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SE... FORESTRY

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

No. 283. 13 Februarie 1981.

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

No. 3 van 1981: Wysigingswet op Handelskeepvaart, 1981.

OFFICE OF THE PRIME MINISTER

No. 283. 13 February 1981.

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

No. 3 of 1981: Merchant Shipping Amendment Act, 1981.

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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 Merchant Shipping Act, 1951, so as to insert, substitute or delete certain definitions; to further regulate the licensing of small vessels; to prohibit the use of vessels of less than three metres in length; to transfer the powers to issue certificates of qualification as able seaman from the Minister to the Director-General; to change the designation "matroos" in the Afrikaans text to "seeman"; to extend the circumstances in which a seaman shall be entitled to wages although his services have been terminated, or in which a seaman shall be entitled to compensation for loss of property; to further regulate the issue of certain safety certificates; to extend the meaning of "grain" for the purposes of transport by ship; to extend the meaning of "owner" for the purposes of limitation of liability; to extend the category of persons who may act as chairman of a court of marine enquiry; to provide for South African citizens committing offences on board any foreign ship outside South African waters to be tried by a South African court; and to substitute the expression "Director-General" for the word "Secretary"; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 4 February 1981.)

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

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974 and section 1 of Act 5 of 1976.

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion in subsection (1) after the definition of "deck line" of the following definition:
"'Director-General' means the Director-General: Transport;";

(b) by the substitution in subsection (1) for the definition of "Minister" of the following definition:
"'Minister' means the Minister of Transport Affairs;";

(c) by the insertion in subsection (1) after the definition of "Minister" of the following definition:
"'nautical mile' means a distance of 1 852 metres;";

(d) by the deletion in subsection (1) of the definition of "Secretary";

(e) by the insertion in subsection (1) after the definition of "short voyage safety certificate" of the following definition:
"'small vessel' means a vessel of less than twenty-five gross tons and of more than three metres in length;"; and

(f) by the substitution in subsection (1) for the definition of "vessel" of the following definition:

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ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Handelskeepvaartwet, 1951, ten einde sekere woordomskrywings in te voeg, te vervang of te skrap; die lisensiëring van klein vaartuie verder te reël; die gebruik van vaartuie minder as drie meter lank te verbied; die bevoegdheid om bevoegdheidsertifikate as volle seeman uit te reik van die Minister aan die Direkteur-generaal oor te dra; die benaming ,,matroos'' te verander na ,,seeman''; die omstandighede waaronder 'n seeman op 'n loon geregtig is nieteenstaande die beëindiging van sy diens, of waaronder 'n seeman op vergoeding vir die verlies van eiendom geregtig is, uit te brei; die uitreiking van sekere veiligheidsertifikate verder te reël; die betekenis van ,,graan'' vir die doel van skeepsvervoer uit te brei; die betekenis van ,,eienaar'' vir die doeleindes van beperking van aanspreeklikheid uit te brei; die kategorie persone wat as voorsitter van 'n hof van marine-ondersoek kan optree, uit te brei; voorsiening te maak dat Suid-Afrikaanse burgers wat misdrywe aan boord van enige vreemde skip buite Suid-Afrikaanse waters pleeg, deur 'n Suid-Afrikaanse hof verhoor mag word; en die woord ,,Sekretaris'' deur die uitdrukking ,,Direkteur-generaal'' te vervang; en om vir bykomstige aangeleenthede voorsiening te maak.

(*Afrikaanse teks deur die Staatspresident geteken.*)
(*Goedgekeur op 4 Februarie 1981.*)

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 2 van Wet 57 van 1951, soos gewysig deur artikel 3 van Wet 30 van 1959, artikel 31 van Wet 69 van 1962, artikel 1 van Wet 40 van 1963, artikel 1 van Wet 13 van 1965, artikel 1 van Wet 42 van 1969, artikel 1 van Wet 24 van 1974 en artikel 1 van Wet 5 van 1976.

1. Artikel 2 van die Handelskeepvaartwet, 1951 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur in subartikel (1) na die omskrywing van ,,deklyn'' die volgende omskrywing in te voeg:
,,,Direkteur-generaal' die Direkteur-generaal: Vervoer;'';

(b) deur in subartikel (1) na die omskrywing van ,,kadet'' die volgende omskrywing in te voeg:
,,,klein vaartuig' 'n vaartuig van minder as vyf-en-twintig bruto ton en meer as drie meter lank;'';

(c) deur in subartikel (1) die omskrywing van ,,Minister'' deur die volgende omskrywing te vervang:
,,,Minister' die Minister van **[Vervoer]** Vervoerwese;'';

(d) deur in subartikel (1) die omskrywing van ,,Sekretaris'' te skrap;

(e) deur in subartikel (1) na die omskrywing van ,,seeman'' die volgende omskrywing in te voeg:
,,,seemyl' 'n afstand van 1 852 meter;'';en

(f) deur in subartikel (1) die omskrywing van ,,vaartuig'' deur die volgende omskrywing te vervang:

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"'vessel' includes any ship, or any boat, small vessel or **[any]** other description of vessel used or designed to be used in navigation;".

Amendment of section 68 of Act 57 of 1951, as amended by section 14 of Act 30 of 1959, section 10 of Act 40 of 1963 and section 3 of Act 13 of 1965.

2. Section 68 of the principal Act is hereby amended—

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

"(1) The owner or the master—

(a) of a small vessel which—

[(i) is of less than twenty-five gross tons; and]

(ii) is not registered as a ship in the Republic or elsewhere; and

[(iii) is employed or owned for the purpose of fishing or carrying persons or goods of any kind for financial gain or reward; and]

(iv) operates at or from a port in or from anywhere else on the coast of the Republic; or

(b) of a ship which has been exempted under the provisions of subsection (3) of section 13,

shall before such small vessel or ship is used in the Republic

[1. in the case of a vessel referred to in paragraph *(a)*, within one month from the date of her being employed or acquired or built for the said purpose; or

2. in the case of a vessel referred to in paragraph *(b)*, within one month from the date of her being exempted as aforesaid,

apply to the nearest proper officer in the Republic for a licence in terms of this Act.] be in possession of a licence issued to him in terms of this Act by a proper officer."; and

(b) by the addition of the following subsection:

"(4) The Minister may on such conditions as he may determine exempt the owner or the master of a small vessel used solely for sport or recreation from the provisions of this section.".

Insertion of section 72A in Act 57 of 1951.

3. The following section is hereby inserted in the principal Act after section 72:

"Prohibition of use of vessels of less than three metres in length.

72A. (1) No vessel of less than three metres in length shall go to sea from any port in or from anywhere else on the coast of the Republic.

(2) Notwithstanding the provisions of subsection (1) the Minister may by regulation—

(a) prescribe the purpose for and the area in which a vessel of less than three metres in length may be used; and

(b) apply the provisions of section 68 *mutatis mutandis* to any such vessel in any area.".

Amendment of section 112 of Act 57 of 1951, as amended by section 23 of Act 40 of 1963.

4. Section 112 of the principal Act is hereby amended—

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

"(2) The **[Minister]** Director-General may grant a certificate of qualification as able seaman to any candidate who passes the examination prescribed and produces satisfactory evidence that he possesses the qualifications prescribed."; and

(b) by the substitution in the Afrikaans text for the word "matroos", wherever it occurs, of the word "seeman".

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,,,vaartuig' ook enige skip, of enige boot, klein vaartuig of **[enige]** ander soort vaartuig wat gebruik word of ontwerp is vir gebruik in navigasie;".

2. Artikel 68 van die Hoofwet word hierby gewysig— Wysiging van artikel 68 van Wet 57 van 1951, soos gewysig deur artikel 14 van Wet 30 van 1959, artikel 10 van Wet 40 van 1963 en artikel 3 van Wet 13 van 1965.

(a) deur subartikel (1) deur die volgende subartikel te vervang:

,,(1) Die eienaar of gesagvoerder—

(a) van 'n klein vaartuig wat—

[(i) van minder as vyf-en-twintig bruto ton; en]

(ii) nie in die Republiek of elders as skip geregistreer is nie; en

[(iii) gebruik of besit word vir visvangs of vervoer van persone of goedere van enige aard vir geldelike voordeel of beloning; en]

(iv) by of vanuit 'n hawe in of vanaf enige ander plek aan die kus van die Republiek gebruik word; of

(b) van 'n skip wat kragtens die bepalings van subartikel (3) van artikel 13 vrygestel is,

moet, voordat sodanige klein vaartuig of skip in die Republiek gebruik word,

[1. in die geval van 'n in paragraaf *(a)* bedoelde vaartuig, binne een maand vanaf die datum waarop dit vir gemelde doel gebruik of verkry of gebou word; of

2. in die geval van 'n in paragraaf *(b)* bedoelde vaartuig, binne een maand vanaf die datum waarop dit soos voormeld vrygestel word,

aansoek doen by die naaste bevoegde beampte in die Republiek om 'n lisensie kragtens hierdie Wet.] in besit wees van 'n lisensie kragtens die Wet deur 'n bevoegde beampte aan hom uitgereik."; en

(b) deur die volgende subartikel by te voeg:

,,(4) Die Minister kan, op voorwaardes wat hy bepaal, die eienaar of die gesagvoerder van 'n klein vaartuig wat uitsluitlik vir sport of ontspanning gebruik word, vrystel van die bepalings van hierdie artikel.

3. Die volgende artikel word hierby in die Hoofwet na artikel 72 ingevoeg: Invoeging van artikel 72A in Wet 57 van 1951.

,,Verbod op gebruik van vaartuie minder as drie meter lank.

72A. (1) Geen vaartuig minder as drie meter lank mag van 'n hawe in of van enige plek aan die kus van die Republiek uitvaar nie.

(2) Ondanks die bepalings van subartikel (1) kan die Minister by regulasie—

(a) die doel waarvoor en die gebied waarin 'n vaartuig minder as drie meter lank gebruik mag word, voorskryf; en

(b) die bepalings van artikel 68 *mutatis mutandis* op enige sodanige vaartuig in enige gebied van toepassing maak.".

4. Artikel 112 van die Hoofwet word hierby gewysig— Wysiging van artikel 112 van Wet 57 van 1951, soos gewysig deur artikel 23 van Wet 40 van 1963.

(a) deur subartikel (2) deur die volgende subartikel te vervang:

,,(2) Die **[Minister]** Direkteur-generaal kan 'n bevoegdheidsertifikaat as volle **[matroos]** seeman aan 'n kandidaat toeken wat in die voorgeskrewe eksamen slaag en bevredigende bewys lewer dat hy die voorgeskrewe kwalifikasies besit."; en

(b) deur die woord ,,matroos", waar dit ook al voorkom, deur die woord ,,seeman" te vervang.

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Amendment of section 140 of Act 57 of 1951, as amended by section 21 of Act 30 of 1959.

5. Section 140 of the principal Act is hereby amended—

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

"*(a)* the wreck, loss, **[**or**]** abandonment, flooding, stranding, fire on board or collision of the ship; or";

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

"(3) If by reason of the wreck, loss, **[or]** abandonment, flooding, stranding, fire on board or collision of a ship on which a seaman is employed he sustains the loss of any or all of his property, he shall be entitled, in accordance with the regulations, to compensation from the owner of the ship for such loss."; and

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

"(4) A seaman shall not be entitled to receive compensation under subsection (3) if it be proved that the loss of his property was not due to the wreck, loss, **[**or**]** abandonment, flooding, stranding, fire on board or collision of the ship.".

Amendment of section 197 of Act 57 of 1951, as amended by section 14 of Act 13 of 1965.

6. Section 197 of the principal Act is hereby amended—

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

"(3) *(a)* The Minister or any person thereto authorized by him may grant an extension of any safety convention certificate, except a cargo ship safety construction certificate, and the **[Secretary]** Director-General may grant an extension of any local safety certificate, issued in respect of any vessel registered or licensed under this Act, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the vessel is absent from the Republic on that date, for a period not exceeding five months from that date.

(b) If any safety convention certificate, except a cargo ship safety construction certificate, issued in respect of a ship not registered in the Republic, expires while such ship is in any port in the Republic, the Minister or any person authorized thereto by him may, for sound reasons, extend such certificate for any period not exceeding five months, which extension shall be granted only for the purpose of allowing such ship to complete its voyage to the country in which it is registered or is to be inspected.

(c) Notwithstanding the provisions of this section the validity of a certificate shall expire upon transfer of any ship to the flag of another country.".

Amendment of section 236 of Act 57 of 1951, as amended by section 43 of Act 40 of 1963.

7. Section 236 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) In this section the word 'grain' includes wheat, maize, oats, rye, barley, rice, pulses, **[and]** seeds and processed forms thereof, whose behaviour during transport in bulk is similar to that of grain in its natural state, and in subsection (4) the expression 'ship carrying a cargo of grain' means a ship carrying a quantity of grain exceeding one-third of the ship's net register tonnage, reckoning **[one hundred cubic feet]** 2,83 cubic metres or two **[tons]** tonne **[**weight**]** mass of grain as equivalent to one ton of net register tonnage.".

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5. Artikel 140 van die Hoofwet word hierby gewysig— Wysiging van artikel 140 van Wet 57 van 1951, soos gewysig deur artikel 21 van Wet 30 van 1959.

(a) deur paragraaf *(a)* van subartikel (1) deur die volgende paragraaf te vervang:

„*(a)* die skipbreuk, verlies, **[of]** verlating, oorstroming, stranding, brand aan boord of botsing van die skip; of;";

(b) deur subartikel (3) deur die volgende subartikel te vervang:

„(3) Wanneer as gevolg van die skipbreuk, verlies, **[of]** verlating, oorstroming, stranding, brand aan boord of botsing van 'n skip waarop 'n seeman in diens is, hy enige van of al sy eiendom verloor het, is hy daarop geregtig om ooreenkomstig die regulasies vergoeding van die eienaar van die skip vir sodanige verlies te ontvang."; en

(c) deur subartikel (4) deur die volgende subartikel te vervang:

„(4) 'n Seeman is nie geregtig om vergoeding kragtens subartikel (3) te verkry nie as bewys word dat die verlies van sy eiendom nie aan skipbreuk, verlies, **[of]** verlating, oorstroming, stranding, brand aan boord of botsing van die skip te wyte is nie.".

6. Artikel 197 van die Hoofwet word hierby gewysig— Wysiging van artikel 197 van Wet 57 van 1951, soos gewysig deur artikel 14 van Wet 13 van 1965.

(a) deur subartikel (3) deur die volgende subartikel te vervang:

„(3) *(a)* Die Minister of 'n daartoe deur hom gemagtigde persoon kan verlenging van 'n veiligheidskonvensiesertifikaat, behalwe 'n vragskipveiligheidskonstruksiesertifikaat, en die **[Sekretaris]** Direkteur-generaal kan verlenging van 'n plaaslike veiligheidsertifikaat, wat ten aansien van 'n kragtens hierdie Wet geregistreerde of gelisensieerde vaartuig uitgereik is, toestaan vir 'n tydperk van hoogstens een maand vanaf die datum waarop die sertifikaat, was dit nie vir die verlenging nie, sou verstryk het, of, as die vaartuig op daardie datum uit die Republiek afwesig is, vir 'n tydperk van hoogstens vyf maande vanaf daardie datum.

(b) As 'n veiligheidskonvensiesertifikaat behalwe 'n vragskipveiligheidskonstruksiesertifikaat wat uitgereik is ten opsigte van 'n skip wat nie in die Republiek geregistreer is nie, verstryk terwyl daardie skip in 'n hawe in die Republiek is, kan die Minister of 'n persoon deur hom gemagtig daardie sertifikaat om gegronde redes verleng vir 'n tydperk van nie langer nie as vyf maande met die uitsluitlike doel om daardie skip in staat te stel om sy vaart na die land waarin dit geregistreer is of ondersoek moet word, voort te sit.

(c) Ondanks die bepalings van hierdie artikel verstryk die geldigheid van 'n sertifikaat by oordrag van 'n skip na die vlag van 'n ander land.".

7. Artikel 236 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang: Wysiging van artikel 236 van Wet 57 van 1951, soos gewysig deur artikel 43 van Wet 40 van 1963.

„(5) In hierdie artikel sluit die woord ‚graan' koring, mielies, hawer, rog, gars, rys, peulvrugte, **[en]** sade **[in]** en verwerkte vorms daarvan waarvan die gedrag tydens massavervoer soortgelyk is aan dié van graan in sy natuurlike staat in, en in subartikel (4) beteken die uitdrukking ‚skip wat 'n vrag graan vervoer' 'n skip wat 'n hoeveelheid graan vervoer wat een-derde van die skip se netto register-tonnemaat oorskry, by berekening waarvan **[eenhonderd kubieke voet]** 2,83 kubieke meter of twee tonne in **[gewig]** massa graan beskou word as gelyk aan een ton netto-registerton."

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Amendment of section 263 of Act 57 of 1951.

8. Section 263 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) For the purposes of section 261 the word 'owner' in relation to a ship shall include any charterer, any person interested in or in possession of such ship, and a manager or operator of such ship.".

Amendment of section 267 of Act 57 of 1951.

9. Section 267 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A court of marine enquiry shall consist of a judge or ex-judge of the Supreme Court, magistrate, ex-magistrate, advocate or attorney, who shall be the presiding officer, and either two or four other members.".

Amendment of section 327 of Act 57 of 1951, as amended by section 40 of Act 30 of 1959 and section 55 of Act 69 of 1962.

10. Section 327 of the principal Act is hereby amended by the substitution for paragraph *(a)* of subsection (1) of the following paragraph:

"*(a)* being a South African citizen, is charged with having committed an offence on board a South African ship on the high seas, or on board a South African ship in any port outside the Republic, or on board any ship (other than a South African ship) **[to which he does not belong]** irrespective of whether he belongs to that ship or not; or".

Substitution of word "Secretary" in Act 57 of 1951.

11. The principal Act is hereby amended by the substitution for the word "Secretary", wherever it occurs, of the expression "Director-General".

Short title and commencement.

12. (1) This Act shall be called the Merchant Shipping Amendment Act, 1981.

(2) The provisions of section 2 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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Wysiging van artikel 263 van Wet 57 van 1951.

8. Artikel 263 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg, terwyl die bestaande artikel subartikel (1) word:

„(2) Vir die doeleindes van artikel 261 omvat die woord ‚eienaar' met betrekking tot 'n skip 'n bevragter, 'n persoon wat belang het by of in besit is van sodanige skip, en 'n bestuurder of operateur van sodanige skip.".

Wysiging van artikel 267 van Wet 57 van 1951.

9. Artikel 267 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) 'n Hof van marine-ondersoek bestaan uit 'n **[magistraat]** regter of oud-regter van die Hooggeregshof, landdros, oud-landdros, advokaat of prokureur, wat as voorsitter optree, en òf twee òf vier ander lede.".

Wysiging van artikel 327 van Wet 57 van 1951, soos gewysig deur artikel 40 van Wet 30 van 1959 en artikel 55 van Wet 69 van 1962.

10. Artikel 327 van die Hoofwet word hierby gewysig deur paragraaf *(a)* van subartikel (1) deur die volgende paragraaf te vervang:

„*(a)* wat 'n Suid-Afrikaanse burger is daarvan aangekla word dat hy 'n misdryf aan boord van 'n Suid-Afrikaanse skip op die ope see, of aan boord van 'n Suid-Afrikaanse skip in enige hawe buite die Republiek, of aan boord van enige skip (behalwe 'n Suid-Afrikaanse skip) **[waartoe hy nie behoort nie,]** ongeag of hy aan daardie skip behoort of nie, gepleeg het; of".

Vervanging van woord „Sekretaris" in Wet 57 van 1951.

11. Die Hoofwet word hierby gewysig deur die woord „Sekretaris", waar dit ook al voorkom, deur die uitdrukking „Direkteur-generaal" te vervang.

Kort titel en inwerkingtreding.

12. (1) Hierdie Wet heet die Wysigingswet op Handelskeepvaart, 1981.

(2) Die bepalings van artikel 2 tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.