

EXTRAORDINARY



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### HOUSE OF ASSEMBLY.

The following Bills having been introduced into the House of Assembly, are published in accordance with Standing Order No. 160.

J. M. HUGO,  
Clerk of the House of Assembly.

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### VOLKSRAAD.

Die volgende Wetsontwerpe, ingedien in die Volksraad, word gepubliseer ingevolge artikel 160 van die Reglement van Orde.

J. M. HUGO,  
Klerk van die Volksraad.

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# BILL

To amend the law relating to the property rights of spouses, to donations between spouses, to orders for maintenance, to the guardianship and custody of minors and to divorce.

(Introduced by the MINISTER OF JUSTICE.)

**BE IT ENACTED** by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Limitation on powers of husband in regard to certain immovable property.

1. (1) No husband shall be entitled, without his wife's written consent, to alienate, mortgage, burden with a servitude or confer any real right in— 5

- (a) any immovable property which is the separate property of the wife; or
- (b) any immovable property held in community—
  - (i) which the wife has at the marriage brought into the community; or 10
  - (ii) which she acquired during the marriage by inheritance or gift; or
  - (iii) which has been paid for to the extent of not less than half the purchase price thereof, with the wife's earnings during the marriage; and 15
  - (iv) in respect of which an endorsement or note has been made under sub-section (2).

(2) The officer in charge of the deeds registry in which the property is registered shall, on the written application of the husband or wife, if he is satisfied as to the relevant facts, endorse upon the title deeds of the property, or if the husband refuses to produce any such title deed in his possession or under his control, upon the registry duplicate thereof only, and note in the appropriate registers, that it is property in respect of which paragraph (b) of sub-section (1) applies. 25

(3) If a wife withholds the consent required by sub-section (1), the husband may apply to a judge in chambers for an order dispensing with such consent, and the judge may grant such order if he is satisfied that the consent is unreasonably withheld. 30

(4) A wife may make an application under sub-section (2), and any application to a judge in connection therewith, and may appear in any proceedings under sub-section (3), without the assistance of her husband. 35

(5) Any order made by a judge in any proceedings under this section, shall be final.

(6) Section *seventeen* of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended by the insertion in sub-section (4), after the word "therewith", of the words "and subject to the provisions of sub-section (1) of section *one* of the Removal of Women's Legal Disabilities Act, 1952". 40

Limitation on powers of husband in regard to certain movable property.

2. (1) No husband shall be entitled, without his wife's written consent—

- (a) to receive any remuneration due or accruing from his wife's employer for services rendered by her, or to take possession of any such remuneration received by her; or 45
- (b) to withdraw any deposit standing in the name of his wife in the Post Office Savings Bank of the Union or in a building society, or to take possession of any moneys withdrawn by her therefrom; or 50
- (c) to alienate or pledge any shares held by his wife in a building society, to receive any dividends on or the proceeds of such shares or to take possession of any such dividends or proceeds received by her; or 55
- (d) to receive any amount payable in terms of any insurance policy taken out by his wife for the purpose of providing for the education or advancement of her child, the

# WETSONTWERP

Tot wysiging van die huweliksgoederereg en van die regsbepalings betreffende skenkings tussen eggenote, onderhoudsbevele, die voogdy oor en bewaring van minderjariges en egskeiding.

(Ingedien deur die MINISTER VAN JUSTISIE.)

**DIT WORD BEPAAL** deur Haar Majesteit die Koningin, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. (1) 'n Man het nie die reg om sonder die skriftelike  
5 toestemming van sy vrou—
- (a) onroerende goed wat die afsonderlike goed van die vrou is; of
- (b) gemeenskaplike onroerende goed—
- 10 (i) wat die vrou by die huwelik in die gemeenskap ingebring het; of
- (ii) wat sy gedurende die huwelik deur erfopvolging of skenking verkry het; of
- 15 (iii) waarvoor vir minstens die helfte van die koopprys daarvan, met die vrou se verdienste gedurende die huwelik betaal is; en
- (iv) ten opsigte waarvan 'n endossement of aantekening kragtens sub-artikel (2) gemaak is, te vervreem of met 'n verband of servituut te beswaar, of enige saaklike reg daaroor te verleen nie.
- 20 (2) Indien die amptenaar aan die hoof van die registrasiekantoor waarin die goed geregistreer is, oortuig is van die tersaaklike feite, endosseer hy, op skriftelike aansoek van die man of vrou, op die titelbewyse van die goed, of as die man weier om so 'n titelbewys wat in sy besit of onder sy beheer is,  
25 voor te lê, slegs op die registrasieduplikaat daarvan, en teken in die toepaslike registers aan, dat dit goed is ten opsigte waarvan sub-artikel (1) van toepassing is.
- (3) Indien 'n vrou weier om die by sub-artikel (1) vereiste toestemming te verleen, kan die man by 'n regter in kamers  
30 aansoek doen om 'n bevel tot vrystelling van bedoelde toestemming, en die regter kan die bevel toestaan as hy oortuig is dat die weiering om toe te stem onredelik is.
- (4) 'n Vrou kan 'n aansoek kragtens sub-artikel (2), en enige aansoek by 'n regter in verband daarmee, sonder die bystand  
35 van haar man doen, en kan by verrigtings ingevolge sub-artikel (3), sonder sy bystand verskyn.
- (5) 'n Bevel deur 'n regter by verrigtings ingevolge hierdie artikel toegestaan, is afdoende.
- (6) Artikel *sewentien* van die Registrasie van Aktes Wet,  
40 1937 (Wet No. 47 van 1937), word hiermee gewysig deur in sub-artikel (4), na die woord „handel”, die woorde „en behoudens die bepalings van sub-artikel (1) van artikel *een* van die Wet tot Verwydering van Regsonbevoegdheid van Vroue, 1952”, in te voeg.
- 45 2. (1) 'n Man het nie die reg om sonder die skriftelike toestemming van sy vrou—
- (a) besoldiging wat deur sy vrou se werkgewer verskuldig is of van hom toeval vir diens wat sy verrig het, te  
50 ontvang nie, of sulke besoldiging wat sy ontvang het, in besit te neem nie; of
- (b) 'n deposito wat in die Posspaarbank van die Unie of by 'n bouvereniging op naam van sy vrou staan, te trek nie, of geld wat sy daaruit getrek het, in besit te neem nie; of
- 55 (c) aandele wat sy vrou in 'n bouvereniging besit, te vervreem of te verpand nie, diwidende op of die opbrengs van sulke aandele, te ontvang nie, of sulke diwidende of bedoelde opbrengs wat sy ontvang het, in besit te neem nie; of
- 60 (d) 'n bedrag wat betaalbaar is luidens 'n versekeringspolis wat sy vrou uitgeneem het om vir die opvoeding of bevordering van 'n kind van haar voorsiening te maak

Beperking op man se bevoegdheid insake sekere onroerende goed.

Beperking op man se bevoegdheid insake sekere roerende goed.

premiums of which have been paid by her, or to take possession of any such amount received by her, or to deal in any manner with any rights under any such policy; or

(e) to alienate or pledge any tool or implement of trade with which his wife is earning any remuneration. 5

(2) If any shares in a building society are held by a married woman, the society shall not register any transfer of those shares without her written consent.

(3) No remuneration, deposit, share, dividend, proceeds, amount, right, tool or implement referred to in sub-section (1) and no property in respect of which an order under sub-section (4) is in operation, shall be attached or sold in execution for any liability incurred by the husband for or in connection with the supply of intoxicating liquor. 15

(4) (a) A wife shall, on *prima facie* proof that her husband has deserted her and is not residing with her, and that she has at any time during the period of the desertion acquired or become entitled to any movable property, be entitled to an order of a judge or magistrate of a court within whose area of jurisdiction she resides, declaring the property (which shall be described in the order in such manner as to be identifiable) to be free from the control of her husband, and prohibiting the husband from dealing in any manner with the property. 20 25

(b) Any judge or magistrate of such court may, on good cause shown, rescind or vary any such order.

(5) Every wife shall be entitled, without the assistance of her husband—

(a) to receive or sue for remuneration due from her employer for services rendered by her; 30

(b) to receive or sue for any deposit, dividend or proceeds referred to in paragraph (b) or (c) of sub-section (1);

(c) to take out an insurance policy for the purpose of providing for the education or advancement of her child, and to receive or sue for any amount payable in terms of any such policy; and 35

(d) to institute legal proceedings in connection with any share, policy, tool or implement referred to in sub-section (1) which has been alienated or pledged or any right under which has been dealt with without her consent, or in connection with any attachment or sale in contravention of sub-section (3), or for the purpose of obtaining an order under sub-section (4), or to protect herself against any act by her husband which is or would be unlawful in terms of sub-section (1), or in conflict with an order under sub-section (4). 40 45

Abolition of rule against donations between spouses.

3. The rule against donations between spouses is hereby abolished.

Amendment of section 110 of Act 46 of 1935.

4. Section *one hundred and ten* of the General Law Amendment Act, 1935, is hereby amended— 50

(a) by the substitution in sub-sections (3) and (4), for the words "this section", of the expression "sub-section (1)"; and

(b) by the addition at the end thereof, of the following sub-sections: 55

"(5) If any person against whom an order referred to in sub-section (1) has been made, during the currency of the order changes the place of his residence or employment, he shall forthwith give notice in writing to the person to whom payment is to be made in terms of the order, and shall in that notice state fully and clearly where the new place of his residence or employment is situate. 60

(6) Any person who fails to give notice as required by sub-section (5) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds." 65

Guardianship and custody of minors.

5. (1) Any provincial or local division of the Supreme Court or any judge thereof may— 70

(a) on the application of either parent of a minor in proceedings for divorce or judicial separation; or

(b) on the application of either parent of a minor whose parents are divorced or are living apart under an order of judicial separation, 75

- en die premies waarvan sy betaal het, te ontvang nie, of so 'n bedrag wat sy ontvang het, in besit te neem nie, of op enige wyse met die regte ingevolge so 'n polis te handel nie; of
- 5 (e) enige ambagsgereedskap of -werktuig waarmee sy vrou besoldiging verdien, te vervreem of te verpand nie.
- (2) Indien 'n getroude vrou aandele in 'n bouvereniging besit, registreer die vereniging nie 'n oordrag van daardie aandele sonder haar skriftelike toestemming nie.
- 10 (3) Op enige in sub-artikel (1) bedoelde besoldiging, deposito, aandeel, diwidend, opbrengs, bedrag, reg, gereedskap of werktuig, en op goed ten opsigte waarvan 'n bevel kragtens sub-artikel (4) van toepassing is, word geen beslag gelê nie of dit word nie in eksekusie verkoop nie, vir 'n skuld wat die man
- 15 vir of in verband met die voorsiening van sterk drank aangegaan het.
- (4) (a) Indien 'n vrou *prima facie* bewys lewer dat haar man haar verlaat het en nie saam met haar woon nie en dat sy te eniger tyd gedurende die tydperk van verlating roerende goed verkry het of daarop geregtig geword het, dan het sy reg op 'n bevel van 'n regter of magistraat van 'n hof binne wie se regsgebied sy woon, waarby die goed (wat in die bevel so beskryf moet word dat dit uitgeken kan word) van haar man se beheer vrygestel word, en die man verbied word om op enige wyse met die goed te handel.
- 20 (b) 'n Regter of magistraat van so 'n hof kan, by bewys van voldoende redes, so 'n bevel intrek of wysig.
- (5) Elke vrou het die reg om sonder bystand van haar man—
- 30 (a) besoldiging wat haar werkgewer haar skuld vir diens wat sy verrig het, te ontvang of daarvoor te dagvaar;
- (b) enige in paragraaf (b) of (c) van sub-artikel (1) bedoelde deposito, diwidend of opbrengs te ontvang of daarvoor te dagvaar;
- 35 (c) 'n versekeringspolis uit te neem om vir die opvoeding of bevordering van 'n kind van haar voorsiening te maak, en enige bedrag wat luidens so 'n polis betaalbaar is, te ontvang of daarvoor te dagvaar; en
- (d) 'n regsproses in te stel in verband met 'n in sub-artikel (1) bedoelde aandeel, polis, gereedskap of werktuig wat sonder haar toestemming vervreem of verpand is of 'n reg uit hoofde waarvan sonder haar toestemming mee gehandel is, of in verband met 'n beslaglegging of verkoop in stryd met sub-artikel (3),
- 40 of om 'n bevel kragtens sub-artikel (4) te verkry, of om haarself te beskerm teen enige optrede van haar man wat luidens sub-artikel (1) onwettig of met 'n bevel kragtens sub-artikel (4) in stryd is of sou wees.
- 45
3. Die reël teen skenkings tussen eggenote word hiermee
- 50 opgehef. Opheffing van reël teen skenkings tussen eggenote.
4. Artikel *honderd-en-tien* van die Algemene Regswysigingswet, 1935, word hiermee gewysig—
- (a) deur in sub-artikels (3) en (4), die woorde „hierdie artikel” te vervang deur die uitdrukking „sub-artikel (1)”; en
- 55 (b) deur die volgende sub-artikels aan die end daarvan by te voeg:
- „(5) Indien iemand teen wie 'n in sub-artikel (1) bedoelde order uitgevaardig is, gedurende die geldigheid van die order van woonplek of werkplek verander, moet hy onverwyld skriftelik daarvan kennis gee aan die persoon aan wie luidens die order betaling moet geskied, en moet in die kennisgewing volledig en duidelik vermeld waar sy nuwe woonplek of werkplek geleë is.
- 60 (6) Iemand wat versuim om volgens voorskrif van sub-artikel (5) kennis te gee, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vyftig pond.”
- 65
5. (1) 'n Provinsiale of plaaslike afdeling van die Hoog-geregshof of 'n regter daarvan kan—
- (a) op aansoek van een van beide ouers van 'n minderjarige in 'n proses vir egskeiding of geregtelike skeiding; of
- 70 (b) op aansoek van een van beide ouers van 'n minderjarige wie se ouers geskei is of uit hoofde van 'n geregtelike skeidingsbevel apart woon,
- 75 Voogdy oor en bewaring van kinders.

if it is proved that it would be in the interests of the minor to do so, grant to either parent the sole guardianship (which shall include the power to consent to a marriage) or sole custody of the minor, or order that on the predecease of the parent named in the order, a person other than the survivor shall be the tutor of the minor, to the exclusion of the survivor or otherwise. 5

(2) An order under sub-section (1) granting the sole guardianship or custody of a minor whose parents are living apart under an order of judicial separation to a parent shall, if the parents become reconciled and live together again as husband and wife, lapse with effect from the date on which the parents commence to live together again. 10

(3) Subject to any order of court—

(a) a parent to whom the sole guardianship or custody of a minor has been granted under sub-section (1), or a mother who is vested with the paternal power over a minor in pursuance of section *fifty-eight* of the Children's Act, 1937 (Act No. 31 of 1937), may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and 15 20

(b) the father of a minor to whom the sole guardianship or custody of the minor has not been granted under sub-section (1), shall not be entitled by testamentary disposition to appoint any person as the tutor of the minor in any other manner than to act jointly with the mother or in such a manner as to affect her right to the custody of the minor. 25

(4) If the mother of a minor does not consent to the marriage of the minor, the consent of the father (whether or not he has in any proceedings been granted the sole custody of the minor), shall not be sufficient, unless he has been granted the sole guardianship of the minor. 30

(5) The court or a judge may—

(a) where a parent has appointed a guardian or custodian as provided in paragraph (a) of sub-section (3); or 35

(b) where a tutor has been appointed to a minor by the father, to act jointly with the mother,

upon the application of the other parent, or of the tutor or mother, as the case may be, made after the death of the testator, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interests of the minor. 40

(6) If an order under section *fifty-eight* of the Children's Act, 1937 (Act No. 31 of 1937), is rescinded, or if an order under sub-section (1) granting the sole guardianship or custody of a minor to a parent, lapses or is rescinded or is varied in such a manner that the parent is no longer the sole guardian or vested with the sole custody of the minor, any disposition made under paragraph (a) of sub-section (3) shall lapse. 50

(7) A wife may make any application referred to in this section, and any application to a court in connection therewith, without the assistance of her husband.

Amendment of section 1 of Act 22 of 1939.

6. Section *one* of the Matrimonial Causes Jurisdiction Act, 1939, is hereby amended by the substitution for sub-section (1) of the following sub-section: 55

“(1) Any provincial or local division of the Supreme Court of South Africa shall have jurisdiction to try an action instituted by a wife against her husband for divorce or for restitution of conjugal rights or for judicial separation, if the wife has been ordinarily resident within the area of jurisdiction of that division for a period of one year immediately preceding the date on which the proceedings are instituted, and if— 60

(a) in any case in which the husband has deserted the wife and has departed from the Union or has been deported from the Union, he is at the said date or was immediately before the desertion or deportation domiciled within the Union; 65

(b) in any other case of an action for divorce or for restitution of conjugal rights, the husband is, at the said date domiciled within the Union; or 70

(c) in any other case of an action for judicial separation, the husband is, at the said date, domiciled or resident within the Union.”. 75

indien dit bewys word dat dit in belang van die minderjarige sou wees om dit te doen, aan een van beide ouers die uitsluitlike voogdy oor die minderjarige (waarby inbegrepe is die bevoegdheid om tot 'n huwelik toe te stem) of die uitsluitlike bewaring van die minderjarige toeken, of beveel dat by vooroorlye van die ouer in die bevel genoem, 'n ander persoon dan die langsliewende, met of sonder uitsluiting van die langsliewende, die voog van die minderjarige sal wees.

(2) 'n Bevel kragtens sub-artikel (1) waarby die uitsluitlike voogdy oor of bewaring van 'n minderjarige wie se ouers uit hoofde van 'n geregtelike skeidingsbevel apart woon, aan 'n ouer toegeken is, verval indien die ouers met mekaar versoen raak en weer as man en vrou saam woon, met ingang van die datum waarop die ouers weer begin saam woon.

(3) Behoudens 'n bevel van die hof—

(a) kan 'n ouer aan wie die uitsluitlike voogdy oor of bewaring van 'n minderjarige kragtens sub-artikel (1) toegeken is, of 'n moeder by wie die vaderlike mag oor 'n minderjarige ingevolge artikel *agt-en-vyftig* van die Kinderwet, 1937 (Wet No. 31 van 1937) berus, enig iemand by testamentêre beskikking benoem tot enigste voog of tot reghebbende op die uitsluitlike bewaring van die minderjarige, na gelang van die geval; en

(b) het die vader van 'n minderjarige aan wie die uitsluitlike voogdy oor of bewaring van die minderjarige nie kragtens sub-artikel (1) toegeken is nie, nie die reg om by testamentêre beskikking iemand as voog van die minderjarige te benoem nie, op 'n ander wyse dan om saam met die moeder op te tree, of op so 'n wyse dat haar reg op die bewaring van die minderjarige geraak word.

(4) Indien die moeder van 'n minderjarige nie toestem tot die huwelik van die minderjarige nie, is die toestemming van die vader (onverskillig of die uitsluitlike bewaring van die minderjarige in enige proses aan hom toegeken is), nie voldoende nie, tensy die uitsluitlike voogdy oor die minderjarige aan hom toegeken is.

(5) Die hof of 'n regter kan—

(a) indien 'n ouer 'n voog of reghebbende op bewaring soos by paragraaf (a) van sub-artikel (3) bepaal, benoem het; of

(b) indien 'n voog van 'n minderjarige deur die vader benoem is om saam met die moeder op te tree,

op aansoek van die ander ouer, of van die voog of moeder, na gelang van die geval, gedoen na die dood van die testateur, die bevel gee met betrekking tot die voogdy oor of die bewaring van die minderjarige, wat hy in belang van die minderjarige ag.

(6) Indien 'n order uitgereik kragtens artikel *agt-en-vyftig* van die Kinderwet, 1937 (Wet No. 31 van 1937) ingetrek word, of indien 'n bevel uitgereik kragtens sub-artikel (1), waarby die uitsluitlike voogdy oor of bewaring van 'n minderjarige aan 'n ouer toegeken is, verval of ingetrek word of op so 'n wyse gewysig word dat die ouer nie meer die enigste voog of die reghebbende op die uitsluitlike bewaring van die minderjarige is nie, verval 'n beskikking wat kragtens paragraaf (a) van sub-artikel (3) gemaak is.

(7) 'n Vrou kan 'n in hierdie artikel bedoelde aansoek, en enige aansoek by 'n hof in verband daarmee, sonder bystand van haar man doen.

6. (1) Artikel *een* van die Wet op Regsbevoegdheid in Matriemoniële Regsake, 1939, word hiermee gewysig deur sub-artikel (1) te vervang deur die volgende sub-artikel:

Wysiging van artikel 1 van Wet 22 van 1939.

„(1) 'n Provinsiale of plaaslike afdeling van die Hoogeregshof van Suid-Afrika het regsbevoegdheid om 'n regsvordering vir egskeiding of herstel van huweliksregte of geregtelike skeiding deur 'n vrou teen haar eggenoot ingestel, te verhoor, indien die vrou vir 'n tydperk van een jaar wat die datum waarop die geding ingestel word onmiddellik voorafgaan, gewoonlik woonagtig was binne die regsgebied van daardie afdeling, en indien—

(a) in 'n geval waarin die eggenoot die vrou verlaat en uit die Unie vertrek het of uit die Unie gedeporteer is, hy op genoemde datum binne die Unie gedomisilieer is of dit onmiddellik voor die verlating of deportasie was;

(b) in enige ander geval van 'n aksie vir egskeiding of herstel van huweliksregte, die eggenoot op genoemde datum binne die Unie gedomisilieer is; of

(c) in enige ander geval van 'n aksie vir geregtelike skeiding, die eggenoot op genoemde datum binne die Unie gedomisilieer of woonagtig is.”.

- Amendment of section 5 of Act 22 of 1939. 7. Section *five* of the Matrimonial Causes Jurisdiction Act, 1939 is hereby amended by the insertion after the word "custody" wherever it occurs, of the word ", guardianship".
- Amendment of section 6 of Act 22 of 1939. 8. Section *six* of the Matrimonial Causes Jurisdiction Act, 1939, is hereby amended by the substitution for the words "is domiciled", of the words "is or was domiciled or is resident, as the case may be". 5
- Insertion of section *6bis* in Act 22 of 1939. 9. The following section is hereby inserted in the Matrimonial Causes Jurisdiction Act, 1939, after section *six*:  
 "Recogn- 6*bis*. (1) The validity of any decree or order made 10  
 nition of in any country in any case in which the husband is  
 certain not domiciled in that country, under the provisions  
 decrees and of any law which are declared by the Governor-  
 orders. General by proclamation in the *Gazette* to be pro-  
 visions substantially corresponding to the relevant 15  
 provisions of paragraph (*a*) of sub-section (1) of  
 section *one*, or of section *four* or *five*, read with the  
 said paragraph, shall be recognized by the courts of  
 the Union.  
 (2) No proclamation shall be issued under sub- 20  
 section (1) unless the Governor-General is satisfied  
 that adequate provision is made by the law of the  
 country concerned for the recognition by the courts  
 thereof of the decrees and orders made in any case 25  
 in which the husband is not domiciled within the  
 Union, under the said paragraph, or under section  
*four* or *five*, read with the said paragraph.  
 (3) The Governor-General may at any time with-  
 draw any such proclamation."
- Maintenance orders on divorce. 10. The court granting a divorce may, notwithstanding the 30  
 dissolution of the marriage—  
 (*a*) make such order against the guilty spouse for the main-  
 tenance of the innocent spouse until the death or until  
 the remarriage of the innocent spouse, whichever event 35  
 may first occur, as the court may deem just; or  
 (*b*) make any agreement between the spouses for the main-  
 tenance of one of them, an order of court,  
 and any court of competent jurisdiction may, on good cause  
 shown (including immorality on the part of the spouse in whose  
 favour the order is made) rescind, suspend or vary any such order. 40
- Short title. 11. This Act shall be called the Removal of Women's  
 Legal Disabilities Act, 1953.



7. Artikel *vyf* van die Wet op Regsbevoegdheid in Matrimoniële Regsake, 1939, word hiermee gewysig deur na die woord „bewaring” waar dit ookal voorkom, die woord „, voogdy” in te voeg. Wysiging van artikel 5 van Wet 22 van 1939.
- 5 8. Artikel *ses* van die Wet op Regsbevoegdheid in Matrimoniële Regsake, 1939, word hiermee gewysig deur na die woorde „gedomisilieer is”, die woorde „of was of woonagtig is, na gelang van die geval,” in te voeg. Wysiging van artikel 6 van Wet 22 van 1939.
9. Die volgende artikel word hiermee na artikel *ses* in die Invoeging van artikel 6bis in Wet 22 van 1939.
- 10 Wet op Regsbevoegdheid in Matrimoniële Regsake, 1939, ingevoeg:
- „Erkenning van sekere bevele en orders. 6bis. (1) Die geldigheid van 'n bevel of order in enige land verleen, in 'n geval waarin die eggenoot nie in daardie land gedomisilieer is nie, ingevolge die bepalings van 'n wet wat die Goewerneur-generaal by proklamasie in die *Staatskoerant* tot bepalings verklaar het wat in hoofsaak met die tersaaklike bepalings van paragraaf (a) van sub-artikel (1) van artikel *een*, of van artikel *vier* of *vyf*, gelees met genoemde paragraaf, ooreenstem, word deur die houe van die Unie erken.
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- (2) Geen proklamasie word kragtens sub-artikel (1) uitgevaardig nie, tensy die Goewerneur-generaal daarvan oortuig is dat voldoende voorsiening deur die reg van die betrokke land gemaak word vir die erkenning deur die houe van daardie land van die bevele en orders wat kragtens genoemde paragraaf, of kragtens artikel *vier* of *vyf*, gelees met genoemde paragraaf, verleen is in 'n geval waarin die eggenoot nie binne die Unie gedomisilieer is nie.
- (3) Die Goewerneur-generaal kan so 'n proklamasie te eniger tyd intrek.”
10. Die hof wat 'n egskeiding toestaan kan, ondanks die ontbinding van die huwelik— Onderhouds-bevele by egskeiding.
- 35 (a) die bevel teen die skuldige eggenoot gee vir die onderhoud van die onskuldige eggenoot, tot die dood of hertroue van die onskuldige eggenoot, na gelang die een of die ander eerste gebeur, wat die hof billik ag; of
- 40 (b) 'n ooreenkoms tussen die eggenote vir die onderhoud van een van hulle, 'n bevel van die hof maak, en enige bevoegde hof kan, by bewys van voldoende rede (waarby inbegrepe is onsedelikheid aan die kant van die eggenoot ten gunste van wie die bevel gegee is), so 'n bevel intrek, opskort of wysig.
- 45 11. Hierdie Wet heet die Wet tot Verwydering van Regs- Kort titel. onbevoegdhede van Vroue, 1953.

# BILL

**To amend the Criminal Procedure and Evidence Act, 1917, in so far as provision is made for special penalties in respect of certain offences.**

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(Introduced by the MINISTER OF JUSTICE.)

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**BE IT ENACTED** by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Amendment of section 338 of Act 31 of 1917, as amended by section 1 of Act 33 of 1952.

**1. Section three hundred and thirty-eight** of the Criminal Procedure and Evidence Act, 1917, hereinafter called the principal Act, is hereby amended—

- (a) by the insertion in paragraph (a) of sub-section (2)*bis*, after the words "*three hundred and forty-four*" of the words "*three hundred and fifty*";
- (b) by the addition to the said sub-section of the following paragraph:
  - "(c) Notwithstanding anything to the contrary contained in section *ninety-two* of the Magistrates' Courts Act, 1944, or in any other law a magistrate's court shall have jurisdiction to impose the penalties prescribed by paragraph (a)".

Amendment of section 344 of Act 31 of 1917, as amended by section 2 of Act 33 of 1952.

**2. Section three hundred and forty-four** of the principal Act is hereby amended by the substitution for sub-section (1)*bis* of the following new sub-sections:

- "(1)*bis* Any person who—
- (a) is proved to have been convicted before or after the commencement of this Act, either in the Union or elsewhere, of an offence mentioned in Part II of the Third Schedule to this Act; and
- (b) is proved thereafter to have been convicted, before or after the commencement of this Act, either in the Union or elsewhere, of the same offence or another offence mentioned in Part II of the said Schedule; shall, if he be again convicted after such commencement of any one of the offences mentioned in Part II of the said Schedule, be declared an habitual criminal: Provided that—
  - (i) the previous convictions proved in terms of paragraphs (a) and (b) are in respect of offences committed within the period of ten years immediately preceding the date on which the offence was committed, in respect of which such person is again convicted;
  - (ii) in respect of the said two previous convictions such person was sentenced in each case to imprisonment without the option of a fine, and the total period of imprisonment to which he was so sentenced of such two convictions or any other previous convictions which he is proved to have suffered within the said period amounts to at least twelve months.
- (1)*ter* Notwithstanding anything to the contrary contained in section *ninety-two* of the Magistrate's Courts Act, 1944, or in any other law, a magistrate's court shall have jurisdiction to declare a person an habitual criminal in terms of sub-section (1)*bis*".

Short title.

**3. This Act shall be called the Criminal Sentences Amendment Act, 1953.**

## WETSONTWERP

Tot wysiging van die „Wet op de Kriminele Procedure en Bewijslevering, 1917”, vir so ver daar voorsiening gemaak word vir spesiale strawwe ten opsigte van sekere misdrywe.

(Ingdien deur die MINISTER VAN JUSTISIE.)

**DIT WORD BEPAAL** deur Haar Majesteit die Koningin, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. Artikel *driehonderd agt-en-dertig* van die „Wet op de Kriminele Procedure en Bewijslevering, 1917”, hieronder die Hoofwet genoem, word hiermee gewysig—
 

Wysiging van artikel 338 van Wet 31 van 1917, soos gewysig deur artikel 1 van Wet 33 van 1952.

  - (a) deur in paragraaf (a) van sub-artikel (2)*bis*, na die woorde „*driehonderd vier-en-veertig*” die woorde „*driehonderd en vijftig*” in te voeg;
  - 10 (b) deur die volgende paragraaf by genoemde sub-artikel te voeg:
 

„(c) Ondanks andersluidende bepalingen vervat in artikel *twee-en-negentig* van de „Magistraats-howewet, 1944”, of in een ander Wet, heeft een magistraatshof de rechtsbevoegdheid om de door paragraaf (a) bepaalde straffen op te leggen.”
  
2. Artikel *driehonderd vier-en-veertig* van die Hoofwet word hiermee gewysig deur sub-artikel (1)*bis* deur die volgende nuwe sub-artikels te vervang—
 

Wysiging van artikel 344 van Wet 31 van 1917, soos gewysig deur artikel 2 van Wet 33 van 1952.

  - 20 „(1)*bis* Een ieder die—
    - (a) bewezen wordt ter zake van een overtreding opgenomen in Deel II van de Derde Bijlage bij deze Wet, vóór of na de inwerkingtreding van deze Wet, hetzij in de Unie of elders, veroordeeld geweest te zijn; en
    - 25 (b) daarna bewezen wordt, voor of na de inwerkingtreding van deze Wet, hetzij in de Unie of elders, ter zake van dezelfde overtreding of een andere overtreding in Deel II van genoemde Bijlage opgenomen veroordeeld geweest te zijn;
    - 30 indien hij na bedoelde inwerkingtreding wederom ter zake van een van de overtredingen in Deel II van genoemde Bijlage opgenomen veroordeeld wordt, wordt dan verklaard een gewoonte-misdadiger te zijn: Met dien verstande dat—
      - 35 (i) de vorige veroordelingen die overeenkomstig paragrafen (a) en (b) bewezen worden, ten aanzien zijn van overtredingen gepleegd binnen het tijdperk van tien jaar dat de datum waarop de overtreding gepleegd is ten aanzien waarvan zo iemand weder veroordeeld wordt, vooraf gaat;
      - 40 (ii) ten aanzien van bedoelde twee vorige veroordelingen het vonnis in ieder geval gevangenisstraf zonder de keuze van een boete was en het algehele tijdperk van gevangenisstraf waartoe hij aldus gevonnist was ten
      - 45 aanzien van bedoelde twee veroordelingen of enig andere vorige veroordelingen welke hij bewezen wordt binnen het bedoeld tijdperk te hebben ondergaan minstens twaalf maanden belooft.
    - 50 (1)*ter* Ondanks andersluidende bepalingen vervat in artikel *twee-en-negentig* van de „Magistraatshowewet, 1944” of in een ander Wet, heeft een magistraatshof de rechtsbevoegdheid iemand een gewoonte-misdadiger ingevolgt sub-artikel (1)*bis* te verklaren.”
  
3. Hierdie Wet heet die Wysigingswet op Strawwe, 1953. Kort titel.