



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GOVERNMENT NOTICE

- No. 115 Promulgation of Motor Vehicle Accidents Fund Act, 2001 (Act No.4 of2001),
of the Parliament.....

Government Notice

OFFICE OF THE PRIME MINISTER

No. 115

2001

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No.4 of 2001: Motor Vehicle Accidents Fund Act, 2001.

ACT

To provide for the establishment, management and administration of the Motor Vehicle Accidents Fund; payment of compensation to victims of motor vehicle accidents and incidental matters.

(Signed by the President on 20 April 2001)

ARRANGEMENT OF SECTIONS

Introductory provisions

1. Definitions

Part I

Motor Vehicle Accidents Fund

2. Establishment of Fund
3. Functions and powers of Fund
4. Financial provisions
5. Exemption from taxation

Part II

Administration of the Fund

6. Establishment of Board
7. Functions of the Board
8. Procedure of the Board
9. Chief Executive Officer and other staff of the Fund

Part III

Payment of Compensation

10. Liability of Fund
11. Claimant's right to claim from other persons

Part IV

General Provisions

12. Furnishing of information by owner and driver of motor vehicle
13. Procedure for making claims
14. Prescription of claims
15. Fund's right of recourse
16. Presumptions
17. Regulations
18. Repeals and savings
19. Short title and commencement

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Introductory provisions

Definitions

1. In this Act unless the context otherwise indicates-

"Board" means the Board referred to in section 6;

"Chief Executive Officer" means the Chief Executive Officer appointed in terms of section 9;

"claimant" means a person who, under section 10, is entitled to claim for compensation from the Fund;

"convey" in relation to a motor vehicle includes -

- (a) entering or mounting the motor vehicle in question for the purpose of being transported; and
- (b) alighting from the motor vehicle in question after having been transported or after attempting to be transported;

"driver" means the person who was driving the motor vehicle referred to in section 10;

"financial year" means the financial year referred to in section 4(2);

"Fund" means the Motor Vehicle Accidents Fund established by section 2;

"Minister" means the Minister of Finance;

"motor vehicle" means any vehicle which is designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity and includes a trailer, caravan, an agricultural or other implement designed or adapted to be drawn by that vehicle;

"owner", in relation to -

- (a) a motor vehicle which is possessed in the course of business by a person who holds a motor vehicle dealer's licence issued in terms of any law relating to the licensing of motor vehicles, means the holder of that motor vehicle dealer's licence;
- (b) a motor vehicle received for delivery but which has not yet been delivered by a person who lawfully carries on the business of delivering new motor vehicles, means that person who carries on the business of delivering new motor vehicles;
- (c) a motor vehicle which is the subject matter of an instalment sale transaction, means the purchaser under the instalment sale transaction concerned; and
- (d) a motor vehicle under an agreement of lease for a period of at least 12 months, means the lessee of the motor vehicle.

"prescribe" means prescribe by regulation made under section 17;

"repealed law" means the law repealed by section 18;

"this Act" includes regulations made under section 17;

Part I
Motor Vehicle Accidents Fund

Establishment of Fund

2. (1) There is established a fund known as the Motor Vehicle Accident Fund which is a juristic body.

(2) The purpose for which the Fund is established is to pay compensation to a person who has suffered loss or damage as contemplated in section 10.

(3) At the commencement of this Act any agreement which was entered into between the fund created by the repealed law and an agent pursuant to the repealed law shall cease to exist, all assets, liabilities, rights and obligations existing in that fund as well as those accruing to that fund shall be transferred to the Fund and unless the contrary otherwise indicates any reference to that fund in any law or document shall be construed as reference to the Fund.

Functions and powers of the Fund

3. (1) In addition to performing the functions conferred by section 4(3) and (4), the Fund may perform the following functions -

- (a) stipulate the conditions on which claims for compensation made under this Act shall be administered;
- (b) investigate and settle, subject to this Act, claims arising under section 10;
- (c) procure reinsurance for any risk undertaken by the Fund;
- (2) In order to fulfill the functions referred to in subsection (1) the Fund may, with the approval of the Minister and subject to conditions which the Minister, may impose -
 - (a) acquire movable or immovable property, shares, debentures, stocks or other securities;
 - (b) sell, mortgage, lease, exchange, encumber in any way, or develop property of the Fund;
 - (c) borrow money from any person or institution and provide where required security for the repayment of the loan;
 - (d) invest money of the Fund which is not immediately required for use by the Fund;
 - (e) make donations for research in connection with any matter regarding injuries sustained in motor vehicles accidents;
 - (f) do any legal act which can be done in relation to a negotiable or transferable instrument;
 - (g) give a study loan or bursary to any person for the purpose of pursuing studies or research in connection with the operations or development of the Fund;
 - (h) do any other act which is necessary in order to achieve the purposes of this Act.

Financial provisions

4. (I) The revenue of the Fund consists of -
 - (a) money derived from the fund established under the Petroleum Products and Energy Act, 1990 (Act No. 13 of 1990) and made available to the Fund under that Act as agreed between the Minister and the Minister of Mines and Energy;
 - (b) money derived from an investment made under section 3(2)(c) and money borrowed under section 3(2)(d);
 - (c) money made available for the purpose of the Fund by Parliament; or
 - (d) any money which accrues to the Fund.
- (2) The financial year of the Fund begins on the 1st April of each year and ends on the 31st March of the following year.
- (3) The Fund shall, in accordance with generally accepted accounting practice and procedure, cause proper books and records of accounts to be kept during each financial year.
- (4) At the end of each financial year the Fund shall -
 - (a) cause its books and records of account to be audited and an audit report to be prepared by the Auditor-General;
 - (b) compile an annual report containing -
 - (i) the audited financial statement of the Fund together with the audit report mentioned in paragraph (a);
 - (ii) a report on the activities of the Fund during the year to which the audit relates; and
 - (c) within six months after the end of the financial year, submit the annual report referred to in paragraph (b) to the Minister.
- (5) On receipt of the annual report referred to in subsection (4) the Minister shall -
 - (a) if the National Assembly is in session, table the annual report in the National Assembly within 30 days after receiving the annual report; or
 - (b) if the National Assembly is not in session, table the annual report in the National Assembly within 30 days after the commencement of the next session.

Exemption from taxation

5. Notwithstanding anything to the contrary in any law -
 - (a) the income of the Fund is exempt from income tax;
 - (b) no transfer duty, stamp duty or any other fee payable to the Registrar of Deeds in connection with the transfer of immovable property is payable in respect of the acquisition and transfer of immovable property by the Fund; and

- (c) no stamp duty is payable in respect of any document if the stamp duty is, according to law, payable by the Fund and no stamp duty is payable in respect of the registration of the transfer of securities issued by the Fund.

Part II

Administration of the Fund

Establishment of Board

6. (I) For the purposes of administering the affairs of the Fund there shall be a Board of the Fund.

(2) The Minister shall appoint the following persons as members of the Board -

- (a) one person from the Ministry of Finance;
- (b) one person nominated by the Minister of Works, Transport and Communications;
- (c) one medical practitioner from the medical fraternity who, the Minister shall appoint after consultation with the association or associations which represents or represent medical practitioners in Namibia;
- (d) one person from the legal fraternity who, the Minister shall appoint after consultation with the association or associations which represents or represent legal practitioners in Namibia; and
- (e) one person who the Minister shall appoint after consultation with the association or associations which represent or represents persons who are engaged in the business of transportation of persons by road for a reward.

(3) A person who is appointed to the Board shall-

- (a) at all times act in the interest of the Fund;
- (b) not participate or vote in any matter in which his or her personal interests are likely to conflict with the interests of the Fund unless he or she has disclosed the potential conflict of interest to the Board and has been authorized by the Board to vote or participate in the proceedings;
- (c) hold office for a period of three years; and
- (d) be eligible for reappointment at the end of the period referred to in paragraph (c).

(4) The Board may establish committees to advise or assist it in the exercise of its powers or performance of its functions under this Act and any such committee shall-

- (a) consist of at least one member of the Board and such other members of the Board or other persons as the Board may appoint to be members of that committee; and
- (b) meet at the times and places as may be determined by the Board;

(5) The Board may, with the approval of the Minister, appoint any person to advise it on any matter which is relevant to the exercise of its powers or performance of its functions under this Act.

(6) The Minister may, after giving a member of the Board an opportunity to make representations on the matter, by notice in writing, remove that member from office, if the Minister is satisfied that, that member -

(a) is incapacitated by physical or mental illness; or

(b) is unable or unfit to discharge the functions of a member of the Board.

(7) When a vacancy exists in the Board, the Minister shall as soon as is reasonably possible after receiving notice of the vacancy, fill the vacant position by making an appointment in accordance with subsection (2) and the person so appointed shall hold office for the remainder of the period which the member who vacated office was entitled to hold office.

(8) A member of the Board, a member of a committee established under subsection (4), a person appointed under subsection (5), a staff member of the Fund or a person who has performed a duty or exercised a power on behalf of the Fund is not personally liable for anything done in good faith whilst performing any function or exercising a power under this Act.

(9) A member of the Board, a member of a committee established under subsection (4) who is not a member of the Board, a person appointed under subsection (5) or any person who has done anything which, under this Act, is required to be done on behalf of the Fund, is entitled to be paid for services rendered to the Fund or to be refunded for expenses incurred whilst doing work on behalf of the Fund, unless that person has been or is entitled to be paid for rendering those services or to be refunded for the incurred expenses by the State or by any other person.

(10) The money payable under subsection (9) shall be paid out from the Fund and the Minister shall determine the amounts.

Functions of the Board

7. (1) Subject to this Act, the Board has the power to exercise and perform the powers and functions of the Fund, and it shall be responsible for the formulation of the policy and management of the financial and administrative affairs of the Fund.

(2) The Board may, in writing, authorize the Chief Executive Officer or any staff member of the Fund to perform any of the functions referred to in subsection.

(3) The Board shall not be divested of the duty to perform a function delegated under subsection (2) and it may change or rescind any decision made under the function so delegated.

Procedure of the Board

8. (1) As soon as is possible after being appointed to the Board, the Board members shall elect two of their members to be chairperson and vice-chairperson of the Board respectively.

(2) The chairperson, or in his or her absence the vice-chairperson, or in the absence of both, a member who is elected to act as chairperson by the members present at a meeting, shall preside at each meeting of the Board.

(3) Each member of the Board is, subject to section 6(3)(b) and subsection (5), entitled to one vote.

(4) The Chief Executive Officer may, by virtue of his or her office, attend meetings of the Board and participate in deliberations of the Board, but he or she has no voting powers.

(5) Any matter which is to be decided on by the Board shall be put to vote and the decision of the majority of members present at a meeting shall be the decision of the Board and in the event of an equality in the number of votes the person presiding at the meeting shall have a casting vote in addition to his or her ordinary vote.

(6) The quorum for a meeting of the Board is three members.

(7) A meeting of the Board shall be held as often as the business of the Board requires, but the Board shall meet at least four times during each financial year.

(8) A decision of the Board or an act performed on authority of the Board, shall not be invalid by reason of a vacancy on the Board, or by reason of the fact that a person who is not entitled to be present as a member was present when the decision was taken or the act was authorized, if that decision was taken or the act was authorized, by a majority of the members who were present and entitled to vote at the meeting.

(9) The Board shall cause a record of proceedings of its meetings to be kept.

(10) The Board may make rules governing the manner in which its meetings are to be held and the procedures to be followed at those meetings.

Chief Executive Officer and other staff of the Fund

9. (1) The Minister shall, on the recommendation of the Board, appoint a person who has wide knowledge or experience which is relevant to the functions of the Fund to be Chief Executive Officer of the Fund.

(2) The Chief Executive Officer is, subject to the directions and control of the Board responsible for conducting the day to day business and administrative affairs of the Fund including the exercise or performance of any power or function delegated to him or her by the Board.

Part III Payment of compensation

Liability of Fund

10. (1) The Fund 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 of the motor vehicle has been established; or
- (b) subject to a regulation made under section 17, 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 of the motor vehicle has not been established,

payout compensation to a person who has suffered loss or damage as a result of bodily injury to himself or herself, or bodily injury to or the death of any person, in either case caused by or arising out of the driving of a motor vehicle by any person at any place in Namibia, if the injury or death was due to the negligence or other unlawful act of the driver of the motor vehicle in question, the owner of the motor vehicle in question or of an employee of the owner of the motor vehicle in the execution of that employee's duties as an employee of the owner of that motor vehicle.

(2) The Minister, on the recommendation of the Board, may, by regulation, provide, in such cases and on such basis as he or she may stipulate -

- (a) the different categories or heads of damages or loss under which compensation is payable under subsection (1);
- (b) impose limitations on the liability of the Fund to pay compensation under any of the different categories or heads of damages or loss referred to in paragraph (a).

(3) Notwithstanding subsections (2), where bodily injury or death occurs in circumstances where the claimant is entitled to compensation under any other law, in respect of that bodily injury or death, the Minister may, on the recommendation of the Board, by regulation, impose limitations on the liability of the Fund to compensate that claimant.

(4) The Fund is not obliged to pay compensation under subsection (1) if -

- (a) neither the owner of the motor vehicle nor the driver would have been liable if section 11 (1) had not been enacted;
- (b) the claim in question has not been instituted and prosecuted by the claimant, or on behalf of the claimant by a person who is entitled to practice as a legal practitioner in Namibia, or on behalf of the claimant by the claimant's legal representative if the claimant is under a legal disability;
- (c) the claimant and another person have entered into an agreement wherein that other person would on settlement of the claim -
 - (i) receive all or part of the compensation, or
 - (ii) receive any money in respect of investigation of the claim or any expenses incurred in the handling of the claim,

unless that other person is a legal practitioner referred to in paragraph (b);

(d) the person who was injured unreasonably refuses or fails -

- (i) at the request and cost of the Fund, to undergo in connection with the claim, a medical examination to be done by a medical practitioner appointed by the Fund;
- (ii) at the request and cost of the Fund, to furnish the Fund with any medical report in his or her possession and which is relevant to the claim; or

(iii) on request by the Fund, to allow the Fund or a person authorized in writing by the Fund, to inspect medical records relating to him or her which are possessed by a hospital or a medical practitioner;

(e) the claimant refuses or fails -

(i) within a reasonable time after lodging a claim, to submit to the Fund an affidavit in which he or she gives particulars of the occurrence which gave rise to the claim; or

(ii) within a reasonable time after coming into possession of a document or information relevant to the claim, to submit the document or information to the Fund.

(5) Where a claim for payment of compensation under subsection (1) is made and the claim includes a claim for -

(a) costs for future accommodation in a hospital or nursing home, future medical treatment, the provision of future medical services or the provision in future of goods, the Fund may give a written undertaking to the provider of services or goods to the effect that the services or goods will be paid for from the Fund and thereafter pay for the proved costs of the services or goods after the services have been rendered or the goods have been supplied; or

(b) future loss of income or support, the Fund may by agreement with the claimant or after being ordered to do so by a competent court, give a written undertaking to the claimant to the effect that the amount will be payable by instalments and thereafter pay the amount in the form of instalments as agreed or as ordered by the competent court.

(6) A person who has incurred costs as a result of having supplied medical treatment, medical service, goods or any other service which is reasonably necessary to a claimant or to any other person under circumstances for which the claimant is entitled to claim from the Fund, may, on the prescribed form claim for the proved costs which were incurred in supplying the service, treatment or goods but the compensation payable shall not exceed the amount which would have been payable to the claimant had he or she lodged the claim.

(7) Where necessary the Fund may, in respect of medical costs, loss of income or loss of support, make an advance payment to a claimant.

Claimant's right to claim from other persons

11. (1) Where a claimant is, under this Act, entitled to claim for compensation in respect of loss or damage caused by or arising out of the driving of a motor vehicle by the owner or by any person with the consent of the owner, that claimant is not entitled to claim for compensation in respect of that loss or damage from the owner or from the driver, or if that driver drove the motor vehicle as an employee in the execution of his or her duty, from his or her employer, unless the Fund is unable to pay the compensation for that loss or damage.

(2) If because of any limitation imposed under section 10(2) on the liability of the Fund, the amount of compensation payable under this Act for the damage or loss sustained, is less than the actual amount of compensation due for the loss or damage sustained, the claimant may claim for the difference from the owner of the motor vehicle or from the person whose negligence or other unlawful act caused the loss or damage.

Part IV
General provisions

Furnishing of information by owner and driver of motor vehicle

12. (1) Where a person, other than the driver, has been injured or has died as a result of the driving of a motor vehicle, the driver and the owner of the motor vehicle, if the driver is not the owner of the motor vehicle, shall on the prescribed form and within 14 days after the occurrence, furnish the Fund with particulars of the occurrence and any prescribed information.

(2) A person who without lawful excuse fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$2000.00 or in default of payment to be imprisoned for a period not exceeding six months.

(3) The Fund shall, within 14 days after a claimant has complied with section 13, furnish that claimant or his or her representative, with a copy of the particulars and information supplied under subsection (1), by the owner or driver and statements taken from witnesses to the occurrence.

Procedure for making claims

13. (1) A person who wishes to claim for compensation payable under this Act shall on the prescribed form and in the prescribed manner claim for compensation from the Fund.

(2) If the Fund does not, within 60 days from the date on which a claim was sent or delivered to it as prescribed, object to the validity of that claim, that claim shall for all purposes, be deemed to be valid in law.

(3) No person shall commence legal proceedings against the Fund for the purposes of obtaining compensation under this Act unless -

- (a) he or she has lodged a claim which complies with this section; and
- (b) a period of 120 days has expired from the date that the claim was delivered or sent to the Fund as prescribed.

(4) Notwithstanding subsection (3), if the Fund in writing, repudiates liability for the claim before the expiry of the period referred to in that subsection, the claimant may at any time after that repudiation, commence legal proceedings against the Fund.

(5) Notwithstanding anything to the contrary in any law, no interest calculated on the amount of compensation awarded by a court to a claimant, shall be payable unless 30 days have elapsed from the date of the court's decision.

(6) In issuing an order for costs on an award for compensation made by a court under this Act, the court may take into consideration any written offer made by the Fund before legal proceedings were started.

(7) Where a claim brought under this Act is settled before the matter is determined by a court, the claimant or the Fund is entitled to the agreed party and party costs or taxed party and party costs in respect of that claim

Prescription of claims

14. (1) Notwithstanding anything to the contrary in any law relating to prescription, and subject to subsections (2) and (3), the right to claim compensation under section 10 shall become prescribed at the expiry of a period of three years from the date that the claim arose.

(2) If within the period referred to in subsection (1), a person who is entitled to claim for compensation under this Act lodges a claim which complies with section 13, the claim shall not become prescribed before the expiry of a period of five years from the date that the claim arose.

(3) Prescription of a claim for compensation referred to in subsection (1) shall not run against -

- (a) a minor;
- (b) any person detained as a patient in terms of any mental health legislation;
or
- (c) a person under curatorship.

Fund's right of recourse

15. (1) Where under section 10 compensation has been paid out from the Fund to any person, the Fund may, subject to subsection (2), and without having obtained cession of the right of action from the claimant, recover from the owner of the motor vehicle or the person whose negligence or other unlawful act caused the loss or damage, so much of the amount paid by way of compensation as the claimant could, but for section 11, have recovered from the owner or the person whose negligence or other unlawful act caused the loss or damage, as the case maybe, if the Fund had not paid that compensation.

(2) The Fund's right of recourse against the owner of a motor vehicle under subsection (1) will arise only where the motor vehicle at the time of the incident which gave rise to the payment of compensation, was being driven -

- (a) by any person other than the owner of the motor vehicle and the driver was under the influence of intoxicating liquor or of a drug to such an extent that the accident was caused by his or her condition and the owner of the motor vehicle allowed the driver to drive the motor vehicle knowing that the driver was under the influence of intoxicating liquor or of a drug;
- (b) by any person other than the owner of the motor vehicle and that person did not hold a licence issued under the law governing the licensing of drivers of motor vehicles or he or she being the holder of a learner's licence or other restricted licence issued under that law, failed to comply with the conditions or requirements of that learner's licence or restricted licence, and the owner of the motor vehicle allowed the driver to drive the motor vehicle knowing that the driver did not hold a licence or that the driver was not complying with the conditions or requirements of a learner's or restricted licence;
- (c) by the owner of the motor vehicle and he or she was under the influence of intoxicating liquor or of a drug to such an extent that the accident was caused by his or her condition;

- (d) by the owner of the motor vehicle and he or she did not hold a licence issued under the law governing the licensing of drivers of motor vehicles or he or she being the holder of a learner's licence or other restricted licence issued under that law, failed to comply with the conditions or requirements of the learner's or restricted licence;
- (e) by the owner of the motor vehicle and he or she failed to comply with section 12 or knowingly furnished the Fund with false information about the accident and the Fund is financially or materially prejudiced by the failure to comply with section 12 or the furnishing of false information.

(3) The Fund has a right of recourse against any person who with or without the owner's consent was driving the motor vehicle at the time of the occurrence which gave rise to the claim if -

- (a) that person drove the motor vehicle whilst he or she was under the influence of intoxicating liquor or of a drug to such extent that the accident was caused by his or her condition;
- (b) that person drove the motor vehicle when he or she did not hold a licence issued under the law governing the licensing of drivers of motor vehicles or he or she being the holder of a learner's licence or other restricted licence issued under that law, failed to comply with the conditions or requirements of that learner's or restricted licence; or
- (c) that person failed to comply with section 12 or knowingly furnished the Fund with false information about the accident and the Fund is financially or materially prejudiced by the failure to comply with section 12 or the furnishing of false information.

Presumptions

16. (1) For the purpose of this Act-

- (a) a motor vehicle which is moved by mechanical, animal, or human power, gravity or other momentum is deemed to be driven by the person in control of that motor vehicle; and
- (b) a person who has placed or left a motor vehicle at any place shall be deemed to be driving that motor vehicle while it moves from that place as a result of gravity, or while it is stationary at that place or at a place to which it moved from the first-mentioned place as a result of gravity.

(2) Whenever any motor vehicle has been placed or left at any place, it shall, for the purposes of this Act, be presumed, until the contrary is proved, that such vehicle was placed or left at such place by the owner of such vehicle.

Regulations

17. (1) The Minister shall, on the recommendation of the Board make regulations relating to -

- (a) the procedure to be followed when making a claim under this Act;

- (b) the conditions to be fulfilled before a claim is made in respect of injury or death caused by a motor vehicle whose driver or owner at the time of the incident cannot be identified;
- (c) the amounts of money payable as compensation under this Act;
- (d) the manner in which payments to legal practitioners who have acted on behalf of claimants are to be made in respect of legal costs and the manner in which payments in respect of compensation are to be made to claimants.
- (e) any matter which he or she is required or permitted to prescribe under this Act; or
- (f) any matter which is necessary or expedient in order to achieve the objectives of this Act.

(2) A regulation made under subsection (1) may prescribe penalties, not exceeding a fine of N\$5 000 or imprisonment not exceeding a period of three months or both that fine and imprisonment, for any contravention or failure to comply with.

Repeals and Savings

18. (1) The Motor Vehicle Accidents Act, 1990 (Act No. 30 of 1990) is repealed.

(2) This Act shall apply to cases where the occurrence which gave rise to the claim or obligation took place after the commencement of this Act and any claim or obligation which arose before the commencement of this Act shall be dealt with in accordance with the repealed law but any payment due to the claimant under the repealed law shall be paid out of the Fund.

Short Title and commencement

19. This Act shall be called the Motor Vehicle Accidents Fund Act, 2001 and it shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.