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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 659.

28 March 1991

No. 659.

28 Maart 1991

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

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

No. 6 of 1991: Insolvency Amendment Act, 1991.

No. 6 van 1991: Insolvensiewysigingswet, 1991.

Act No. 6, 1991

INSOLVENCY AMENDMENT ACT, 1991

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 Insolvency Act, 1936, so as to further regulate the publication of a notice in terms of section 34 of the said Act; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 18 March 1991.)*

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

Amendment of section 34 of Act 24 of 1936, as amended by section 12 of Act 32 of 1952, section 2 of Act 101 of 1983 and section 2 of Act 27 of 1987

1. Section 34 of the Insolvency Act, 1936, is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:

“(1) If a trader **[disposes of]** transfers in terms of a contract any business belonging to him, or the goodwill of such business, or any goods or property forming part thereof (except in the ordinary course of that business or for securing the payment of a debt), and such trader **[does not publish]** has not published a notice of such intended **[disposition]** transfer in the *Gazette*, and in two issues of an Afrikaans and two issues of an English newspaper circulating in the district in which that business is carried on, within a period not less than thirty days and not more than sixty days before the date of such **[disposition]** transfer, the said **[disposition]** transfer shall be void as against his creditors for a period of six months after such **[disposition]** transfer, and shall be void against the trustee of his estate, if his estate is sequestrated at any time within the said period.”;
 - (b) by the substitution for subsection (3) of the following subsection:

“(3) If any person who has any claim against the said trader in connection with the said business, has before such **[disposition]** transfer, for the purpose of enforcing his claim, instituted proceedings against the said trader—

 - (a) in any court of law, and the person to whom the said business was **[disposed of]** transferred knew at the time of the **[disposition]** transfer that those proceedings had been instituted; or
 - (b) in a Division of the Supreme Court having jurisdiction in the district in which the said business is carried on or in the magistrate's court of that district,

the **[disposition]** transfer shall be void as against him for the purpose of such enforcement.”; and

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Tot wysiging van die Insolvensiewet, 1936, ten einde die publikasie van 'n kennisgewing ingevolge artikel 34 van bedoelde Wet verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 18 Maart 1991.)*

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

Wysiging van artikel 34 van Wet 24 van 1936, soos gewysig deur artikel 12 van Wet 32 van 1952, artikel 2 van Wet 101 van 1983 en artikel 2 van Wet 27 van 1987

- 5 1. Artikel 34 van die Insolvensiewet, 1936, word hierby gewysig—
 - (a) deur subartikel (1) deur die volgende subartikel te vervang:

“ (1) Indien 'n handelaar 'n besigheid wat aan hom behoort, of die klandisie van so 'n besigheid, of goedere of eiendom wat 'n deel daarvan is, **[vervreem]** oordra ingevolge 'n kontrak (behalwe in die gewone loop van daardie besigheid of tot versekering van die betaling van 'n skuld), en so 'n handelaar **[publiseer]** het nie 'n kennisgewing van so 'n voorgenome **[vervreemding]** oordrag in die *Staatskoerant*, en in twee uitgawes van 'n Afrikaanse en twee uitgawes van 'n Engelse nuusblad in omloop in die distrik waarin daardie besigheid gedryf word, binne 'n tydperk van minstens dertig en hoogstens sestig dae voor die datum van so 'n **[vervreemding]** oordrag gepubliseer nie, dan is so 'n **[vervreemding]** oordrag teenoor sy skuldeisers nietig vir 'n tydperk van ses maande na so 'n **[vervreemding]** oordrag en nietig teenoor die kurator van sy boedel indien sy boedel te eniger tyd binne bedoelde tydperk gesekwestreer word.”;
 - 10 (b) deur subartikel (3) deur die volgende subartikel te vervang:

“ (3) As iemand wat 'n vordering teen bedoelde handelaar in verband met bedoelde besigheid het, voor daardie **[vervreemding]** oordrag, ten einde betaling van sy vordering te verkry, 'n regsgeding teen bedoelde handelaar ingestel het—

 - 15 (a) in enige geregshof, en die persoon aan wie bedoelde besigheid **[vervreemd]** oorgedra is, ten tyde van die **[vervreemding]** oordrag gewet het dat daardie regsgeding ingestel was; of
 - 20 (b) in 'n afdeling van die Hooggeregshof wat bevoeg is in die distrik waarin bedoelde besigheid gedrywe word of in die magistraatshof van daardie distrik,
 - 25 dan is die **[vervreemding]** oordrag teenoor hom nietig sover as nodig is om sy vordering te laat geld.”; en

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(c) by the addition of the following subsection:

“(4) For the purposes of this section ‘transfer’, when used as a noun, includes actual or constructive transfer of possession, and, when used as a verb, has a corresponding meaning.”.

Short title

5

2. This Act shall be called the Insolvency Amendment Act, 1991.

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(c) deur die volgende subartikel by te voeg:

“(4) By die toepassing van hierdie artikel beteken ‘oordrag’ ook die werklike of fiktiewe oordrag van besit, en het ‘oordra’ ’n ooreenstemmende betekenis.”.

5 Kort titel

2. Hierdie Wet heet die Insolvensiewysigingswet, 1991.

