



NTA

NATIONAL TAXI ALLIANCE

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To : The Transport Portfolio Committee

From : National Taxi Alliance

Subject : AARTO amendment Bill Submissions (B38 -2015)

Date : 23 March 2017

1. Section 25 of the Principal Act is amended to read as follows:

By the substitution for subsection (1) of the following subsection:

“(1) If a person, operator or a juristic person who is not an operator, incurs demerit points, which, when added to the points previously recorded against that person, operator or a juristic person, who is not an operator, in the National Contraventions Register, National Road Traffic Offences Register and reduced as contemplated in section 28, exceed the total contemplated in section 29(d), that person, operator or a juristic person who is not an operator, is disqualified with effect for 32 days after such excess points have been incurred, from driving or operating a motor vehicle on a public road.”

2. The Act is unclear as to whether the word “person” or “operator” refers either to the owner of the driver. Assuming that the word “person” or “operator” refers to the owner, the effect of the amendment to s 25(1) is to impose strict liability upon the owner. The effect of the amendment to s 25(1) means that due to the acts of the driver (and not due to the acts of the owner), if demerit points, which when added to the points previously recorded against that person or operator, exceeds the total contemplated in s 29 (d) of the Act, that “person” or “operator” is disqualified for 32 days from driving or operating a motor vehicle on a public road.
3. The question which arises is whether the phrase “operating a motor vehicle” extends to the right of an owner to allow his vehicle to be driven on a public road.

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4. There is furthermore a substitution in ss 3 in terms whereof that person or operator must immediately within a period of thirty two days hand in any driving license card or professional driving permit, motor vehicle license, disk, operator card or any other permit, card or license issued in terms of Road Traffic and Transport Legislation,
5. The reference to "operator card" can only be a reference to the operating license of the vehicle.
6. The effect of the legislation i.e. the amendment to s 25 of the Principal Act, is an unlawful deprivation of property and economic which is unconstitutional.
7. We say this for the following reasons:
 - 7.1 Due to the actions of a person either than the owner of the vehicle, i.e. the driver, in circumstances where the driver fails to pay the penalty, the owner incurs demerit points which can ultimately result in the loss of his operating license.
 - 7.2 The circumstances where the driver does not pay the penalty are circumstances where the driver has an address which is not a permanent address, thereby making service impossible either by virtue of personal service or registered post.
 - 7.3 The effect of the Act is to visit the penalty upon the owner where the driver does not pay the penalty in question.
8. The principal Act makes provision for execution against movable property owned by the owner which means that the actual vehicle owned by the person and who is not responsible for the offence, can be taken in execution.
9. In some, what is being contended for, is that due to the acts of a person either than the owner of a vehicle, ultimately the owner of a vehicle will land up losing both his operating license and potentially his taxi. This also discriminates unfairly against the owner.

10. Ironically, the responsible person i.e. the driver will never lose his license because the fine would not have been served upon him, either by registered post or by personal service and the penalty will then redound on the owner of the vehicle.
11. It appears from a proper reading of the Act, that vicariously the owner of the vehicle incurs two penalties. The first penalty is that the demerits ultimately result in the loss of his operating license and secondly ultimately result in the loss of his ordinary driver's license.
12. Provision is already made in the Act to compel the owner or operator of a motor vehicle to ensure that before he permits any person to drive such vehicle, or otherwise to exercise any control over such vehicle, he must ascertain the full names, acceptable identification, residential, postal and where applicable, business and email address of an infringer and should the owner fail to do so, then the owner is guilty of an offence.
13. It is self-evident however that even if the owner of the vehicle takes steps to ascertain the full names, residential and postal address of the person to whom he is allowing access to the vehicle, this does not lead to the conclusion that in the event of the driver committing an offence, the authorities will be able to serve the relevant process upon him. This is tied into the nature of South African society.
14. Regrettably in the year 2017, the vast majority of South Africans still do not own their property nor do they have a fixed address due to being financially unable to sustain a fixed residential address over a long period of time.
15. The duties imposed upon the owner are unrealistic. The nature of a driver who commonly rents is not the kind of driver who is in possession of a written lease in regard to the property which he is leasing and would be able to give that to the owner.
16. In *Mazibuko v City of Johannesburg*, a decision in the Constitutional Court which has found in the South African Law Reports at 2010 (4) SA (1) , O'Reagan J in a case concerning the City of Johannesburg, and Human Rights within the context of Socio Economic Rights, said the following:

“7. The case needs to be understood in the context of the challenges facing Johannesburg as a City. The City is, in terms of population, the second fastest growing City in the country and according to Census 2001, (the last Census) is home to approximately 3.2 million people living in about 1 million households. Half of these households are very poor with an income of less than R1600 per month. Just under a fifth of the households are located in formal settlements. A similar proportion has no access to basic sanitary services and a tenth of all the households have no access to a tap, providing clean water within 200 meters of their home. It can be seen that there is much to be done to improve the quality of the life of all citizens, an important goal set by the preamble to our constitution.”

17. The employment of operators in the sense contended for, as drivers of vehicles owned by a third party, facilitates employment opportunities in South Africa. It leads to the creation of a middle class in South Africa. It enables people to earn an income and to contribute towards the economy.

18. The ultimate effect of this legislation is to interfere with the right of the owner to pursue the right to economic trade.

19. We can take the following example:

19.1 Assume an owner has ten vehicles which are leased to ten drivers. Assume that each driver commits one traffic offence, per month. This means potentially that the owner in the case where service of process is not affected upon the driver will have ten offences debited to him, per month. Within a very short space of time, he will lose either his operating license, his driver's license or his vehicle, or all three. That is our understanding of the legislation.