

NO. 204 OF 1993: GENERAL LAW SIXTH AMENDMENT ACT, 1993.

STATE PRESIDENT'S OFFICE

No. 131.

26 January 1994

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It is hereby notified that the State President has assented to the following Act which is hereby published for general information:

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Magistrates' Courts Act, 1944, so as to further regulate property exempt from execution; to amend the Aviation Act, 1962, so also make provision for a prohibition of the conveyance of certain drugs and animal products in aircraft; to amend the Maintenance Act, 1963, so as to further regulate witness expenses payable to certain persons; to amend the Gambling Act, 1965, so as to define the expression "opportunity to play a further game"; to amend the Mental Health Act, 1973, so as to redefine "Minister"; to further regulate the discharge of State patients and the termination of their detention; and to amend or repeal certain outdated provisions; to amend the Criminal Procedure Act, 1977, so as to further regulate the taking of evidence by a judge, regional magistrate or magistrate; to amend the Attorneys Act, 1979, so as to raise certain fines; to amend the Legal Succession to the South African Transport Services Act, 1989, so as to rectify an incorrect reference; to amend the Judges' Remuneration and Conditions of Employment Act, 1989, so as to further regulate the gratuity payable to judges after discharge from active service; to amend the Air Services Licensing Act, 1990, so as to further regulate the making of regulations; to amend the Abolition of Racially Based Land Measures Act, 1991, so as to provide that a proclamation may be made with retrospective effect; to provide for the appointment and powers of committees; and to make other provision in respect of the removal of certain racially based restrictions in the laws of self-governing territories; to amend the Magistrates Act, 1993, so as to further regulate the pension benefits of magistrates; to amend the Security Forces Board of Inquiry Act, 1993, so as to provide for the appointment of acting members on the Security Forces Board of Inquiry; to amend the Technikons Act, 1993, so as to rectify an incorrect reference; to provide for the grant of vacation leave and the resignation of civil servants for the purposes of an election in terms of the Electoral Act, 1993; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)

(Assented to 14 January 1994.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa as follows:-

Amendment of section 67 of Act 32 of 1944, as amended by section 25 of Act 93 of 1962 and section 5 of Act 19 of 1985

1. Section 67 of the Magistrates' Courts Act, 1944 is hereby amended

(a) by the substitution for paragraphs (b) and (c) of the following paragraphs, respectively:

in

"(b) the necessary furniture (other than beds) and household utensils so far as they do not exceed in value the sum of R1 000 amount determined by the Minister from time to time by notice in the Gazette;

(c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of R1 000 amount determined by the Minister from time to time by notice in the Gazette;"

(b) by the substitution for paragraphs (e) and (f) of the following paragraphs, respectively:

"(e) tools and implements of trade, in so far as they do not exceed in value the sum of R1 000 amount determined by the Minister from time to time by notice in the Gazette;

(f) professional books, documents or instruments necessarily used by such debtor in his profession, in so far as they do not exceed in value the sum of R1 000 amount determined by the Minister from time to time by notice in the Gazette;" and

(c) by the substitution for the proviso of the following proviso:

"Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the sums referred to in amounts determined by the Minister in respect of paragraphs (b), (c), (e) and

Substitution of section 15A of Act 74 of 1962, as inserted by section 6 of Act 63 of 1981

2. The following section is hereby substituted for section 15A of the Aviation Act, 1962:

"Prohibition of conveyance of armaments, drugs or animal products in aircraft

15A. (1) Except with the written permission of the Minister or a person in the service of the State authorized thereto by the Minister and subject to such conditions as the Minister or such a person may determine, no person shall convey any armaments, drugs or animal product in an aircraft.

(2) An aircraft which is upon reasonable grounds believed to be engaged in conveying any armaments, drugs or animal product contrary to the provisions of subsection (1), shall be subject to the provisions of the regulations with regard to the identification and interception of aircraft: Provided that any identification and interception of an aircraft shall take place with due regard to the provisions of the Convention on Offences and certain other Acts committed on board Aircraft, 1963, entered into on 14 September 1963 at Tokyo.

(3) A person who is an authorized person for the purposes of the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), may, without derogating from any power which he may have under the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at any aerodrome or place in the Republic, without a warrant

(a) search any aircraft which he reasonably believes to be used or to have been used to convey any armaments, drugs or animal product contrary to the provisions of subsection (1) of

this section. and any cargo or goods on board such an aircraft,

(b) seize

(i) any armaments, drugs or animal product found during a search carried out under paragraph (a) of this subsection;

(ii) any aircraft on which such armaments are, drugs or animal product is found; and

(iii) any other thing which in his opinion was used or is intended to be used for the commission, or in connection with the commission, of an offence under this section; and

(c) arrest any person who is found on board an aircraft contemplated in paragraph (a) of this subsection and whom he reasonably suspects of having committed an offence under this section or of attempting to commit such an offence, and the provisions of section 2H(2) of the Civil Aviation Offences Act, 1972, shall mutatis mutandis apply for the purpose of his effecting the arrest.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding ten years.

(5) (a) Any armaments, drugs, animal product, aircraft or other thing seized under subsection (3)(b) shall be forfeited to the State unless the court at the trial of any person accused of the contravention concerned of subsection (1), finds-

(i) in the case of such armaments, drugs or animal product, that they were not conveyed contrary to the provisions of the last named subsection and were not intended to be used for any unlawful purpose; or

(ii) in the case of such an aircraft or other thing, that it was not used or intended to be used for the commission, or in connection with the commission, of any offence.

(b) Anything forfeited in terms of paragraph (a) shall be disposed of as the Minister may either generally or in a particular case order.

(c) The provisions of paragraph (a), in so far as they relate to an aircraft, shall not affect the rights which any person other than a person accused of the contravention concerned of subsection (1) may have to such an aircraft, if he, within thirty days of the seizure thereof, satisfies the Minister, by means of proof in writing submitted through the Director-General: Transport, that he did not know that the aircraft was used or intended to be used for the commission, or in connection with the commission, of any offence, or that he could not prevent such use.

(6)(a) For the purposes of this section

(i) 'animal product' means a rhinoceros horn, an elephant tusk or a part thereof which is possessed contrary to the provisions of any other law;

(ii) 'drugs' means a drug as defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), that has not

been acquired, bought or possessed lawfully as contemplated in section 4 of the said Act.

(b) For the purposes of this section the expression 'armaments' bears the meaning assigned thereto in section 1 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), but with the exception of any such armaments while being conveyed in an aircraft

(a) (i) on behalf of the State;

(b) by or on behalf of

(i) (aa) the Armaments Corporation of South Africa, Limited, established by section 2 of the Armaments Development and Production Act, 1968, or any undertaking or company established or promoted by the said corporation, or any member, director, employee or agent of that corporation or any such undertaking or company;

(ii) (bb) any person in his capacity as an officer or employee of the State;

(iii) (cc) any person for the purposes of the Defence Act, 1957 (Act No. 44 of 1957); or

(iv) (dd) any person who is entitled by virtue of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), to possess the armaments concerned or to have the armaments concerned in his custody."

Amendment of section 4 of Act 23 of 1963

3. Section 4 of the Maintenance Act, 1963, is hereby amended by the addition of the following subsection:

"(3) The provisions of section 181 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), are, subject to the provisions of section 8(2), not applicable to a person legally liable to maintain any other person and in respect of whom an inquiry referred to in subsection (1) is instituted."

Amendment of section 8 of Act 23 of 1963

4. Section 8 of the Maintenance Act, 1963, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The officer presiding at such an enquiry may direct that any person against whom a maintenance order is made legally liable to maintain any other person and in respect of whom an enquiry referred to in section 4(1) is instituted, shall be paid the necessary expenses to travel to and from the court and of sojourn at the court in question and shall be paid such allowance as may be paid to a witness for the accused in criminal proceedings."

Amendment of section 1 of Act 51 of 1965, as amended by section 1 of Act 144 of 1992

5. Section 1 of the Gambling Act, 1965, is hereby amended by the insertion of the following definition after the definition of "Minister":

" 'opportunity to play a further game' means an opportunity which can not be distributed or transferred to the person who has won such opportunity or to any other person, for any purpose other than to use such opportunity without any interruption to continue playing the type of game in respect of which the opportunity

was won, and includes an opportunity which cannot in any manner, whether directly or indirectly, be converted into money, property, cheques, credit or anything of value."

Amendment of section 1 of Act 18 of 1973, as amended by section 1 of Act 10 of 1978, section 1 of Act 38 of 1981, section 1 of Act 3 of 1984, section 2 of Act 34 of 1986, section 1 of Act 55 of 1987, section 6 of Act 51 of 1991, section 1 of Act 19 of 1992 and section 8 of Act 116 of 1993

6. Section 1 of the Mental Health Act, 1973, is hereby amended
(a) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

'Minister' means the Minister for National Health and Welfare;"; and

(b) by the substitution in subsection (1) for the definition of "State patient" of the following definition:

'State patient' means a person detained by order of any, court of law or other competent authority at any place pending the signification of the decision of the Minister of justice a judge in chambers:".

Amendment of section 29 of Act 18 of 1973, as amended by section 1 of Act 48 of 1976, section 3 of Act 10 of 1978, section 9 of Act 51 of 1991 and section 33 of Act 129 of 1993

7. Section 29 of the Mental Health Act, 1973, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

" (a) Where any person is with reference to a charge of murder or culpable homicide or a charge involving serious violence, detained as a State patient under the provisions of section 27, 28 or 29 of the Mental Disorders Act, 1916 (Act No. 38 of 1916), or of section 77 or 78 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be, a judge in chambers may at any time after the order of detention, on written application being made to him by the official curator ad litem that such person be discharged either absolutely or conditionally or that he cease to be treated as a State patient, order (i) that that State patient be discharged either absolutely or conditionally or that he cease to be treated as such; or (ii) that that State patient be further detained as a patient under Chapter 3, or make such other order under section 19 as he may think fit."

Amendment of section 30 of Act 18 of 1973, as amended by section 2 of Act 38 of 1981 and section 10 of Act 116 of 1993

8. Section 30 of the Mental Health Act, 1973, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Whenever it appears to the Minister of Correctional Services that a convicted prisoner in a prison is mentally ill to such a degree that he should be detained in an institution and the prisoner is not under the sentence of death, he may order the magistrate of the district in which the prison is situated to cause the mental condition of the prisoner to be enquired into."

Amendment of section 74 of Act 18 of 1973, as amended by section 3 of Act 55 of 1987

9. Section 74 of the Mental Health Act, 1973, is hereby amended by the substitution for subsection (1) of the following subsection:

" (1) Any order, warrant or document which may be issued by the Minister or the Minister of justice Correctional Services as the

case may be, under this Act shall be valid and of force if signed by an officer in the public service designated thereto by the Minister concerned by notice in the Gazette, and shall, if so signed, be proof in any court of law and in any public office and for any other relevant purpose that it was issued under the provisions of this Act. "

Amendment of section 74B of Act 18 of 1973, as inserted by section 7 of Act 10 of 1978 and amended by section 6 of Act 38 of 1981 and section 4 of Act 55 of 1987

10. Section 74B of the Mental Health Act, 1973, is hereby amended
(a) by the deletion of paragraph (b) of subsection (1); and
(b) by the deletion of paragraph (b) of subsection (2).

Substitution of section 205 of Act 51 of 1977

11. The following section is hereby substituted for section 205 of the Criminal Procedure Act, 1977:

"Judge, regional court magistrate or magistrate may take evidence as to alleged offence

205.(1) A judge of the supreme court, a regional court magistrate or a magistrate may, subject to the provisions of subsection 4, upon the request of an attorney-general or a public prosecutor authorized thereto in writing by the attorney-general, require the attendance before him or any other judge, regional court magistrate or magistrate, for examination by the attorney-general or the public prosecutor authorized thereto in writing by the attorney-general, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the attorney-general or public prosecutor concerned prior to the date on which he is required to appear before a judge, regional court magistrate or magistrate, he shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

(2) The provisions of sections 162 to 165 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall mutatis mutandis apply with reference to the proceedings under subsection (1).

(3) The examination of any person under subsection (1) may be conducted in private at any place designated by the judge, regional court magistrate or magistrate.

(4) A person required in terms of subsection (1) to appear before a judge, a regional court magistrate or a magistrate for examination, and who refuses or fails to give the information contemplated in subsection (1), shall not be sentenced to imprisonment as contemplated in section 189 unless the judge, regional court magistrate or magistrate concerned, as the case may be, is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order."

Amendment of section 236 of Act 51 of 1977, as substituted by section 45 of Act 129 of 1993

12. Section 236 of the Criminal Procedure Act, 1977, is hereby amended

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) that such are or have been accounting records or document is or has been the ordinary records or document of such bank;" and

(b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) that such are accounting records or document is in the custody or under the control of such bank,".

Amendment of section 72 of Act 53 of 1979, as amended by section 5 of Act 80 of 1985, section 25 of Act 87 of 1989 and section 17 of Act 115 of 1993

13. Section 72 of the Attorneys Act, 1979, is hereby amended

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

"(i) impose upon him a fine not exceeding R5 000 R10 000; or";

(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the following subparagraph:

(ii) impose upon him a fine not exceeding R1 000 R2 000: or" and

(c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (c) of the following subparagraph:

"(ii) impose upon him a fine not exceeding R1 000 R2 000: or";.

Amendment of section 4 of Act 9 of 1989

14. Section 4 of the Legal Succession to the South African Transport Services Act, 1989, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The total loan debt of the Company to the State, the permanent capital referred to in sections 27A to 27F of the Exchequer and Audit 27G of the Exchequer Act, 1975, and all permanent capital established in terms of any other law applicable to the South African Transport Services, shall be capitalised by the issue to the State of additional fully paid-up shares in the Company and any obligations in respect of interest associated with such loans and permanent capital shall lapse.".

Amendment of section 6 of Act 88 of 1989, as amended by section 28 of Act 139 of 1992

15. (1) Section 6 of the Judges' Remuneration and Conditions of Employment Act, 1989, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be disregarded taken into account.".

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1989.

Amendment of section 29 of Act 115 of 1990

16. Section 29 of the Air Services Licensing Act, 1990, is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph (a) and the insertion of the following paragraph:

(aA)the information to be furnished by an applicant for the purposes of section 16(4)(a), and the standards and requirements to be complied with by an applicant for the purposes of that section in relation to the class of licence, type of air service and category of aircraft mentioned in his application; and".

Repeal of section 10 of Act 5 of 1991

17. Section 10 of the Criminal Procedure Amendment Act, 1991, is hereby repealed.

Amendment of section 27B of Act 108 of 1991, as inserted by section 19 of Act 89 of 1993

18. Section 27B of the Abolition of Racially Based Land Measures Act, 1991, is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) A proclamation contemplated in subsection (1) may be made with retrospective effect.".

Insertion of section 93A in Act 108 of 1991

19. The following section is hereby inserted in the Abolition of Racially Based Land Measures Act, 1991, after section 93:

"Appointment and powers of committee

93A. (1) The Minister may appoint a committee, which shall consist of the chairman or vice-chairman of the Commission and such number of members of the Commission as the Minister may determine.

(2) The chairman or vice-chairman of the Commission shall be the chairman of a committee.

(3) If the chairman or vice-chairman of the Commission is absent or unable to perform any of the functions as chairman of a committee, the Minister may appoint another member of the Commission to act as chairman of the committee concerned during his absence or inability.

(4) Two members of a committee shall form a quorum.

(5) The committee may, between meetings of the Commission, exercise all the powers of the Commission and perform all the functions of the Commission, but shall not be able to take a decision regarding an investigation the committee has instituted, and any decision which may be taken with regard to a specific investigation shall be taken at a meeting of the Commission.

(6) A committee shall meet at the time and place which the chairman of the Commission may determine.".

Substitution of section 105 of Act 108 of 1991

20. (1) The following section is hereby substituted for section 105 of the Abolition of Racially Based Land Measures Act, 1991:

"Construction of laws of selfgoverning territories

105. No provision in any law in force in a selfgoverning territory or any portion thereof immediately before the commencement of this Act shall be so construed as imposing any prohibition or placing any restriction in respect of the alienation, grant or transfer of land or any right to land to, or the possession, occupation or use of land or any right to land by, any person of a particular population or ethnic group or who

is not of a particular population or ethnic group.".

(2) Subsection (1) shall be deemed to have come into operation on 30 June 1991.

Amendment of section 18 of Act 90 of 1993

21. Section 18 of the Magistrates Act, 1993, is hereby amended by the addition of the following subsection:

" (5) Notwithstanding the provisions of the Government Service Pension Act, 1973 (Act No. 57 of 1973)

(a) any person contemplated in subsection (1), shall remain a member of the Government Service Pension Fund referred to in section 3 of the Government Service Pension Act, 1973;

(b) any person appointed as a magistrate after the commencement of section 10 who is a member of the fund referred to in paragraph (a), shall remain a member; and

(c) any person appointed as a magistrate after the commencement of section 10 who is not a member of the fund referred to in paragraph (a), shall become a member of the fund and contribute thereto,

until other provision is made by regulation under section 16(1)(b).".

Amendment of section 3 of Act 95 of 1993

22. Section 3 of the Security Forces Board of Inquiry Act, 1993, is hereby amended by the insertion after subsection (7) of the following subsection:

" (7A) Notwithstanding the provisions of subsection (7), the State President may appoint any eligible person to act

(a) in any member's stead; or

(b) in a temporary capacity in any vacancy on the Board, for such period as the State President may determine.".

Amendment of section 16 of Act 125 of 1993

23. Section 16 of the Technikon Act, 1993, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Except in the case of members contemplated in subsection (1) (2) (a), (b) and (d), no person in receipt of a salary or wages from the technikon shall be eligible for appointment or election as a member of the council.".

Granting of vacation leave and resignation of civil servant for purposes of election in terms of Electoral Act, 1993

24. (1) Notwithstanding anything to the contrary in any law contained, any person contemplated in section 22(10) of the Electoral Act, 1993, may participate in an election in terms of that Act and shall be granted vacation leave for the period contemplated in that section, if he is nominated by a registered party on a list of candidates.

(2) If such person has no or insufficient vacation leave to his credit, he shall be granted unpaid vacation leave for the period in question.

(3) If such person is elected as a representative in the National Assembly or any provincial legislature in an election in terms of the Electoral Act, 1993, he shall be deemed to have resigned from his post with effect from the day on which the lists of names of representatives in all legislatures are published in the Gazette in terms of section 51(2) of that Act.

(4) This section shall cease to have effect on the day following the day on which the lists of names of representatives in all legislatures are published in the Gazette in terms of section 51(2) of the Electoral Act, 1993.

Short title and commencement

25.(1) This Act shall be called the General Law Sixth Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2)Section 5 shall only come into operation in consultation with the Lotteries and Gambling Board referred to in section 2 of the Lotteries and Gambling Board Act, 1993.