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Road Transportation Act, 1963 Act 37 of 1963

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Road Transportation Act, 1963 Act 37 of 1963

Commenced on 1 April 1964

[This is the version of this document at 1 December 1998.]

[Repealed by Road Transportation Act, 2007 (Act 5 of 2007) on 29 February 2008]

An Act to consolidate and amend the law relating to the transportation of persons and goods by road for reward.

Part I – Preliminary

1. Short title

This Act may be cited as the Road Transportation Act, 1963.

2 Interpretation

In this Act, unless the context otherwise requires-

"Appeals Board" means the Road Transportation Appeals Board established by section 17bis;

[Added A.6/1980]

"board" means the Road Transportation Board established under section 5;

"Chairman" means the chairman of the board;

"inspector" means an officer designated by the Minister as such by notice in the *Gazette*;

[Added K.O-I-C. 44/1973]

"member" includes the chairman or vice-chairman;

"Minister" means the Minister responsible for Communications;

"**motor vehicle**" means any vehicle self-propelled by mechanical or electrical power, adapted or intended to be used on roads for the purpose of conveying persons or goods;

"official" means an officer of the Board, but does not include any member of the Board;

[Added K. O-I.C. 44/1973]

"public road" means-

- (a) any road established, proclaimed or recognised as such under the provisions of any law and includes bridges over which such road passes;
- (b) any road or thoroughfare however created which, before or after the commencement of this Act, has been in undisturbed use by the public or which the public has had the right to use during a period of not less than three years; and
- (c) any street or thoroughfare and any other public place whatever open for the use of the public for purposes of vehicular traffic:

Provided that in any prosecution under this Act the road on which the offence is alleged to have occurred shall be assumed to be a public road unless and until the contrary is proved;

"public servant" has the meaning assigned to it in the Repealed Constitution, Act No. 50 of 1968c;

[Added A.35/1968]

"public service vehicle" means—

- (a) any motor vehicle or trailer used for the carriage or haulage of passengers or goods or both for hire or reward on one or more occasions, but does not include—
 - (i) a motor vehicle the property of the Government;
 - (ii) a motor vehicle driven by a public servant in the course of his duties as such or on behalf of the Government;
 - (iii) an ambulance, a fire engine, hearse or motor cycle whether with or without a side-car;
 - (iv) a motor vehicle in transit through Swaziland on condition that no persons or goods are deposited or picked up in Swaziland; or

[Amended A.12/1985]

(b) any motor vehicle or class of motor vehicle used for or in connection with any trade or profession which, although not plying for such a hire or reward as is referred to in paragraph (a), is declared by the Minister under the provisions of section 23 to be a public service vehicle;

"**quarter-day**" means the thirty-first day of March, the thirtieth day of June, the thirtieth day of September or the thirty-first day of December;

"scheduled service" means a road transportation service for the carriage of passengers or goods or both at separate fares or tariffs for a journey or journeys from one or more points specified in advance to one or more common destinations so specified and which has stops to pick up or set down passengers or goods or both along the line of route.

3. Public service vehicle not to be used except in accordance with a permit

No person shall drive or cause or permit to be driven on a public road a public service vehicle otherwise than under and in accordance with the terms and conditions of a permit issued under <u>section 14</u>.

4. Unlicensed public service vehicle not to be used on public road

No person shall drive or cause or permit to be driven on a public road a public service vehicle which is not licensed in accordance with the provisions of <u>section 19</u>.

Part II - Road Transportation Board

5. Establishment of Road Transportation Board

- (1) There is hereby established a board to be known as the Road Transportation Board.
- (2) The board shall consist of seven members, including a chairman and a vice-chairman, all of whom the Minister shall appoint and the Minister may appoint an alternate to a member.

[Amended A .35/1968]

(3) Each member of the board shall hold office for such period and on such conditions as the Minister may decide when the appointment is made:

Provided that the Minister may in his absolute discretion terminate any appointment at any time.

- (4) The office of a member of the board shall be vacated—
 - (a) if the member is absent from three consecutive meetings of the board without special leave of the chairman; or
 - (b) if one month has elapsed since the member has given one month's notice in writing to the Minister of his resignation of office.
- (5) Every member of the board, other than a Government officer, shall be paid from the public revenue of Swaziland such remuneration or allowance as the Minister may determine.
- (6) The Minister shall appoint an officer of Government to act as secretary to the board.

6. Procedure of the board

- (1) The first meeting of the board shall be held on a date and at a place to be appointed by the Minister.
- (2) All subsequent meetings of the board shall be held at such times and places as the chairman shall from time to time determine:

Provided that the board shall meet at least once in every quarter for the consideration of applications for permits under Part III.

- (3) If at any meeting of the board the chairman is absent, the vice-chairman shall be the chairman at that meeting, and if at any meeting both the chairman and the vice-chairman are absent the members present shall choose one of their number to be chairman at that meeting.
- (4) The decision of the majority of the board present and voting shall be the decision of the board.
- (5) Each member of the board shall have one vote:

Provided that in the event of there being an equality of votes, at any meeting, the member presiding as chairman shall have a casting vote in addition to his deliberative vote.

- (6) Three members of the board shall form a quorum.
- (7) The procedure at meetings of the board shall be determined by the board.

7. Functions of the board

The functions of the board shall be-

- (a) to consider and determine applications for or relating to the granting, renewal and amendment of permits under Part III; and
- (b) to advise the Minister on any matter relating to the transportation of goods and passengers by road in Swaziland or any matter ancillary thereto which the Minister may refer to it.

Part III – Permits

8. Applications for permits

- (1) Any person who wishes to operate a public service vehicle shall make written application for a road transportation service permit or renewal or amendment thereof, as the case may be, to the Regional Administrator of the region in which he intends to keep the vehicle.
- (2) On receipt of any such application the Regional Administrator shall forward to the board with due expedition the original thereof together with his comments.

9. Particulars which are to be furnished

- (1) Every application under <u>section 8</u> for a permit or a renewal thereof shall be submitted in duplicate, and shall contain the following information—
 - (a) the full name and postal address of the applicant;
 - (b) particulars of any agreement or arrangement, whether verbal or in writing, entered into by the applicant with any other person in regard to the operation of the service for which he is applying for a permit;
 - (c) particulars of any financial interest (whether as a partner, shareholder, as a result of any loan, guarantee or other financial transaction) which any other person has in the applicant's business of operating public service vehicles, and, if the applicant is a company, any right which any such person has to nominate any director or manager of the company;
 - (d) particulars of any such interest or right which the applicant has in the business of any other person engaged in the operation of public service vehicles;
 - (e) particulars of the routes to be used or area it is proposed to serve;
 - (f) particulars of the type of each vehicle to be used;
 - (g) in the case of a scheduled service, the time-table of the service which it is proposed to provide, and in any other case full particulars of the service which the applicant proposes to render;
 - (h) the rate or fare tables of the proposed service.
- (2) Every applicant for an amendment of a road transportation service permit shall submit, in duplicate, full details of the alterations required to his permit.
- (3) Every applicant shall furnish the board with such further information as the board may require.
- (4) Every application shall be accompanied by such fee as may be prescribed for advertising and hearing the application.

10. Notification of applications

- (1) Before considering any application the board shall cause notice thereof to be published in the *Gazette* and in a newspaper circulating in Swaziland setting out briefly the particulars of the application.
- (2) The notice shall state where the application may be examined by interested persons and shall call upon any person objecting thereto, within fourteen days after the publication of the notice, to lodge with the secretary to the board and to send the applicant his objections in writing together with all the grounds thereof by registered post.
- (3) The secretary to the board shall give written notice to every person who has made application and has indicated that he wishes to appear in support of the application, and every person who has objected to the application, of the time and place at which the application will be considered.
- (4) Such notice shall be given not less than fourteen days before the application is considered.
- (5) Such notice shall be deemed to have been received by the person to whom it is addressed two days after the date it is posted if posted to the address notified by him to the secretary for that purpose.
- (6) If any such person fails to notify the secretary of such an address no notice shall be required to be given to him.

11. Consideration of applications for permits

- (1) Subject to <u>section 9</u> and the payment of the prescribed fee, the board shall consider any application made in terms of <u>section 8</u>, and may adjourn or postpone further consideration of the application for such period as it may deem fit.
- (2) The board may, in its discretion, refuse such application or grant it in full or in part.
- (3) Any applicant, either by himself or by his duly authorized representative, may appear before the board in support of his application and the board shall afford any other person an opportunity of appearing before it in support of or in opposition to such application:

Provided that the board shall not be required to hear any person appearing in opposition to any application if he has not lodged with it and the applicant his objections and all grounds therefor in writing within the period mentioned in $\frac{10}{20}$.

12. Matters to be considered by the board

- (1) In considering an application for a permit to operate a road transportation service or a renewal or amendment thereof the board shall have regard to the following matters—
 - (a) the type of vehicle, its carrying or haulage capacity and the nature of the transport to be undertaken;
 - (b) the proposed routes on or area in which the vehicle will be operated, and the nature thereof;
 - (c) the applicant's character, financial stability, place of residence and the technical facilities available to him;
 - (d) in the case of a scheduled service, the proposed timetable, fares and tariffs; and in the case of any other service the proposed fares and tariffs;
 - (e) whether the applicant is likely to carry on satisfactorily the transportation to which the application relates.
- (2) The board may in its discretion refuse to issue, renew or amend a road transportation permit if in its opinion—
 - (a) the grant of the application is not justified having regard to any of the matters set out in subsection (1);
 - (b) the grant of the application will adversely affect rail transport; or
 - (c) the transportation service is not justified, having regard to existing transport facilities whether by road, rail, air or otherwise; or
 - (d) it is not necessary or desirable in the public interest to grant the application.

13. Validity of permits

(1) A road transportation service permit or renewal thereof shall, unless duly suspended or cancelled, be valid for such period as the board may fix, which shall not exceed three years:

Provided that the expiry date shall be fixed so as to fall upon a quarter day.

- (2) In any case where the board is satisfied that a road transportation service permit has been lost, destroyed or defaced, a duplicate permit upon payment of the prescribed fee may be issued with the word "duplicate" endorsed thereon.
- (3) No road transportation service permit shall be renewed unless, before its expiry, an application for its renewal has been submitted to the Regional Administrator in terms of <u>section 8</u>:

Provided that nothing in this subsection shall preclude the holder of an expired permit from making application for the grant of a new permit.

14. Particulars of road transportation service permit

A road transportation service permit shall be issued by the secretary to the board on behalf of the board and shall specify—

- (a) the full names of the person to whom it is issued;
- (b) the number and particulars of the vehicles which may be operated;
- (c) the period for which it is valid;
- (d) in the case of a scheduled service, the time-table of such service;
- (e) in the case of a passenger carrying service, any conditions relating to fares; and
- (f) any other condition imposed by the Board.

15. Powers of the board

- (1) The board may at any time—
 - (a) suspend or cancel a road transportation permit if it appears to it that—
 - (i) any of the conditions imposed on the grant of such permit or renewal or amendment thereof are not being observed;
 - (ii) the holder of the permit has been convicted of using his public service motor vehicle in contravention of any law; or
 - (iii) in the case of a road transportation service for the carriage of passengers, the holder of the permit or any employee of his has been convicted of an offence which in the opinion of the board discloses a disregard for the safety of the passengers carried on any of his public service vehicles or the public using public roads;
 - (b) instruct an examiner to examine any public service vehicle and report to the board on its condition;
 - (c) take evidence on oath and make such other necessary investigations as it may deem fit in assisting it to come to a decision regarding the issue, suspension, cancellation or refusal of a road service transportation permit or renewal or amendment thereof, and for such purpose the chairman may subpoena witnesses and administer oaths;
 - (d) examine, or cause to be examined by such person as the board may authorize for the purpose, any records of the holder of a road transportation service permit which may contain information to enable it to decide whether the holder is complying with the conditions specified in his permit.
- (2) Any person who, having been duly sworn, wilfully gives false evidence before the board knowing such evidence to be false or not knowing or believing it to be true shall be guilty of an offence and on conviction may be punished with the penalties prescribed by law for the crime of perjury.
- (3) Any person shall be guilty of an offence if he, having been subpoenaed to give evidence or to produce any book, plan or document before the board—
 - (a) fails, without sufficient cause to attend at the time and place mentioned in the subpoena served on him;
 - (b) attends, but contumaciously leaves the premises where the board is sitting without the permission of the chairman;

- (c) refuses to be sworn or, having been duly sworn, refuses without sufficient cause, to answer or to answer fully and satisfactorily to the best of his knowledge and belief all lawful questions put to him by or with the concurrence of the chairman; or
- (d) refuses or omits, without sufficient cause, to produce any books, plans or documents in his possession or under his control and mentioned or referred to in the subpoena served on him.

16. Powers of chairman and vice-chairman

- (1) If an application is made to the board for the renewal or amendment of a road transportation service permit, and the application is not opposed, the chairman may—
 - (a) grant the application if he is satisfied as to all the matters in regard to which the board is required by this Act to be satisfied when dealing with such an application; or
 - (b) may order that the application be referred to the board for decision.
- (2) In a case of urgency the chairman may, subject to such conditions as he may impose, and on payment of the prescribed fee, authorise a temporary variation of any condition imposed in relation to a road transportation service permit.
- (3) The chairman may, in his discretion but subject to the requirements of subsection (4) by certificate exempt from the provisions of this Act a vehicle coming from outside Swaziland either—
 - (a) delivering persons or goods or both to destinations inside Swaziland; or
 - (b) removing persons or goods or both from Swaziland to destinations outside it.
- (4) In considering whether or not to exempt a vehicle mentioned in subsection (3), the chairman shall have regard to—
 - (a) the availability and suitability of local transport services,
 - (b) the specialised nature of the vehicle used for the purpose, and
 - (c) the public interest.
- (5) If the chairman is prevented by illness, absence from Swaziland, or other cause from exercising or performing the powers and duties conferred or imposed upon him by this Act, such powers and duties shall be exercised or performed by the vice-chairman.

17. Powers of Regional Administrator

- (1) Notwithstanding anything to the contrary in this Act, a Regional Administrator may, if no reasonable facilities are available for their conveyance by an existing authorised transportation service—
 - (a) in a case of urgency, and if possible after consultation with the chairman, subject to such conditions as he may impose, and on payment of the prescribed fee, authorise a temporary variation of any condition imposed in relation to a road transportation service permit;
 - (b) grant temporary exemption from the provisions of sections $\underline{3}$ and $\underline{4}$ to any applicant for the conveyance of persons for educational, sporting or religious purposes.
- (2) The Regional Administrator shall forthwith in writing notify the board of any action taken by him under this section.

17bisEstablishment of Road Transportation Appeals Board

(1) There is hereby established a board to be known as the Road Transportation Appeals Board.

- (2) The Appeals Board shall consist of a Chairman and four other members, all of whom shall be appointed by the Minister.
- (3) The Minister shall appoint a secretary to the Appeals Board.
- (4) The quorum for any meeting of the Appeals Board shall be three members, including the Chairman.
- (5) Subject to subsection (4), the Appeals Board may regulate its own procedure.

[Added A.6/1980]

18. Appeal from decision of the board

(1) An applicant for a road transportation service permit, or any person who has opposed the application at the hearing thereof, may appeal against the decision of the board to the Appeals Board whose decision shall be final.

[Amended A.6/1980]

- (2) Any person whose permit has been suspended or cancelled may likewise appeal.
- (3) Notice of any appeal shall be lodged in writing with the board and a copy thereof forwarded to each other party to the application within twenty-one days from the date of the board's decision and shall set out fully the grounds upon which the appeal is based, and shall be accompanied by the prescribed deposit, which in the event of the appeal being dismissed may be declared by the Appeals Board, in its discretion, to be forfeited.

[Amended A.6/1980]

(4) On receipt of the notice of appeal and the prescribed deposit, the Secretary to the Board shall forward the notice of appeal to the Appeals Board, the reasons for its decision and the copy of the evidence, if any, upon which those reasons were based.

[Amended A.6/1980]

- (5) The appellant and any other party who was heard when the application was considered shall, on request and on payment of the cost thereof, be furnished with a copy of the notice of appeal, the reasons for the board's decision and the evidence, if any.
- (6) The Appeals Board, after considering the appeal, may make such order in the matter as it considers fit, and the board shall comply with that order.

[Amended A.6/1980]

Part IV – Licences

19. Issue of licences and renewals thereof

- (1) The Accountant-General, or his duly authorised agent, shall issue a licence in respect of a public service vehicle or renew such licence if the person applying therefor submits—
 - (a) a permit issued by the secretary to the board in terms of section 14;
 - (b) a certificate of fitness issued under Part VI of the Road Traffic Act, <u>No. 6 of 1965</u>, in respect of each motor vehicle to be licensed unless the vehicle has been exempted under section 57 of the Road Traffic Act, <u>No. 6 of 1965</u>;
 - (c) a declaration of insurance issued under section 3 or 5 of the Motor Vehicle Insurance Proclamation (Cap 210), in respect of each motor vehicle to be licensed, if the vehicle is required to be insured.

- (2) The licence shall be in the prescribed form and shall be required in addition to any other licence required by law for motor vehicles.
- (3) There shall be issued free with every licence a disc, in the prescribed form, in respect of that licence.

20. Fees

- (1) The prescribed licence fee shall be paid in respect of each public service motor vehicle.
- (2) The Minister may, in his discretion authorise the issue of a free licence and a disc in respect of any vehicle owned by the South African Railways and Harbours Administration or by the Government of the Province of Mozambique.

21. Expiry date of licence

- (1) Except as provided in subsection (2), every licence shall expire on the quarter-day first occurring after a period of twelve months has elapsed from the date of its issue.
- (2) If either—
 - (a) the road transportation service permit of the applicant issued under <u>section 14</u>, or
 - (b) the certificate of fitness issued under Part VI of the Road Traffic Act, <u>No. 6 of 1965</u>, in respect of the public service vehicle to be licensed,

expires prior to the date mentioned in subsection (1), then the licence shall expire on the same expiry date as the permit or certificate, whichever date is the earlier.

22. When licence to be surrendered

- (1) If the board cancels a road transportation permit in accordance with <u>section 15(1)(a)</u> the holder of the licence issued under this Part as a result of such permit shall, within fourteen days of being notified of that cancellation, surrender the licence and any disc issued to him under <u>section 19</u> to the office where the licence was issued.
- (2) The licence shall be cancelled in such office and no refund shall be made in respect of any unexpired portion of the licence.

[Original sections 23 to 27 inclusive (Part V) incorporated in Road Traffic Act, <u>No. 6 of 1965</u>]

Part V – Miscellaneous

23. Declaration of a public service vehicle

If in his opinion it is in the public interest to do so, the Minister may, by notice in the Gazette, declare-

- (a) any motor vehicle used for or in connection with any trade or profession, the conveyance of any specified type of goods or class of persons; or
- (b) any specified class of vehicle used for or in connection with any trade or profession;

to be a public service vehicle for the purpose of this Act.

24. Receipt for fares

(1) If the owner or agent or servant of the owner of a public service vehicle agrees to convey a passenger and receives the amount of the fare, or any portion thereof, before he has completed the journey agreed upon, he shall issue the passenger with a printed ticket or receipt.

- (2) Such a ticket or receipt shall, in addition to the fare paid, show the places of departure and destination of the passenger.
- (3) The owner of a public service vehicle shall retain a duplicate copy of every ticket or receipt issued in terms of subsection (1), which copy shall be available for inspection by any police officer at the office of the owner at all reasonable times.

25. Marking of vehicles

- (1) Every person operating a public service vehicle shall in a prominent place on the vehicle clearly and legibly display—
 - (a) a copy of the time table referred to in <u>section 14(d)</u>, duly certified as correct by the secretary of the board;
 - (b) words to show whether the vehicle has been licensed for the conveyance of goods only, for passengers and goods or for passengers only; and
 - (c) in the case of a public service vehicle which is licensed for the conveyance of passengers, the maximum number of passengers it is permitted to carry:

Provided that, if the vehicle is licensed for the conveyance of passengers, the maximum number of passengers it is permitted to carry shall also be so displayed.

[Amended A.35/1968]

(2) The disc mentioned in <u>section 19</u> shall be attached to and carried on the windscreen of the vehicle at all times when the vehicle is on a public road.

26. Powers of police and examiners

- (1) Any member of the Royal Swaziland Police Force and any examiner, inspector or official may stop any public-service vehicle and—
 - (a) require the driver thereof to produce for inspection any permit, certificate or licence required under this Act in respect of such vehicle;
 - (b) generally satisfy himself that the vehicle is being operated in a proper manner and in terms of any road transportation service permit issued in respect of such vehicle.

[Amended K.O-I-C. 44/1973]

(2) If a document mentioned in subsection (1) hereof is not available at the time when the driver is requested to produce it in terms of that subsection, the driver shall within seven days of such request produce it for inspection at the nearest police station or in the office of the Board as may be specified in a notice delivered by the member of the Police, inspector, or official, as the case may be, to the driver.

[Amended K.O-I-C. 44/1973]

- (3) An inspector or official may—
 - (a) require the driver of a public service vehicle to stop such vehicle;
 - (b) inspect or test or cause to be inspected or tested by a person whom he considers competent to do so the brakes or other parts of a public service vehicle or its equipment with a view to ascertaining whether it or its equipment complies with the law;
 - (c) require the driver or a conductor of a public service vehicle to give him his name and address;
 - (d) temporarily forbid a person being the driver or in charge of a public service vehicle who appears to him to be for the time being in charge of the vehicle from driving such vehicle;

- (e) require such person to be examined by a medical practitioner;
- (f) require a person or goods unlawfully conveyed in a public vehicle to be removed therefrom.

[Added K.O-I-C. 44/1973]

- (4) Any person who fails to comply with a lawful requirement under this section shall be guilty of an offence.
- (5) The Minister may, for the purpose of carrying out the above functions by notice in the *Gazette*, designate an officer to be an inspector.

[Added K.O-I-C. 44/1973]

27. Offences and penalties

- (1) Any person who contravenes section <u>3</u>, <u>4</u>, or Part VI of the Road Traffic Act, <u>No. 6 of 1965</u> shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or imprisonment not exceeding twelve months or both.
- (2) Any person who contravenes <u>section 22(1)</u> shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or imprisonment not exceeding six months.
- (3) Any person who contravenes <u>section 15(3)</u> or <u>section 26</u> shall be liable on conviction to a fine not exceeding one hundred rand or imprisonment not exceeding three months.
- (4) Any person who contravenes section <u>24</u> or <u>25</u> shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or imprisonment not exceeding six weeks.
- (5) Any person who, on a public service vehicle which is not authorised in terms of this Act to carry passengers, carries or permits to be carried a passenger, other than the owner or hirer of the vehicle or of all the goods carried on it or the servant or agent of that owner or hirer, shall be guilty of an offence and liable on conviction to the penalty provided in subsection (1).
- (6) If, on a public service vehicle which is authorised in terms of this Act to carry passengers, there are found more passengers than the vehicle is authorised to carry, then the conductor or, if there is no conductor, the driver of the vehicle, shall be guilty of an offence and liable on conviction to the penalty provided in subsection (1).
- (7) Any person who, having been requested by the conductor or driver of a public service vehicle not to enter the vehicle, thereafter enters or attempts to enter the vehicle when it is carrying the full number of passengers which it is authorised to carry shall be guilty of an offence and liable on conviction to the penalty provided in subsection (3).
- (8) For the purposes of subsections (6) and (7)-
 - (a) a child under five years of age and not occupying a seat shall not be counted as a passenger; and
 - (b) two children over five years of age but under ten years of age shall be counted as one passenger.
- (9) Any person who carries or permits to be carried on a public service vehicle such load of passengers or goods or both as results in the authorised gross weight of the vehicle being exceeded shall be guilty of an offence and liable on conviction to the penalty provided in subsection (1).

28. Regulations

The Minister may, by notice in the Gazette, make regulations-

(a) prescribing any fee or payment to be paid, or deposit to be made for any licence, permit or certificate or any other matter provided for by this Act;

- (b) prescribing any form or any other thing which under the provisions of this Act requires to be prescribed;
- (c) for the prosecuting of appeals under this Act;
- (d) after consultation with the board and the chairman of the Swazi Commercial Amadoda, prescribing maximum fares or charges for the conveyance of passengers or goods in public service vehicles;

[Added A.6/1980]

- (e) generally for the better carrying out of the purposes of this Act.
- 29. ***

[Amended P.20/1964; repealed A.6/1980]