

REPUBLIC OF SOUTH AFRICA

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# AMENDMENT OF CUSTOMARY LAW OF SUCCESSION BILL

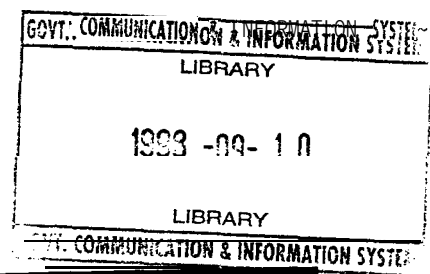
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*(As introduced in the National Assembly)*

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(MINISTER OF JUSTICE)

[B 109—98]



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REPUBLIEK VAN SUID-AFRIKA

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# WETSONTWERP OP DIE WYSIGING VAN DIE GEWOONTEREG OOR ERFOPVOLGING

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*(Soos ingedien in die Nasionale Vergadering)*

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(MINISTER VAN JUSTISIE)

[W 109—98]

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**GENERAL EXPLANATORY NOTE:**

[                      ]     Words in bold type in square brackets indicate omissions from existing enactment.

—————             Words underlined with a solid line indicate insertions in existing enactments.

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# **BILL**

**To extend the South African law of testate and intestate succession to all persons; to further regulate the administration of estates; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## **Definitions**

- 1.** In this Act unless the context indicates otherwise—
- (i) “Minister” means the Minister of Justice: (ii) and
  - (ii) “this Act” includes the regulations made under section 5. (i)

## **Succession**

**2. (1)** Despite any other law to the contrary, the estate of a person must upon that person’s death devolve in accordance with that person’s will or, failing a valid testamentary disposition, either wholly or in part, according to the law of intestate 10 succession.

(2) The Intestate Succession Act, 1987 (Act No. 81 of 1987), applies with the changes required by the context to the intestate estate of a person who before the coming into operation of this Act entered into a valid customary marriage which subsisted at the time of that person’s death.

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## **Administration of estates**

**3. (1)** Upon a person’s death the estate of that person must be liquidated and distributed in accordance with the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(2) The Master may in respect of an estate of a deceased person which does not exceed 20 in value the amount determined by the Minister by notice in the *Gazette*, delegate any power of the Master under the Administration of Estates Act, 1965—

- (a) to the magistrate of the district where the deceased was at the time of death ordinarily resident; or
- (b) to the magistrate of the district in which is situate the greater or greatest 25 portion of the property of that person.

**Amendment of section 1 of Act 81 of 1987, as amended by section 14 of Act 43 of 1992**

4. Section 1 of the Intestate Succession Act, 1987 (Act No. 81 of 1987), is hereby amended—

(a) by the substitution for paragraph (a) of subsection ( 1 ) of the following paragraph: 5

“(a) is survived—

(i) by **[a] one** spouse, but not by a descendant, such spouse shall inherit the intestate estate:

(ii) by more than one spouse, but not by a descendant, such spouses shall inherit the intestate estate in equal shares:” 10

(b) by the substitution in paragraph (c) of subsection ( 1 ) for the words preceding subparagraph (i) of the following words:

“is survived **[by a spouse as well as a descendant]—**”;

(c) by the substitution for subparagraph (i) of paragraph (c) of subsection ( 1 ) of the following subparagraph: 15

“(i) by a descendant and—

(aa) one spouse, such spouse shall inherit a child’s share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed by the Minister of Justice by notice in the *Gazette*, whichever is the greater: or 20

(bb) more than one spouse, such spouses shall each inherit a child’s share of the intestate estate or so much of the intestate estate in equal shares as does not exceed the amount fixed in terms of subparagraph (aa), whichever is the greater: and’.: and 25

(d) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) ‘intestate estate’ includes any part of any estate which does not devolve by virtue of a will **[or in respect of which section 23 of the Black Administration Act, 1927 (Act No. 38 of 1927), does not apply]**: “: and 30

(e) by the substitution for subsection (6) of the following subsection:

“(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with **[the] a** surviving spouse of the deceased, is entitled to a benefit from an intestate estate renounces his or her right to receive such a benefit, such benefit shall vest in the surviving spouse who is the parent of the said descendant.” 35

**Regulations**

5. The Minister may make regulations relating to reporting of estates in respect of which a notice referred to in section 3(2) has been issued. 40

**Partial repeal of law**

6. Section 23 of the Black Administration Act, 1927 (Act No. 38 of 1927), is hereby repealed.

**Short title and commencement**

7. This Act is called the Amendment of Customary Law of Succession Act, 1998, and will come into operation on a date fixed by the President by proclamation in the *Gazette*. 45

## **MEMORANDUM ON THE OBJECTS OF THE AMENDMENT OF CUSTOMARY LAW OF SUCCESSION BILL, 1998**

### **1. purpose of Bill**

The main object of the Bill is to extend the South African law of testate and intestate succession to all persons and to repeal section 23 of the Black Administration Act, 1927 (Act No. 38 of 1927), which regulates succession in respect of black persons as well as to enact new provisions which will be consistent with the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

### **2. Contents of Bill**

2.1 Clause 2 extends the application of the general law of succession as embodied in the Intestate Succession Act, 1987 (Act No. 81 of 1987). to all persons.

2.2 Clause 3 brings the administration of all estates under the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965). The Master of the High Court may, in an estate which does not exceed in value the amount determined by the Minister, delegate any or all of the Master's powers to a magistrate.

2.3 Clause 4 amends the Intestate Succession Act, 1987, so as to make it applicable to all persons.

2.4 Clause 5 empowers the Minister to make regulations in respect of estates below a prescribed value.

2.5 The provisions of section 23 of the Black Administration Act, 1927, will become redundant upon the enactment of this Bill and are therefore repealed (clause 6).

### **3. Departments, institutions and bodies consulted**

The Bill was drafted on an urgent basis for introduction in Parliament during the 1998 session. NGOS and special groups such as traditional and religious leaders and the rural women's movement were consulted in a number of workshops around the country. Several Government Departments, including provincial administrations also participated in these workshops.

### **4. Parliamentary procedure**

This Bill should, in the opinion of the State Law Advisers and the Department of Justice, be dealt with in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).