

ROAD ACCIDENT FUND AMENDMENT BILL, 2023

On 8 September 2023 the Department of Transport published a draft Road Accident Fund Amendment Bill, 2023 in GN3868 GG49283/8-9-2023 for public comment. The deadline for comment is 8 October 2023.

If the draft Bill is signed into law, the rights of all drivers, passengers and pedestrians to claim compensation for injuries they suffer in a motor vehicle accident will be taken away. In its place will be significantly reduced ‘social benefits’.


Despite the fact that only very limited social benefits will be paid –

- the innocent injured party is still denied a common law claim against the guilty party for the balance of his or her loss;
- all claimants will still have to prove that their injuries were suffered as a result of the negligence of the driver or owner of a motor vehicle; and
- all those using the roads will nevertheless, either directly or indirectly, still have to contribute to the Road Accident Fund (the Fund) by way of the fuel levy, which is currently R 2,18 per litre.



CURRENT
COMPENSATION

PROPOSED CHANGES

- The Fund is a state backed insurer which steps into the shoes of the wrongdoer and compensates the innocent injured party subject to some caps in respect of loss of income.
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- Injuries sustained in a motor vehicle accident anywhere in the Republic of South Africa by any person are covered.
- Uncapped compensation for general damages for pain and suffering, loss of amenities of life, disfigurement and shock paid to those who have suffered serious injuries.
- Loss of earnings and support, past and future, are paid by way of a lumpsum, affording the injured claimant or dependants the freedom and dignity to take charge of their own future.
- All medical and other expenses reasonably incurred that arise directly from the accident are covered.
- In terms of the common law, expenses covered by medical aids must be paid by the Fund and in terms of the rules of the medical scheme, reimbursed to the medical aid to go back into the pool of funds available for the benefit of all members.
- Costs incurred to inter the deceased in a grave are covered.
- Any person injured as a result of the negligence of a driver or owner may claim.
- Once a claimant has lodged a substantially compliant claim on the Fund and a period of 120 days has lapsed, the claimant is free to prosecute his or her claim in a court of law.
- Once a valid claim has been lodged, the period to institute proceedings before the claim will prescribe and become unenforceable is extended from three years to five years from date of accident, allowing a claimant sufficient time for injuries to stabilise and to prepare a claim.
- An injured party can claim personally or be represented by a practising attorney or an employee of the state.
- The object of the Fund has been changed from the payment of compensation (as a statutory insurer) to the provision of social benefits (welfare) – this despite the fact that road users continue to pay a significant premium by way of the fuel levy.
- Only persons injured on a public road may claim – injuries suffered in motor vehicle accidents in parking areas, sports fields, farm roads, driveways, private estates, game reserves or any other private road are not covered. Persons who are not citizens or direct permanent residents are not covered. Persons crossing a highway are not covered. Persons injured in a hit-and-run are not covered. Pedestrians, drivers and cyclist who may test over the legal limit for alcohol and their dependants are not covered.
- No payment for pain and suffering, loss of amenities of life, disability, disfigurement, or shock regardless of how catastrophic the injuries might be.
- No lumpsum payments for future loss of earnings or support. Future earnings or loss of support will be paid as an annuity (monthly payments). The Fund has the right to continually reassess its liability to continue to pay. If the injured claimant is a breadwinner and dies, the pension will cease, leaving dependants destitute.
- Medical and other expenses will be subject to a prescribed tariff, which will not cover the actual costs incurred. All future expenses to be pre-authorised in terms of a procedure to be prescribed and subject to restrictions and exclusions.
- No cover for expenses covered by medical aid/insurance. This will have dire consequences for all medical aid members, not just road accident victims. Medical aids may be forced to exclude cover for motor vehicle accident expenses.
- Fixed capped benefits for funeral expense.
- No compensation if there is a claim in terms of the Consumer Protection Act 68 of 2008. No compensation if injured while filming a movie or advertisement. Claims for passengers who may be covered by the operator’s passenger liability insurance to be reduced by the extent of the cover.
- Jurisdiction of the courts are largely ousted by the establishment of alternative dispute resolution procedures followed by referral to the Office of the Road Accident Fund Adjudicator (yet to be established).
- Lodgement of a claim no longer extends prescription from three to five years, meaning that many claims could prescribe while trapped in the internal resolution process.
- Claimant can be represented by any person or functionary as prescribed in the regulations.



Funds are needed urgently in order to launch and maintain an effective awareness campaign and to rally opposition to the legislation, including litigation, if necessary. The Law Society of South Africa calls on all practitioners to contribute whatever they can to a dedicated fund for this purpose. Any contributions can be transferred into the following bank account:

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