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CONTENTS • INHOUD

No.

Page
No. Gazette
 No.

GENERAL NOTICE



Transport, Department of

General Notice

245 Transport Law Enforcement and Related General Matters Amendment Bill, 2010: Publication for comments 3 33027

GENERAL NOTICE

NOTICE 245 OF 2010

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS: TRANSPORT LAW ENFORCEMENT AND RELATED GENERAL MATTERS AMENDMENT BILL, 2010 (SECTION 76 Bill).

The above mentioned draft amendment Bill is hereby published for public comments.

Interested persons are invited to submit written comments on the Transport Law Enforcement and Related Matters Amendment Bill, 2010 (section 76 Bill) on or before the 15 April 2010. Submission or comments should be posted or emailed to the Director General, Department of Transport for the attention of ;

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REPUBLIC OF SOUTH AFRICA

TRANSPORT LAW ENFORCEMENT AND RELATED MATTERS GENERAL

AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Government Gazette No. 33027 of 15 March 2010
(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B - 2010]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the—

- **National Road Traffic Act, 1996, to provide for a definition of toll road and add a presumption to facilitate the collection of tolls;**
- **Administrative Adjudication of Road Traffic Offences Act, 1998, to include in its ambit offences relating to operating licenses and cross-border permits for public transport services and offences relating to non-payment of tolls on national roads;**
- **Road Traffic Management Corporation Act, 1999, to empower the Road Traffic Management Corporation to enter into law enforcement agreements with the South African National Roads Agency; and to provide for matters connected therewith.**

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

Amendment of section 1 of Act 93 of 1996, as amended by section 1 of Act 8 of 1998 and section 1 of Act 21 of 1999

1. Section 1 of the National Road Traffic Act, 1996 is hereby amended by the insertion after the definition of "title holder" of the following definition:

" 'toll road' has the meaning ascribed to it in section 1 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);".

Amendment of section 69 of Act 93 of 1996

2. Section 69 of the National Road Traffic Act, 1996 is hereby amended by the insertion after subsection (3) of the following subsection:

"(4) Where in any prosecution in terms of this Act it is alleged that an offence was committed on a toll road, the road concerned shall, in absence of evidence to the contrary, be presumed to be a toll road."

Amendment of section 1 of Act 46 of 1998, as amended by section 1 of Act 22 of 1999 and section 1 of Act 72 of 2002

3. Section 1 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended—

(a) by the substitution for the words preceding the definition of "acceptable identification" of the following words:

"In this Act, unless the context otherwise indicates, any word or expression to which a meaning has been assigned to the National Road Traffic Act, 1996 (Act No. 93 of 1996), has the same meaning in this Act, and—"

- (b) by the insertion in the definition of "authorised officer" after paragraph (b) of the following paragraph:

"(bA) an employee of the South African National Roads Agency Limited contemplated in section 54(1) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);"

- (c) by the insertion after the definition of "courtesy letter" of the following definitions:

"(vA) 'Cross-Border Agency' means the Cross-Border Road Transport Agency established by section 4 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);"

"(vB) 'cross-border permit' has the meaning ascribed to 'permit' in section 1 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);"

"(vC) 'cross-border road transport' has the meaning ascribed to it in section 1 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);"

- (d) by the substitution of the following definition for the definition of "issuing authority":

"(xiv) 'issuing authority' means—"

- (a) a **[local authority] municipality** contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996 **[(Act 108 of 1996), the Local Government Transition Act, 1993 (Act 209 of 1993),]** or any other applicable law;
- (b) a provincial administration;
- (c) the Road Traffic Management Corporation, established by section **[4] 3** of the Road Traffic Management Corporation Act, 1999~~[,] (Act No. 20 of 1999)~~;
- (d) the South African National Roads Agency Limited established by section 2 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);
- (e) the Cross-Border Agency;
- (f) the South African Police Service; or
- (g) any other authority, administration or agency designated by the Minister for this purpose by notice in the Gazette,
- in so far as such authority, administration, **[or] Corporation or Agency** is responsible for **[traffic] matters relating to road traffic, public transport, cross-border road transport or toll roads in its area of jurisdiction;";**

- (e) by the insertion after the definition of "offence" of the following definitions:

"(xxA)'operating licence' has the meaning ascribed to it in the National Land Transport Act, 2009 (Act No. 5 of 2009);

(xxB)'Provincial Regulatory Entity' means a public transport licensing board contemplated in section 23 of the National Land Transport Act, 2009 (Act No.5 of 2009);"; and

(f) by the insertion of the following definitions after the definition of "sheriff":

" (xxiiiA) 'toll' means a toll levied under section 27 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) and includes all surcharges, fees, fines and penalties payable under that Act;";

(xxiiiB) 'toll road' has the meaning ascribed to it in section 1 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);".

Amendment of section 2 of Act 46 of 1998, as amended by section 2 of Act 72 of 2002

4. Section 2 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution for paragraphs (a) and (e) of the following paragraphs, respectively:

"(a) to encourage compliance with the national and provincial laws and municipal by-laws relating to road traffic, public transport, cross-border road transport and toll roads and to promote road traffic safety;

(e) to penalise drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension **[and]** or cancellation of driving licences, professional driving permits, operating licences, cross-border permits or operator cards;"

Insertion of section 2A in Act 46 of 1998

5. The following section is hereby inserted in the Administrative Adjudication of Road Traffic Offences Act, 1998 after section 2:

"Application of Act

2A This Act applies to offences created by the following Acts:

- (a) The National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (b) any provincial Act dealing with road traffic, public transport or toll roads;
- (c) the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);
- (d) the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);
- (e) the National Land Transport Act, 2009 (Act No. 5 of 2009); and
- (f) any other Act designated by the Minister by notice in the Gazette."

Amendment of section 4 of Act 46 of 1998

6. Section 4 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

- "(a) to administer a procedure to discourage the contravention of road traffic and transport laws and to support the adjudication of infringements as set out in subsection (2);

- (b) to enforce penalties imposed against persons contravening road traffic and transport laws as set out in subsection (3);".

Amendment of section 7 of Act 46 of 1998

7. Section 7 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution in subsection (1) for paragraphs (b) and (d) of the following paragraphs, respectively:

- "(b) to monitor the success achieved by the agency in promoting compliance with road traffic and transport laws;
- (d) to advise the Minister regarding amendments to this Act or any other **[road traffic]** legislation in order to improve the effectiveness of the agency;".

Amendment of section 17 of Act 46 of 1998, as amended by section 8 of Act 72 of 2002

8. Section 17 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution in subsection (3) for paragraph (d) of the following paragraph:

- "(d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the **[amount]** number of points left before his or her driving licence, professional driving permit, operating licence, cross-border permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.".

Amendment of section 18 of Act 46 of 1998, as amended by section 9 of Act 72 of 2002

9. Section 18 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution in subsection (8) for paragraph (d) of the following paragraph:

"(d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the **[amount]** number of points left before his or her driving licence, professional driving permit, operating licence, cross-border permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27."

Amendment of section 19 of Act 46 of 1998, as amended by section 10 of Act 72 of 2002

10. Section 19 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution in subsection (3) for paragraph (d) of the following paragraph:

"(d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit, operating licence, cross-border permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27."

Amendment of section 19B of Act 46 of 1998, as inserted by section 11 of Act 72 of 2002

11. Section 19B of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the addition of the following subsection:

"(3) Whenever a penalty is payable in terms of this Act for an infringement relating to the failure to pay outstanding tolls, the infringer shall not be regarded as having paid the penalty in full until all outstanding tolls have been paid."

Amendment of section 20 of Act 46 of 1998, as amended by section 12 of Act 72 of 2002

12. Section 20 of the Administrative Adjudication of Road Traffic Offences Act, 1998, is hereby amended—

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

"(d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit, operating licence, cross-border permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27.";

(b) by the substitution for subsection (5) of the following subsection:

"(5) Subject to subsection (6), no—

- (a) driving licence;
- (b) professional driving permit; **[or]**
- (c) licence disc;
- (d) operating licence;
- (e) cross-border permit; or
- (f) operator card.

may be issued to an infringer or in respect of a motor vehicle registered in the name of an infringer, if an enforcement order has been issued in respect of such infringer, until such enforcement order has been complied with or has been revoked."; and

- (c) by the substitution in subsection (10) for paragraph (b) of the following paragraph:

*“(b) the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit, operating licence, cross-border permit or operator **[operator’s]** card must be returned or the endorsement of a driving licence that is contained in an identity document must be cancelled, unless he or she has been disqualified otherwise.”.*

Amendment of section 21 of Act 46 of 1998, as amended by section 2 of Act 22 of 1999 and section 13 of Act 72 of 2002

13. Section 21 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) to seize the driving licence, [or] professional driving permit, operating licence or cross-border permit of the infringer;"

Amendment of section 25 of Act 46 of 1998, as amended by section 16 of Act 72 of 2002

14. Section 25 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended—

(a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) must immediately hand in any driving licence card, [or] professional driving permit, operating licence or cross-border permit in the prescribed manner to the issuing authority contemplated in section 26(2) ; in the case of a driving licence card or professional driving permit, or to the relevant operating licensing board, in the case of an operating licence or to the Cross-Border Agency in the case of a cross-border permit, for retention by such issuing authority, board or Agency, as the case may be, during the disqualification period, produce any driving licence contained in an identity document, operating licence or cross-border permit to such issuing authority, board or Agency for endorsement as suspended or must remove the prescribed operator card and deal therewith in the prescribed manner; and

(b) may not apply for a driving licence, professional driving permit, operating licence, cross-border permit or operator card during the disqualification period."; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) Upon expiry of his or her disqualification period, a person referred to in subsection (3) may apply in the prescribed manner to the issuing authority, operating licensing board or Cross-Border Agency as the case may be, to return his or her driving licence card, [or] professional driving permit, operating licence or cross-border permit, or to reissue an operator card."

Substitution of section 27 of Act 46 of 1998, as amended by section 18 of Act 72 of 2002

15. The following section is hereby substituted for section 27 of the Administrative Adjudication of Road Traffic Offences Act, 1998:

"Cancellation of driving licence, professional driving permit, operating licence, cross-border permit and operator card.

27. (1) (a) A person who incurs demerit points resulting in a disqualification in terms of section 25 to drive or operate a motor vehicle for a third time, must immediately hand in his or her driving licence card, professional driving permit, operating licence, cross-border permit or operator

card in the prescribed manner to the issuing authority, operating licensing board or Cross-Border Agency, as the case may be, or must submit any driving licence contained in his or her identity document to such issuing authority.

(b) A person who fails to comply with the provisions of paragraph (a) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

(2) **[An]** The issuing authority, operating licensing board or Cross-Border Agency must, upon receipt of a driving licence card, professional driving permit, **[or]** operator card, operating licence or cross-border permit, as the case may be, take the necessary steps to destroy such licence, permit or card, and must submit any driving licence contained in an identity document to be endorsed as cancelled.

(3) Upon expiry of his or her disqualification period, a person contemplated in subsection (1) may reapply for and be issued with a driving licence, professional driving permit, **[or]** operator card, operating licence or cross-border permit in terms of the applicable **[road traffic]** laws."

Amendment of section 29 of Act 46 of 1998

16. Section 29 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the addition in subsection (1) of the following paragraph:

"(e) prescribe that outstanding tolls will be payable together with the relevant penalty, and be collected with such penalty."

Amendment of section 32 of Act 46 of 1998

17. Section 32 of the Administrative Adjudication of Road Traffic Offences Act, 1998 is hereby amended by the addition of the following subsections:

"(3) Outstanding toll collected must be paid to South African National Roads Agency Limited.

(4) The penalty fees and collection fees paid in respect of outstanding toll may be paid and owned by the Agency that collected such toll."

Amendment of section 36 of Act 46 of 1998

18. Section 36 of the Administrative Adjudication of Road Traffic Offences Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) This Act is called the Administrative Adjudication of Road Traffic and Transport Offences Act, 1998, and comes into operation on a date determined by the President by proclamation in the *Gazette*."

Amendment of long title of Act 46 of 1998

19. The following long title is hereby substituted for the long title of the Administrative Adjudication of Road Traffic Offences Act, 1998:

"To promote road traffic and transport quality by providing for a scheme to discourage road traffic and transport contraventions, to facilitate the adjudication of road traffic and transport infringements, to support the prosecution of offences in terms of the national and provincial laws relating to road traffic and transport, and implement a points demerit system; to provide for the establishment of an agency to administer the scheme; to provide for the establishment of a board to represent the agency; and to provide for matters connected therewith."

Amendment of section 31 of Act 20 of 1999

20. Section 31 of the Road Traffic Management Corporation Act, 1999 is hereby amended by the addition of the following subsection:

"(3) The Chief Executive Officer may enter into an agreement with the South African National Roads Agency Limited established in terms of section 2 of the South African National Roads Agency and National Roads Act, 1998 (Act No. 7 of 1998), in terms of which the Corporation is authorised, and undertakes, to perform law enforcement functions contemplated in section 54 of that Act on any national road by the employees of the Corporation designated or appointed by it for that purpose in agreement with that Agency, and such an agreement may include provision for that Agency to compensate the Corporation for exercising such functions."

Short title and commencement

21. (1) This Act is called the Transport Law Enforcement and Related Matters Amendment Act, 2010, and takes effect on a date fixed by the President by proclamation in the *Gazette*.
