

THE ROAD TRAFFIC (AMENDMENT NO. 3) BILL
(No..... of 2003)

Explanatory Memorandum

1. The main object of this Bill is to amend the Road Traffic Act in order to make provision for speedier compensation in cases of road accidents between two motor vehicles resulting only in damage to either one or both vehicles, other than State-owned vehicles, and it does not appear that any of the drivers was under the influence of alcohol or drug.

2. The Bill provides that, in such cases, the drivers may record, in a form, their agreement as to the facts of the accident or the police may record the facts in a form approved by the Commissioner of Police, following which the liability of the respective insurers would be determined by pre-set scales of liabilities. A speedy and informal arbitration process will take care of any dispute between the insurers.

....., 2003

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 2 of principal Act amended
4. New sections 68A to 68J added to principal Act
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A BILL

To amend the Road Traffic Act by providing a fast-track process for ascertaining liability and paying compensation in the case of certain road accidents resulting only in damage to vehicles involved

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Road Traffic (Amendment No. 3) Act 2003.

2. Interpretation

In this Act –

“principal Act” means the Road Traffic Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by inserting the following new definitions in its appropriate alphabetical order –

“Agreed Statement of Facts Form” means the form specified in section 68B(1)(a);

“Committee” means the Motor Vehicle Insurance Arbitration Committee specified in 68F;

“Minor Road Accident Report Form” means the form specified in section 68C(1)(b).

4. New sections 68A to 68J added to principal Act

The principal Act is amended by inserting after section 68, the following new sections –

68A. Motor vehicle damaged in road accidents

Notwithstanding any other enactment or anything to the contrary in an insurance contract, sections 68B to 68J shall apply to every road traffic accident between 2 motor vehicles which does not involve –

- (a) bodily injury to persons travelling in the motor vehicles;
- (b) injury or other prejudice to any other person;
- (c) damage to other structure or property;
- (d) a motor vehicle which does not have a valid insurance vignette;
- (e) a motor vehicle being driven by a person not holding a valid driving licence;
- (f) a motor vehicle being driven by a person under the influence of alcohol or drugs;

- (g) a State-owned vehicle.

68B. Agreement between parties

(1) Where the drivers of the motor vehicles agree on the circumstances of the accident, they –

- (a) shall record, in two originals, the facts of the accident on the Agreed Statement of Facts Form substantially in the form set out in Part A of the Fifth Schedule, and sign the form; or
- (b) may call at the nearest police station where a police officer shall give all reasonable assistance in filling up the form after which they and the police officer shall sign such form.

(2) Each driver shall –

- (a) keep one of the signed original Agreed Statements of Facts Form;
- (b) as soon as possible, and not later than 5 days of the accident –
 - (i) notify the insurer of the motor vehicle driven by him of the accident; and
 - (ii) forward a copy of the Agreed Statement of Facts Form to the insurer.

(3) For the purpose of subsection (1), every driver of a motor vehicle shall carry in his vehicle an Agreed Statement of Facts Form.

(4) Where an Agreed Statement of Facts Form has been filled in accordance with this section, the drivers of the motor vehicles shall not be required to report the accident to the police as required by section 140

(5) Any person who contravenes subsection 2(b) or (3) shall commit an offence and shall, on conviction, be liable to fine not exceeding 5000 rupees.

68C. Drivers unable to agree

(1) Where the drivers of the motor vehicles involved in an accident described in section 68A are unable to agree on the circumstances or cause of the accident and any one of the drivers request a police officer to attend at the spot of the accident, the police officer shall –

- (a) make such preliminary investigations on the circumstances of the accident as may be necessary; and
- (b) record the relevant facts on such Minor Road Accident Report Form as may be approved by the Commissioner of Police.

(2) The police officer shall, not later than 10 days after the occurrence, make available to the insurers of the vehicles involved a copy of the Minor Road Accident Report

Form upon payment of the prescribed fee.

68D. Liability of insurers

The liability of an insurer to compensate one or more of the owners of the motor vehicles involved in the accident shall be determined –

- (a) on the basis of the Agreed Statement of Facts or, as the case may be, of the report of the police on the facts observed and recorded by them;
- (b) in accordance with the scales of liabilities specified in Part B of the Fifth Schedule;
- (c) within 21 days of the date on which the Agreed Statement of Facts Form, or the Minor Road Accident Report Form is received by the two insurers, whichever is the later.

68E. Settlement of dispute

Notwithstanding any other enactment, where a dispute arises between 2 insurers, or between a policy holder and an insurer, regarding their respective liability or the amount of compensation to be paid, the dispute shall, if it has not been resolved amicably within the period specified in section 68D(c), be referred to the Motor Vehicle Insurance Arbitration Committee for determination.

68F. Motor Vehicle Insurance Arbitration Committee

(1) There is established for the purposes of this Act a Motor Vehicle Insurance Arbitration Committee.

(2) The Committee shall consist of –

- (a) a Chairperson and one or more Vice-Chairpersons who shall be barristers of not less than 5 years standing; and
- (b) such other members having suitable qualifications or wide experience in transport, traffic management, insurance, automobile engineering or motor surveying;

(3) The Chairperson, the vice-Chairpersons and the members shall be appointed by the Minister on such terms and conditions as may be determined by the Minister.

(4) (a) For the purpose of determining any dispute referred to the Committee under section 68E, the Committee may sit in one or more divisions.

(b) A division shall consist of the Chairperson or a Vice-Chairperson and 2 other members to be selected by the Chairperson or the Vice-Chairperson, in the absence of the Chairperson.

(5) A decision of the Committee shall be taken by at least 2 members including the member presiding at the meeting of the Committee.

(6) Every member of the Committee shall be paid such remuneration or allowances as may be determined by the Minister.

(7) There shall be a Secretary to the Committee who shall be paid such remuneration or allowances as may be determined by the Minister.

(8) The Secretary shall ensure that the Committee obtains such administrative, secretarial or other assistance as the Committee may require.

(9) The Chairperson or a Vice-Chairperson may be appointed on a part-time basis.

(10) For the avoidance of doubt, a decision of the Committee shall be subject to judicial review by the Supreme Court.

68G. Conflict of Interest

Where a member of the Committee has any interest, direct or indirect, in any matter which is the subject of arbitration before the Committee, he shall disclose his interest to the Committee and shall not take part in the arbitration.

68H. Proceedings of the Committee

(1) The Committee shall sit at such place and time as the Chairperson of the Committee may determine.

(2) The Committee shall, subject to the Sixth Schedule, regulate its proceedings in such manner it thinks fit.

(3) The findings of the Committee shall be complied with within 21 days from the date of its communication to the interested parties.

68J. Removal of obstruction

(1) Where an accident to which section 68A applies occurs and the vehicles involved are likely to cause an obstruction of the road, each driver shall move his vehicle to allow the free passage of traffic after he has clearly marked on the surface of the road the position and the registration mark of his vehicle.

(2) For the purpose of marking the position and registration mark of his vehicle on the surface of the road, a driver shall carry in his vehicle a yellow indelible chalk, or other appropriate yellow indelible marker.

(3) Where a driver wilfully and fraudulently marks a position other than the true position of his vehicle involved in the accident under subsection (1), he shall commit an offence and shall, on conviction, be liable to imprisonment for a term of not less than 3 months nor more than 2 years.

5. Section 161 of principal Act amended

Section 161 of the principal Act is amended in subsection (3), by adding the following new paragraphs –

- (i) an Agreed Statement of Facts Form; and
- (j) a Minor Road Accident Report Form.

6. Fifth and Sixth Schedules added to principal Act

The principal Act is amended by adding immediately after the Fourth Schedule, the Fifth and Sixth Schedules specified in the Schedule to this Act.

7. Consequential amendment

The Road Traffic (Amendment) Act 1999 is amended–

- (a) in section 17, by deleting the words “Fifth and Sixth Schedules” and replacing them by the words “Seventh and Eighth Schedules”;
- (b) by deleting the words “Fifth Schedule” and “Sixth Schedule” wherever they appear and replacing them by the words “Seventh Schedule” and “Eighth Schedule” respectively.

8. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SIXTH SCHEDULE*(section 68 H)***Procedural Rules of the Motor Vehicle Insurance Arbitration Committee**

1. Where a dispute referred to in section 68E has not been resolved amicably, within the statutory period, any party to the dispute may lodge an application with the Secretary on a form to be approved by the Committee stating precisely the issues which the Committee will be expected to determine.
2. On receipt of the application, the Secretary shall request the other party to make written representations to the Committee, in reply to the issues raised by the applicant, within a period of 7 days from the date of receipt of the request made by the Secretary.
3. The Committee shall determine the dispute on the basis of the written representations made but may call for further information from the parties to the dispute or from other persons having the relevant expertise in matters to be decided by the Committee.
4. Upon receipt of written representations from the respective parties, the Committee shall determine the dispute within a period of 6 weeks as from the date the application is submitted to the Secretary.
5. The Committee shall communicate its findings in writing by registered post, stating briefly the reasons in support thereof, to the parties within 2 weeks from the date of its determination.