



Republic of Namibia
Annotated Statutes

Moratorium Act 25 of 1963 (RSA)

(RSA GG 468)

came into force in South Africa and South West Africa

on date of publication: 29 March 1963

(see section 7 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 7 states “This Act shall also apply in the territory of South West Africa.” This wording did not make amendments to the Act in South Africa automatically applicable to South West Africa, and none of the amending acts in South Africa prior to Namibian independence were made specifically applicable to South West Africa.

TRANSFER TO SOUTH WEST AFRICA: The administration of the Act does not appear to have been transferred to South West Africa.

ACT

To provide for a moratorium in certain circumstances for the protection of citizens undergoing nine months continuous compulsory military training in the Citizen Force; to provide for the application of this Act to members of the South African Defence Force and the Reserve called up for service under Chapter X of the Defence Act, 1957 (Act No. 44 of 1957); and to provide for matters incidental thereto.

[The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002, which does not provide for compulsory service.]

(Afrikaans text signed by the State President)

(Assented to 23rd March, 1963)

ARRANGEMENT OF SECTIONS

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Moratorium Act 25 of 1963 (RSA)

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

Definitions

1. In this Act, unless the context otherwise indicates -

“citizen” means a South African citizen within the meaning of the South African Citizenship Act, 1949 (Act No. 44 of 1949);

[The South African Citizenship Act 44 of 1949 has been replaced by the Namibian Citizenship Act 14 of 1990.]

“compulsory military training” means nine months continuous training in the Citizen Force as contemplated in sub-paragraph (i) of paragraph (b) of subsection (2) of section *twenty-two* of the Defence Act, 1957 (Act No. 44 of 1957), and which is undergone by a citizen whose name has been drawn in a ballot referred to in section *seventy* of the said Act, and includes any period of service by such a citizen in terms of Chapter X of that Act performed during the said period of nine months and further includes any period during which such a citizen is undergoing treatment in hospital for any illness contracted or injury sustained as a result of such training or service if such treatment commenced during the said period of nine months.

[The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002, which does not provide for compulsory service.]

Moratorium in certain circumstances

2. (1) Save as provided in sub-sections (2) and (3) of this section, all civil legal remedies whatsoever against any citizen undergoing compulsory military training in respect of contractual debts incurred by such citizen shall be suspended during the whole of the period during which such citizen is undergoing such training and for three months thereafter.

- (2) The provisions of sub-section (1) of this section shall not apply -
- (a) to an action or any other legal proceeding of a civil nature against any partnership, if any member of such partnership is not undergoing compulsory military training at the time such action or proceeding is instituted;
 - (b) to an action for the recovery of the rent of any dwelling-house, room or tenement becoming due from a citizen after he has commenced to undergo compulsory military training, or to an action for ejectment from any such premises, and service of process for the purpose of this paragraph shall be considered as sufficient if such process is served upon the occupier of such premises;
 - (c) to an action for the recovery of the price of actual necessities of life supplied by persons in the ordinary course of their business, to or at the instance of any such citizen after he has commenced to undergo compulsory military training;
 - (d) to an action claiming an amount due in respect of board or lodging supplied or afforded to or at the instance of such citizen after he has commenced to undergo compulsory military training;
 - (e) to an action under a hire-purchase agreement as defined in section *one* of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), entered into by a citizen after he had

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received notice that his name had been drawn in a ballot referred to in section *seventy* of the Defence Act, 1957 (Act No. 44 of 1957), and before he has completed his compulsory military training, if at the time of entering into such agreement such citizen had failed to inform the other party to such agreement of the receipt of such notice or that he is undergoing such training;

[The Hire-Purchase Act 36 of 1942 has been replaced by the Credit Agreements Act 75 of 1980. The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002.]

- (f) to the issue of process for the execution of any judgment or order in any action or proceedings mentioned in this sub-section or to the execution of such a judgment or order under such process: Provided that nothing in this paragraph contained shall be deemed to permit the issue of a writ of civil imprisonment of such citizen or to permit attachment or arrest of his person or attachment of salary or wages or pay which is or may become due to him or of any allowance made to his dependants from funds appropriated for this purpose by Parliament or of any allowance made by or out of any public fund, or the issue of an order in terms of paragraph (d) of sub-section (9) of section *sixty-five* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944):

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

(3) Notwithstanding anything in sub-section (1) of this section contained, upon application made to the provincial or local division of the Supreme Court having jurisdiction for leave to sue any citizen who is undergoing compulsory military training, such division, if satisfied that there is a probability of such citizen taking advantage of the suspension of civil legal remedies against him to carry on any trade or business without paying his creditors or to dispose of his assets to the prejudice of his creditors or that for any other reason whatsoever it would be just and equitable to allow the applicant to proceed with his action, may grant leave to the applicant so to proceed in any court of competent jurisdiction; and process may be issued in execution of any judgment given in favour of the plaintiff on the action so allowed to proceed and execution may be levied accordingly: Provided that the said division may at any time on application made to it, order that further proceedings in the action so allowed to proceed or that execution of any judgment therein shall be stayed for such period or on such conditions as it may think fit, if it appear to the said division just and equitable to make such order.

Suspension of prescription

3. Prescription in regard to any contract, obligation, liability, judgment or order, the time for fulfilment or satisfaction whereof has been extended or the execution whereof has been stayed or postponed or in respect whereof the legal remedies have been suspended under this Act, shall be suspended for so long as such extension or postponement lasts, and the period of such suspension shall not be deemed to form part of the period of prescription.

Interest may be claimed

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

Extension of time for doing acts, lodging documents, etc.

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5. Whenever any statutory officer or other statutory authority is satisfied that any citizen was prevented from doing any act, or making any application or lodging or transmitting any document within a time prescribed by the statute concerned or a regulation made thereunder, by reason of such citizen undergoing compulsory military training or of any other circumstances arising out of such training, such officer or authority may, unless the statutory rights of any other person will be detrimentally affected, extend the prescribed time for such further period as seems to him or it to be equitable in the circumstances.

Application of this Act in time of war, internal disorder or other emergency

6. The State President may by proclamation in the *Gazette* apply the provisions of this Act *mutatis mutandis* to members of the South African Defence Force and the Reserve called out for service in terms of Chapter X of the Defence Act, 1957 (Act No. 44 of 1957), and may in the same manner terminate the application of this Act to such members.

[The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002.]

Act to apply in South-West Africa

7. This Act shall also apply in the territory of South-West Africa.

Repeal of law

8. The Moratorium Act, 1962 (Act No. 53 of 1962), is hereby repealed.

Short title

9. This Act shall be called the Moratorium Act, 1963.