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THE PRESIDENCY

No. 1926

15 July 1992

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

No. 139 of 1992: General Law Amendment Act, 1992.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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ACT

To provide that the advantage which is required so as to constitute the common law crime of extortion, may also be of a non-patrimonial nature; to provide for the disposal of certain money by the Minister of Mineral and Energy Affairs; to amend the Insolvency Act, 1936, so as to delete obsolete references, to grant a preferential claim to the State in respect of value-added tax owing to the State, and to provide that the amounts payable out of an insolvent estate in respect of remuneration be determined by notice in the *Gazette*; to amend the Sexual Offences Act, 1957, so as to extend the category persons deemed to keep a brothel, and to abolish the application of the Act in respect of Namibia; to amend the Administration of Estates Act, 1965, so as to provide that an executor who is a practising conveyancer may receive remuneration for certain work performed by him; to provide for a temporary suspension of the provisions of the Prohibition of Foreign Financing of Political Parties Act, 1968; to amend the Legal Aid Act, 1969, so as to effect a consequential amendment arising from the Legal Aid Amendment Act, 1991; to amend the Prescription Act, 1969, so as to effect certain consequential amendments as a result of the attainment of independence by Namibia; to amend the Criminal Procedure Act, 1977, so as to delete a reference in a charge-sheet or an indictment to an accused's race, to further regulate an objection to a charge and the furnishing of particulars or further particulars in connection with a charge, and to provide that a punishment of correctional supervision may be imposed in respect of any offence; to amend the law of criminal procedure so as to empower the Minister of Justice to refer certain cases to the Appellate Division of the Supreme Court; to amend the Registration of Newspapers Amendment Act, 1982, so as to repeal the power of the Minister of Home Affairs to cancel the registration of a newspaper under certain circumstances; to amend the Admiralty Jurisdiction Regulation Act, 1983, so as to make a technical correction; to amend the Small Claims Courts Act, 1984, so as to further regulate the indemnity for liability in respect of assistance rendered in good faith by clerks of the court or legal assistants and to delete an obsolete provision; to amend the Rules Board for Courts of Law Act, 1985, so as to further regulate the Board's power to make rules; to amend the Sheriffs Act, 1986, so as to provide that interest on moneys held in trust by sheriffs shall, subject to the provisions of a written directive, be paid to the Fidelity Fund for Sheriffs; to amend the Mediation in Certain Divorce Matters Act, 1987, so as to empower a court to condone non-compliance with any provision of a regulation; to amend the Judges' Remuneration and Conditions of Employment Act, 1989, so as to further regulate the remuneration of a judge after discharge from active service and to provide that the gratuity payable to such a judge is not taxable; to amend the Judicial Matters Amendment Act, 1991, so as to regulate the granting of default

judgments by registrars; to amend the Upgrading of Land Tenure Rights Act, 1991, so as to make other provision in connection with the conversion of certain quitrent titles into ownership; to amend the Prevention of Public Violence and Intimidation Act, 1991, so as to provide for the granting of *pro Deo* legal aid to certain witnesses; to amend the Law of Succession Amendment Act, 1992, so as to effect an emendment of the text; to provide that certain land shall be deemed to be situated in a declared area as contemplated in the Housing Development Act (House of Delegates), 1987; to repeal certain obsolete laws; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 2 July 1992.)*

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

Advantage at extortion can be non-patrimonial

1. At criminal proceedings at which an accused is charged with extortion it shall with respect to the object of the extortion be sufficient to prove that any advantage was extorted, whether or not such advantage was of a patrimonial nature.

Disposal of certain money by the Minister of Mineral and Energy Affairs

2. (1) The Minister of Mineral and Energy Affairs shall pay into the State Revenue Fund as referred to in section 81 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), all money which, notwithstanding the repeal of the Strategic Mineral Resources Development Act, 1964 (Act No. 88 of 1964), by section 68 of the Minerals Act, 1991 (Act No. 50 of 1991), is at the commencement of this section, being kept in the Strategic Mineral Resources Development Account established by the Strategic Mineral Resources Development Act, 1964.

- (2) Money collected in terms of section 8 of the Coal Act, 1983 (Act No. 32 of 1983), and invested with the Corporation for Public Deposits in terms of section 9(5) of the said Act prior to the substitution of the said section 9 by section 3 of the Coal Act Amendment Act, 1987 (Act No. 70 of 1987), as well as interest derived from the investment of such money, shall as soon as practicable after the commencement of this section be paid by the Minister of Mineral and Energy Affairs into the Safety Research Account established under section 63(1)(u) of the Minerals Act, 1991 (Act No. 50 of 1991), and such money shall be utilized for such research in respect of coal mining safety as the Director-General: Mineral and Energy Affairs may determine.

Amendment of section 99 of Act 24 of 1936, as substituted by section 5 of Act 6 of 1972 and amended by section 30 of Act 90 of 1972, section 6 of Act 62 of 1973, section 9 of Act 29 of 1974, section 69 of Act 85 of 1974 and section 50 of Act 103 of 1978

3. Section 99 of the Insolvency Act, 1936, is hereby amended—

(a) by the substitution for subparagraphs (iii) and (iv) of paragraph (b) of subsection (1) of the following subparagraphs, respectively:

- “(iii) is under the provisions of section 99 of the said Act [or section 76 of the Income Tax Ordinance, 1974 (Ordinance No. 5 of 1974), of the Territory] required to pay in respect of any tax due by any other person and has deducted or withheld from any moneys, including pensions, salary, wages, remuneration and amounts of any other nature, held by him for or due by him to such person;

- (iv) has under the provisions of the Fourth Schedule to the said Act **[for Schedule 3 to the said Ordinance]** deducted or withheld by way of employees' tax from remuneration or any other amount paid or payable by him to any other person; or"; and
- (b) by the insertion in subsection (1) after paragraph (cC) of the following paragraph:
- "(cD) the amount of value-added tax, interest, fine or penalty which in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), was due by the insolvent immediately prior to the sequestration of the estate."

Amendment of section 100 of Act 24 of 1936, as amended by section 13 of Act 32 of 1952, section 31 of Act 99 of 1965 and section 14 of Act 101 of 1983

4. Section 100 of the Insolvency Act, 1936, is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- "(a) Thereafter any balance of the free residue shall be applied in paying the salary or wages, for a period not exceeding two months prior to the date of sequestration of the estate, due to an employee who was engaged by the insolvent and in paying any fee due to a nurse or an accountant or auditor registered under the Public Accountants and Auditors Act, **[1951 (Act No. 51 of 1951)]** 1991 (Act No. 80 of 1991), who was engaged, whether full-time or part-time, by the insolvent before the said date to nurse himself, his wife or minor child or to keep or write up or audit the books relating to the insolvent's affairs, as the case may be: Provided that not more than **[R2 000]** the amount determined by the Minister of Justice from time to time by notice in the *Gazette* shall be paid out under this subsection to any employee, nurse, accountant or auditor."; and
- (b) by the substitution for subsection (2) of the following subsection:
- "(2) If on the date of sequestration any leave is due to any such employee or any bonus in respect of leave or holiday due to him has accrued to such employee, he shall be entitled to salary or wages in respect of any period, not exceeding twenty-one days, of leave due to him or to such bonus whether or not payment thereof is then due or to both such salary or wages and such bonus, as the case may be: Provided that not more than **[R1 000]** the amount determined by the Minister of Justice from time to time by notice in the *Gazette* shall be paid out under this subsection to any such employee in respect of such salary or wages and bonus."

Amendment of section 3 of Act 23 of 1957

5. Section 3 of the Sexual Offences Act, 1957, is hereby amended by the substitution in paragraph (f) for the word "woman" of the word "person".

45 Repeal of section 24 of Act 23 of 1957

6. Section 24 of the Sexual Offences Act, 1957, is hereby repealed.

Amendment of section 39 of Act 66 of 1965, as amended by section 4 of Act 54 of 1970

7. Section 39 of the Administration of Estates Act, 1965, is hereby amended by the addition of the following subsection:

“(4) If the executor is a practising conveyancer and has performed any work in terms of this section in connection with the registration of, or the endorsement against the title deeds of, immovable property referred to in subsection (1), he shall be entitled to remuneration for such work in accordance with the fees and charges prescribed by regulation under section 10(1)(c) of the Deeds Registries Act, 1937 (Act No. 47 of 1937).”.

Suspension of certain provisions of Act 51 of 1968

8. The provisions of sections 3 and 4 of the Prohibition of Foreign Financing of Political Parties Act, 1968, are hereby suspended from the date of commencement of this section until a date determined by the State President by proclamation in the *Gazette*.

Amendment of section 4 of Act 22 of 1969, as amended by section 2 of Act 47 of 1989 and section 1 of Act 1 of 1991

9. Section 4 of the Legal Aid Act, 1969, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The Minister may appoint a person to serve as an alternate in the stead of any member referred to in paragraph (b) or [(g)] (e) of subsection (1), during such member's absence from any meeting of the board, if such person is qualified to be appointed as such member and has been nominated in the same manner as such member.”.

Amendment of section 3 of Act 68 of 1969

10. Section 3 of the Prescription Act, 1969, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) the person in favour of whom the prescription is running is outside the Republic [(including the territory of South-West Africa)], or is married to the person against whom the prescription is running, or is a member of the governing body of a juristic person against whom the prescription is running; and”.

Amendment of section 13 of Act 68 of 1969

11. Section 13 of the Prescription Act, 1969, is hereby amended—

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

“(b) the debtor is outside the Republic [(including the territory of South-West Africa)]; or”; and

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

“(g) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), [or the Farmers' Assistance Ordinance, 1962 (Ordinance No. 11 of 1962, of the territory of South-West Africa)]; or”.

Repeal of section 21 of Act 68 of 1969

12. Section 21 of the Prescription Act, 1969, is hereby repealed.

Amendment of section 76 of Act 51 of 1977

13. Section 76 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The charge-sheet shall in addition to the charge against the accused include the name and, where known and where applicable, the address and description of the accused with regard to sex, **[race,]** nationality and age.”.

Amendment of section 85 of Act 51 of 1977

5 14. Section 85 of the Criminal Procedure Act, 1977, is hereby amended by the addition in subsection (1) to paragraph (d) of the following proviso:

“Provided that such an objection may not be raised to a charge when he is required in terms of section 119 or 122A to plead thereto in the magistrate’s court;”.

10 Amendment of section 87 of Act 51 of 1977

15. Section 87 of the Criminal Procedure Act, 1977, is hereby amended by the addition to subsection (1) of the following proviso:

15 “Provided that the provisions of this subsection shall not apply at the stage when an accused is required in terms of section 119 or 122A to plead to a charge in the magistrate’s court.”.

Amendment of section 122 of Act 51 of 1977

16. Section 122 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

20 “(a) in the magistrate’s court concerned, **[proceed with the trial from the stage at which the proceedings were adjourned under subsection (1) or, if the accused is arraigned on a charge which is different from the charge to which he has pleaded,]** require the accused to plead to that charge, and, if the plea to that charge is one of guilty or the plea in respect of an offence of which the
25 accused may on such charge be convicted is one of guilty and the prosecutor accepts such plea, deal with the matter in accordance with the provisions of section 112, in which event the provisions of section 114(1) shall not apply, or, if the plea is one of not guilty, deal with the matter in accordance with the provisions of
30 section 115 and proceed with the trial;”.

Amendment of section 144 of Act 51 of 1977

17. Section 144 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (2) of the following subsection:

35 “(2) The indictment shall, in addition to the charge against the accused, include the name and, where known and where applicable, the address and a description of the accused with regard to sex, **[race,]** nationality and age.”.

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990 and section 41 of Act 122 of 1991

40 18. (1) Section 276 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) **[The]** Notwithstanding anything to the contrary in any law contained, the provisions of subsection (1) shall not be construed as prohibiting the court—

45 (a) from imposing imprisonment together with correctional supervision; or

(b) from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence.”.

(2) Subsection (1) shall be deemed to have come into operation on 15 August 1991.

50 Appeal by Minister of Justice on behalf of certain persons

19. (1) If, in the case of a person who was sentenced to death before 27 July 1990—

- (a) that person has in respect of the conviction in question exhausted all the recognized legal procedures pertaining to appeal or review;
- (b) the Appellate Division of the Supreme Court has not yet considered an appeal against the conviction; and
- 5 (c) the Minister of Justice has any doubt as to the correctness of the conviction,

the Minister may, whether or not the Appellate Division has already considered an appeal against the sentence in question, on behalf and without the consent of that person refer the relevant record, together with a statement of the ground for his doubt, to the Appellate Division, whereupon that court shall consider the correctness of the conviction in the same manner as if it were considering an appeal by that person against the conviction.

(2) The Minister shall cause—

- 15 (a) the attorney-general concerned to be advised of his decision to refer the matter to the Appellate Division;
- (b) counsel to be appointed to argue the matter before the Appellate Division and the registrar of that court to be advised of the name of that counsel; and
- 20 (c) the registrar of the court in which the conviction occurred to transmit the requisite number of certified copies of the relevant court record and proceedings to the registrar of the Appellate Division and to furnish counsel appointed under paragraph (b) with a copy thereof.

(3) The registrar of the Appellate Division shall give notice to the attorney-general concerned and to counsel appointed under subsection (2)(b) of the date fixed for the consideration by the Appellate Division of the matter referred to it under subsection (1).

(4) The Appellate Division shall in respect of a matter referred to it under subsection (1) have the powers conferred upon it by section 322 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of an appeal against a conviction.

Repeal of section 1 of Act 98 of 1982

20. Section 1 of the Registration of Newspapers Amendment Act, 1982, is hereby repealed.

Amendment of section 3 of Act 105 of 1983

35 21. Section 3 of the Admiralty Jurisdiction Regulation Act, 1983, is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

- “(a) in the case of a claim contemplated in paragraph (a), (b), **[(i) or (r)]** (j) or (u) of the definition of ‘maritime claim’, the claim arises out of an agreement concluded within the area of jurisdiction of that court;”.

Amendment of section 11 of Act 61 of 1984, as amended by section 6 of Act 92 of 1986

22. Section 11 of the Small Claims Courts Act, 1984, is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) The State, a clerk of the court, an assistant clerk of the court or a legal assistant shall not be liable for any damage or loss resulting from assistance given in good faith by that clerk of the court, assistant clerk of the court or legal assistant to any party or prospective party to an action before a court or to the enforcement of a judgment or order in terms of section 41 in the form of legal advice or the compilation or preparation of a summons, statement or other document.”.

Amendment of section 14 of Act 61 of 1984

23. Section 14 of the Small Claims Courts Act, 1984, is hereby amended by the deletion of subsection (3).

Amendment of section 6 of Act 107 of 1985, as amended by section 4 of Act 77 of 1989

24. Section 6 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the substitution for subsection (2) of the following subsection:

- 5 “(2) (a) Different rules may be made in respect of the Supreme Court and the lower courts and in respect of different kinds of proceedings.
 (b) The Board may, with the approval of the Minister, make different rules in respect of different divisions of the Supreme Court which shall be of force for the period or periods determined by the Board.”.

10 Amendment of section 22 of Act 90 of 1986

25. Section 22 of the Sheriffs Act, 1986, is hereby amended by the substitution for subsection (4) of the following subsection:

- 15 “(4) Interest on moneys in an account mentioned in subsection (1) or (2) shall, unless the person on whose behalf the sheriff is holding or has received those moneys, in writing indicates otherwise, be paid in the prescribed manner to the Fund by the sheriff concerned.”.

Insertion of section 5A in Act 24 of 1987

26. The following section is hereby inserted in the Mediation in Certain Divorce Matters Act, 1987, after section 5:

- 20 **“Court may condone non-compliance with provision of regulation**
 5A. The court may, at the trial of an action or the hearing of an application referred to in section 4, condone non-compliance with any provision of a regulation made in terms of section 5.”.

Amendment of section 5 of Act 88 of 1989

- 25 27. (1) Section 5 of the Judges' Remuneration and Conditions of Employment Act, 1989, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- 30 “(a) A, subject to the provisions of subsection (2), represents the **[annual]** salary applicable to the office held by the judge concerned on discharge from active service;”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 April 1989.

Amendment of section 6 of Act 88 of 1989

28. Section 6 of the Judges' Remuneration and Conditions of Employment Act, 1989, is hereby amended by the addition of the following subsection:

- 35 “(7) Notwithstanding anything to the contrary contained in any other law, the gratuity payable to judges under this section shall not be taxable.”.

Substitution of section 5 of Act 4 of 1991

29. The following section is hereby substituted for section 5 of the Judicial Matters Amendment Act, 1991:

- 40 **“Insertion of section 27A in Act 59 of 1959**

5. The following section is hereby inserted in the Supreme Court Act, 1959, after section 27:

‘Judgment by default

- 45 27A. **[(1)]** A judgment by default may be granted and entered by the registrar in the manner and in the circumstances prescribed in the Rules made in terms of the Rules Board for Courts of Law Act, 1985

(Act No. 107 of 1985), and a judgment so entered shall be deemed to be a judgment of the court.

[(2) Any judgment by default entered in terms of subsection (1) shall be submitted to a judge in chambers for confirmation.

5 (3) Any judgment by default confirmed by a judge in chambers shall be deemed to be a judgment of the court.]”.

Amendment of section 2 of Act 112 of 1991

30. (1) Section 2 of the Upgrading of Land Tenure Rights Act, 1991, is hereby amended by the addition of the following subsection:

10 “(4) For the purposes of subsection (1)(c) and section 6, any piece of land in respect of which a land tenure right referred to in item 2 of Schedule 1 has been granted, shall be deemed not to form part of a township irrespective of its position.”.

(2) Subsection (1) shall be deemed to have come into operation on 15 1 September 1991.

Amendment of section 9 of Act 139 of 1991

31. Section 9 of the Prevention of Public Violence and Intimidation Act, 1991, is hereby amended by the addition of the following paragraph, the existing subsection becoming paragraph (a) thereof:

20 “(b) If the Commission has granted consent as contemplated in paragraph (a) and is satisfied that—
(i) the person is not financially capable of appointing a legal representative himself; and
25 (ii) it is in the interest of the commission’s functions that such person be represented by a legal representative,
the Commission may appoint a legal representative to appear *pro Deo* on behalf of the person concerned.”.

Amendment of section 14 of Act 43 of 1992

32. Section 14 of the Law of Succession Amendment Act, 1992, is hereby 30 amended by the substitution in paragraph (b) for the word “testator” of the word “deceased”.

Certain land deemed to be situated in declared area

33. (1) Any land—

35 (a) acquired by the board in whichever manner, or transferred or purported to be transferred to the board by or in terms of any law, at any time before the commencement of this section; and

(b) the ownership of which, according to an endorsement by the Registrar on the relevant title deed, vests or at any time vested in the board, shall notwithstanding any other law be deemed to be situated in and at all 40 relevant times to have been situated in a declared area.

(2) In subsection (1) any word or expression defined in the Housing Development Act (House of Delegates), 1987 (Act No. 4 of 1987), shall have the same meaning as in that Act.

Repeal of laws

45 34. The laws specified in the Schedule are hereby repealed.

Short title and commencement

35. (1) This Act shall be called the General Law Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

50 (2) Different dates may be so fixed in respect of different provisions of this Act.

SCHEDULE

Laws Repealed

No. and year of law	Title or subject
1. Chapter LXXXVII of the Law Book (Orange Free State)	"Over het heffen van Erfpachten en Dorpsbelastingen op Gronden of Erven gelegen in Dorpen"
2. Act No. 15 of 1912	Transvaal and Orange Free State Land Settlements Amendment Act, 1912
3. Act No. 7 of 1922	Frankenwald Estate Transfer Act, 1922
4. Act No. 6 of 1926	Relief Settlements Act, 1926
5. Act No. 15 of 1926	Kopjes Township Act, 1926
6. Act No. 11 of 1929	Murray Park (Private) Act, 1929
7. Act No. 34 of 1972	Land Titles (Division of George) Adjustment Act, 1972
8. Act No. 32 of 1973	Land Titles (Division of Oudtshoorn) Adjustment Act, 1973
9. Act No. 27 of 1975	Land Titles (Division of George) Adjustment Amendment Act, 1975
10. Act No. 82 of 1977	Common Pasture Management Act, 1977