

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 even numbered pages as the other language is printed on uneven numbered pages.



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No. 12630

CAPE TOWN, 13 JULY 1990

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1610.

13 Julie 1990

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

No. 108 van 1990: Wysigingswet op Regsbelange van Geestesongestelde Persone, 1990.

No. 1610.

13 July 1990

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

No. 108 of 1990: Mentally Ill Persons' Legal Interests Amendment Act, 1990.

MENTALLY ILL PERSONS' LEGAL INTERESTS AMENDMENT
ACT, 1990

Act No. 108, 1990

GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Mental Health Act, 1973, and the Administration of Estates Act, 1965, so as to make further provision for the appointment of a curator for a mentally ill person who is not detained as or declared to be mentally ill or not detained as a mentally ill prisoner or a President's patient; to further regulate the furnishing of security by a curator; to regulate the termination of the appointment of a curator on the recovery of such a mentally ill person; and to increase certain fines; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 28 June 1990.)

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

Amendment of section 56 of Act 18 of 1973, as amended by section 2 of Act 3 of 1984

1. Section 56 of the Mental Health Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—

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

“(1) The court, if satisfied that any person detained as or declared to be mentally ill or detained as a mentally ill prisoner or a President's patient is incapable of managing his own affairs, may appoint a curator to perform or exercise on his behalf any particular act in respect of his property or to take care of or administer his property or to carry on any business or undertaking of such person: Provided that, if the estimated value of the property does not exceed **[R50 000]** R100 000 in respect of the *corpus* thereof or **[R10 000]** R24 000 per annum in respect of income, **[a judge in chambers or]** the Master or if the Master so desires a judge in chambers may exercise the powers conferred upon the court by this section.”; and

(b) by the addition of the following subsection:

“(3) The Minister may with the concurrence of the Minister of Justice amend the amounts referred to in subsection (1) by notice in the *Gazette*.”.

20 Insertion of section 56A in Act 18 of 1973

2. The following section is hereby inserted in the principal Act after section 56:

“Appointment of curator to certain mentally ill persons not falling within ambit of section 56 and who are indigent

25 **56A. (1) Any person over the age of eighteen years (in this section referred to as the applicant) may apply to the Master for the appointment of a curator to a person—**

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- 5
- (a) who is not detained as or declared to be mentally ill or not detained as a mentally ill prisoner or a President's patient;
- (b) whom the applicant believes to be suffering from mental illness to such a degree that he is incapable of managing his own affairs; and
- (c) in respect of whose property the estimated value does not exceed R100 000 in respect of the *corpus* thereof or R24 000 per annum in respect of income.
- 10 (2) (a) Such application shall—
- (i) set out the grounds on which the applicant believes that the person in respect of whom the application is made is mentally ill to such a degree that he is incapable of managing his own affairs;
- 15 (ii) state the degree in which the applicant is related by consanguinity or affinity, as the case may be, to the person in respect of whom the application is made, and if the applicant is not the husband or wife or a near relative of such person, the reason why the application is made by the applicant and not by the husband or wife or a near relative;
- 20 (iii) state the estimated value of the property in respect of the *corpus* thereof or in respect of income of the person in respect of whom the application is made, and furnish particulars of the nature of that person's property; and
- 25 (iv) state that during the period of seven days immediately preceding the date of the signing of the application, the applicant has on at least one occasion been in the presence of the person in respect of whom the application is made.
- (b) The matters referred to in paragraph (a) shall be verified by the applicant by affidavit or solemn declaration.
- 30 (c) The applicant shall by registered post give notice to the person in respect of whom the application is made at least 14 days before the application is made that he intends so applying, and proof that notice has been so given, shall accompany such application.
- 35 (3) The application shall be handed to the Master within seven days or be transmitted in such a way that it reaches the Master within seven days of the signing thereof and shall be accompanied by a medical certificate or other evidence relating to the mental condition of the person in respect of whom the application is made and his inability to manage his own affairs.
- 40 (4) (a) The Master may, in respect of the mental condition or the financial standing of the person in respect of whom the application is made, obtain such further information as he may deem necessary and he may, in particular, request the magistrate of the district in which such person is, or in which he is ordinarily resident, to report to him with regard to the mental condition or the financial standing of such person and to make a recommendation concerning the appointment of a curator to such person.
- 45 (b) The magistrate to whom such request is directed by the Master shall—
- (i) make such additional enquiry into the mental condition of the person in respect of whom the application is made as he may deem necessary and may summon any person to appear before him as a witness to testify with regard to the mental condition of such person;
- 55 (ii) inquire into the financial standing of the person concerned.
- (c) Any person summoned under paragraph (b) and who without sufficient cause fails to appear before the magistrate, shall be guilty of an offence.
- 60

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- (5) If the Master is satisfied that the person in respect of whom the application is made—
- 5 (a) is a person who is not detained or declared to be mentally ill or not detained as a mentally ill prisoner or a President's patient;
- (b) is mentally ill to such a degree that he is incapable of managing his own affairs; and
- 10 (c) does not possess property the estimated value of which does not exceed R100 000 in respect of the *corpus* thereof or R24 000 per annum in respect of income,
- he may appoint a curator to perform or exercise on behalf of such person any particular act in respect of the property of such person or to take care of or administer the property of such person or to carry on any business or undertaking of such person.
- (6) The Master may—
- 15 (a) on request of the applicant; or
- (b) if he otherwise deems it necessary,
- refer the application to a judge in chambers who may exercise the powers conferred upon the Master by subsection (5).
- (7) The provisions of section 56 (2) shall apply *mutatis mutandis* with regard to the appointment of a curator under this section.
- 20 (8) The Minister may with the concurrence of the Minister of Justice amend the amounts referred to in subsections (1) and (5) (c) by notice in the *Gazette*.”.

Amendment of section 57 of Act 18 of 1973

- 25 3. Section 57 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Subject to the provisions of section 57A the powers, duties and functions of the Master and the curator shall not cease until the patient is discharged as provided by this Act and it appears from the certificate of the superintendent of the institution in which he was detained or, in the case of a patient detained elsewhere than in an institution, of the person in whose medical care he was, that he is capable of managing his own affairs: Provided that the curator shall be discharged from office only after he has completed his duties to the satisfaction of the Master.”; and
- 30 (b) by the addition to subsection (3) of the following proviso:
- “Provided that the Master shall require security from a curator appointed under section 56A only if he is satisfied that, in the circumstances of the case, it is necessary to do so.”.
- 35

Insertion of section 57A in Act 18 of 1973

- 40 4. The following section is hereby inserted in the principal Act after section 57:
- “Termination of appointment of curator referred to in section 56A on recovery of mentally ill person**
- 57A. (1) A person in respect of whom a curator has been appointed in terms of section 56A and who has recovered from his mental illness to such an extent that he is once again capable of managing his own affairs, may in writing apply to the Master to terminate that appointment, and the Master shall, if he is satisfied that the applicant has recovered sufficiently so that he is capable of managing his own affairs, terminate the appointment: Provided that a curator shall be discharged from office only after he has completed his duties to the satisfaction of the Master.
- 45 (2) An application referred to in subsection (1) shall be accompanied by a medical certificate stating—
- 50 (a) that a medical examination of the applicant has taken place, and the date of such examination;

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- (b) the finding in respect of the mental condition of the applicant during the examination; and
- (c) the present as well as the expected future ability of the applicant to manage his own affairs.
- 5 (3) The Master may obtain such further information as he may deem necessary in order to determine the mental condition and the ability of the applicant to manage his own affairs.”

Amendment of section 67 of Act 18 of 1973

5. Section 67 of the principal Act is hereby amended—
- 10 (a) by the substitution for subsection (1) of the following subsection:
“(1) Any person who contravenes any provision of this Act in respect of which no penalty is expressly provided shall on conviction be liable to a fine not exceeding **[one hundred rand] R1 000** or to imprisonment for a period not exceeding three months.”; and
- 15 (b) by the substitution for subsection (2) of the following subsection:
“(2) Any person who contravenes any provision of sections 61 to 66 inclusive, shall on conviction be liable to a fine not exceeding **[five hundred rand] R8 000** or to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and
- 20 such imprisonment.”.

Amendment of section 73 of Act 66 of 1965, as amended by section 17 of Act 86 of 1983

6. Section 73 of the Administration of Estates Act, 1965, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- 25 “(b) in any case in which it would, in terms of the proviso to section 56 (1) of the Mental Health Act, 1973 (Act No. 18 of 1973), be competent for a judge in chambers to appoint a curator, or in any case in which the Master would be competent to appoint a curator in terms of section 56A of the said Act; or”.

Amendment of section 77 of Act 66 of 1965, as amended by section 18 of Act 86 of 1983

7. Section 77 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:
- 30 “(1) Every person appointed or to be appointed tutor or curator as provided in section 72 (1) (d) or (2) or under section 73 or 74, shall, subject to the proviso to section 57 (3) of the Mental Health Act, 1973 (Act No. 18 of 1973), before letters of tutorship or curatorship are granted or signed and
- 35 sealed, or any endorsement is made, as the case may be, and at any time thereafter when called upon by the Master to do so, find security or additional security to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.”.

Short title

- 40 8. This Act shall be called the Mentally Ill Persons' Legal Interests Amendment Act, 1990.