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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 445.

23 Maart 1977.

No. 445.

23 March 1977.

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

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

No. 27 van 1977: Moratorium-wysigingswet, 1977.

No. 27 of 1977: Moratorium Amendment Act, 1977.

Act No. 27, 1977

MORATORIUM AMENDMENT ACT, 1977.

ACT

To amend the Moratorium Act, 1963, so as to include in the definition of "service" certain service rendered by a citizen allotted in terms of Chapter VIII of the Defence Act, 1957, to the South African Police; and to provide for the suspension of the obligation of a citizen rendering service to pay certain debts which become payable while he is rendering service; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 16 March 1977.)*

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

Amendment of section 1 of Act 25 of 1963, as substituted by section 1 of Act 4 of 1969, and amended by section 3 of Act 26 of 1973 and section 10 of Act 1 of 1976.

1. Section 1 of the Moratorium Act, 1963 (hereinafter referred to as the principal Act) is hereby amended by the substitution for the definition of "service" of the following definition:

"'service' means the continuous service in the Citizen Force which is rendered during the periods referred to in section 22 (3), or the continuous service in a commando which is rendered during the periods referred to in section 44 (3) of the Defence Act, 1957, or the continuous service which is rendered in terms of section 34A (10) of the Police Act, 1958 (Act No. 7 of 1958), by a citizen who has been allotted to the Citizen Force, the commandos or the South African Police in terms of Chapter VIII of the Defence Act, 1957, and includes any service on which a citizen allotted to the Citizen Force or the commandos is employed in terms of Chapter X of the latter Act, during the periods of continuous service referred to in sections 22 (3) and 44 (3) of the latter Act, and if such citizen contracts any illness or sustains any injury as a result of such service, he shall be deemed to be rendering service during any period during which he is undergoing treatment in hospital for any such illness or injury if such treatment is commenced during the said periods of continuous service."

Substitution of section 2 of Act 25 of 1963, as amended by section 2 of Act 4 of 1969.

2. The following section is hereby substituted for section 2 of the principal Act:

"Moratorium in certain cases.

2. (1) Save as is provided in subsections (2) and (3) of this section—

- (a) the obligation of a citizen rendering service to pay contractual debts incurred by him which become payable while he is rendering service shall be suspended for a period equal to the period during which he is rendering service plus one month;
- (b) all civil legal remedies whatsoever against such citizen in respect of contractual debts incurred by

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such citizen, shall be suspended during the whole period during which such citizen is rendering service.

(2) The provisions—

- (a) of subsection (1) (a) shall not apply in respect of a citizen who receives from his employer while rendering service any salary or wages which together with the salary, pay or allowances paid to him in terms of the Defence Act, 1957 (Act No. 44 of 1957), is not less than the salary or wages which he received from his employer immediately before his service commenced;
- (b) of paragraph (a) of subsection (1) shall not apply to the obligation of a citizen to pay the following, namely—
- (i) the rent of any dwelling house, room or tenement;
 - (ii) the price of actual necessities of life supplied by persons, in the ordinary course of their business, to or at the instance of any such citizen after he has commenced to render service;
 - (iii) the amount due in respect of board or lodging supplied or afforded to or at the instance of such citizen after he has commenced to render service;
 - (iv) any amount becoming payable under a hire-purchase agreement as defined in section 1 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), entered into by a citizen after he had been advised in terms of section 67 of the Defence Act, 1957, of his allotment in terms of that section for service and before he had completed such service, if at the time of entering into such agreement, such citizen has failed to inform the other party to the agreement in writing that he had thus been advised or that he was rendering such service;
- (c) of paragraph (b) of subsection (1) shall not apply to—
- (i) any action or other legal proceedings of a civil nature against any partnership, if any member of such partnership is not rendering service at the time such action or proceedings are instituted;
 - (ii) any action for the enforcement of an obligation referred to in paragraph (b) (i) and (iii) of this subsection, including any action for the ejection from any premises referred to in subparagraph (i) or (iii) of that paragraph, and service of process for the purpose of the said subparagraphs (i) and (iii) shall be considered as sufficient if such process is served upon the occupier of such premises;
 - (iii) the issue of any process for the execution of any judgment or order in any action or proceedings mentioned in this paragraph or to the execution of such a judgment or order under such process: Provided that nothing in this subparagraph contained shall be deemed to permit attachment or arrest of his person or attachment of his salary or wages which is or may become due to him or of any allowance made to his dependants from

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funds appropriated for this purpose by Parliament or of any allowance made by or out of any public fund, or the issue of an order in terms of paragraph (d) of subsection (9) of section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944):

Provided that any action or proceedings so instituted may be stayed by the court on such terms as it may deem proper.

(3) Notwithstanding anything in subsection (1) of this section contained, upon application made to the provincial or local division of the Supreme Court having jurisdiction, such division, if satisfied that there is a probability of such citizen taking advantage of the suspension of his obligations or of civil legal remedies against him to carry on any trade or business without paying his creditors or to dispose of his assets to the prejudice of his creditors or that for any other reason whatsoever it would be just and equitable to do so, may declare that the provisions of subsection (1) shall not apply in respect of any obligation of, or civil legal remedies against such citizen: Provided that the said division may at any time, on application made to it, order that any action or proceedings or the execution of any judgment which would, failing such declaration, have been precluded by the provisions of subsection (1) shall be stayed for such period or on such conditions as it may think fit, if it appears to the said division just and equitable to make such order."

Substitution of section 3 of Act 25 of 1963.

3. The following section is hereby substituted for section 3 of the principal Act:

"Suspension of prescription. 3. Prescription in regard to any obligation or civil legal remedy suspended under this Act, shall be suspended for so long as the suspension of such obligation or legal remedy lasts, and the period of such suspension shall not be deemed to form part of the period of prescription."

Substitution of section 4 of Act 25 of 1963.

4. The following section is hereby substituted for section 4 of the principal Act:

"Interest may be claimed. 4. Whenever a person is debarred under this Act from obtaining payment of any money due to him he shall be entitled to claim interest at the rate of ten per cent per annum on all such moneys due to him during the period of the suspension by which he is debarred from obtaining payment under this Act, or until payment of the principal sum due before the termination of such period."

Substitution of long title of Act 25 of 1963, as amended by section 4 of Act 4 of 1969.

5. The following long title is hereby substituted for the long title to the principal Act:

"To provide for a moratorium in certain circumstances for the protection of citizens and certain non-citizens rendering service in the Citizen Force, the Commandos and the South African Police; to provide for the application of this Act to members of the South African Defence Force and the Reserve called up for service under Chapter X of the Defence Act, 1957 (Act No. 44 of 1957); and to provide for matters incidental thereto."

Short title.

6. This Act shall be called the Moratorium Amendment Act, 1977.