

STATE PRESIDENT'S OFFICE

No. 363. 5 March 1993

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

NO. 3 OF 1993: ALIENS CONTROL 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 Aliens Control Act, 1991, so as to make other provision concerning the penalty to be imposed in respect of certain offences; to provide that any person entering the Republic shall produce a valid passport to an immigration officer; to make further provision regarding the invalidity and cancellation of permits; to create a certain presumption; to empower the Minister to make regulations concerning the requirements and conditions to be complied with by any person applying on behalf of another person for certain permits or the extension of their validity; to effect certain textual improvements; and to delete certain expressions relating to penalties; and to provide for matters connected therewith.

(English text signed by the State President.)

(Assented to 26 February 1993.)

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

Amendment of section 5 of Act 96 of 1991

1. Section 5 of the Aliens Control Act, 1991 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (5) of the following subsection:

(5) Any person who-

(a) in contravention of the provisions of this section **or a condition determined in terms thereof** enters the Republic, shall be guilty of an offence and liable on conviction to a fine **not exceeding R20 000**, or to imprisonment for a period not exceeding five years **or to both such fine and such imprisonment; or**

(b) *in contravention of a condition determined in terms of this section enters the Republic, shall be guilty of an offence and liable on conviction to the penalties determined in section 51.*"

Amendment of section 6 of Act 96 of 1991

2. Section 6 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Any person who fails to comply with a requirement in terms of subsection (2) shall be guilty of an offence and on conviction liable to **a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment the penalties determined in section 51.**".

Amendment of section 11 of Act 96 of 1991

3. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person entering the Republic who fails on demand by an immigration officer to produce to him a *valid* passport which bears a visa or an endorsement by the Director-General to the effect that authority to proceed to the Republic for the purpose of being examined under this Act has been granted by the Minister, or is accompanied by a document containing a statement to that effect together with particulars of such passport, shall be a prohibited person, unless he is proved to be a South African citizen by birth or descent."

Amendment of section 30 of Act 96 of 1991

4. Section 30 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If a permit has been issued in terms of section 25 on an application which contains any incorrect information, or if the holder of such a permit or his agent has furnished any incorrect information in connection with that application or any application for the extension of the period of validity of such permit, *or if the said holder fails to comply with a condition imposed under section 25(3)*, or if the said holder within a period of three years as from the date of issue of that permit without the consent of the Minister engages in the Republic in any occupation other than the occupation stated in the said permit to be his occupation, the Minister may direct that by notice in writing addressed to the holder of the permit, such permit be cancelled and the holder be ordered to leave the Republic within a period stated in the notice, and upon the expiration of that period that permit shall become null and void."

Amendment of section 32 of Act 96 of 1991

5. Section 32 of the principal Act is hereby amended by the addition to subsection (5) of the following paragraph:

"(c) *If in any criminal proceedings in respect of a contravention of subsection (1)(a) it is proved (other than by means of the presumption referred to in paragraph (b)) that the alien concerned was so employed, it shall be presumed that the accused knew at the time of the employment that the alien was an alien as contemplated in this section, unless the accused proves-*

(i) *that he employed such alien in good faith; and*

- (ii) *that the circumstances in which the employment took place were not of such a nature that he could reasonably have been expected to suspect that the alien was in the Republic in contravention of the provisions of this Act.*".

Substitution of section 51 of Act 96 of 1991

6. The following section is hereby substituted for section 51 of the principal Act:

"Removal from Republic of persons who contravene or fail to comply with certain conditions or requirements

51. (1) Any person who contravenes or fails to comply with **any provision of section 5 or 6, or any condition subject to which any authority has under section 5 been issued to him, or** a condition imposed by the Minister in terms of section 40(2), or who fails to comply with a requirement of an immigration officer under section 7 shall be guilty of an offence and liable on conviction to a fine **not exceeding R8 000** or to imprisonment for a period not exceeding two years, and whether or not such person has been convicted of that offence, an immigration officer may, if such person is not in custody, arrest him or cause him to be arrested without a warrant, and may remove him or cause him to be removed from the Republic under a warrant issued by the Minister and, pending his removal, may detain him or cause him to be detained in the manner and at the place determined by the Director-General.

(2) If a person has been sentenced under subsection (1) he may be removed from the Republic in the manner provided for in that subsection before the expiration of his sentence, and the provisions of section 43(2) and (3) shall mutatis mutandis apply in respect of the removal of such person."

Amendment of section 56 of Act 96 of 1991

7. Section 56 of the principal Act is hereby amended-

(a) by the addition to subsection (1) of the following paragraph:

"(1) the requirements and conditions which should be complied with by any person who on behalf of any other person applies for a permit referred to in section 25 or 26 or for the extension of the period of validity of a permit referred to in section 26,"; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding 12 months."

Amendment of section 58 of Act 96 of 1991

8. Section 58 of the principal Act is hereby amended-

(a) by the insertion after the expression "58." of the expression

"(1)"; and

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

"(a) for the purpose of entering the Republic, or of remaining therein, in contravention of this Act, or of assisting any other person so to enter or so to remain, utters, uses, or attempts to use-

(i) any permit, certificate, written authority or other document which has not been issued by lawful authority, or which, though issued by lawful authority, he is not entitled to use; or

ii any fabricated or falsified permit, certificate, written authority or other document;".

Deletion of certain expressions

9. The sections of the principal Act mentioned in the first column of the Schedule are hereby amended by the deletion of the expression or expressions, as the case may be, mentioned in the second column thereof.

Short title

10. This Act shall be called the Aliens Control Amendment Act, 1993.

Schedule

| Number of section | Extent of deletion |
|-------------------|--|
| 10(5)(b) | "not exceeding R4 000" |
| 11(4) | "not exceeding R4 000" |
| 12(3) | "not exceeding R8 000" |
| 27(3) | "not exceeding R4 000" |
| 34(3) | "not exceeding R4 000" and "or to both such fine and such imprisonment" |
| 35(5) | "not exceeding R20 000" and "or to both such fine and such imprisonment" |
| 43(1)(a) | "not exceeding R4 000" |
| 44(2) | "not exceeding R4 000" |
| 53(2) | "not exceeding R4 000" |
| 57 | "not exceeding R20 000" and "or to both such fine and such imprisonment" |
| 58(1) | "not exceeding R8 000" and "not exceeding R20 000" and "or to both such fine and such imprisonment" |