

REPUBLIC OF SOUTH AFRICA

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL

*(As amended by the Portfolio Committee on Transport (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 42B—2002]

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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 Administrative Adjudication of Road Traffic Offences Act, 1998, so as to regulate the composition of the board; to provide for the appointment of sheriffs by the Minister; to prescribe an extended period for payment of infringement fines and matters related thereto; and to effect textual corrections; and to provide for matters connected thereto.

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

Amendment of section 1 of Act 46 of 1998

1. Section 1 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (hereinafter referred to as the principal Act), is amended by— 5

- (a) the insertion of the following paragraph after paragraph (d) of the definition of “acceptable identification”:
“(dA) a driving licence card issued in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);”; and
- (b) the insertion after the definition of “prescribed” of the following definition: 10
“‘representations officer’ means a person contracted by the agency in terms of section 5 or appointed by the Registrar in terms of section 10 to consider representations submitted by any person who, after having committed a minor infringement, elects to make a representation.”.

Amendment of section 2 of Act 46 of 1998 15

2. Section 2 of the principal Act is amended by—

- (a) the substitution for paragraph (a) of the following paragraph:
“(a) to encourage compliance with the national, **[and]** provincial and municipal laws relating to road traffic and to promote road traffic safety;”; and 20
- (b) the substitution for paragraph (f) of the following paragraph:
“(f) to reward law-abiding behaviour by reducing demerit points **[imposed]** where they have been incurred if infringements or offences are not committed over specified periods.”.

Amendment of section 5 of Act 46 of 1998

3. Section 5 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The prescribed procedures must be followed in respect of any procurement or contract contemplated in subsection (1).” 5

Amendment of section 6 of Act 46 of 1998

4. Section 6 of the principal Act is amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) A Road Traffic Infringement Agency Board, to represent and control the agency, is hereby established, comprising— 10

(a) [**three**] five persons[, **who are not employed by the State,**] appointed by the Minister, **[on account]** who by virtue of their [commercial] relevant experience and technical expertise are suitably qualified to perform the functions of the Agency under this Act;

(b) a Director of Public Prosecutions, nominated by the National Director of Public Prosecutions, in consultation with the **[Directors of Public Prosecutions]** Minister; and 15

(c) the registrar of the agency.”;

(b) the substitution for subsection (2) of the following subsection:

“(2) **[The Minister must, prior to appointing the members contemplated in subsection (1)(a), publish the names of the persons proposed to be appointed as such members in the Gazette and invite comment on the suitability of such members for appointment]** Prior to the appointment of a person to the board, the Minister must— 20

(a) by notice in the Gazette, publish his or her intention to appoint that person and invite public comment or objections within the period specified in the notice; 25

(b) forward a copy of the notice to the relevant Parliamentary Committees; and

(c) take into account any comment or objection received by him or her in accordance with such notice.” 30

Amendment of section 9 of Act 46 of 1998

5. Section 9 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The board may appoint not more than **[twenty five]** 25 persons as deputy registrars.” 35

Substitution of section 12 of Act 46 of 1998

6. Section 12 of the principal Act is substituted by the following section:

“**12.** The Minister, after consultation with the registrar, may recommend to the Minister of Justice that such sheriffs or deputy sheriffs, as may be necessary to ensure the proper performance of the agency’s functions, be appointed in terms of the Sheriffs Act, 1986 (Act No. 90 of 1986).” 40

Amendment of section 13 of Act 46 of 1998

7. Section 13 of the principal Act is amended by the substitution in subsection (1) for paragraph (d) of the following paragraph: 45

“(d) donations received, which must be declared in the annual report contemplated in section **[7(3)]** 7(2); and”.

Amendment of section 17 of Act 46 of 1998

8. Section 17 of the principal Act is amended by—

(a) the substitution in subsection (1) for paragraph (d) of the following paragraph: 50

- “(d) specify the prescribed discount which may be obtained if the penalty is paid not later than [28] 32 days after the date of service of the infringement notice;”;
- (b) the substitution in paragraph (f) of subsection (1) for the words preceding subparagraph (i) of the following words: 5
 “(f) inform the infringer that, not later than [28] 32 days after the date of service of the infringement notice, the infringer may—”;
- (c) the substitution for subsection (2) of the following subsection: 10
 “(2) If an infringer fails to comply with an infringement notice within the period contemplated in subsection (1)(f), the issuing authority must give notice of the failure, in the prescribed manner, to the agency for further action in terms of section 19.”;
- (d) the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 15
 “(3) If an infringer complies with an infringement notice by arranging to pay the penalty in instalments or by paying the penalty, as reduced by the discount contemplated in subsection (1)(d), the [issuing authority] agency must—”;
- (e) the substitution in subsection (3) for paragraph (c) of the following paragraph: 20
 “(c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and”.

Amendment of section 18 of Act 46 of 1998

9. Section 18 of the principal Act is amended by—
- (a) the substitution in subsection (7) for paragraphs (b) and (c) of the following paragraphs: 25
 “(b) if the infringer does not elect to be tried in court—
 (i) that the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter, if any, are payable to the agency or that the arrangements are made with the agency in the prescribed manner to pay in instalments, not later than [28] 32 days after the date of service of the notification; and 30
 (ii) that a failure to pay the penalty and fees or to make arrangements to pay in instalments will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order; 35
 and
 (c) if the infringer elects to be tried in court, which may only be done on the advice of the representations officer, that the provisions of section 22 apply.”; and 40
- (b) the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
 “(8) If an infringer pays the penalty and fee as contemplated in subsection (7)(b)(i), or makes arrangements to pay in instalments, the agency must—”.

Amendment of section 19 of Act 46 of 1998

10. Section 19 of the principal Act is amended by the substitution in paragraph (b) of subsection (2) for the words preceding subparagraph (i) of the following words:
 “(b) give notice that the infringer must, not later than [28] 32 days after the date of service of the courtesy letter—”.

Insertion of sections 19A and 19B into Act 46 of 1998

11. The following sections are inserted after section 19 of the principal Act:

“Options

- 19A.** Where an infringer exercises one of the options envisaged in sections 17(1)(f), 18(7)(b) or 19(2)(b) within 32 days, which options—
- (a) include the option to pay fines and monies, if any, or to make arrangement to pay in instalments, the matter must be concluded without considering the other options; and
 - (b) in any other case, including the option to be heard in court, this option must be ignored in order to conclude the matter out of court, corresponding to the administrative process envisaged in this Act.

Payments

- 19B.** (1) If an infringer makes an insufficient payment to the agency in terms of this Act in respect of a fine or the cheque used for payment is dishonoured, a notice as prescribed must be served on the infringer, informing him or her—
- (a) that the full amount owed, including the prescribed fee for the notice, must be paid within 32 days of service of the notice; and
 - (b) that failure to comply with the notice contemplated in paragraph (a) will lead to a warrant being issued against him or her in terms of section 21.
- (2) If an infringer who has made arrangements to pay a fine or monies, if any, in instalments, fails to pay the instalments or makes an insufficient payment on an instalment or the cheque used for payment of that instalment is dishonoured, a notice as prescribed must be served on the infringer, informing him or her—
- (a) that the outstanding balance of the instalment, including the fee for the notice, must be paid within seven days of service of the notice or that arrangements must be made within that time for the payment thereof; and
 - (b) that any payment referred to in paragraph (a) must be made as arranged and that subsequent instalments must be paid as originally arranged; and
 - (c) that failure to comply with the notice will lead to a warrant in respect of the full amount owed being issued against him or her in terms of section 21.”.

Amendment of section 20 of Act 46 of 1998**12.** Section 20 of the principal Act is amended by—

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “(1) If an infringer fails to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)(b) or has failed to appear in court as contemplated in section 22(3)(a), as the case may be, the registrar must, subject to subsection (2)—”;
- (b) the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:
 - “(a) [an infringement notice,] a notification contemplated in section 18(7) or courtesy letter, as the case may be, has been served on the infringer in question;
 - (b) a period of at least [28] 32 days has passed since the date of service of the said notification or courtesy letter, as the case may be;”;
- (c) the substitution for paragraph (a) of subsection (3) for the following paragraph:
 - “(a) state that the infringer on whom it is served may, not later than [28] 32 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of the enforcement order to the agency at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the national contraventions register; and”;

- (d) the substitution for subsections (7) and (8) for the following subsections:
 “(7) An infringer on whom an enforcement order has been served may comply with it by paying the applicable penalty and fees to—
 (a) a registering authority; or
 (b) a driving licence testing centre.]
 the local registering authority or driving licence testing centre.
 (8) A local registering authority or driving licence testing centre must update the national contraventions register and notify the agency in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the agency after deduction of the prescribed collection fee, within the prescribed period after which the agency may charge interest at the prescribed rate.
- (e) the addition of the following words after paragraph (b) of subsection (9):
 “, and the infringer or the issuing authority, as the case may be, who applied for the revocation of an enforcement order, must be informed in the prescribed manner of the result of such an application.”; and
- (f) the addition of the following subsection:
 “(10) If an enforcement order is revoked, its consequences must be cancelled and if it involves the cancellation of a disqualification to drive or use a motor vehicle—
 (a) the national contraventions register must be updated; and
 (b) the infringer must be informed about it in the prescribed manner and his or her driving licence, professional driving permit or 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

13. Section 21 of the principal Act is amended by—

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “(1) If an infringer on whom a notice contemplated in section 19B(1) or (2) or an enforcement order is served does not comply with the requirements of the notice contemplated in section 19B(1)(a) or (2)(a) or the provisions of the order contemplated in section 20(3)(a), the registrar may, on the prescribed conditions, issue a warrant against the infringer, which is valid until such time it is served by the sheriff or is cancelled by the registrar—”;
- (b) the substitution for paragraph (a) of subsection (1) of the following paragraph:
 “(a) to seize and sell movable property to defray the penalty and fees due;”.

Amendment of section 22 of Act 46 of 1998

14. Section 22 of the principal Act is amended by—

- (a) the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph:
 “(ii) under section 18(7)(c) or 19(2)(b)(iii), the agency must inform the issuing authority, who must cancel the infringement notice; or”;
- (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) the execution of a warrant in terms of section 21(1) produces no property to seize and sell or the infringer otherwise fails to comply with the enforcement order after execution of the warrant, the agency must inform the issuing authority, who must cancel the infringement notice, and the issuing authority must [issue] prepare a summons in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”;
- (c) the substitution for subsection (2) of the following subsection:
 “(2) Once a summons has been [issued] prepared in terms of this section, the Criminal Procedure Act, 1977 [(Act No. 51 of 1977)], applies, and—
 (a) the prosecutor must notify [the agency and] the issuing authority in writing in the prescribed manner of his or her reasons if he or she declines to prosecute;

- (b) the clerk of the court must notify the issuing authority or the agency of the outcome of the case, so that the national contraventions register may be updated; and
- (c) no admission of guilt [**fine**] may be endorsed on a summons or may be accepted.”;
- (d) the substitution for subsection (3) of the following subsection:
 “(3) If an infringer has been summoned to appear at criminal proceedings—
 (a) in terms of subsection (1)(a), and fails to appear or attend, the court must not, despite the provisions of section 55 of the Criminal Procedure Act, 1977, issue a warrant for his or her arrest, but the clerk of the court must notify the issuing authority, which must inform the agency, and the registrar must proceed to issue an enforcement order contemplated in section 20(1); and
 (b) in terms of subsection (1)(b), the case must be handled in terms of the Criminal Procedure Act, 1977.”;
- (e) the substitution for subsection (4) of the following subsection:
 “(4) Despite any other law, an infringer who has been dealt with [**administratively**] by means of administrative procedures in terms of this Chapter, does not incur previous convictions and may not be prosecuted again on the same facts.”

Amendment of section 24 of Act 46 of 1998

15. Section 24 of the principal Act is amended by—
- (a) the substitution for subsection (2) of the following subsection:
 “(2) Subject to subsection (4), demerit points are incurred on the date on which the penalty and fee, if any, imposed for the infringement are paid, including when partial or dishonoured payments, or arrangements to pay in instalments, are made, an enforcement order is issued or the infringer is convicted of the offence, as the case may be.”;
- (b) the insertion of the following subsection after subsection (4):
 “(4A) For the purpose of recording the demerit points as contemplated in subsections (3) and (4), the clerk of the court must notify the agency of the result of each prosecution and appeal.”.

Amendment of section 25 of Act 46 of 1998

16. Section 25 of the principal Act is amended by—
- (a) the substitution for subsection (1) of the following subsection:
 “(1) If a person incurs demerit points which, when added to the points previously recorded against that person in the national contraventions register and reduced as contemplated in section 28, [exceeds] exceed the total contemplated in section 29(d), that person is disqualified [**in the prescribed manner**] with effect from 32 days after such excess points have been incurred, from driving or operating a motor vehicle.”;
- (b) the substitution for paragraph (a) of subsection (3) of the following paragraph:
 “(a) must immediately hand in any driving licence card or professional driving permit in the prescribed manner to the issuing authority contemplated in section 26(2) for retention by such issuing authority during the disqualification period, produce any driving licence contained in an identity document to such issuing authority for endorsement as suspended or must remove the prescribed operator card and deal therewith in the prescribed manner; and”;
- (c) the substitution for subsections (4) and (5) of the following subsections:
 “(4) Any person who fails to comply with the provisions of subsection (3)(a) or who drives or operates a motor vehicle during his or her disqualification period 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.
 (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 to

return his or her driving licence card or professional driving permit or to reissue an operator card.”.

Amendment of section 26 of Act 46 of 1998

17. Section 26 of the principal Act is amended by the substitution for subsection (2) of the following subsection: 5

“(2) A notice referred to in subsection (1) must be sent by the agency, who must notify the issuing authority within whose area of jurisdiction the person in question is resident.”.

Amendment of section 27 of Act 46 of 1998

18. Section 27 of the principal Act is amended by the substitution for subsections (1) 10 and (2) of the following subsections:

“(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 or operator card [issued in respect of that vehicle] in the prescribed 15 manner to the issuing authority [contemplated in section 26(2)] 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. 20

(2) An issuing authority must, upon receipt of a driving licence card, professional driving permit or operator card, 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.” 25

Amendment of section 28 of Act 46 of 1998

19. Section 28 of the principal Act is substituted by the following section:

“Reduction of demerit points

28. If demerit points have been incurred by any person, the [issuing authority contemplated in section 26(2)] agency must reduce the total number of points recorded in the national contraventions register against that person with one point for every three months, or such other number of points or period as may be prescribed, [during which no demerit points were incurred by that person,] except for the time that the court has found 30 that the [court] process [had] has been deliberately delayed by that person to obtain a reduction in points. 35

Amendment of section 31 of Act 46 of 1998

20. Section 31 of the principal Act is amended by the substitution for subsection (2) of the following subsection: 40

“(2) The laws on prescription are not applicable to penalties and fees payable in terms of this Act, and [they] may be collected at any time.”.

Amendment of section 32 of Act 46 of 1998

21. Section 32 of the principal Act is amended by the substitution for subsection (2) of the following subsection: 45

“(2) Subject to section 6 of the Finance and Financial Adjustment Acts Consolidation Act, 1977 (Act No. 11 of 1977), any fine received in respect of any conviction under the national [and], provincial or municipal laws relating to road traffic, must be paid over monthly to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the 50

authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed.”.

Amendment of section 33 of Act 46 of 1998

22. Section 33 of the principal Act is amended by the substitution for subsection (1) of the following subsection: 5

“(1) Any person may, in the prescribed manner and upon payment of the prescribed fee, ascertain his or her demerit points position from the national contraventions register at the office of any [**issuing authority,**] local registering authority or driving licence testing centre.”.

Short title

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23. This Act is called the Administrative Adjudication of Road Traffic Offences Amendment Act, 2002.

**MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATIVE
ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT
BILL**

PURPOSE

The Bill amends the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998) ("the Act"), in order to regulate the composition of the board; to provide for the appointment of sheriffs by the Minister; and to prescribe an extended period for payment of infringement fines, making representations and enforcing orders. It is proposed that the board comprise seven members and that a restriction that five of such members should not be employees of the State should be removed. The Bill further makes provision for the extension of the period of compliance with the infringement notice from 28 days to 32 days. The infringer has to be informed in the prescribed manner if demerit points have been recorded against his or her name. The prosecutor has to notify the issuing authority of the reasons if he or she declines to prosecute. The Bill also makes provision for the payment of fines in instalments.

CONSULTATIONS

Members of the Executive Councils responsible for traffic or transport in the nine provinces were consulted and consensus regarding the proposed changes was reached.

FINANCIAL IMPLICATION FOR STATE

None.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Transport are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it falls within a functional area listed in Schedule 4 to the Constitution, namely, "Road traffic regulation".