

No. 18, 1962.]

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.

# ACT

To make provision for the establishment of a bureau of heraldry and a heraldry council; for the grant, registration and protection of coats of arms, badges and other emblems; and for other matters incidental thereto; and to amend the Protection of Names, Uniforms and Badges Act, 1935.

(Afrikaans text signed by the State President.)  
(Assented to 7th March, 1962.)

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

1. In this Act, unless the context otherwise indicates— Definitions.
- (i) "Administrator" means the Administrator of a province acting on the advice and with the assent of the Executive Committee of the province; (i)
  - (ii) "association" means any association of persons in the Republic, the territory or a foreign country formed for the promotion of sport or for any other lawful purpose; (xix)
  - (iii) "badge" means any object or figure, being a symbolic representation in conformity with the principles and rules of heraldry, but less formal than a coat of arms, used for official or municipal purposes or by any association, institution or person as a mark of recognition or as a distinguishing token; (ix)
  - (iv) "bureau" means the bureau of heraldry established by section *three*; (iv)
  - (v) "coat of arms" means any object or figure, being a symbolic representation displayed in colours on a shield in conformity with the principles and rules of heraldry, with or without a crown, helmet, mantling, supporters, motto or other accessories; (xxi)
  - (vi) "council" means the heraldry council established by section *six*; (xiv)
  - (vii) "historical family coat of arms" means a coat of arms which was granted to a member of a certain family in historical times or in regard to which it is known according to historical evidence or family tradition to have existed in historical times and to have been used by a member of a certain family; (vii)
  - (viii) "institution" means any institution, including any university, university college, teachers' college, training college, normal college, technical college, school or research institute, in the Republic, the territory or a foreign country, for the promotion of education, arts, science or any other lawful human activity; (viii)
  - (ix) "Minister" means the Minister of Education, Arts and Science; (x)
  - (x) "municipal" means of or belonging to an institution or body referred to in sub-paragraph (i) or (ii) of paragraph (*f*) of sub-section (1) of section *eighty-four* of the Republic of South Africa Constitution Act, 1961, and any similar institution or body in the territory; (xi)
  - (xi) "official" means of or belonging to the Government of the Republic or any provincial administration; (ii)
  - (xii) "other emblem" means any flag, pennant, banner, decoration, medal, seal, insignia of any office or order or other heraldic or kindred symbolic representation, but does not include a coat of arms or badge; (iii)
  - (xiii) "prescribed" means prescribed by this Act; (xx)
  - (xiv) "province" includes the territory; (xiii)
  - (xv) "provincial administration" means the administration of a province; (xii)
  - (xvi) "register" means the register kept in terms of section *five*; (xv)
  - (xvii) "registration" means an entry in the register; and "registered" has a corresponding meaning; (xvi)
  - (xviii) "regulation" means any regulation made in terms of section *twenty-five*; (xvii)
  - (xix) "state herald" means the officer appointed in terms of section *four*; (xviii)
  - (xx) "territory" means the Territory of South-West Africa; (v)
  - (xxi) "this Act" includes any regulation. (vi)

2. (1) The State President may subject to the provisions of any law with respect to the grant or amendment of any such coat of arms, badge or other emblem, grant or amend any official coat of arms, badge or other emblem.

Grant or amendment of official and municipal coats of arms, badges and other emblems.

(2) When any official coat of arms, badge or other emblem has been so granted or amended, the Minister may cause particulars of such grant or amendment to be published in the *Gazette*.

(3) An Administrator may on application in the prescribed manner and subject to the provisions of any law with respect to the grant or adoption or amendment of any such coat of arms, badge or other emblem, grant or amend or approve of the adoption or amendment in terms of any law of any municipal coat of arms, badge or other emblem.

(4) When any municipal coat of arms, badge or other emblem has been so granted or amended or when the adoption or amendment of any municipal coat of arms, badge or other emblem has been so approved, the municipal authority concerned may with the prior approval of the Administrator publish particulars of the coat of arms, badge or other emblem in the *Official Gazette* of the province.

(5) A coat of arms, badge or other emblem shall not be granted or amended in terms of sub-section (1) or (3) and the adoption of a coat of arms, badge or other emblem or any amendment thereof in terms of any law shall not be approved before the design or amended design thereof has been approved by the council.

(6) The design or amended design of a coat of arms, badge or other emblem requiring the approval of the council in terms of sub-section (5) shall be lodged with the bureau for submission to the council.

(7) After a notice has been published in terms of sub-section (2) or (4) the official or municipal authority referred to in such notice as the owner of the coat of arms, badge or other emblem described therein shall, subject to the provisions of section *twenty*, have the sole and exclusive right to use such coat of arms, badge or other emblem.

(8) This section shall not apply to any coat of arms, badge or other emblem instituted, constituted or created by any law.

3. (1) There is hereby established a bureau of heraldry for the registration of coats of arms, badges or other emblems and for the performance of such other functions as are assigned to the bureau by or under this Act.

Bureau of heraldry.

(2) The functions of the bureau shall be to—

- (a) give advice on heraldic and related matters and to assist in the designing of coats of arms, badges and other emblems;
- (b) receive and examine applications for the registration of coats of arms, badges or other emblems;
- (c) keep the register and the documents lodged in terms of this Act;
- (d) issue certificates of registration of coats of arms, badges and other emblems; and
- (e) carry out such other duties as may be assigned to the bureau by the Minister.

4. There shall be appointed, subject to the laws governing the public service, a state herald as head of the bureau.

State herald!

5. A register shall be kept in the bureau in which the bureau shall on application in the prescribed manner enter the heraldic and other particulars required by the regulations to be entered therein in respect of—

Register of coats of arms, badges and other emblems.

- (a) the coat of arms of the Republic, the national flag of the Republic, the coats of arms of the provinces and any other coat of arms, badge or other emblem instituted, constituted or created by any law, and any amendment thereof effected by any law;
- (b) any official or municipal coat of arms, badge or other emblem granted by competent authority, or adopted in terms of any law, before the commencement of this Act;
- (c) any official or municipal coat of arms, badge or other emblem granted in terms of section *two*, or adopted after the commencement of this Act in terms of any law, and any amendment thereof; and

- (d) any other coat of arms, badge or other emblem to the registration of which no valid objection exists, and any amendment thereof.

6. (1) There is hereby established a heraldry council which shall consist of the state herald and at least seven other members to be appointed by the Minister, to carry out the functions assigned to the council by or under this Act. Heraldry council.

(2) The functions of the council shall be to—

- (a) advise the Minister and the Administrator of any province on heraldic and related matters;  
 (b) approve for the purposes of this Act the design of any coat of arms, badge or other emblem and any amendment of the design of any registered coat of arms, badge or other emblem;  
 (c) consider applications referred to it in terms of this Act;  
 (d) consider appeals noted in terms of section *nine*;  
 (e) consider objections lodged in terms of section *eleven*; and  
 (f) carry out such other duties as may be assigned to the council by the Minister.

7. An application for registration of a coat of arms, badge or other emblem or of any amendment of a registered coat of arms, badge or other emblem shall be made to the bureau in the prescribed form and shall be accompanied by the prescribed documents, designs and fees. Application for registration.

8. (1) If the application is in the form prescribed by this Act, the state herald shall— Consideration of applications by state herald.

- (a) approve an application for the registration of a coat of arms, badge or other emblem referred to in paragraph (a) of section *five*, and any amendment thereof;  
 (b) approve an application for the registration of a coat of arms, badge or other emblem referred to in paragraph (b) of section *five*;  
 (c) refer an application for the registration of any historical or other family coat of arms or any amendment of such a coat of arms to the council.

(2) The state herald may, subject to the provisions of sections *two* and *nineteen*—

- (a) approve or reject an application for the registration of an official or municipal coat of arms, badge or other emblem granted by competent authority, or adopted by a municipal authority in terms of any law, after the commencement of this Act or any amendment of such a coat of arms, badge or other emblem granted by competent authority, or adopted by a municipal authority in terms of any law, before or after the commencement of this Act, or he may refer it to the council;  
 (b) provisionally approve an application for the registration of a coat of arms (other than a family coat of arms), badge or other emblem of an association or institution or person, or any amendment thereof, or he may reject it or refer it to the council: Provided that if any objection is lodged against the registration of such a coat of arms, badge or other emblem, he shall refer the application to the council.

(3) If the state herald—

- (a) approves an application referred to in paragraph (a) or (b) of sub-section (1) or in paragraph (a) of sub-section (2), the bureau shall enter in the register the heraldic and other particulars required by the regulations to be entered therein in respect of the coat of arms, badge or other emblem concerned or the amendment thereof, and shall give notice of the registration in the prescribed manner;  
 (b) provisionally approves an application referred to in paragraph (b) of sub-section (2), the bureau shall give notice of the application in the prescribed manner.

(4) Subject to the provisions of paragraphs (a) and (b) of sub-section (1), an application may be rejected by the state herald if—

- (a) the design of the coat of arms, badge or other emblem be similar to a design or any material part of a design protected by copyright or by the Protection of Names, Uniforms and Badges Act, 1935 (Act No. 23 of 1935), or this Act, and permission in writing for the use of



such design or such material part has not been obtained from the owner thereof;

- (b) the design of the coat of arms, badge or other emblem does not accord with the principles and rules of heraldry; or
- (c) the application does not comply with the provisions of this Act or is defective in other respects.

(5) If any application is rejected by the state herald, the applicant may within the prescribed period amend the application or furnish further information or make further representations or submit a new application.

(6) If the bureau has given notice of an application in terms of paragraph (b) of sub-section (3) and no objection is lodged within the prescribed period, the state herald may, subject to the provisions of section *nineteen*, finally approve the application or refer it to the council.

(7) If the state herald has finally approved of an application referred to in sub-section (6), the bureau shall enter in the register the heraldic and other particulars required by the regulations to be entered therein in respect of the coat of arms, badge or other emblem concerned or the amendment thereof, and the bureau shall give notice of the registration in the prescribed manner.

9. (1) There shall be a right of appeal to the council against any decision of the state herald and at the hearing of any such appeal the state herald shall recuse himself. Appeal against decision of state herald.

(2) An appeal to the council against a decision of the state herald shall be noted in the prescribed manner and within the prescribed period.

(3) On appeal the council may uphold, set aside or amend any decision of the state herald and may approve an application or reject it or refer it back for further information or particulars.

(4) If an application for the registration of a coat of arms, badge or other emblem or any amendment thereof is approved by the council on appeal, the bureau shall enter in the register the heraldic and other particulars required by the regulations to be entered therein in respect of the coat of arms, badge or other emblem concerned or the amendment thereof, and shall give notice of the registration in the prescribed manner.

(5) If a decision of the state herald granting an application for registration is set aside by the council, the bureau shall delete the relevant entry in the register.

10. (1) Whenever an application is referred to it by the state herald, the council may, subject to the provisions of section *nineteen*— Consideration of applications by the council.

(a) if it is an application referred to in paragraph (c) of sub-section (1) of section *eight*, approve such application finally or provisionally or reject it or refer it back for further information or particulars; or

(b) if it is an application referred to in paragraph (a) of sub-section (2) of section *eight*, approve or reject such application or refer it back for further information or particulars; or

(c) if it is an application referred to in paragraph (b) of sub-section (2) of section *eight*, approve such application provisionally or reject it or refer it back for further information or particulars.

(2) The provisions of sub-section (4) of section *eight* shall apply to the consideration of an application by the council.

(3) If an application for the registration of a coat of arms, badge or other emblem or any amendment thereof is approved by the council, the bureau shall enter in the register the heraldic and other particulars required by the regulations to be entered therein, in respect of the said coat of arms, badge, other emblem or amendment, and the bureau shall give notice of the registration in the prescribed manner.

(4) The bureau shall give notice in the prescribed manner of any application provisionally approved by the council.

11. Any official or municipal authority, association, institution or person wishing to object to the registration of any coat of arms, badge or other emblem on the grounds that such registration would encroach upon rights to which it or he is legally entitled, shall lodge such objection with the bureau in the prescribed manner and within the prescribed period for submission to the council. Objections.

12. (1) If the bureau has given notice of an application referred to in paragraph (b) of sub-section (3) of section *eight*, and such application is thereafter referred to the council in terms of the proviso to paragraph (b) of sub-section (2) or sub-section (6) of the said section, or if the bureau has given notice of an application referred to in sub-section (4) of section *ten*, the council may, after consideration of any objections lodged within the prescribed period, approve or reject the application or refer it back for further information or particulars.

Consideration by the council of provisionally approved applications.

(2) If the council approves an application referred to in sub-section (1), the bureau shall enter in the register the heraldic and other particulars required by the regulations to be entered therein, in respect of the coat of arms, badge, other emblem or amendment concerned, and the bureau shall give notice of the registration in the prescribed manner.

13. (1) There shall be a right of appeal against any decision of the council to the Minister whose decision on any such appeal shall be final: Provided that in matters arising in the territory, there shall be a right of appeal to the Administrator whose decision shall likewise be final.

Appeal against council's decision.

(2) An appeal to the Minister or the said Administrator shall be noted in the prescribed manner and within the prescribed period.

(3) On appeal the Minister or the said Administrator may uphold, set aside or amend any decision of the council and may approve any application or reject it or refer it back to the council for further information or particulars.

(4) If the Minister or the said Administrator approves an application for the registration of a coat of arms, badge or other emblem or any amendment thereof, the provisions of sub-section (4) of section *nine* shall apply.

(5) If the Minister or the said Administrator upholds an appeal against the registration of a coat of arms, badge or other emblem or any amendment thereof, the bureau shall delete the relevant entry in the register.

14. Subject to the provisions of section *twenty*—

Proprietary rights to arms, badge or emblem.

(a) a registered coat of arms (other than a family coat of arms), badge or other emblem shall be the full and exclusive property of the official or municipal authority, association, institution or person in whose name it has been registered; and

(b) a registered historical or other family coat of arms shall be the inalienable property of the person in whose name it has been registered and of his family and may lawfully be used during his lifetime or after his death as a family coat of arms by any person who is able to produce proof that he is a member of the said person's family by lawful blood-relationship, descent, marriage or adoption and that he bears the same family name.

15. The bureau shall have a seal of office the heraldic particulars whereof shall be entered in the register.

Seal of office.

16. (1) The register or any document lodged in terms of this Act and kept by the bureau shall be open for inspection by the public during the prescribed hours on payment of the prescribed fees and subject to the prescribed conditions: Provided that the state herald may in his discretion refuse access to any document on the grounds of public policy, or because the document concerned is being repaired or is in a tattered condition and should first be repaired, or for any other good reason.

Register open for inspection.

(2) There shall be a right of appeal to the council against any such refusal by the state herald and in the last resort to the Minister or in the case of the territory, to the Administrator, and the decision of the Minister or the said Administrator, as the case may be, shall be final.

17. (1) Subject to the provisions of the proviso to sub-section (1) of section *sixteen* and of sub-section (2) of the said section, the bureau shall, at the request of any person and on payment of the prescribed fees, furnish copies of documents lodged in the bureau in terms of this Act or of particulars from the register, or certificates in respect thereof.

Information from register.

(2) A copy of an entry in the register or of a document kept in the bureau or an extract from the register or any such docu-

ment certified by the state herald and bearing the seal of office of the bureau shall be admissible in evidence in all courts of law without further proof or production of the original.

18. Upon a request in writing accompanied by the prescribed fees or without such a request and subject to the provisions of section *nineteen*—

Correction of clerical errors and rectification of register.

- (a) the state herald or the council may authorize the correction of any clerical error in any document lodged or issued in terms of this Act or in the register; or
- (b) the council may order the register to be rectified by the making, amendment or deletion of any entry therein.

19. Whenever any discretionary power is by this Act given to the state herald or the council, such power shall not be exercised adversely to an applicant or an objector or other person who according to the register appears to be an interested party, without affording such applicant, objector or interested party an opportunity of being heard within the prescribed period.

Exercise of discretionary powers.

20. (1) Nothing in this Act shall be deemed to prevent any person from using any registered coat of arms, badge or other emblem in the course of or for the purpose of any stage play, historical pageant or other form of performance or entertainment or any cinematographic film, provided it is not used in such a manner or under such circumstances as to bring it into ridicule or contempt.

Savings.

(2) Nothing in this Act shall prevent the continued use of any mark or design registered under the Designs, Trade Marks and Copyright Act, 1916, or any mark or design not protected under that Act but which has been *bona fide* used as a trade mark before the commencement of this Act: Provided that the onus of proving such *bona fide* use shall be upon the person making such claim.

(3) Nothing in this Act shall deprive any person of the right to use any coat of arms, badge or other emblem which at the commencement of this Act is in regular use by such person: Provided that the onus of proving such use shall be upon such person.

(4) Nothing in this Act shall deprive any person of the right to use any coat of arms, badge or other emblem to the use of which he has become entitled by reason of his membership of an association or institution: Provided that the onus of proving such right shall be upon the person claiming such right.

21. Any person who without the written authority of the official or municipal authority, association, institution or person in whose name any coat of arms, badge or other emblem has been registered or, if such person has died, of a member of the family of such person in the case of a family coat of arms, or without any other lawful reason, wears, uses, sells, barter or trades in any such coat of arms, badge or other emblem or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such coat of arms, badge or other emblem, may be sued in any court of law by any such official or municipal authority, association, institution or person or member of the family of such person for—

Damages for misuse of coat of arms, badge or emblem.

- (a) an amount not exceeding fifty rand, and such court may without proof of any damages, and in addition to the costs of the action, award such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or
- (b) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to be reasonable in the circumstances, or grant an interdict or both award damages and grant an interdict.

22. Any person who, without the written permission of the official or municipal authority in whose name any official or municipal coat of arms, badge or other emblem has been registered, or without any other lawful reason, sells, barter or uses for gain or trades in such coat of arms, badge or other emblem or any material part thereof or any replica or repro-

Penalties for misuse of official or municipal coat of arms, badge or other emblem.

duction thereof or any imitation thereof which might reasonably be confused therewith, shall be guilty of an offence, and liable on conviction to a fine not exceeding four hundred rand.

23. Any person who knowing the same to be false— Penalty for false entries.  
 (a) makes or causes to be made a false entry in the register;

(b) makes or causes to be made any document falsely purporting to be a copy of an entry in the register;

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof; or

(d) makes any false statement or representation for the purpose of deceiving the state herald or the council in the execution of the provisions of this Act,

shall be guilty of an offence, and liable on conviction to a fine not exceeding two hundred rand or in default of payment, to imprisonment for a period not exceeding one year.

24. (1) The state herald shall report annually to the Annual report. Minister on the activities of the bureau and the council.

(2) The Minister shall lay a copy of such report on the Table of the Senate and of the House of Assembly within fourteen days after receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

25. The Minister may make regulations with regard to— Regulations.

(a) the functions of the bureau;

(b) the constitution, powers, duties, procedure at meetings, and the manner in which the duties of the council shall be performed; and in consultation with the Minister of Finance, the allowances payable to members of the council who are not in the employ of the State;

(c) the approval of designs of coats of arms, badges or other emblems and of amendments thereof;

(d) the registers to be kept, the forms to be used, the certificates to be issued and the documents and designs to be lodged;

(e) the notices to be given and the manner of notification;

(f) a tariff of fees which shall be payable in respect of any application, appeal, matter, document or certificate and the manner in which such fees shall be paid: Provided that such regulations shall be made in consultation with the Minister of Finance;

(g) all matters which by this Act are required or permitted to be prescribed; and

(h) generally, all matters which he considers it necessary or expedient to prescribe to give effect to the provisions of this Act, or in order that the objects of this Act may be achieved.

26. The Protection of Names, Uniforms and Badges Act, 1935, is hereby amended— Amendment of Act 23 of 1935.

(a) by the substitution in sub-section (2) of section *three* for the words "of five pounds" of the words "prescribed by regulation";

(b) by the substitution in paragraph (a) of sub-section (3) of section *six* for the words "ten pounds" of the words "fifty rand";

(c) by the insertion in sub-section (1) of section *nine* before the word "under" of the words "before the commencement of the Heraldry Act, 1962"; and by the substitution in the said sub-section for the words "of ten shillings on or before the thirtieth day of June in each and every year" of the words "prescribed by regulation on or before the thirtieth day of June, 1963";

(d) by the deletion in sub-section (2) of section *nine* of the words "in any year";

(e) by the insertion of the following section after section *nine*:

"Delegation of powers. *9bis.* (1) The Minister may delegate to the state herald appointed under the Heraldry Act, 1962, any of the powers vested in him by sections *one, four, five, eight and nine*, and in the definition of 'association' in section *eleven*, and may cancel any such delegation: Provided that the Minister—

- (a) shall not be deemed to be divested of any of the powers thus delegated by him; and  
 (b) may cancel or amend any decision taken or any action performed by the state herald in accordance with any powers thus delegated.

(2) All matters bearing on registration in terms of the Protection of Names, Uniforms and Badges Act, 1935, as carried out by any Department prior to the passing of the Heraldry Act, 1962, shall be deemed to have been lawfully carried out.”;

and

(f) by the insertion after section *eleven* of the following section:

“Appli-  
 cation of  
 Act.

*11bis.* The provisions of this Act shall not apply to any badge not entered in the register on or before the date of commencement of the Heraldry Act, 1962.”.

27. This Act and any amendment thereof shall also apply to the territory. Application to the territory.

28. This Act shall be called the Heraldry Act, 1962, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*. Short title and date of commencement.