

MOTOR VEHICLE ACCIDENT FUND (AMENDMENT) ACT, 2021

No. 13



of 2021

ARRANGEMENT OF SECTIONS

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An Act to amend the Motor Vehicle Accident Fund Act.

Date of Assent: 08.10.2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Motor Vehicle Accident Fund (Amendment) Act, 2021, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Motor Vehicle Accident Fund Act (hereinafter referred to as "the Act") is amended in section 2 —

Amendment of section 2 of Cap. 69:02

(a) by substituting for the definition of "claimant", the following new definition —
 "“claimant” —

- (a) means any person who has suffered loss as a result of personal injury or death caused by a vehicle accident, and who makes a claim to the Fund in respect of that loss; and
- (b) includes any person who is below the age of 18 years and has been adjudged to be emancipated in terms of a court order;"

(b) by substituting for the definition of "vehicle accident", the following new definition —
 "“vehicle accident” means any occurrence that involves the driving of a vehicle resulting in the injury or death of any person."; and

(c) by deleting the word "Minister" appearing therein.

Amendment of
section 10 of
the Act

3. Section 10 of the Act is amended by substituting for that section, the following new section —

“Filling of
vacancies
of Board
10. On the death of, or vacating of office, by a member of the Board, the Minister shall, as soon as possible, appoint a person in accordance with section 6.”.

Amendment
of section 17
of the Act

4. Section 17 of the Act is amended by substituting for subsection (10), the following new subsection —

“(10) A person who drives a foreign registered motor vehicle into Botswana shall pay to the Fund a levy on a foreign registered vehicle in such manner as may be prescribed.”.

Amendment
of section 22
of the Act

5. Section 22 of the Act is amended —

(a) by substituting for subsection (13), the following new subsection —

“(13) Subject to the limitations and exclusions set out in this Act, every victim of a vehicle accident shall be entitled to be compensated by way of medical attention and rehabilitation, whilst any negligent party, irrespective of their contribution to the accident shall similarly be entitled to medical attention and rehabilitative compensation, but only during the first six months from the date of the accident or to such sum as may be prescribed.”;

(b) by substituting for subsection (14), the following new subsection —

“(14) A negligent driver or owner of a vehicle who is the subject of the right of recovery in terms of section 30 shall not be entitled to any benefit for loss of income.”; and

(c) by substituting for subsection (15), the following new subsection —

“(15) Subject to any limit set out in this Act, the Minister may, by Order published in the *Gazette*, prescribe the computation of loss of support.”.

Amendment
of section 23
of the Act

6. Section 23 of the Act is amended —

(a) in subsection (1), by inserting immediately after paragraph (g), the following new paragraphs —

“(h) in respect of war, invasion, acts of foreign enemy hostilities or war-like operations, whether war has been declared or not, and civil war;

(i) in respect of abandonment or permanent or temporary dispossession resulting from detention, confiscation, seizure, restraint, commandeering, nationalisation, appropriation, destruction or requisition by order of any government *de jure* or *de facto* or by any public authority;

(j) in respect of mutiny, civil commotion, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege or any event or cause which determines the proclamation or maintenance of martial law or state of siege;

(k) in respect of any act, including but not limited to, labour disturbances, lock-outs, riots or strikes, which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State, or any political or local authority, or which is meant to endanger the life, safety or health of the public; and

- (l) in respect of any act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in paragraph (k).”;
- (b) by substituting for subsection (2), the following new subsection —
“(2) A visitor to Botswana who, whilst in Botswana, suffers loss as a result of personal injury caused by a vehicle accident, shall, subject to the limitations and exclusions, be entitled to only medical and rehabilitation benefits set out in this Act only whilst he or she is in Botswana, and such benefits shall be revoked upon the visitor leaving the country.”; and
- (c) by inserting immediately after subsection (4), the following new subsections —
“(5) A non-citizen who, whilst in Botswana, suffers loss as a result of personal injury caused by a motor vehicle shall, subject to limitations and exclusions set out in this Act, be entitled to any medical and rehabilitation benefits and funeral expenses payable to him or her by the Fund up to the remaining validity of his or her work or residence permit.
(6) A non-citizen referred to under subsection (5) shall be entitled to the benefits of loss of income and any loss of support to his or her dependants up to the validity of his or her work permit.
(7) For purposes of this section, “non-citizen” has the meaning assigned to it under the Immigration Act.”.
7. The Act is amended by deleting section 25.

Cap. 25:02

Deletion of
section 25
of the Act

8. Section 26 of the Act is amended by substituting for subsection (2), the following new subsection —
“(2) Any claim made in terms of subsection (1) shall be delivered by hand, registered post or by any electronic means and —
(a) where hand delivered, receipt of claim shall be acknowledged in writing, by the person to whom it is delivered; and
(b) where delivered by electronic means, the claim shall be acknowledged by the person to whom it is delivered in accordance with the Electronic Communications and Transactions Act.”.
9. Section 29 of the Act is amended —
(a) in subsection (1), by substituting for the words “three years” appearing therein, the words “five years”; and
(b) in subsection (4), by substituting for the words “three years” appearing therein, the words “five years”.

Amendment
of section 26
of the Act

Cap. 43:12

Amendment
of section 29
of the Act

10. Section 30 of the Act is amended by substituting for that section, the following new section —

Amendment
of section 30
of the Act

“Right of recovery

30. (1) Notwithstanding the provisions of any other law, where the Fund has paid any sum as compensation in terms of this Act, or where the Fund has set aside monies for payment of future benefits, it shall have the right to recover the amount the Fund has paid as compensation or which the Fund shall become liable to pay as compensation, as the case may be, from the person who caused the vehicle accident giving rise to the claim in question, if at the time of such vehicle accident that person —

- (a) was under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of the vehicle;
- (b) was driving the vehicle recklessly;
- (c) was driving the vehicle without being the holder of a valid driving licence;
- (d) was driving a defective vehicle and such defect caused or contributed to the cause of the vehicle accident;
- (e) was driving a stolen vehicle knowing, or ought to have known, that it was stolen; or
- (f) being the owner, custodian or lawful possessor of the vehicle, permitted the vehicle to be driven in any of the circumstances set out in paragraphs (a), (b), (c) and (d) hereof.

(2) Where the Fund has set aside monies for the payment of future benefits in terms of subsection (1), a court may issue a declaratory order that enables the Fund to claim any money that the Fund has set aside and may pay in future.”.

PASSED by the National Assembly this 16th day of August, 2021.

BARBARA. N. DITHAPO,
Clerk of the National Assembly.