

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain odd numbered pages as the other language is printed on even numbered pages.



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REPUBLIC OF SOUTH AFRICA

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THE PRESIDENCY

No. 787

13 March 1992

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

No. 18 of 1992: Merchant Shipping 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.

ACT

To amend the Merchant Shipping Act, 1951, so as to define or further define certain expressions; to exclude the territory of South West Africa from the application of the Act and to extend the scope of the Act in respect of certain persons, and objects on vessels; to extend the powers of officers and courts; to make new arrangements in connection with the disposal of the property of a deceased seaman; to determine further requirements in respect of safety on ships not registered in the Republic; to further provide for the elimination of defects; to make further provision in connection with the reporting to a proper officer of accidents to ships and accidents on board ships; to make other arrangements in connection with preliminary enquiries into shipping casualties; to provide that reports of preliminary enquiries into shipping casualties shall only be disclosed to a court of marine enquiry or a court of law; to extend the powers of a court of marine enquiry to members of the crew, and to empower such a court to impose a fine; to make other provision in connection with the penalties which may be imposed for offences; to indemnify certain persons from civil liability in respect of failure to perform acts in terms of the Act; to provide for the appointment of safety officers, safety appointees and safety committees and the election of safety representatives; to extend the powers of the Minister to make regulations; to provide for the incorporation of safety standards in the regulations; and to amend certain obsolete references; and to provide for matters connected therewith.

*(English text signed by the State President.)
(Assented to 3 March 1992.)*

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

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982 and section 1 of Act 25 of 1985

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—
- 10 (a) by the insertion in subsection (1) before the definition of “apprentice-officer” of the following definition:
- “accident”, in relation to a vessel, includes—
- 15 (a) the collapse or overturning of any lift, crane, davit, derrick, mobile powered access platform, access equipment, staging or bosun’s chair or the failure of any load-bearing part thereof;

- (b) the explosion, collapse or bursting of any closed container, including a boiler or boiler tube, in which there is any gas (including air), liquid or any vapour at a pressure greater than atmospheric pressure;
- 5 (c) any electrical short circuit or overload resulting in fire or explosion;
- (d) the sudden, uncontrolled release of flammable liquid or gas from any system, plant or pipeline;
- 10 (e) the uncontrolled release or escape of any harmful substance;
- (f) either of the following occurrences in respect of any pipeline, valve or any piping system in a vessel—
- (i) the bursting, explosion or collapse of a pipeline;
- (ii) the accidental ignition of anything in a pipeline or of anything which, immediately before it ignited, was in a pipeline;
- 15 (g) any contact of the human body with loose asbestos fibre;
- (h) the failure of any lashing-wire, chain or appliance;
- (i) any collapse or significant movement of cargo;
- 20 (j) the malfunctioning of any hatch cover, hatch cover control wire or other mechanism;
- (k) any person falling overboard;
- (l) the parting of a tow-rope;
- (m) the failure of bilge-pumping arrangements or life-saving or fire-fighting equipment to operate;;
- 25 (b) by the insertion in subsection (1) after the definition of “country to which the Safety Convention applies” of the following definition:
“‘crew’ means all seamen on board a ship;”;
- (c) by the insertion in subsection (1) after the definition of “dangerous goods” of the following definition:
 30 “‘dangerous space’ means any enclosed or confined space in which it is reasonably foreseeable that the atmosphere may at some stage contain toxic or flammable gases or vapours or dangerous substances, or be deficient in oxygen, to the extent that it may endanger the life or health of any person entering that space;”;
- 35 (d) by the insertion in subsection (1) after the definition of “Director-General” of the following definitions:
“‘employee’ means any person on board a vessel, including a member of the crew, who is employed by or working for an employer and receives or is entitled to receive any remuneration, or who works under the direction or supervision of an employer, or any other person who on board a vessel in any manner assists in the carrying on or the conducting of the business of an employer, except as provided otherwise by regulation;
‘employer’ means any person, including the owner or master of a vessel, who employs any person or provides work for him on a vessel and who remunerates that person or expressly or tacitly undertakes to remunerate him, except as provided otherwise by regulation;”;
- 40 (e) by the insertion in subsection (1) after the definition of “local safety exemption certificate” of the following definitions:
“‘machinery’ means any appliance or combination of appliances assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for generating, receiving, storing, containing, transforming, transmitting, transferring or controlling any form of energy;
‘marine notice’ means a notice described as such and issued by the Department of Transport;”;
- 45 (f) by the substitution in subsection (1) for the definition of “Minister” of the following definition:
“‘Minister’ means the Minister of Transport [Affairs];”;
- 50 (g) by the insertion in subsection (1) after the definition of “near relative” of the following definition:
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“‘occupational safety’ means the safety of any employee on board a ship and whilst boarding or leaving the ship;”;

- (h) by the substitution in subsection (1) for paragraph (b) of the definition of “port” of the following paragraph:

5 “(b) a port in the Republic, means a harbour **[contemplated in the definition of ‘harbours’ in section 1 of the South African Transport Services Act, 1981 (Act No. 65 of 1981)]** of which Transnet Limited has become the owner in terms of section 3 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or a fishing harbour **[contemplated]** as defined in section 1 of the Sea **[Fisheries Act, 1973 (Act No. 58 of 1973)]** Fishery Act, 1988 (Act No. 12 of 1988), or any place which has under this Act or any other law been designated as a place from or at which any vessel or a vessel of a particular type may be launched, beached, moored or berthed;”;

- (i) by the insertion in subsection (1) after the definition of “regulation” of the following definitions:

20 “‘safe’ means free from any threat which may cause bodily injury, illness or death;
‘safety appointee’ means any person appointed in terms of section 355A(1)(a);
‘safety committee’ means a committee appointed in terms of section 355A(1)(a);”;

- 25 (j) by the insertion in subsection (1) after the definition of “safety convention certificate” of the following definitions:

 “‘safety officer’ means any person appointed in terms of section 355A(1)(a);
‘safety representative’ means any person elected in terms of section 355A(1)(b);
‘safety standard’ means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act;”;

- 35 (k) by the substitution in subsection (1) for the definition of “savings bank” of the following definition:

 “‘savings bank’ means the Post Office Savings Bank, or a **[banking] deposit-taking** institution registered under the **[Banking Act, 1965 (Act No. 23 of 1965)]** **Deposit-taking Institutions Act, 1990 (Act No. 94 of 1990)**, **[or a building society registered under the Building Societies Act, 1965 (Act No. 24 of 1965)]** or, in respect of the allotment of premiums, a person registered or deemed to be registered as an insurer under the Insurance Act, 1943 (Act No. 27 of 1943), or any other body designated by the Minister;”;

- 45 (l) by the insertion in subsection (1) after the definition of “seaman” of the following definition:

 “‘serious injury’ includes—
(a) a fracture of the skull, spine or pelvis;
50 (b) a fracture of any bone other than a bone in the wrist, hand, ankle or foot, or a single rib;
(c) the amputation of a hand or foot;
(d) the loss of sight of an eye;
(e) frost-bite of any bodily extremity which may lead to permanent disfigurement; or
55 (f) any impairment of a person’s physical condition owing to—
(i) the use of machinery;
(ii) an electrical shock;
(iii) the exposure to hazardous working conditions or hazardous substances or articles; or
60 (iv) the exposure to natural or artificial environmental extremes,
on board a vessel which results in that person being admitted to hospital as a patient for more than 24 consecutive hours, or

- would have resulted in his being so admitted had he been within reach of a hospital.”;
- (m) by the insertion in subsection (1) after the definition of “sport or recreation” of the following definition:
- 5 “standard’ means—
- (a) any provision occurring in a specification, standard specification, compulsory specification, code of practice or standard method within the meaning of the Standards Act, 1982 (Act No. 30 of 1982); or
- 10 (b) any provision occurring in any specification, code or any other directive having standardization as its aim and issued by an institution or organization inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardization.”;
- 15 (n) by the insertion in subsection (1) after the definition of “unseaworthy” of the following definition:
- “user’, in relation to machinery, means any person who uses machinery on a vessel for his own benefit.”; and
- 20 (o) by the insertion in subsection (1) after the definition of “whaling boat” of the following definition:
- “workplace’ means any place on a vessel where an employee performs work in the course of his employment.”.

Amendment of section 3 of Act 57 of 1951, as amended by section 4 of Act 30 of 1959, section 32 of Act 69 of 1962, section 2 of Act 40 of 1963, section 2 of Act 13 of 1965 and section 2 of Act 25 of 1985

2. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- 30 “(1) This Act and any amendment thereof, shall apply to **[the Territory of South-West Africa and]** the port and settlement of Walvis Bay **[and the said Territory shall for the purpose of this Act be deemed to form part of the Republic: Provided that the provisions of this Act shall not affect the competency of the Legislative Assembly for the said Territory to make Ordinances dealing with matters relating to sealing and sea fisheries and the licensing of vessels engaged in sealing and sea fishing, in the exercise of its powers under section *twenty-five* of the South-West Africa Constitution Act, 1925 (Act No. 42 of 1925), as extended by section *thirteen bis* of the Sea Fisheries Act, 1940 (Act No. 10 of 1940), as inserted by section *three* of the Sea Fisheries Amendment Act, 1949 (Act No. 58 of 1949), nor the validity of any such Ordinances made before the coming into operation of any of the provisions of this Act]**.”;
- 35 (b) by the substitution for subsection (3) of the following subsection:
- 45 “(3) This Act shall bind the State: Provided that the Minister may by notice direct that sections 102 to 109, inclusive, 113, 120 to 124, inclusive, 133, 134, 145, 188 and 323 shall not apply in respect of the master, seamen or apprentice-officers of any ship named in the notice and belonging to the Government of the Republic **[(including the Railway Administration)]** or to Transnet Limited whose conditions of service are governed by laws other than this Act or statutory regulations other than regulations made under this Act.”; and
- 50 (c) by the addition of the following subsections:
- 55 “(12) Unless otherwise indicated, only the provisions of sections

9(5), 223, 259, 264, 313, 343*ter*, 355A, 356 and 356*ter*, read with section 2, shall apply to—

- 5 (a) every owner and master of any vessel, every user and every employer of persons on board a vessel;
- (b) all crew on board a vessel who have entered into a contract of employment with the master or with the owner or operator of such vessel, or any person who in the case of a vessel of less than 100 gross register tons can be regarded as crew on board such vessel;
- 10 (c) every other person on board a vessel in the execution of his duties;
- (d) every working gear, lifting gear, anchor or cable, any machinery, every gangway or accommodation ladder, any equipment or every appurtenance in or on a vessel which forms a part of the construction or equipment of such vessel, excluding any machinery or equipment brought on board a vessel and which does not form part of the equipment of such vessel.
- 15 (13) The provisions referred to in subsection (12) shall not apply to a vessel while being constructed or dismantled.”

20 Amendment of section 9 of Act 57 of 1951, as amended by section 7 of Act 30 of 1959

3. Section 9 of the principal Act is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (v) of subsection (1);
- 25 (b) by the addition to subsection (1) of the following paragraph:
“(vii) prohibit the removal of any article from the scene of an accident which must be reported in terms of section 259.”;
 and
- (c) by the addition of the following subsection:
- 30 “(5) (a) (i) When an employer performs an act or requires or permits an act to be performed which in the opinion of a proper officer or surveyor threatens or is likely to threaten the safety of any person at a workplace or in the course of his employment, the proper officer or surveyor may by notice in writing prohibit that employer from continuing or commencing with the performance of that act or from requiring or permitting that act to be continued or commenced with, as the case may be.
- 35 (ii) When a user uses any machinery or proposes to use it in a manner or in circumstances which in the opinion of a proper officer or surveyor threatens or is likely to threaten the safety of any person who works with such machinery or who is or may come in the vicinity thereof, such proper officer or surveyor may by notice in writing prohibit that user from continuing or commencing with the use of such machinery or the use thereof in that manner or those circumstances, as the case may be.
- 40 (iii) A prohibition imposed under subparagraph (i) or (ii) may at any time be revoked in writing by the proper officer or surveyor if arrangements to the satisfaction of such proper officer or surveyor have been made to dispose of the threat which gave rise to the imposition of the prohibition.
- 45 (b) When a proper officer or surveyor is of the opinion that the safety of any person at a workplace or in the course of his employment or in connection with the use of machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of such person’s safety, such proper officer or surveyor may by
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notice in writing direct that employer or user to take such steps as are specified in the notice, within a specified period.

5 (c) When on board a vessel in the vicinity of a workplace there is any nuisance which in the opinion of a proper officer or surveyor threatens or is likely to threaten the safety of an employee performing work at that workplace, such proper officer or surveyor may by notice in writing direct the person responsible for such nuisance or the owner or master of such vessel to remove the nuisance within a specified period.

10 (d) When a proper officer or surveyor is of the opinion that an employer or a user has failed to comply with a provision of a regulation applying to him, such proper officer or surveyor may by notice in writing direct that employer or user to take, within a period specified in the notice, such steps as in the opinion of the proper officer or surveyor are necessary to comply with the said provision and as are specified in the notice.

15 (e) The period contemplated in paragraph (b), (c) or (d) may at any time be extended by the proper officer or surveyor by notice in writing to the person concerned.

20 (f) (i) A proper officer or surveyor may by notice in writing prohibit an employer from requiring or permitting employees or any employee belonging to a category of employees specified in the notice, to be exposed in the course of their or his employment for a longer period than a period specified in the notice to any article or condition which in the opinion of such proper officer or surveyor threatens or is likely to threaten the safety of such employees or the employee belonging to such category of employees, as the case may be.

25 (ii) An employer shall forthwith bring the contents of a notice under subparagraph (i) to the attention of the employees or employee concerned.”

Amendment of section 101 of Act 57 of 1951, as amended by section 17 of Act 30 of 1959

35 4. Section 101 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (8) of the following paragraph:

“(a) vessel belonging to **[the Railway Administration]** Transnet Limited and used by that **[Administration]** authority in connection with the working of its harbours; or”.

40 **Amendment of section 130 of Act 57 of 1951, as amended by section 16 of Act 3 of 1982**

5. Section 130 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

45 “(1) Subject to the provisions of subsection (2), a seaman engaged on a South African ship may before the commencement of a voyage make stipulations for the payment during his absence by means of an allotment note to a near relative or a savings bank or a body engaged in the promotion of the welfare of seamen and registered under the National Welfare Act, **[1965 (Act No. 79 of 1965)]** 1978 (Act No. 100 of 1978), of any portion of the wages which he may earn during the voyage.”.

50 **Amendment of section 135 of Act 57 of 1951**

6. Section 135 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Nothing in this section shall affect the provisions of this Act

regarding allotment notes or those of section 326 of this Act or those of sections **[74 and 75]** 99 and 100 of the Income Tax Act, **[1941 (Act No. 31 of 1941)]** 1962 (Act No. 58 of 1962).”.

Insertion of section 152 in Act 57 of 1951

5 7. The following section is hereby inserted in the principal Act after section 151:

“Disposal of property of deceased seaman

10 **152.** If the property of a deceased seaman is handed over to a proper officer, such property shall be handed over to his next of kin after the necessary authority thereto has been obtained from the Master of the Supreme Court or any other authorized person.”.

Amendment of section 163 of Act 57 of 1951

8. Section 163 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

15 “(3) The provisions of this section shall not in any way derogate from or modify the powers and duties of a port health officer under the provisions of the **[Public]** Health Act, **[1919 (Act No. 36 of 1919)]** 1977 (Act No. 63 of 1977).”.

Amendment of section 168 of Act 57 of 1951

20 9. Section 168 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

25 “(3) The provisions of this section shall not in any way derogate from or modify the powers and duties of a port health officer under the provisions of the **[Public]** Health Act, **[1919 (Act No. 36 of 1919)]** 1977 (Act No. 63 of 1977).”.

Amendment of section 171 of Act 57 of 1951

10. Section 171 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

30 “(2) This section shall not apply in respect of a seaman or apprentice-officer on board a vessel belonging to **[the Railway Administration]** Transnet Limited and used by that **[Administration]** authority in connection with the working of its harbours.”.

Amendment of section 180 of Act 57 of 1951, as amended by section 24 of Act 30 of 1959

35 11. Section 180 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

40 “(2) (a) If the provisions of this subsection have in terms of subsection (1) been applied to seamen and apprentice-officers belonging to ships of any foreign country, any magistrate may, on application by the master of a ship of that country, if he is satisfied from information taken on oath that reasonable grounds exist for suspecting that any seaman or apprentice-officer has deserted or is absent without leave from that ship, issue a warrant for the apprehension of that seaman or apprentice-officer and for bringing him before a judicial officer, **[Every]** and such warrant shall be executed in the same manner as a warrant issued under section **[28]** 43 of the Criminal Procedure Act, **[1955 Act No. 56 of 1955)]** 1977 (Act No. 51 of 1977).

50 (b) A judicial officer before whom the seaman or apprentice-officer is brought in terms of paragraph (a) may, on proof that he has deserted or is absent without leave from that ship, order that he be conveyed on board that ship or delivered to the master or a ship’s officer or the owner of that ship, to be so conveyed, and any such order shall be duly executed.”.

Amendment of section 203 of Act 57 of 1951, as amended by section 32 of Act 40 of 1963 and section 18 of Act 13 of 1965

12. Section 203 of the principal Act is hereby amended by the addition of the following subsections:

5 “(8) Notwithstanding the provisions of this section, every ship not registered or licensed in the Republic, plying regularly between ports in the Republic or operating from a port in the Republic, and which is not in possession of any safety convention certificate issued by or under the authority of the government of the country of origin of the ship, shall be in
10 possession of a local general safety certificate.

(9) No person, including the owner or master of a ship referred to in subsection (8), shall cause or permit that ship to proceed to sea from any port in the Republic, unless there is on board and in respect of that ship a local general safety certificate.”

15 **Amendment of section 221 of Act 57 of 1951, as amended by section 49 of Act 69 of 1962 and section 40 of Act 40 of 1963**

13. Section 221 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

20 “(3) Subsection (1)(a) shall not apply in respect of any vessel belonging to **[the Railway Administration] Transnet Limited** and used by that **[Administration] authority** in connection with the working of its harbours, if that vessel goes to sea in an emergency.”

Amendment of section 223 of Act 57 of 1951, as amended by section 27 of Act 13 of 1965

25 **14.** Section 223 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If upon the inspection of a vessel a surveyor finds that the provisions of section 73 or 221 or of the maritime occupational safety regulations are not being complied with, or that the vessel is not equipped as required by
30 the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other applicable regulations which may have been made or not marked as required by the load line regulations, or that the equipment is not in a good condition, or that the deck lines or load lines are not being properly maintained, or that the
35 qualified staff required by the radio regulations for the operation of the radio installation is not provided, he shall give notice in writing to that effect to the owner or master, pointing out the deficiencies or defects and requiring that they be made good.”

40 **Substitution of section 259 of Act 57 of 1951, as amended by section 21 of Act 42 of 1969**

15. The following section is hereby substituted for section 259 of the principal Act:

“Report to proper officer of accidents to and on board ships

45 **259.** (1) The owner or master of any ship—
(a) which has been lost, abandoned or stranded; or
(b) which has been seriously damaged or has caused serious damage to any other ship; or
(c) on which any casualty resulting in loss of life or serious injury to any person or an accident has occurred; or
50 (d) which has been in a position of great peril either from the action of some other ship or for any other reason; or
(e) which, having left any port in the Republic, has put back to that port; or

(f) which has fouled or done any damage to any harbour, dock or wharf or to any lightship, buoy, beacon or sea mark, shall within 24 hours after the **[happening of the event, or as soon thereafter as possible, report it]** ship has arrived in a port or, if the event occurred in a port, within 24 hours after the event occurred, but before the ship departs from that port, report the event to the nearest proper officer in the form prescribed, stating the nature of the event and of the probable cause **[therefor]** thereof, the name of the ship, her official number, the port to which she belongs, the place where the event occurred and the place where the ship then is, and giving all other available relevant information: Provided that any event resulting in loss of life or serious injury shall forthwith be so reported by the fastest means of communication available.

(2) Subsection (1) shall, subject to subsection (3), apply to every ship which is registered or licensed in the Republic or which is in terms of this Act required to be so registered or licensed and to or in respect of or on board of which any such event as is referred to in subsection (1) has occurred anywhere, and it shall apply to a ship registered in a country other than the Republic only while she is within the Republic or the territorial waters thereof and if any such event has occurred to or in respect of or on board of the ship during a voyage to a port in the Republic or within the Republic or the territorial waters thereof.

(3) Subsection (1)(f) shall not apply to any vessel belonging to **[the Railway Administration] Transnet Limited** and used by that **[Administration]** authority in connection with the working of its harbours.

(4) Any employee, employer or user who learns about an event referred to in subsection (1), shall forthwith notify the owner or master concerned of such event."

30 **Substitution of section 264 of Act 57 of 1951, as substituted by section 22 of Act 42 of 1969**

16. The following section is hereby substituted for section 264 of the principal Act:

"Preliminary enquiry into shipping casualties

35 **264. (1) The Director-General may in his discretion appoint any competent person to hold a preliminary enquiry—**

(a) in the case of a ship which is registered or licensed in the Republic or which is in terms of this Act required to be so registered or licensed, whenever—

40 (i) an allegation of incompetency or misconduct is made against the owner, the master or any member of the crew of such ship; or

(ii) (aa) such ship has been lost, abandoned or stranded;

45 (bb) an accident has occurred on board such ship or such ship has been damaged or has caused damage to any other ship; or

(cc) loss of life or serious injury to any person on board such ship has occurred;

50 (b) in the case of a ship registered or required to be so registered in a country other than the Republic, whenever, in a port of or within the territorial waters of the Republic, any event referred to in paragraph (a)(ii) has occurred;

55 (c) in the case of any ship, wherever registered or required to be so registered, whenever an allegation referred to in paragraph (a)(i) is made against an employer or any person on board the

- ship while such ship is in a port of or within the territorial waters of the Republic;
- 5 (d) in the case of a ship registered in a foreign country, whenever any event referred to in paragraph (a)(ii) has occurred elsewhere than in a port of or within the territorial waters of the Republic, and—
- 10 (i) such ship subsequently arrives at a port in the Republic and an enquiry into the casualty has not been held by any competent court or other investigatory body in any other treaty country; or
- (ii) in the case of a treaty ship, evidence is obtainable in the Republic as to the circumstances in which such ship proceeded to sea, or was last heard of, or any event referred to in paragraph (a)(ii) has occurred.
- 15 (2) The Director-General may request the Director-General of Manpower to assign a person designated as an inspector under section 20 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), to assist a person appointed under subsection (1) to hold a preliminary enquiry.”.

20 Amendment of section 265 of Act 57 of 1951

17. Section 265 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):
- 25 “(2) Notwithstanding anything to the contrary contained in any law, the report referred to in subsection (1), the opinion thereon or any evidence relating thereto or any copy of or excerpt from the report, opinion or evidence shall only be disclosed to a court of marine enquiry or to a court of law.”.

Amendment of section 266 of Act 57 of 1951, as amended by section 53 of Act 69 of 1962 and section 48 of Act 40 of 1963

- 30 18. Section 266 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) A formal investigation shall not be held into any allegation against the master or a [ship’s officer] member of the crew of a ship registered in any treaty country other than the Republic, or into any event that has
- 35 occurred [to or] in respect of or on board any such ship, save at the request or with the consent of the government of that treaty country: Provided that this restriction shall not apply if—
- (a) the allegation relates to the master or a [ship’s officer] member of the crew of a ship which is wholly engaged in plying between ports in the Republic, or the event has occurred at any place whatsoever [to or] in respect of or on board any such ship; or
- 40 (b) the event has occurred in a port in the Republic or [on or near the coasts] within the territorial waters of the Republic [to or] in respect of or on board a ship other than a ship referred to in paragraph (a).”.

45 Substitution of section 269 of Act 57 of 1951, as substituted by section 23 of Act 42 of 1969 and amended by section 4 of Act 24 of 1974

19. The following section is hereby substituted for section 269 of the principal Act:

50 “Powers of court of marine enquiry in respect of master or member of crew

269. (1) If a court of marine enquiry finds that any master or [ship’s officer] member of the crew is incompetent or has been guilty of any act of misconduct, or that loss, abandonment or stranding of or serious damage to any ship or loss of life or serious injury to any
- 55 person has been caused by the wrongful act or default of any master

or **[ship's officer] member of the crew**, it may, subject to the provisions of section 283, cancel the certificate of competency or service of the master or **[ship's officer] member of the crew** or suspend it for a stated period or, whether or not the master or **[ship's officer] member of the crew** holds a certificate of competency or service, prohibit his employment in any stated capacity in a ship for a stated period or impose a fine not exceeding R2 000 upon him or reprimand him.

(2) Subsection (1) shall apply in respect of masters or **[ship's officers] members of the crew** of all ships which are registered or licensed in the Republic or which are in terms of this Act required to be so registered or licensed, and in respect of masters or **[ship's officers] members of the crew** of ships registered in a country other than the Republic only if those ships are wholly engaged in plying between ports in the Republic.”.

Amendment of section 283 of Act 57 of 1951, as amended by section 25 of Act 42 of 1969

20. Section 283 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a), and paragraph (a), of the following words:

“A court of marine enquiry shall not cancel or suspend a certificate or prohibit the employment of a person or impose a fine upon him or reprimand him, and a maritime court shall not suspend a certificate or prohibit the employment of a person or reprimand him—

(a) unless the holder of the certificate or other person has been present at the hearing of any evidence on which the decision of the court to cancel or suspend his certificate or to prohibit his employment or to impose a fine upon him or to reprimand him is based, or, if he has not been so present, unless a transcript of the notes of such evidence has been furnished to him at least 48 hours before he is called upon to make his defence; and”.

Substitution of section 284 of Act 57 of 1951

21. The following section is hereby substituted for section 284 of the principal Act:

“**Court may require delivery of certificate during course of investigation**

284. A court of marine enquiry **[or a marine court]** may at any time during the progress of the investigation order any master or **[ship's officer] member of the crew** affected by the investigation, and a marine court may at any time during the progress of the investigation order any master or ship's officer affected by the investigation, to deliver his certificate to the court forthwith.”.

Amendment of section 286 of Act 57 of 1951

22. Section 286 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) When the investigation affects a master or **[ship's officer] member of the crew** of a ship other than a South African ship the Director-General shall transmit a copy of the court's finding or decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered.”.

Substitution of section 288 of Act 57 of 1951

23. The following section is hereby substituted for section 288 of the principal Act:

“Delivery of Republic certificate which has been cancelled or suspended

5 288. A master or **[ship’s officer]** member of the crew who is the holder of a certificate issued in the Republic shall, if such certificate has been cancelled or suspended by the Minister or a court of marine enquiry or suspended by a maritime court, deliver his certificate to the Minister or court on demand, or if it is not demanded by the Minister or court, to the Director-General.”

10 **Substitution of section 289 of Act 57 of 1951, as substituted by section 27 of Act 42 of 1969**

24. The following section is hereby substituted for section 289 of the principal Act:

“Certificate not to be endorsed

15 289. If the certificate of a master or **[ship’s officer]** member of the crew is suspended by the Minister or a court of marine enquiry or a maritime court, or if the employment of a master or **[ship’s officer]** member of the crew is prohibited or if a fine is imposed upon him or he is reprimanded by a court of marine enquiry or if he is reprimanded by a maritime court, or if a direction is given by the Minister under section 87(2) in respect of the holder of a certificate, no person shall make any endorsement to that effect on the certificate of the master or **[ship’s officer]** member of the crew.”

Amendment of section 290 of Act 57 of 1951, as amended by section 28 of Act 42 of 1969

25 25. Section 290 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

30 “(c) set aside the prohibition of employment by a court of marine enquiry or a maritime court or shorten or lengthen the period of the prohibition, or set aside the fine imposed or the reprimand by any such court.”

Amendment of section 298 of Act 57 of 1951, as amended by section 36 of Act 30 of 1959 and section 51 of Act 40 of 1963

26. Section 298 of the principal Act is hereby amended—

- 35 (a) by the deletion of paragraph (c) of subsection (1); and
 (b) by the substitution for subsection (2) of the following subsection:
- 40 “(2) Any person acting for a salvage officer in terms of subsection (1) shall in respect of any wreck be considered to be the agent of the salvage officer and shall comply with the provisions of **[subsection (2) of section one hundred and four of the Customs Act, 1955 (Act No. 55 of 1955)]** section 112(2) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), but shall not be deprived, by reason of his so acting, of any right to salvage to which he would otherwise be entitled.”

45 **Substitution of section 313 of Act 57 of 1951, as substituted by section 10 of Act 5 of 1976**

27. The following section is hereby substituted for section 313 of the principal Act:

“Penalties for offences

50 313. (1) Every person who is guilty of an offence under this Act for which no penalty is specially provided in subsection (2) or (3) of this section or section 323(4) or under section 356(5) shall on conviction be liable to a fine **[not exceeding R200]**, or to imprisonment for a period not exceeding three months.

(2) Every person who is guilty of an offence under this Act mentioned in Column 1 hereunder shall on conviction be liable to a penalty not exceeding the penalty mentioned in Column 2 hereunder opposite the offence:

5	Column 1	Column 2
	Contravening or failing to comply with the following provisions	Penalty
10	Section 201.	Fine [of R80] , or imprisonment for a period not exceeding three months, and, in addition, for every passenger in excess of the number permitted by the certificate or memorandum, a fine of double the highest fare payable by any passenger on board.
15	[Section 16, 19(2), 36(2), 65(2), 68, 72, 117(1), 118, 172, 213, 232(1) or 250.	Fine of R400.
20	Section 9(2), 174(2)(c) or (e), 200(1)(c) or (d), 212(b), 219(a)(ii), 228(1) or 303(1).	Fine of R400 or six months' imprisonment or both such fine and imprisonment]
25	<u>Section 9(2), 16, 19(2), 36(2), 65(2), 68, 72, 117(1), 118, 172, 174(2)(c) or (e), 200(1)(c) or (d), 203(9), 212(b), 213, 219(a) (ii), 228(1), 232(1), 250 or 303(1).</u>	Fine, or imprisonment for a period not exceeding six months.
30	Section 32(2).	Fine [of R400] , or imprisonment for a period not exceeding six months [months' imprisonment or both such fine and imprisonment] , and, in addition, a fine [of R20] not exceeding R100 for every day during which the offence continues after conviction.
35	Section 73(1), 174(2) (d), (f) or (g), 200(1)(a) or (b), 212(a), 219(a)(i) or (b), 221(1), 235(1) or (2), 236(1), 237(1) or (2), 316(a), (b), (e), (f), (g) or (h) or 320.	Fine [of R800] , or imprisonment for a period not exceeding one year [year's imprisonment or both such fine and imprisonment] .
40	Section 9(3), 11(2), 25, 65(3), 66, 67, 174(1), 204(3), 234(1) or (2), 296, 299(2), 314, 315 or 316(c).	Fine [of R2 000] , or imprisonment for a period not exceeding two years [years' imprisonment or both such fine and imprisonment] .
45	Section 214(1).	Fine [of R2 000] , or imprisonment for a period not exceeding two years [years' imprisonment, or both such fine and such imprisonment] , and, in addition, a fine of [R800] R4 000 for every 25 mm or fraction thereof by which the appropriate load line on each side of the ship was submerged or would have been submerged if the ship had no list.
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55	Section 240.	[Fine of R4 000 or three years' imprisonment or both such fine and imprisonment] For vessels of less than 25 gross tons, a fine, or imprisonment for a period not exceeding six months.
60		

Column 1	Column 2
5	<u>For vessels of 25 gross tons and over but less than 100 gross tons, a fine, or imprisonment for a period not exceeding one year.</u>
10	<u>For vessels of 100 gross tons and over but less than 500 gross tons, a fine, or imprisonment for a period not exceeding two years.</u>
15	<u>For vessels of 500 gross tons and over but less than 1 000 gross tons, a fine, or imprisonment for a period not exceeding three years.</u>
20	<u>For vessels of over 1 000 gross tons, a fine, or imprisonment for a period not exceeding four years.</u>
20	<u>Fine, or imprisonment for a period not exceeding three years.</u>
25	<u>Fine of treble the value of the ship or goods received or had in possession, or [R4 000] R12 000, whichever is the greater, or imprisonment for a period not exceeding three years [years' imprisonment or both such fine and imprisonment].</u>

30 (3) Every person who, being the master of a ship involved in a collision, fails to comply with the provisions of section 258(1) or who, being the master of a ship to which any provision of the collision regulations applies, without reasonable cause contravenes or fails to comply with that provision, shall on conviction be liable to a fine [not exceeding R2 000], or imprisonment for a period not exceeding two years [or both such fine and imprisonment].”.

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Substitution of section 326 of Act 57 of 1951, as amended by section 39 of Act 30 of 1959

28. The following section is hereby substituted for section 326 of the principal Act:

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“Appropriation of wages to satisfy award of compensation in offences against discipline

326. When a seaman or apprentice-officer has been convicted of desertion as defined by section 175 or of absence without leave as defined by section 176 or of contravening any of the provisions of section 174(1), (2) or (3), and the court trying the case has made an award of compensation under section [357] 300 of the Criminal Procedure Act, [1955 (Act No. 56 of 1955)] 1977 (Act No. 51 of

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1977), any wages that have accrued or that may thereafter accrue to him may be applied to the satisfaction of the award.”.

Insertion of section 343ter in Act 57 of 1951

29. The following section is hereby inserted in the principal Act after section 5 343bis:

“Exemption from liability

10 **343ter.** A safety officer, a safety appointee, a safety representative or a safety committee or any member thereof, as referred to in section 355A, shall not incur any civil liability by reason of the fact that he failed to do anything which he should have done in terms of the provisions of sections 3, 9(5), 223, 259, 264, 313, 343ter, 355A, 356 and 356ter, read with section 2.”.

Substitution of section 355 of Act 57 of 1951, as amended by section 41 of Act 30 of 1959 and section 58 of Act 40 of 1963

15 30. The following section is hereby substituted for section 355 of the principal Act:

“Application of certain labour laws to seamen

20 **355.** (1) Nothing in this Act contained shall affect the application of the provisions of the **[Industrial Conciliation] Labour Relations Act, 1956 (Act No. 28 of 1956)**, or of the **Wage Act, 1957 (Act No. 5 of 1957)**, **[or of the Black Labour (Settlement of Disputes) Act, 1953 (Act No. 48 of 1953)]** to seamen in respect of their employment as such.

25 (2) To the extent to which any provisions of this Act which, but for the provisions of this section, would apply to any seamen are inconsistent with any agreement or award under the **[Industrial Conciliation] Labour Relations Act, 1956**, or any determination under the **Wage Act, 1957**, **[or any order under the Black Labour (Settlement of Disputes) Act, 1953]** which is binding in respect of those seamen, the provisions of this Act referred to shall not apply in respect of those seamen.

30 (3) Any agreement or award under the **[Industrial Conciliation] Labour Relations Act, 1956**, or any determination under the **Wage Act, 1957**, **[or any order under the Black Labour (Settlement of Disputes) Act, 1953]** which is binding in respect of any seamen employed on board any ship which is registered in the Republic or on board any ship which is not registered in the Republic and is wholly engaged in plying between ports in the Republic, while the ship is in the Republic, shall be binding in respect of such seamen while the ship is outside the Republic.

35 (4) No seaman who is an employee, as defined in section 1 of the **[Industrial Conciliation] Labour Relations Act, 1956**, who is not a person referred to in section 2(2) of that Act, and who is engaged on or belongs to any South African ship, shall be guilty of an offence under section 174(2)(b), (c), (d) or (f), section 175 or section 176 merely by reason of the fact that he has taken part in a strike or in the continuation of a strike, as defined in section 1 of that Act, in such circumstances that the act or omission by which he has taken part therein does not constitute an offence under section 65 of that Act: Provided that this subsection shall not apply in respect of any act which is committed or any omission which occurs while the ship is at sea.

50 (5) In this section the expression ‘seamen’ includes all persons employed or engaged in any capacity on board any ship.”.

- ment, the application of first-aid and the qualifications which persons applying first-aid shall possess;
- (xliE) as to the compilation by employers of safety directives in respect of vessels, the matters to be dealt with in such directives and the manner in which such directives shall be brought to the attention of employees and other persons at a workplace;
- (xliF) as to the appointment and functions of safety officers, safety appointees and safety committees and the election, training and functions of safety representatives;
- (xliG) as to the duties of owners, masters and employers;"; and
- (c) by the substitution in subsection (5) for the words preceding the proviso, of the following words:
- "Any regulations made under subsections (1) and (2) may prescribe penalties for contravention thereof or failure to comply therewith, **[but no such penalty shall exceed]** of a fine **[of R400]**, or imprisonment for **[the]** a period **[of]** not exceeding one year **[or both such fine and such imprisonment]**:".

Amendment of section 356bis of Act 57 of 1951, as inserted by section 60 of Act 40 of 1963 and substituted by section 20 of Act 3 of 1982

33. Section 356bis of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- "(3) The Minister shall lay a copy of any proclamation issued under subsection (1) or (2) on the Table **[of the House of Assembly]** in Parliament within 14 days after the publication of such proclamation in the *Gazette* if **[the House of Assembly]** Parliament is then in ordinary session or, if **[the House of Assembly]** Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session."

Insertion of section 356ter in Act 57 of 1951

34. The following section is hereby inserted in the principal Act after section 356bis:

"Incorporation of safety standards in regulations

- 356ter.** (1) The Minister may by notice in the *Gazette* incorporate in the regulations any safety standard, without stating the text thereof, by mere reference to the number, title and year of issue of that safety standard or to any other particulars by which that safety standard is sufficiently identified.
- (2) No safety standard shall be incorporated in the regulations except after consultation with a committee designated by the Director-General.
- (3) Any safety standard incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to any regulation made under section 356, be deemed to be a regulation, but not before the expiry of a period of two months from the date of incorporation thereof.
- (4) If any safety standard is at any time after the incorporation thereof as aforesaid, amended or substituted by the competent authority, the notice incorporating that safety standard shall, unless otherwise stated therein, be deemed to refer to that safety standard as so amended or substituted, as the case may be.
- (5) Every principal officer shall keep in his office a copy of the complete text of each safety standard incorporated in the regulations under subsection (1) and of each amendment or substitution of any such safety standard, and shall at the written request of any

5 interested person make any such copy available free of charge to any
such person for inspection or for making a copy thereof at a place
approved by the principal officer: Provided that a principal officer
shall not be obliged to keep in his office for the said purpose a copy
of any safety standard, or of any amendment or substitution thereof,
which was published in a publication available in the Republic,
provided he records in a register particulars of the publication in
10 which such safety standard, or any amendment or substitution
thereof, was published and also of the place in the Republic where
such publication is obtainable or otherwise available for inspection,
and makes that register or an extract therefrom available free of
charge to interested persons for inspection.

15 (6) The provisions of section 33 of the Standards Act, 1982 (Act
No. 30 of 1982), shall not affect any incorporation of a safety
standard or of any amendment or substitution of a safety standard
under this section.”.

Short title

35. This Act shall be called the Merchant Shipping Amendment Act, 1992.