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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 802.

19 April 1991

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

No. 17 of 1991: Plant Improvement Amendment Act, 1991.

No. 802.

19 April 1991

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 17 van 1991: Wysigingswet op Plantverbetering, 1991.

Act No. 17, 1991

PLANT IMPROVEMENT AMENDMENT ACT, 1991

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 Plant Improvement Act, 1976, so as to define or further define certain expressions; to further regulate certain applications in terms of the Act; to extend the reservations regarding certain propagating material and the matters in respect of which certification schemes may provide; to make different provision as to powers of entry upon and inspection of premises to which the Act applies; to further regulate the circumstances under which plants and propagating material may be imported and exported; and to effect a change in relation to offences and penalties; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 8 April 1991.)

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

Amendment of section 1 of Act 53 of 1976, as amended by section 1 of Act 10 of 1979 and section 1 of Act 39 of 1983

1. Section 1 of the Plant Improvement Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for paragraph (e) of the definition of “business” of the following paragraph:
 “(e) a test laboratory **[for seed]**”;
- (b) by the insertion after the definition of “cleansing” of the following definition:
 “‘cultivate’, in relation to plants and propagating material, means promote or stimulate the growth of a plant, or care for propagating material, with a view to the propagation or multiplication of plants or propagating material; and ‘cultivation’ has a corresponding meaning”;
- (c) by the insertion after the definition of “establishment” of the following definition:
 “‘import’ means import into the Republic by any means; and ‘importation’ has a corresponding meaning”;
- (d) by the substitution for the definition of “officer” of the following definition:
 “‘officer’ means an officer or employee as defined in section 1 of the Public Service Act, **[1957 (Act No. 54 of 1957)]** 1984 (Act No. 111 of 1984)”;
- (e) by the substitution for the definition of “test laboratory for seed” of the following definition:

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- “test laboratory **[for seed]**’ means a laboratory where **[seed is]** plants and propagating material are tested, examined or analysed in respect of any physical or biological property thereof or the occurrence thereon or therein of pathogens or insects, for reward;”; and
- (f) by the substitution for the definition of “unit for certification” of the following definition: 5
- “unit **[for certification]**’ means an area of land which is registered in terms of a scheme **[and on which]** for the cultivation of plants and propagating material of the kinds and varieties to which the scheme applies **[are propagated or multiplied in accordance with the provisions of the scheme];**” 10

Amendment of section 7 of Act 53 of 1976, as amended by section 4 of Act 10 of 1979 and section 5 of Act 39 of 1983

2. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15
- “(1) An application for the registration of any premises in respect of a business under this Act shall be made to the registrar by the person intending to conduct the business on such premises, in the form determined by the registrar and in the manner prescribed, and shall be accompanied by the application fee prescribed.” 20

Amendment of section 9 of Act 53 of 1976, as amended by section 5 of Act 10 of 1979 and section 7 of Act 39 of 1983

3. Section 9 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 25
- “(1) The person to whom a certificate of registration has been issued under section 7 (3) may, **[before]** till 30 days after the expiry of the registration but not later, apply to the registrar in the form determined by the registrar and in the manner prescribed, for the renewal of the registration, and the application shall be accompanied by the prescribed renewal fee and such information or documents as may be prescribed or required by the registrar.”; 30
- (b) by the substitution in subsection (2) for paragraph (f) of the following paragraph: 35
- “(f) that any condition contemplated in section 7 (4) or any decision or direction **[resulting from an inspection of the establishment in terms of]** under section 25 has been complied with.”; and
- (c) by the deletion of subsection (6).

Amendment of section 14 of Act 53 of 1976

4. Section 14 of the principal Act is hereby amended—
- (a) by the deletion of the word “or” at the end of paragraph (b); 40
- (b) by the insertion after paragraph (b) of the following paragraph: 45
- “(bA) to the cleansing of propagating material by the producer thereof; or”; and
- (c) by the substitution in paragraph (c) for the words preceding subparagraph (i) of the following words: 45
- “(c) to the **[cleansing and]** sale of propagating material **[sold]** by the producer thereof to a registered establishment: Provided—”.

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Amendment of section 15 of Act 53 of 1976, as amended by section 9 of Act 39 of 1983

5. Section 15 of the principal Act is hereby amended by the addition of the following subsection:

“(6) The registrar shall from time to time publish by notice in the Gazette the prescribed particulars regarding the varieties included in the varietal list.” 5

Amendment of section 15A of Act 53 of 1976, as inserted by section 10 of Act 39 of 1983

6. Section 15A of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“15A. The registrar may with the approval of the Minister, which shall be granted with the concurrence of the Minister of Finance and of the Minister of Foreign Affairs **[and Information]**, enter into an agreement with the appropriate authority of another country in which it is provided that the registrar—” 10

Amendment of section 16 of Act 53 of 1976

7. Section 16 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) shall be made to the registrar in the form determined by the registrar and in the manner prescribed;”

Amendment of section 24 of Act 53 of 1976, as amended by section 10 of Act 10 of 1979 and section 15 of Act 39 of 1983

8. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) if the authority referred to in subparagraph (i) is not an **[official]** officer in the Department, or a body consisting of such **[officials]** officers, provide that such authority shall exercise, perform or carry out its powers, functions or duties at its own cost and subject to the directions of the registrar and not have any right of recourse against the State for costs so incurred;” 25

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

“(b) provide that **[any person intending to participate in a scheme, and any unit for certification intended for consideration]** any area of land utilized for the cultivation of plants or propagating material in terms of a scheme, shall be registered with the authority referred to in paragraph (a);” 35

(c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) provide for the manner in which **[a person or a unit for certification shall be registered, the forms to be used for]** an application for registration shall be lodged, the information which shall accompany such an application and the circumstances under which such registration shall lapse, be refused or be cancelled;” 40

(d) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) determine the requirements for registration to be complied with by **[a person or]** a unit, **[for certification]** the conditions on which such a **[person or]** unit shall be registered and the period of validity of such registration;” 45

(e) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) determine that, as from the date on which **[a person or]** a unit **[for certification]** is registered in terms of a scheme, the provisions of such scheme shall be binding on **[such]** the person [or unit] in whose favour that unit is registered;” 55

(f) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) determine the manner in which and the times at which any inspection of units **[for certification]** or of plants or propagating material with

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- reference to which the provisions of a scheme are applicable, shall be carried out, and authorize the authority designated under paragraph (a) to determine the forms to be used in connection with such an inspection;";
- (g) by the substitution in subsection (1) for paragraph (m) of the following paragraph: 5
 "(m) determine the records to be kept and the information to be furnished by any person in whose favour a unit is registered under a scheme;";
- (h) by the substitution in subsection (1) for paragraph (n) of the following paragraph: 10
 "(n) determine the fees or charges payable **[to any authority designated in terms of paragraph (a), by any person registered]** in terms of a scheme, or authorize any authority designated in terms of paragraph (a), to determine such fees or charges, and stipulate that the rendering of any service may be refused to a person who is indebted to any such authority in any amount in respect of such fees or charges;"; and 15
- (i) by the insertion in subsection (2) of the following paragraphs after paragraph (a):
 "(aA) When any authority designated in terms of paragraph (a) so authorizes any person at his request, it may determine that— 20
 (i) the power, function or duty concerned be exercised, performed or carried out at the cost of the person concerned;
 (ii) the person concerned shall have no right of recourse against that authority or the State for costs so incurred; and
 (iii) the person concerned shall exercise, perform or carry out the power, function or duty concerned subject to the directions of that authority. 25
 (aB) A juristic person established under any law and so authorized, shall be deemed, notwithstanding the absence of any express provision to such effect in the law under which it was established, to be competent to exercise, perform or carry out the power, function or duty concerned. 30
 (aC) The said juristic person may authorize any person in its service in writing to exercise, perform or carry out the power, function or duty concerned." 35

Amendment of section 25 of Act 53 of 1976, as amended by section 11 of Act 10 of 1979 and section 16 of Act 39 of 1983 35

9. Section 25 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:
 "(1A) When an officer in the department or an authorized person makes a decision as a result of action taken in terms of subsection (1), he may issue any instruction that he may deem necessary or expedient."; and 40
- (b) by the substitution for subsection (2) of the following subsection:
 "(2) (a) Where an officer in the department or an authorized person **[carries out any inspection]** acts in terms of subsection (1) in the presence of any person affected **[by the inspection]** thereby, the officer in the department or authorized person shall, if he is requested to do so, produce proof of his identity to such person. 45
 (b) If an officer in the department or an authorized person has carried out an inspection in terms of subsection (1), he shall enter the particulars of the inspection and any decision **[or instruction]** arising therefrom on the **[prescribed]** form determined by the registrar for that purpose, and hand or transmit by post a copy thereof to the owner of or person in charge of the place, **[or]** premises or vehicle in question. 50
 (c) The provisions of paragraph (b) of this subsection shall *mutatis mutandis* apply to any instruction referred to in subsection (1A)." 55

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Amendment of section 26 of Act 53 of 1976, as amended by section 12 of Act 10 of 1979 and section 17 of Act 39 of 1983**10. Section 26 of the principal Act is hereby amended—**

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

“(1) No person shall import into the Republic any plant or propagating material— 5

(a) unless the plant or propagating material—

[(a)] (i) is of a variety of which the denomination is entered in the varietal list;

[(b)] (ii) complies with the requirements prescribed in respect thereof; 10

[(c)] (iii) is packed in a container which is sealed and branded, marked or labelled in the prescribed manner with the prescribed information; **and**

(d) (iv) is imported through a prescribed port of entry or such other place as the registrar may determine; and 15

(b) under a denomination other than the denomination entered in the varietal list in respect thereof: Provided that, in the case of a variety of a kind of plant in respect of which an entry has been made as contemplated in section 15 (3), the denomination which shall be used for such variety shall be that which is generally used for that variety.”; 20
and

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) Notwithstanding the provisions of subsection (1)—

(i) the registrar may in his discretion and on such conditions as he may determine, in writing allow the importation of a consignment of plants or propagating material which does not conform to all or any of the requirements referred to in subsection (1); and 25

(ii) the Minister may by notice in the *Gazette* determine that any particular kind of plant, or propagating material of a particular kind of plant, shall only be imported with the permission in writing of the registrar and on such conditions as he may specify in such permission.”. 30

Amendment of section 27 of Act 53 of 1976**11. Section 27 of the principal Act is hereby amended—**

(a) by the substitution for subsection (2) of the following subsection:

“(2) Any person desiring to obtain any such certificate shall apply therefor to the registrar **[at the prescribed time and]** in the prescribed manner and **[form]** in the form determined by the registrar, and such application shall be accompanied by the prescribed application fee.”; 40

(b) by the deletion of subsection (4); and

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

“(6) The provisions of subsection (1) shall not apply with reference to the export of—

(a) plants and propagating material intended for purposes other than cultivation; or 45

(b) propagating material which does not exceed the prescribed quantity.”.

Insertion of section 27A in Act 53 of 1976**12. The following section is hereby inserted in the principal Act after section 27:**

“**Distribution of plants or propagating material** 50

27A. The Minister may by notice in the *Gazette* prohibit, or, subject to such conditions as may be mentioned in the notice, regulate, the distribution of plants or propagating material.”.

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Amendment of section 35 of Act 53 of 1976, as amended by section 13 of Act 10 of 1979 and section 22 of Act 39 of 1983**13. Section 35 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the following subparagraph: 5
 “(iii) fails or refuses to comply with any **[decision or]** instruction **[referred to in]** issued under section 25 **[(2) (b)] (1A) [with which it is his duty to comply]**”;
- (b) by the addition in subsection (1) of the following subparagraph to paragraph (g): 10
 “(v) distributes any plant or propagating material in contravention of a notice mentioned in section 27A or of any condition referred to in that section;” and
- (c) by the substitution in subsection (1) for the words following upon paragraph (l) of the following words: 15
 “shall be guilty of an offence and liable on conviction—
 (i) in the case of a contravention referred to in paragraph (a), (b), (f), (g), (h), (k) or (l), to a fine not exceeding **[one thousand rand]** R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or 20
 (ii) in the case of a contravention referred to in paragraph (c), (d), (e), (i) or (j), to a fine not exceeding **[five hundred rand]** R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

Short title and commencement 25

14. (1) This Act shall be called the Plant Improvement Amendment Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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