

Government Gazette 15178

STATE PRESIDENT'S OFFICE

No. 1870  
15 October 1993

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

No. 157 of 1993: General Law Fifth Amendment Act, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Insolvency Act, 1936, so as to amend the definition of "special mortgage"; to amend the Lower Courts Act, 1944, so as to further regulate the jurisdiction of civil lower courts; to amend the Estates Act, 1965, so as to confer upon the Minister of Justice the power to determine certain amounts by notice in the Gazette; to amend the Criminal Procedure Act, 1977, so as to further regulate the proof of foreign formal evidence; to amend the Manpower Training Act, 1981, so as to alter the date on which a contract of apprenticeship is deemed to be terminated; to amend the Judges' Remuneration and Conditions of Employment Act, 1989, so as to increase the non-taxable allowance paid to judges; to amend the Tobacco Products Control Act, 1993, so as to effect certain corrections; to amend the General Law Third Amendment Act, 1993, so as to further regulate the determination of the value of remuneration in kind in agriculture; to amend the Anti-Shark Measures Control Ordinance, 1964, of Natal, so as to further regulate the powers of the Natal Sharks Board; and to provide for matters connected therewith.

(English text signed by the State President.)  
(Assented to 1 October 1993.)

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

Amendment of section 2 of Act 24 of 1936, as amended by section 2 of Act 16 of 1943, section 1 of Act 6 of 1972, section 1 of Act 27 of 1987 and section 4 of Act 57 of 1993

1. (1) Section 2 of the Insolvency Act, 1936, is hereby amended by the substitution for the definition of "special mortgage" of the following definition:

" 'special mortgage' means a mortgage bond hypothecating any immovable property or a notarial mortgage bond hypothecating specially described movable property in terms of section 1 of the Security by Means of Movable Property Act, 1993 (Act No. 57 of 1993), *or such a notarial mortgage bond registered before 7 May 1993 in terms of section of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932)*, but excludes any other mortgage bond hypothecating movable property;"

(2) Subsection (1) shall be deemed to have come into operation on 7 May 1993.

Amendment of section 29 of Act 32 of 1944, as substituted by section 3 of Act 25 of 1987 and amended by section 21 of Act 120 of 1993

2. Section 29 of the Lower Courts Act, 1944, is hereby amended by the insertion in subsection (1) after paragraph (f) of the following paragraph:

*"(fA) actions, including an application for liquidation, in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984);"*

Amendment of section 80 of Act 66 of 1965, as amended by section 6 of Act 15 of 1978

3. Section 80 of the Estates Act, 1965, is hereby amended by the substitution for the words "ten thousand rand" wherever they occur, of the words "the amount determined by the Minister from time to time by notice in the Gazette".

Amendment of section 90 of Act 66 of 1965, as substituted by section 7 of Act 12 of 1984 and amended by section 2 of Act 35 of 1986

4. Section 90 of the Estates Act, 1965, is hereby amended by the substitution for the expression "R10 000" of the words "the amount determined by the Minister from time to time by notice in the Gazette".

Insertion of section 212A in Act 51 of 1977

5. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 212:

"Proof of certain facts by affidavit from person in foreign country

*212A. (1) Whenever in criminal proceedings the question arises*

*whether any particular act, transaction or occurrence did or did not take place*

- (a) in any particular department or sub-department of a state or territory outside the Republic;*
- (b) in any particular department or sub-department of an administration in such state or territory which is similar to a provincial administration in the Republic;*
- (c) in any branch or office of a department or sub-department contemplated in paragraph (a) or (b);*
- (d) in any particular court of law in such state or territory; or*
- (e) in any particular institution in such state or territory which is similar to a bank in the Republic,*

*or whenever the question arises in such proceedings whether any particular functionary in any such department, sub-department, branch, office, court or institution did or did not perform any particular act or did or did not take part in any particular transaction, the provisions of subsections (1), (2) and (3) of section 212 shall mutatis mutandis apply: Provided that for the purposes of this section a document purporting to be an affidavit shall have no effect unless-*

- (a) it is obtained in terms of an order of a competent court or on the authority of a competent government institution of the state or territory concerned, as the case may be;*
- (b) it is authenticated in the manner prescribed in the rules of court for the authentication of documents executed outside the Republic; or*
- (c) it is authenticated by a person, and in the manner, contemplated in section 8 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).*

*(2) The admissibility and evidentiary value of an affidavit contemplated in subsection (1) shall not be affected by the fact that the form of the oath, confirmation or attestation thereof differs from the form of the oath, confirmation or attestation prescribed in the Republic.*

*(3) A court before which an affidavit contemplated in subsection (1) is placed, may, in order to clarify obscurities in the said affidavit, at the request of a party to the proceedings order that a supplementary affidavit be submitted or that oral evidence be heard: Provided that oral evidence shall only be heard if the court is of the opinion that it is in the*

*interests of the administration of justice and that a party to the proceedings would be materially prejudiced should oral evidence not be heard."*

Insertion of section 236A in Act 51 of 1977

6. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 236:

"Proof of entries in accounting records and documentation of banks in countries outside Republic

*236A. (1) The entries in the accounting records of an institution in a state or territory outside the Republic which is similar to a bank in the Republic, and any document which is in the possession of such an institution and which refers to the said entries or to any business transaction of the institution, shall, upon the mere production at criminal proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-*

- (a) that he is in the service of the institution in question;*
- (b) that such accounting records or document are or were the ordinary records or document of the institution;*
- (c) that the said entries have been made in the usual and ordinary course of the business of such institution; and*
- (d) that such accounting records are or document is in the custody or under the control of such institution, be prima facie proof at such proceedings of the matters, transactions and accounts recorded in such accounting records or document.*

*(2) Any entry in any accounting record contemplated in subsection (1) or any document contemplated in subsection (1) may be proved at criminal proceedings upon the mere production at such proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-*

- (a) that he is in the service of the institution in question;*
- (b) that he has examined the entry, accounting record or document in question; and*
- (c) that a copy of such entry or document set out in the affidavit or in an annexure thereto is a correct copy of such entry or document.*

*(3) A document purporting to be an affidavit shall for the purposes*

*of this section have no effect unless-*

- (a) it is obtained in terms of an order of a competent court or on the authority of a competent government institution of the state or territory concerned, as the case may be;*
- (b) it is authenticated in the manner prescribed in the rules of court for the authentication of documents executed outside the Republic; or*
- (c) it is authenticated by a person, and in the manner, contemplated in section 8 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).*

*(4) The admissibility and evidentiary value of an affidavit contemplated in subsections (1) and (2) shall not be affected by the fact that the form of the oath, confirmation or attestation thereof differs from the form of the oath, confirmation or attestation prescribed in the Republic.*

*(5) A court before which an affidavit contemplated in subsections (1) and (2) is placed may, in order to clarify obscurities in the said affidavit, on the request of a party to the proceedings order that a supplementary affidavit be submitted or that oral evidence be heard: Provided that oral evidence shall only be heard if the court is of the opinion that it is in the interests of the administration of justice and that a party to the proceedings would be materially prejudiced should oral evidence not be heard.*

*(6) In this section-*

*'document' includes a recording or transcribed computer printout produced by any mechanical or electronic device and any device by means of which information is recorded or stored; and*

*'entry' includes any notation, by any means whatsoever, in the accounting records of an institution contemplated in subsection (1)."*

Amendment of section 13 of Act 56 of 1981, as amended by section 10 of Act 39 of 1990 and section 55 of Act 129 of 1993

7. Section 13 of the Manpower Training Act, 1981, is hereby amended by the substitution for subsection (12) of the following subsection:

"(12) If an apprentice passes a trade test prescribed under subsection (2)(h), the registrar shall in collaboration with the training board in question, within 14 days after the last day of the

test issue to him a certificate to that effect and his contract of apprenticeship shall be deemed to be terminated with effect from the **last day** *date of issue* of the **test certificate**."

#### Amendment of section 2 of Act 88 of 1989

8. Section 2 of the Judges' Remuneration and Conditions of Employment Act, 1989, is hereby amended by the substitution in subsection (1) for the expression "R3 000" of the expression "R3 500".

#### Substitution of certain expressions in Act 83 of 1993

9. The Tobacco Products Control Act, 1993, is hereby amended-

- (a) by the substitution in the definition of "officer" in section 1 for the expression "section 4" of the expression "section 5";
- (b) by the substitution in section 6(1) (a) for the expression "section 2" of the expression "section 3";
- (c) by the substitution in section 7(c) for the expression "section 4(3)" of the expression "section 5(3)"; and
- (d) by the substitution in section 7(d) for the expression "subsection 5(1)(d)" of the expression "section 6(1)(d)".

#### Amendment of section 32 of Act 129 of 1993

10. The following section is hereby substituted for section 32 of the General Law Third Amendment Act, 1993:

"Amendment of section 50 of Act 30 of 1966, as substituted by section 9 of Act 29 of 1977 and amended by section 14 of Act 1 of 1982 and section 14 of Act 130 of 1992

32. Section 50 of the Unemployment Insurance Act, 1966, is hereby amended by the addition of the following provisos to subsection (3):

`: Provided that a different method of determination may be prescribed in respect of remuneration in kind supplied by an employer in agriculture: Provided further that if an employer and a contributor in agriculture should agree in writing on the value of remuneration in kind to be supplied by the employer, such value agreed upon shall, for the purposes of this section, be deemed to be the value determined in accordance with the prescribed method: *Provided further that such agreed value shall not be less than the amount prescribed.*'".

Amendment of section 6 of Ordinance 10 of 1964 of Natal, as amended by section 6 of Ordinance 8 of 1978, section 1 of Ordinance 24 of 1982 and section 1 of Ordinance 30 of 1983

11. (1) Section 6 of the Anti-Shark Measures Control Ordinance, 1964, of Natal, is hereby amended by the addition of the following subsection:

*"(9) Without derogating from the provisions of section 5(1)(gA) the Board may, whether for remuneration or otherwise-*

*(a) render assistance to;*

*(b) give advice to;*

*(c) furnish supplies to;*

*(d) place its services at the disposal of,*

*any state, or person or body within or without the borders of the Republic: Provided that no such assistance, advice, supplies or services shall be rendered to, given to, furnished to or placed at the disposal of a state, or person or body outside the borders of the Republic, without the prior consent of the State President: Provided further that in a case where the Board is not to be fully compensated for such assistance, advice, supplies or services, the Administrator's prior consent shall be obtained."*

(2) Any service rendered by the Natal Sharks Board established under section 2 of the Anti-Shark Measures Control Ordinance, 1964 (Ordinance No. 10 of 1964), of Natal, to the Republic of Transkei prior to the date of commencement of subsection (1), shall be deemed to have been rendered in terms of section 6(9) of the said Ordinance, and any expenditure incurred in this regard shall be deemed to have been validly incurred.

(3) The amendment of section 6 of the said Ordinance by subsection (1) shall not affect the powers conferred upon the Administrator by section 14(2)(a) of the Provincial Government Act, 1986 (Act No. 69 of 1986), in relation to the amendment, repeal or substitution of that section or any other provision of the said Ordinance.

Short title and commencement

12. This Act shall be called the General Law Fifth Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.