

REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT FUND AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 25540 of 3 October 2003)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B64—2003]

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(c) includes a claim for future non-patrimonial loss, the Fund or an agent shall, 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, pay in the prescribed manner, in instalments, that portion of the amount payable by the Fund or the agent in respect of the said loss, that exceeds the prescribed amount.” 5

Insertion of sections 17A and 17B in Act 56 of 1996

2. The principal Act is hereby amended by the insertion after section 17 of the following sections:

“Liability of Fund under certain circumstances 10

17A. The liability of the Fund or an agent to compensate a third party in respect of the costs of accommodation in a hospital or nursing home, treatment of a bodily injury, rendering of a medical service or supplying of medical goods shall be limited to the prescribed medical tariff.

Collateral benefits in case of bodily injury 15

17B. Where a third party is entitled to compensation in terms of section 17 for loss or damage suffered as a result of bodily injury or death, all benefits from whatever source, including insurance, pension or gratuitous benefits, payable to the third party as a result of that injury or death shall be deducted from the compensation payable in terms of this Act, except benefits which the third party proves to be legally reimbursable to the payer after compensation has been paid in terms of this Act.” 20

Amendment of section 18 of Act 56 of 1996

3. Section 18 of the principal Act is hereby amended by the addition of the following subsection: 25

“(5) (a) If a third party or the injured or deceased person concerned is a non-resident of the Republic, the liability of the Fund or an agent to compensate the third party concerned for any loss or damage contemplated in section 17 shall be limited to the amount determined by the Minister, on the recommendation of the Board, by notice in the *Gazette* or the amount determined in accordance with section 17B, whichever is the lesser amount. 30

(b) For the purposes of this subsection a “non-resident of the Republic” means a person who is not permanently resident in the Republic at the time of the occurrence which caused the injury or death concerned.”

Amendment of section 19 of Act 56 of 1996 35

4. Section 19 of the principal Act is hereby amended 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.” 40

Amendment of section 24 of Act 56 of 1996

5. Section 24 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent[— 45
(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and

(b) before all requirements contemplated in section 19(f) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be] unless the third party has exhausted the prescribed procedure for the resolution of disputes through mediation and arbitration.”. 5

Transitional arrangements

6. (1) Sections 17A, 17B, 18(5) and 19(g) of the principal Act do not apply to any claim for compensation under section 17 of the principal Act, in respect of an occurrence that took place prior to the commencement date of this Act, and any such claim must be dealt with as if those sections had not been enacted. 10

(2) Section 17(4)(a) and (b) as amended by this Act, section 17(4)(c) and section 24(6) as amended by this Act, apply to all claims for compensation under section 17 of the principal Act that have not been finalised prior to the commencement date of this Act. 15

Commencement of regulations and notices

7. Any regulation made under section 26 of the principal Act and any notice published in the *Gazette* within a period of three months after the commencement date of this Act and as a result of this Act, may provide that such regulation or notice must be deemed to have come into operation on the commencement date of this Act. 20

Short title

8. This Act is called the Road Accident Fund Amendment Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT FUND AMENDMENT BILL, 2003

1. OBJECTS OF BILL

The Road Accident Fund Amendment Bill, 2003 (“the Bill”), seeks to amend the Road Accident Fund Act, 1996 (Act No. 56 of 1996) (“the Act”), in various respects. These amendments are aimed at improving the efficiency of the Fund. Some of the important amendments are the following:

- In terms of section 17(4) of the Act the Fund has a discretion to furnish certain undertakings regarding the payment of benefits. The Bill seeks to make it obligatory for the Fund to furnish undertakings for the payment of benefits in instalments.
- The Bill seeks to limit the Fund’s liability in respect of cost of hospitalisation and certain other treatment, to a medical tariff prescribed by regulation.
- The Bill also seeks to authorise the Fund to take into account benefits received from sources other than the Fund when determining benefits payable in terms of the Act.
- Claimants of the Fund who are not residents of the Republic currently receive the same advantages as residents. Claims by non-residents are often measured in foreign currency and may involve huge amounts of money. The Bill seeks to limit the liability of the Fund to an amount determined by the Minister by notice in the *Gazette*.
- In terms of section 3 of the Act, the object of the Fund is to pay compensation resulting from loss or damage wrongfully caused by the driving of motor vehicles. Being a public fund, the Fund cannot be called upon to compensate for “exotic” claims which might be brought within the ambit of its object. The Bill seeks to exclude claims suffered as a result of emotional shock when a person witnessed or observed or was informed of the injury or death of someone as a result of the driving of a motor vehicle.
- The Act currently prescribes that where the Fund and a claimant cannot reach agreement as to the claim, legal proceedings have to be instituted. Such proceedings are costly and time-consuming. The Bill seeks to oblige the claimant first to exhaust a process which will be prescribed by regulation and which will involve mediation and arbitration.

2. CONSULTATIVE PROCESS

The Bill and an explanatory memorandum were released for general comment. Invitations for written comments were placed in five national newspapers. The draft Bill was also made available on the Fund’s Internet site.

A three-day national conference on the current state of the road accident compensation environment in South Africa was held by the Board of the Fund. This conference was attended by interested parties from a wide range of backgrounds, including the attorneys’ and advocates’ professions, commuters and other road users, consumers, the disabled, academics, road safety bodies, traffic authorities and national and provincial government departments and bodies. The proposed legislative changes formed the main focus of the deliberations during the conference.

Oral and written comments and inputs were received from a large number of persons and entities and were considered by the Fund.

3. FINANCIAL IMPLICATIONS FOR STATE

The Bill will improve the cash flow situation of the Fund.

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Transport are of the view that this Bill must be dealt with 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.