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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 821.

20 April 1983

No. 821.

20 April 1983

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

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

No. 39 of 1983: Plant Improvement Amendment Act, 1983.

No. 39 van 1983: Wysigingswet op Plantverbetering, 1983.

Act No. 39, 1983

PLANT IMPROVEMENT AMENDMENT ACT, 1983

**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 provisions of the Plant Improvement Act, 1976, relating to the definitions; to empower the registrar to authorize an officer in the public service or, with the approval of the Minister, any person who is not such an officer, to exercise, perform or carry out any of the powers, functions or duties of the registrar; to repeal the provisions relating to the keeping of a register of establishments; to make different provision as to the period of registration of establishments; to authorize the registrar to enter into agreements with the appropriate authority of any country providing for the reciprocal obtaining and furnishing of the results of tests and trials with plants and propagating material carried out by the registrar and such authority, respectively; to authorize the registrar, when considering an application for the recognition of a variety, to make use of the results of tests and trials undertaken by the appropriate authority of another country; to repeal the provisions relating to the publication in the *Gazette* of a proposed certification scheme or an amendment of a scheme; to provide for the designation of the registrar as the authority which exercises, performs or carries out certain powers, functions and duties in respect of a certification scheme; to provide that such authority may authorize any person to exercise, perform or carry out such powers, functions or duties; to extend the powers of entering upon certain premises as well as certain other powers connected therewith; to empower the registrar to determine the particulars which shall be furnished by the importer of a consignment of plants or propagating material; to exclude certain provisions from those provisions of the Act which are binding upon the State; to extend the provisions relating to the circumstances under which information obtained by a person in the application of the Act may be disclosed to another person; to render failure to comply with a certain decision or instruction punishable; to provide that any statement or entry contained in a book or document purporting to have been issued or made by any person, or the manager, agent or employee of such person, shall be admissible as evidence against such person; and to extend the provisions relating to the limitation of liability for acts performed in terms of the Act; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)*  
*(Assented to 13 April 1983.)*

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## PLANT IMPROVEMENT AMENDMENT ACT, 1983

**BE IT ENACTED** by the State President and the House of Assembly 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.

1. Section 1 of the Plant Improvement Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of “advertise” of the following definition:  
“‘authorized person’ means a person (other than an officer) authorized in terms of section 3 (3) (a);”; 5
- (b) by the insertion after the definition of “board” of the following definition:  
“‘calendar year’ means a year from 1 January to 31 December;”; 10
- (c) by the substitution for the definition of “business” of the following definition:  
“‘business’ means the business of— 15  
 (a) a nursery;  
 (b) the cleansing of propagating material for sale;  
 (c) the prepacking of propagating material for sale; [or]  
 (d) the sale of propagating material; or 20  
 (e) a test laboratory for seed;”;
- (d) by the substitution for the definition of “department” of the following definition:  
“‘department’ means the Department of [Agricultural Technical Services] Agriculture;”; 25
- (e) 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);”; 30
- (f) by the substitution for the definition of “plant” of the following definition:  
“‘plant’ means any tree, shrub or vegetation [and includes any live part] or any shoot, bud, cutting or other vegetative part thereof, or, in the case of a plant which normally reproduces vegetatively, the seed thereof, but not any propagating material or a derivation thereof which is used for a purpose other than the cultivation of [the] such plant;”; 35
- (g) by the substitution for the definition of “propagating material” of the following definition:  
“‘propagating material’ means any bulb, tuber [rhizome, shoot, bud or other vegetative part] or seed of a plant which normally reproduces [asexually] by means of a bulb, tuber or seed [and includes, unless otherwise indicated, the seed of a plant], but does not include any derivation of a plant which is used for a purpose other than the cultivation thereof;”; 40
- (h) by the deletion of the definition of “register”; 50
- (i) by the substitution for the definition of “registrar” of the following definition:  
“‘registrar’ means the officer designated under section 3 as Registrar of Plant Improvement [and includes an officer acting under delegation from or under the control or direction of the registrar];”; and 55
- (j) by the insertion after the definition of “sell” of the following definition:  
“‘test laboratory for seed’ means a laboratory where seed is tested, examined or analysed in respect of any physical or biological property thereof for reward;”. 60

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## PLANT IMPROVEMENT AMENDMENT ACT, 1983

Amendment of  
section 3 of  
Act 53 of 1976.

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

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

“(1) The Minister shall designate an officer in the department as the Registrar of Plant Improvement, who shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the registrar under this Act or, if he is designated under paragraph (a) (i) of section 24 (1), exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the authority referred to in that section.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) (a) [Any power conferred upon, function assigned to or duty imposed upon the registrar may be exercised, performed or carried out by the registrar personally or by an officer under the delegation, control or direction of the registrar.] The registrar may authorize any officer or, with the approval of the Minister, a person who is not an officer, to exercise, perform or carry out any power, function or duty of the registrar.

(b) Any decision made or order given by any such officer or person may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made or given by the registrar.”.

Repeal of  
section 4 of  
Act 53 of 1976,  
as amended by  
section 2 of  
Act 10 of 1979.

## 3. Section 4 of the principal Act is hereby repealed.

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Repeal of  
section 5 of  
Act 53 of 1976.

## 4. Section 5 of the principal Act is hereby repealed.

Amendment of  
section 7 of  
Act 53 of 1976,  
as substituted  
by section 4 of  
Act 10 of 1979.

## 5. Section 7 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the registrar, after considering an application under subsection (2), is satisfied that the premises may be registered in respect of the business concerned, he shall register the premises and [—

(a)] issue a certificate of registration in respect thereof to the person who applied for the registration [; and

(b) enter the applicable particulars referred to in section 4 (1) in the register].”.

Substitution of  
section 8 of  
Act 53 of 1976.

## 6. The following section is hereby substituted for section 8 of the principal Act:

“Term of registration. 8. (1) The registration of an establishment shall, subject to earlier termination under this Act, be valid from the date of issue of the certificate of registration under section 7 (3) to 31 August of the first calendar year the date of which is expressed in an odd number and following on such date of issue, and shall be renewable.

(2) The provisions of subsection (1), as amended by the Plant Improvement Amendment Act, 1983, shall apply also to a registration which took place before the commencement of the Amendment Act.”.

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## PLANT IMPROVEMENT AMENDMENT ACT, 1983

Amendment of section 9 of Act 53 of 1976, as amended by section 5 of Act 10 of 1979.

## 7. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) If the registrar renews the registration of an establishment [— 5

(a)] he shall notify the person who applied for such renewal in writing thereof, and may, if he deems it necessary, issue a fresh certificate of registration in respect thereof [; and

(b) he shall enter the applicable particulars referred to in section 4 (1) in the register].”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) The renewal of the registration of an establishment shall be valid until 31 August of the first calendar year the date of which is expressed in an odd number and following the year in which the renewal is effected, and an application for the further renewal thereof shall be made [annually] biennially in accordance with the provisions of subsection (1).”;

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

“(6) The registrar shall, subject to the payment of such additional fee as may be prescribed, consider any application for the renewal of a registration received after [31 August but not later than 30 September in any particular year] the date of expiry thereof, but not exceeding 30 days thereafter.”.

Amendment of section 12 of Act 53 of 1976, as amended by section 7 of Act 10 of 1979.

## 8. Section 12 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) if an application for the renewal thereof is not received by the registrar [on or before 30 September in any particular year] within 30 days of the date of expiry thereof.”.

Amendment of section 15 of Act 53 of 1976.

## 9. Section 15 of the principal Act is hereby amended by the deletion of subsection (4).

Insertion of section 15A in Act 53 of 1976.

## 10. The following section is hereby inserted in the principal Act after section 15:

“Registrar may enter into certain agreements for obtaining or rendering available of results of certain tests and trials. 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— 45

(a) shall, for the purposes of the consideration by him of an application for the recognition of a variety in terms of this Act, be entitled to obtain the results of tests and trials conducted by that authority in respect of that variety; 50

(b) shall render available to such authority the results of tests and trials conducted by the registrar in respect of a variety, against payment by the registrar or that authority, as the case may be, of the amount stipulated in the agreement.”.

Substitution of section 18 of Act 53 of 1976, as amended by section 9 of Act 10 of 1979.

## 11. The following section is hereby substituted for section 18 of the principal Act:

“Consideration and examination of applications. 18. (1) The registrar shall consider every application for the recognition of a variety and all documents and any other proof submitted to him in con- 60

nection therewith in order to ascertain whether the application complies with the requirements of this Act.

(2) The registrar shall—

- (a) either undertake such tests and trials as he may deem necessary with a variety in respect of which an application is being considered under subsection (1);
- (b) or **[have such]** use the results of tests and trials undertaken **[in terms of subsection (6)]** with that variety and obtained by him in terms of an agreement referred to in section 15A,

in order to enable him to determine whether such a variety may be recognized.

(3) A person whose application is being considered shall, for the purposes of such tests and trials and at the **[prescribed]** time and place determined by the registrar—

- (a) subject to the provisions of subsection (4), pay the appropriate prescribed examination fee; and
- (b) furnish the registrar—
- (i) with **[the prescribed]** such quantity or mass of plants and propagating material of the variety as he may require;
  - (ii) with such specimens of plants of the variety or of such parts thereof as he may require; and
  - (iii) with such information in connection with the variety as he may require.

(4) **[(a) Notwithstanding the provisions of subsection (2), the registrar may, if he can obtain acceptable results of tests and trials with the variety in question from the appropriate authority of another country, in his discretion decide not to undertake any tests or trials with a variety in respect of which an application is being considered under subsection (1).**

(b) The costs incurred in obtaining the results under paragraph (a) shall be paid to the registrar by the person whose application is being considered. If the registrar for the purposes of the consideration of an application in terms of subsection (1), decides to use the results referred to in paragraph (b) of subsection (2)—

- (a) the costs incurred in obtaining the results shall be reimbursed to the registrar by the person whose application is being considered; and
- (b) the registrar may, before taking any steps, require that person to furnish a written undertaking or suitable guarantee for the reimbursement of such costs.

**[(5) Different examination fees may be prescribed in respect of tests and trials with different kinds of plants.**

(6) (a) The registrar may submit plants or propagating material of a variety in respect of which an application is being considered under subsection (1) to the appropriate authority in another country in order to have the necessary tests and trials undertaken therewith, and the registrar shall accept the results of any such tests or trials which such authority may furnish to him.

(b) The provisions of subsection (4) (b) shall *mutatis mutandis* apply to the costs involved in obtaining results under paragraph (a).”



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Amendment of  
section 19 of  
Act 53 of 1976.

12. Section 19 of the principal Act is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

- “(f) that the applicant refuses or has failed or is not able—
- (i) to propose an acceptable denomination; or
  - (ii) to furnish a written undertaking or suitable guarantee referred to in section 18 (4) after having been requested to do so;”.

Amendment of  
section 20 of  
Act 53 of 1976.

13. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph 10 (b) of the following words:

“he shall recognize the variety and enter it in the varietal list if all moneys payable in terms of this Act in respect of that application have been paid.”.

Amendment of  
section 23 of  
Act 53 of 1976.

14. Section 23 of the principal Act is hereby amended by the deletion of subsections (3) and (4).

Amendment of  
section 24 of  
Act 53 of 1976,  
as amended by  
section 10 of  
Act 10 of 1979.

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

- (a) by the substitution for paragraphs (a), (b), (n), (o) and (p) of the following paragraphs, respectively:
    - “(a) (i) designate the [person who or the body] authority which shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such [person or body] authority under a scheme;
    - (ii) if the [person or body] authority referred to in subparagraph (i) is not an official in the department, or a body consisting of such officials, provide that such [person or body] authority shall exercise, perform or carry out its [or his] powers, functions or duties subject to the directions of the registrar;
  - (b) provide that any person intending to participate in a scheme, and any unit for certification intended for consideration in terms of a scheme, shall be registered with the [person or body] authority referred to in paragraph (a);
  - (n) determine the fees or charges payable to any [person or body] authority designated in terms of paragraph (a), by any person registered in terms of a scheme, and stipulate that the rendering of any service may be refused to a person who is indebted to any such [person or body] authority in any amount in respect of such fees or charges;
  - (o) confer on any [person or body] authority designated in terms of paragraph (a) of this subsection, or on any person authorized in writing by any such [person or body] authority to enforce any provision of a scheme, the powers of inspection referred to in section 25 (1);
  - (p) declare that the provisions of section 32 shall *mutatis mutandis* apply with reference to any person who feels aggrieved by any decision or action taken in connection with a scheme by any [person or body] authority designated in terms of paragraph (a) of this [section] subsection; and”;
- (b) by the addition of the following subsection, the existing section becoming subsection (1):

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- “(2) (a) The authority designated under subsection (1) (a) may authorize any person to exercise, perform or carry out any power, function or duty of that authority.
- (b) A decision made or order given by any person authorized under paragraph (a), may be withdrawn by such authority, and any such decision or order shall, until it is so withdrawn or amended, be deemed, except for the purpose of this paragraph, to have been given by such authority.”

Amendment of section 25 of Act 53 of 1976, as amended by section 11 of Act 10 of 1979.

## 16. Section 25 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:  
 “(1) [The registrar or] An officer in the department or an authorized [thereto in writing by the registrar] person may at any reasonable time—”;
- (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:  
 “(a) enter upon and inspect any place, premises or vehicle on which or in which there is or is suspected to be produced, processed, treated, prepared, tested, examined, analysed, graded, classified, prepacked, marked, labelled, held, packed, removed, transported, exhibited or sold, any plants, propagating material, substance or other article in respect of which this Act or any scheme applies;”;
- (c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:  
 “(b) inspect [or test] any such plant, propagating material, substance or other article, and examine all books and documents at, on or in such place, premises or vehicle which on reasonable grounds are suspected to relate to such plant, propagating material, substance or other article, and make copies of or extracts from any such book or document;”;
- (d) by the substitution for paragraph (d) of subsection (1) of the following paragraph:  
 “(d) inspect any operation or process carried out at or on such place or premises in connection with the production, processing, treatment, preparation, testing, examination, analysing, grading, classification, prepacking, marking, labelling, holding, packing, removal, transport, exhibition or selling of such plant, propagating material, substance or other article, and demand from the person in charge of such operation or process, or the owner or custodian of such plant, propagating material, substance or other article, any information or explanation regarding such operation, process, plant, propagating material, substance or other article;”;
- (e) by the substitution for paragraph (f) of subsection (1) of the following paragraph:  
 “(f) take samples of any plant, propagating material, substance or other article used or suspected to be intended for use in the production, processing, treatment, preparation, testing, examination, analysing, grading, classification, prepacking, marking, labelling, holding, packing, removal, transport, exhibition or selling of any plant, propagating material, substance or other article referred to in paragraph (a) or seized in terms of paragraph (e), [and examine, analyse, grade or classify such samples or cause them to be examined, analysed, graded or classified, and] open any container



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which contains or is suspected to contain any such plant, propagating material, substance or other article, and affix thereto any identification mark or seal which he may deem necessary.”;

- (f) by the substitution for subsection (2) of the following subsection: 5

“(2) (a) Where an officer or an authorized person [acting under the written authority of the registrar] carries out any inspection in terms of subsection (1) in the presence of any person affected by the inspection, the officer or authorized person shall [first], if he is requested to do so, produce [such written authority] proof of his identity to such person. 10

- (b) If [the registrar or] an officer 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 and hand or transmit by post a copy thereof to the person in charge of the place or premises in question.”; and 15 20

- (g) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) shall, if necessary, be packed and [sealed in a suitable container which shall be labelled or marked] identified in such manner as the nature thereof permits [to identify the sample]; and” 25

Amendment of section 26 of Act 53 of 1976, as amended by section 12 of Act 10 of 1979.

## 17. Section 26 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 30

“(3) A person importing a consignment of plants or propagating material shall furnish the registrar with the [prescribed] particulars which the registrar may determine regarding such consignment, and such consignment shall not be removed from a port or place contemplated in subsection (1) (d) unless the registrar has authorized the removal thereof in writing.”; 35

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

“(4) Plant or propagating material imported in terms of subsection (1) or (2) shall, if the registrar so requires, be presented for examination and sampling in terms of this section at a port or place contemplated in subsection (1) (d) [and shall not be sold in the Republic except under a permit in writing by the registrar which may be issued on such conditions as the registrar may determine].”; and 40 45

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

“(6) The provisions of this section shall not apply with reference to the importation of plants and propagating material intended for— 50

- (a) purposes other than cultivation; or  
(b) immediate export:

Provided that the person importing such plants or propagating material shall, prior to or on arrival thereof in the Republic, furnish to the registrar a declaration to that effect in the prescribed form.”. 55

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Substitution of section 28 of Act 53 of 1976.

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

"Certain provisions to apply in respect of State. 28. This Act, except sections 32, 35 and 37, shall apply also in respect of the State: Provided that no fees [payable under this Act] shall be payable by the State in terms of this Act." 5

Amendment of section 30 of Act 53 of 1976.

19. Section 30 of the principal Act is hereby amended by the deletion of subsection (4).

Amendment of section 31 of Act 53 of 1976.

20. Section 31 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

- "(1) No person shall, except—
- (a) [to the Minister, the board, the registrar or any other person] for the purpose of carrying out his duties or the performance of his functions under this Act;
  - (b) [to a police official] for the purposes of [an inquiry relating to the enforcement of the provisions of] legal proceedings under this Act or any other law; 15
  - (c) when required to do so by any court or under any law; or
  - (d) with the written consent of the Minister, 20
- disclose any information acquired by him in the carrying out of his duties or the performance of his functions under this Act or a scheme and which relates to the business or affairs of another person."

Amendment of section 34 of Act 53 of 1976.

21. Section 34 of the principal Act is hereby amended by the deletion of subsections (3) and (4). 25

Amendment of section 35 of Act 53 of 1976, as amended by section 13 of Act 10 of 1979.

22. Section 35 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
  - "(a) who makes a false entry in [the register or] the varietal list or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the [register or] varietal list, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy thereof;" 30
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
  - "(b) who— 40
    - (i) fails or refuses to make any statement or to give any explanation demanded by [the registrar or] an officer or an authorized person or by any [person or body] authority designated in terms of section 24 (1) (a) in the execution of the provisions of this Act or a scheme [or who]; 45
    - (ii) makes a false statement or representation knowing it to be false; or
    - (iii) fails or refuses to comply with any decision or instruction referred to in section 25 (2) (b) with which it is his duty to comply;" 50
- (c) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
  - "(c) who obstructs or hinders the registrar or an officer or an authorized person or [a person or body] an authority designated under section 24 (1) (a) in the exercise of his powers, the performance of his 55

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- functions or the carrying out of his duties under this Act or a scheme;"; and
- (d) by the substitution for subparagraph (ii) of paragraph (g) of subsection (1) of the following subparagraph: 5
- (ii) imports **[or sells]** any plant or propagating material in contravention of section 26, or uses for the purposes of cultivation any plant or propagating material imported in accordance with section 26 (6) for purposes other than cultivation or for immediate export; 10

Amendment of section 36 of Act 53 of 1976.

23. Section 36 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

- "(d) any statement or entry contained in any book or document kept by or purporting to be issued by any person, 15 or by the manager, agent or employee of such a person, **[or found upon or in any premises occupied by, or any vehicle used in the business of, any person]** shall be admissible in evidence against such person as an admission of the facts set forth in that statement or entry, unless it is proved that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his work as manager or in the course of his agency or employment."

Substitution of section 38 of Act 53 of 1976, as substituted by section 14 of Act 10 of 1979.

24. The following section is hereby substituted for section 38 25 of the principal Act:

- "Limitation of liability. 38. No compensation shall be payable by the State, the Minister, the registrar **[or an officer acting under a delegation from or under the control or direction of the registrar, or by a person or body designated in terms of section 24 or any person authorized thereto in writing by such person or body], an authority designated in terms of section 24 (1), any person authorized thereto in writing by the registrar or such authority, or any officer, in respect of any act 35 done in good faith under this Act or a scheme."**

Short title and commencement.

25. (1) This Act shall be called the Plant Improvement Amendment Act, 1983, and shall come into operation on a date to be 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. 40