summons was served.

(4) Where a claim for compensation under subsection (1)—

(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate—

(i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or

(ii) the provider of such service or treatment directly, notwithstanding section 19(c) or (d),

in accordance with the tariff contemplated in subsection (4B);

(b) includes a claim for future loss of income or support, [**the Fund or an agent shall be entitled, after furnishing the third party in question with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to pay the amount payable by it or the agent in respect of the said loss, by instalments in arrear as agreed upon**] the amount payable by the Fund or the agent shall be paid by way of a lump sum or in instalments as agreed upon;

(c) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding—

(i) R160 000 per year in the case of a claim for loss of income; and

(ii) R160 000 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

(4A) (a) The Fund shall, by notice in the *Gazette*, adjust the amounts referred to in subsection (4)(c) quarterly, in order to counter the effect of inflation.

(b) In respect of any claim for loss of income or support the amounts adjusted in terms of paragraph (a) shall be the amounts set out in the last notice issued prior to the date on which the cause of action arose.

(4B) (a) The liability of the Fund or an agent regarding any tariff contemplated in subsections (4)(a), (5) and (6) shall be based on the tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003), and shall be prescribed after consultation with the Minister of Health.

(b) The tariff for emergency medical treatment provided by a health care provider contemplated in the National Health Act, 2003—

(i) shall be negotiated between the Fund and such health care providers; and

(ii) shall be reasonable taking into account factors such as the cost of such treatment and the ability of the Fund to pay.

(c) In the absence of a tariff for emergency medical treatment the tariffs contemplated in paragraph (a) shall apply.

(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may, notwithstanding section 19(c) or (d), claim **[the]** an amount in accordance with the tariff contemplated in subsection (4B) direct from the Fund or an agent on a prescribed form, and such claim shall be subject, *mutatis mutandis*, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered.

(6) The Fund, or an agent with the approval of the Fund, may make an interim payment to the third party out of the amount to be awarded in terms of subsection (1) to the third party in respect of medical costs, in accordance with the tariff contemplated in subsection (4B), loss of income and loss of support: Provided that the Fund or such agent shall, notwithstanding anything to the contrary in any law contained, only be liable to make an interim payment in so far as such costs have already been incurred and any such losses have already been suffered.”.

Amendment of section 18 of Act 56 of 1996

7. Section 18 of the principal Act is hereby amended—

- (a) by the deletion of subsection (1); and
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) the liability of the Fund or such agent, in respect of the bodily injury to or death of any one such employee, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund or such agent[, **or the amount of R25 000 (whichever is the lesser)**] and any lesser amount to which that third party is entitled by way of compensation under the said Act; and”.

Amendment of section 19 of Act 56 of 1996

8. Section 19 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (b); and
- (b) by the addition at the end of paragraph (f)(ii) of the word “or” and by the addition of the following paragraph:

“(g) suffered as a result of an emotional shock sustained by that person when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.”.

Substitution of section 21 of Act 56 of 1996

9. The following section is hereby substituted for section 21 of the principal Act:

“Abolition of certain common law claims

21. (1) No claim for compensation in respect of loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie—

- (a) against the owner or driver of a motor vehicle; or
- (b) against the employer of the driver.

(2) Subsection (1) does not apply—

- (a) if the Fund or an agent is unable to pay any compensation; or
- (b) to an action for compensation in respect of loss or damage resulting from emotional shock sustained by a person, other than a third party, when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.”.

Amendment of section 23 of Act 56 of 1996

10. Section 23 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 17(4)(a) or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.”. 5

Substitution of section 26 of Act 56 of 1996

11. The following section is hereby substituted for section 26 of the principal Act:

“Regulations

26. (1) The Minister [shall or] may make regulations [to prescribe any matter which] regarding any matter that shall or may be prescribed in terms of this Act [shall or may be prescribed] or which [may be] it is necessary or expedient to prescribe in order to achieve or promote the object of this Act. 10

(1A) Without derogating from the generality of subsection (1), the Minister may make regulations regarding— 15

- (a) the method of assessment to determine whether, for purposes of section 17, a serious injury has been incurred;
- (b) injuries which are, for the purposes of section 17, not regarded as serious injuries;
- (c) the resolution of disputes arising from any matter provided for in this Act. 20

(1B) Any regulation made under subsection (1A)(a) or (b) must be made after consultation with the Minister of Health. 25

(2) Any regulation contemplated in subsection (1) or (1A) may for any contravention of or failure to comply with its provisions or the provisions of this Act, provide for penalties of a fine or imprisonment for a period not exceeding three months.”. 30

Savings

12. Any claim for compensation under section 17 of the principal Act in respect of which the cause of action arose prior to the date on which this Act took effect must be dealt with as if this Act had not taken effect. 30

Short title

13. This Act is called the Road Accident Fund Amendment Act, 2005, and takes effect on a date determined by the President by proclamation in the *Gazette*. 35

MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT FUND AMENDMENT BILL, 2005

OBJECTS OF BILL

1. The Road Accident Fund Amendment Bill [B64B—2003] (“the Bill”) seeks to amend the Road Accident Fund Act, 1996 (Act No. 56 of 1996) (“the Act”), in various respects. The Bill is a redraft of the Road Accident Fund Amendment Bill, 2003 [B 64—2003], currently before Parliament. These amendments are aimed at improving the governance of the Fund, providing for a more equitable, fair and transparent compensation system, whilst limiting the liability of the Fund.

2. The Bill seeks to authorise the Minister of Transport to appoint the Chairperson and Vice-Chairperson of the Board of the Fund. It also seeks to abolish the executive committee of the Board. In terms of the proposed amendments, the Board will determine the conditions of employment of the Chief Executive Officer of the Fund.

3. It is proposed in the Bill to put a monetary limit on claims for loss of income or support. A method for determining tariffs for payment of medical expenses is provided for. Those tariffs will be based on the tariffs for health services provided by public health establishments or negotiated for emergency medical treatment.

4. The Bill also seeks to repeal the provision in terms of which the Fund is liable for the legal costs of claimants. This will result in a saving to the Fund.

5. The Bill seeks to limit the liability of the Fund to compensate for general damages only for those seriously injured and provides guidelines for the assessment of injuries. This amendment will result in substantial saving needed to compensate all passengers.

6. Amendments are also proposed to allow for direct payment to medical service providers for treatment provided.

7. The Bill furthermore seeks to repeal limitations on liability in sections 18(1), 18(2)(a) and 19(b) of the Act in terms of which the liability of the Fund for certain claims (e.g. claims in respect of persons who were conveyed for reward) are limited or excluded. It is believed to be discriminatory to have a specific limitation on such claims and that such claims should be treated the same as any other claim.

8. In terms of a further provision in the Bill, it is proposed that the Fund’s liability be excluded where a person sustained emotional shock when he or she witnessed or observed or was informed of an accident. This provision will prevent a growth in the liability of the Fund.

9. The Bill seeks to abolish the right to common law claims except where the Fund is unable to pay compensation or where the action for compensation arises in respect of damages arising from emotional shock sustained as a result of witnessing or being informed of the bodily injury or death of another person as a result of a motor vehicle accident.

10. The envisaged Road Accident Fund Amendment Act, 2005, will not apply to claims in respect of which the cause of action arose prior to the commencement of that Act. It would be unfair, and arguably unconstitutional, to accord retrospectivity to the Act. Thus, the Act will only apply to claims that arose after the commencement of the Act.

CONSULTATIONS

11. The Department took the oral and written comments and inputs given during the consultation process in the Portfolio Committee hearings in 2003, regarding B 64—2003, into account. It also took into account the oral and written comments and inputs given during the consultation process in the Portfolio Committee hearings in 2005, regarding the redrafted Bill, into account. The Department presented the draft Bill to the Board of the Road Accident Fund and its comments were incorporated. National Treasury was consulted on both the Bill and the financial implications of the Bill. Cabinet was informed of the revision of the Bill as well as the impact of the Bill on road users and the financial implication of the Bill. Stakeholders whose comments were considered, include the following:

Alexander Forbes Financial Services	Rand Mutual Assurance Company Limited
Network Healthcare Holdings Limited (NETCARE)	Kwa-Zulu Natal Association of Personal Injury Lawyers
Munro Consulting	Josephs Inc.
Hospital Association of South Africa	Alexander Cellarius
Alexander Forbes Compensation Technologies (Pty) Ltd	Jeremy Manton
The South African Insurance Association	South African Bus Operators Association
Cape Regional Chamber of Commerce	Western Cape Department of Health
South African Medical Association	Coalition of the Road Accident Fund
Law Society of South Africa	Quadruplegic Association of South Africa
Medi-Clinic Limited	General Council of the Bar
South African Commuter Organisation	Black Lawyers Association
Board of Healthcare Funders	Road Accident Victims Association
National Council for Persons with Physical Disabilities	MedX Millennium Holdings
FEDUSA	COSATU
C N Greenland	South African Chamber of Business
South African Association of Personal Injury Lawyers	Headway Kwa-Zulu Natal
Kruger and Co Attorneys	Adv Dave Mitchell
Lionel Karp and Associates	Lovius Block Attorneys
Sue Anderson	Stephen Kritzinger
Allan G Jones Inc. Attorneys	

FINANCIAL IMPLICATIONS FOR STATE

12. The Bill will improve the financial sustainability of the Fund.

PARLIAMENTARY PROCEDURE

13. The State Law Advisers and the Department of Transport are of the view that this Bill must be dealt with in the same manner as in the case of B 64—2003, i.e. in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

14. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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