

BUITENGEWONE



EXTRAORDINARY

Staatskoerant

VAN DIE UNIE VAN SUID-AFRIKA

THE UNION OF SOUTH AFRICA

Government Gazette

[Geregistreer by die Hoofposkantoor as 'n Nuisblad.]

[Registered at the General Post Office as a Newspaper.]

VOL. CLXVII.] PRYS 6d.

KAAPSTAD, 3 MAART 1952.
CAPE TOWN, 3RD MARCH 1952.

PRICE 6d. [No. 4798]

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.

BLADSY

VW. 33—'52:	Wetsontwerp tot Verwydering van Regsonbevoegdhede van Vroue ..	2
VW. 34—'52:	Wetsontwerp op Na-doodse Ondersoeke en Verwydering van Menslike Weefsels	10

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.

PAGE

A.B. 33—'52:	Removal of Women's Legal Disabilities	3
A.B. 34—'52:	Post Mortem Examinations and Removal of Human Tissues ..	11

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:—

Beperking op man se bevoegdhede insake sekere onroerende goed.

1. (1) 'n Man het nie die reg om sonder die skriftelike toestemming van sy vrou— 5

(a) onroerende goed wat die afsonderlike goed van die vrou is; of

(b) gemeenskaplike onroerende goed—

(i) wat die vrou by die huwelik in die gemeenskap ingebring het; of 10

(ii) wat sy gedurende die huwelik deur erfopvolging of skenking verkry het; of

(iii) waarvoor vir minstens die helfte van die koopprys daarvan, met die vrou se verdienste gedurende die huwelik betaal is; en 15

(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 daarvoor te verleen nie.

(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, 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. 20 25

(3) Indien 'n vrou weier om die by sub-artikel (1) vereiste toestemming te verleen, kan die man by 'n regter in kamers 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. 30

(4) 'n Vrou kan 'n aansoek kragtens sub-artikel (2), en enige aansoek by 'n regter in verband daarmee, sonder die bystand van haar man doen, en kan by verrigtings ingevolge sub-artikel (3), sonder sy bystand verskyn. 35

(5) 'n Bevel deur 'n regter by verrigtings ingevolge hierdie artikel toegestaan, is afdoende.

(6) Artikel *sewentien* van die Registrasie van Aktes Wet, 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 Regsonbevoegdhede van Vroue, 1952”, in te voeg. 40

Beperking op man se bevoegdhede insake sekere roerende goed.

2. (1) 'n Man het nie die reg om sonder die skriftelike toestemming van sy vrou— 45

(a) besoldiging wat deur sy vrou se werkgever verskuldig is of van hom toeval vir diens wat sy verrig het, te ontvang nie, of sulke besoldiging wat sy ontvang het, in besit te neem nie; of 50

(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

(c) aandeel wat sy vrou in 'n bouvereniging besit, te vervreem of te verpand nie, diwidende op of die opbrengs van sulke aandeel, te ontvang nie, of sulke diwidende of bedoelde opbrengs wat sy ontvang het, in besit te neem nie; of 55

(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 60

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:—

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—
 - (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
 - (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
 - (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.
 - (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.
 - (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.
 - (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".
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
 - (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
 - (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
 - (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

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

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

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

(e) enige ambagsgereedskap of -werktuig waarmee sy vrou 5
besoldiging verdien, te vervreem of te verpand nie.

(2) Indien 'n getroude vrou aandeel in 'n bouvereniging besit, registreer die vereniging nie 'n oordrag van daardie aandeel sonder haar skriftelike toestemming nie.

(3) Op enige in sub-artikel (1) bedoelde besoldiging, deposito, 10
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 vir of in verband met die voorsiening van sterk drank aangegaan 15
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 20
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) vir die duur van die verlating van haar man se beheer vrygestel word, en die man 25
vir die duur van die verlating verbied word om op enige wyse met die goed te handel.

(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 regsproes in te stel in verband met 'n in sub- 40
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), 45
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 is of sou wees.

Opheffing van
reël teen
skenkings tussen
eggenote.

3. Die reël teen skenkings tussen eggenote word hiermee 50
opgehef.

Wysiging van
artikel 110
van Wet 46 van
1935.

4. Artikel *honderd-en-tien* van die Algemene Regswysigings-
wet, 1935, word hiermee gewysig—

(a) deur in sub-artikels (3) en (4), die woorde „hierdie artikel” te vervang deur die uitdrukking „sub-artikel 55
(1)”; en

(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 geldig- 60
heid 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 65
geleë is.

(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.”. 70

Voogdy oor
en bewaring
van kinders.

5. (1) 'n Provinsiale of plaaslike afdeling van die hoog-
eregshof of 'n regter daarvan kan—

(a) op aansoek van een van beide ouers van 'n minder-
jarige in 'n proses vir egskeiding of geregtelike skeiding; 75
of

(b) op aansoek van een van beide ouers van 'n minder-
jarige wie se ouers geskei is of uit hoofde van 'n
geregtelike skeidingsbevel apart woon,

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

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

(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.

- 10 (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, for as long as the desertion continues, from the control of her husband, and prohibiting the husband, for as long as the desertion continues, from dealing in any manner with the property.

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

- 30 (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;
- 35 (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
- 40 (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).
- 45

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

Abolition of rule against donations between spouses.

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

Amendment of section 110 of Act 46 of 1935.

- 55 (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:

- 60 "(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.

- 65 (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."

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

Guardianship and custody of minors.

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

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, vervall 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, vervall 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, vervall '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.

Wysiging van
artikel 1 van
Wet 22 van 1939.

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

„(1) 'n Provinsiale of plaaslike afdeling van die Hoog-geregshof van Suid-Afrika het regsbevoegdheid om 'n regsvordering vir egskedding 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, hy op genoemde datum binne die Unie gedomisileer is of dit onmiddellik voor die verlating was;

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

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

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.

(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.

(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

(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.

(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.

(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

(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.

(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.

(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.

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: Amendment of section 1 of Act 22 of 1939.

“(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—

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

(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

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

Wysiging van
artikel 6 van
Wet 22 van 1939.

7. Artikel *ses* van die Wet op Regsbevoegdheid in Matrimoniële Regsake, 1939, word hiermee gewysig deur na die woorde „gedomisileer is”, die woorde „of was of woonagtig is, na gelang van die geval,” in te voeg.

Invoeging van
artikel 6*bis* in
Wet 22 van 1939.

8. Die volgende artikel word hiermee na artikel *ses* in die Wet op Regsbevoegdheid in Matrimoniële Regsake, 1939, ingevoeg:

„Erkenning
van sekere
bevele en
orders.

6*bis*. (1) Die geldigheid van 'n bevel of order in enige land verleen, in 'n geval waarin die eggenoot nie in daardie land gedomisileer 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*, geles met genoemde paragraaf, ooreenstem, word deur die hof van die Unie erken.

(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 hof van daardie land van die bevele en orders wat kragtens genoemde paragraaf, of kragtens artikel *vier* of *vyf*, geles met genoemde paragraaf, verleen is in 'n geval waarin die eggenoot nie binne die Unie gedomisileer is nie.

(3) Die Goewerneur-generaal kan so 'n proklamasie te eniger tyd intrek.”.

Onderhouds-
bevele by
egskeiding.

9. Die hof wat 'n egskedding toestaan kan, ondanks die ontbinding van die huwelik—

(a) die bevel teen die skuldige eggenoot gee vir die onderhoud van die onskuldige eggenoot, tot die dood of hertrou van die onskuldige eggenoot, na gelang die een of die ander eerste gebeur, wat die hof billik ag; of

(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.

Kort titel.

10. Hierdie Wet heet die Wet tot Verwydering van Regs-onbevoegdheid van Vroue, 1952.

7. 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".

Amendment of section 6 of Act 22 of 1939.

5 8. The following section is hereby inserted in the Matrimonial Causes Jurisdiction Act, 1939, after section *six*:

Insertion of section 6*bis* in Act 22 of 1939.

10 "Recognition of certain decrees and orders.

6*bis*. (1) The validity of any decree or order made in any country in any case in which the husband is not domiciled in that country, under the provisions of any law which are declared by the Governor-General by proclamation in the *Gazette* to be provisions substantially corresponding to the relevant 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.

15

20

25

(2) No proclamation shall be issued under sub-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 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 withdraw any such proclamation."

9. The court granting a divorce may, notwithstanding the dissolution of the marriage—

Maintenance orders on divorce.

30

(a) make such order against the guilty spouse for the maintenance of the innocent spouse until the death or until the remarriage of the innocent spouse, whichever event may first occur, as the court may deem just; or

(b) make any agreement between the spouses for the maintenance of one of them, an order of court,

35

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.

10. This Act shall be called the Removal of Women's Short title. Legal Disabilities Act, 1952.

WETSONTWERP

Om voorsiening te maak vir die na-doodse ondersoek van sekere menslike liggame, vir die verwydering van sulke liggame van weefsels vir geneeskundige of wetenskaplike doeleindes, en vir die bewaring en gebruik van sulke weefsels.

(Ingedien deur die MINISTER VAN GESONDHEID.)

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

Woordbepaling.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - „gemagtigde inrigting” ’n inrigting wat deur die Minister gemagtig is om weefsels vir geneeskundige of wetenskaplike doeleindes te ontvang, te verkry, te bewaar, te gebruik of uit te gee;
 - „geneesheer” iemand wat ingevolge die Wet op Genees- here, Tandartse en Aptekers, 1928 (Wet No. 13 van 1928) as ’n geneesheer geregistreer is;
 - „Minister” die Minister van Gesondheid;
 - „openbare inrigting” ’n inrigting waarvan die onderhoudskoste geheel uit die Staatskas gedek word, behalwe ’n hospitaal in bevel waarvan ’n geneesheer nie in voltydse hoedanigheid in diens is nie, maar ook ’n mynhospitaal in bevel waarvan ’n geneesheer aldus in diens is;
 - „regulasie” ’n kragtens artikel sewe uitgevaardigde regulasie;
 - „weefsel” enige menslike weefsel, vleis, orgaan, been of liggaamsvloeistof.

Na-doodse ondersoeke en verwydering van weefsels van lyke van sekere persone.

2. (1) Die magistraat in wie se distrik iemand in ’n openbare inrigting oorlede is, kan ondanks die bepalings van enige ander wet, op die skriftelike aansoek van ’n geneesheer, daardie geneesheer of ’n ander geneesheer skriftelik magtig—
 - (a) om, behoudens die voorwaardes wat by regulasie voorgeskryf mag word, ’n na-doodse ondersoek op die lyk van so iemand voor die begrawing daarvan, uit te voer; of
 - (b) om, behoudens die voorwaardes wat aldus voorgeskryf mag word, enige vermelde weefsels van die lyk van so iemand voor die begrawing daarvan, te verwyder.
- (2) Geen magtiging word kragtens sub-artikel (1) toegestaan 35 nie tensy die betrokke magistraat oortuig is dat—
 - (a) die lyk dié van ’n persoon is—
 - (i) wat of in die aanwesigheid van minstens twee getuies voor sy dood of in sy laaste testament, sy lyk vir geneeskundige of wetenskaplike doeleindes bemaak het; of
 - (ii) wie se langselewende eggenoot of naaste beskikbare volwasse bloedverwant of, indien geen sodanige bloedverwant beskikbaar is nie, ’n *bona fide* vriend van die oorledene, skriftelik tot die toestaan van die magtiging toestem;
 - (b) die lyk nie of nie meer nodig is nie vir die doel van ’n ondersoek ooreenkomstig—
 - (i) artikel *sewen-en-tagtig* van die „Wet op de Kriminele Procedure en Bewyslevering, 1917” (Wet No. 31 van 1917);
 - (ii) artikel *twee* van die „Wet op Lijkschouwingen, 1919” (Wet No. 12 van 1919);
 - (iii) artikel *vier-en-dertig* van die Volksgezondheidswet, 1919” (Wet No. 36 van 1919);
 - (iv) artikel *vier-en-twintig* van die „Wet op de Registratie van Geboorten, Huweliken en Sterfgevallen, 1923” (Wet No. 17 van 1923);
 - (v) artikel *vyf-en-vyftig* van die Silikosewet, 1946 (Wet No. 47 van 1946);
 - (c) in die geval van ’n lyk waarop die bepalings van artikel *vyf* van die „Anatomie Wet, 1911” (Wet No. 32 van 1911) van toepassing is, die kragtens daardie

BILL

To provide for the *post-mortem* examination of certain human bodies, for the removal from such bodies of tissue for therapeutic or scientific purposes, and for the preservation and use of such tissue.

(Introduced by the MINISTER OF HEALTH.)

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:—

1. In this Act, unless the context otherwise indicates— Definitions.
 - 5 "authorized institution" means an institution authorized by the Minister to receive, acquire, preserve, use or issue any tissue for therapeutic or scientific purposes;
 - "medical practitioner" means a person registered as a medical practitioner under the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928);
 - 10 "Minister" means the Minister of Health;
 - "public institution" means any institution the cost of whose maintenance is wholly defrayed from State funds, other than a hospital in charge of which a medical practitioner is not employed in a full-time capacity, but includes a mine hospital in charge of which a medical practitioner is so employed;
 - 15 "regulation" means a regulation made under section seven;
 - 20 "tissue" means any human tissue, flesh, organ, bone or body fluid.
2. (1) The magistrate in whose district any person has died in a public institution may, notwithstanding anything to the contrary in any law contained, upon the written application of *Post-mortem examinations of and removal of tissue from bodies of certain deceased persons.*
 - 25 a medical practitioner, authorize that medical practitioner or another medical practitioner in writing—
 - (a) to perform, subject to such conditions as may be prescribed by regulation, a *post-mortem* examination of the body of such person before its burial; or
 - 30 (b) to remove, subject to such conditions as may be so prescribed, any specified tissue from the body of such person before its burial.
 - (2) No authority shall be granted under sub-section (1) unless the magistrate concerned is satisfied that—
 - 35 (a) the body is that of a person—
 - (i) who either in the presence of at least two witnesses before his death or in his last will has left his body for therapeutic or scientific purposes; or
 - 40 (ii) whose surviving spouse or nearest available adult relative or, if no such relative is available, any *bona fide* friend of the deceased consents in writing to the grant of such authority;
 - (b) the body is not or is no longer required for the purpose of an examination in accordance with—
 - 45 (i) section *eighty-seven* of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917);
 - (ii) section *two* of the Inquests Act, 1919 (Act No. 12 of 1919);
 - 50 (iii) section *thirty-four* of the Public Health Act, 1919 (Act No. 36 of 1919);
 - (iv) section *twenty-four* of the Births, Marriages and Deaths Act, 1923 (Act No. 17 of 1923); or
 - (v) section *fifty-five* of the Silicosis Act, 1946 (Act No. 47 of 1946);
 - 55 (c) in the case of a body to which the provisions of section *five* of the Anatomy Act, 1911 (Act No. 32 of 1911), apply, the inspector of anatomy appointed under that

Wet aangestelde ontleedkundige inspekteur, skriftelik tot die toestaan van die magtiging toestem; en

- (d) die na-doodse ondersoek van die lyk nodig is vir die nadere bepaling van die oorsaak van die dood of vir enige vermelde wetenskaplike doel of, na gelang van die geval, die vermelde weefsels nodig is vir enige geneeskundige of wetenskaplike doel. 5

Verwydering
van weefsels
van lewende
persone.

3. Indien minstens twee geneeshere skriftelik sertifiseer dat na hulle oordeel die verwydering van vermelde weefsels van die liggaam van 'n lewende volwasse persoon daardie persoon op geen wyse sal benadeel nie, en indien bedoelde persoon skriftelik daartoe toestem, kan enige geneesheer (behalwe 'n geneesheer wat voormelde sertifikaat onderteken het), indien daardie vermelde weefsels nodig is vir enige geneeskundige of wetenskaplike doel, die aldus vermelde weefsels van die liggaam van daardie persoon verwyder: Met dien verstande dat 'n sertifikaat soos voormeld nie nodig is om uit die liggaam van 'n persoon bloed wat vir oortappingsdoeleindes benodig word, te tap nie. 10 15

Verkryging,
bewaring, gebruik
en uitgifte van
weefsels deur
gemagtigde
inrigtings.

4. (1) 'n Gemagtigde inrigting kan enige weefsels wat wet- 20
tiglik van—

- (a) die lyk van 'n oorledene ingevolge die bepalings van hierdie Wet; of
(b) die liggaam van 'n lewende persoon,
verwyder is, ontvang, verkry, bewaar of gebruik. 25

(2) 'n Gemagtigde inrigting kan te eniger tyd enige weefsels wat hy in sy besit het, aan 'n geneesheer vir geneeskundige of wetenskaplike doeleindes uitgee.

Voorbehoude.

5. Geen bepalings van hierdie Wet maak—

- (a) die voorbereiding van die lyk van 'n oorledene vir balseming, ditsy sodanige voorbereiding insnydings vir die onttrekking van bloed en die vervanging daarvan deur 'n bederfweringsmiddel insluit al dan nie, of die herstel van enige verminking of mutilasie van die lyk van 'n oorledene voor die begraving daarvan, onwettig nie; 30 35
(b) die verwydering van die liggaam van iemand, met sy toestemming of die van 'n persoon wat regtens namens hom toestemming kan verleen, van weefsels in die belang van die gesondheid van so iemand en die bewaring en gebruik van sodanige weefsels vir geneeskundige of wetenskaplike doeleindes, onwettig nie. 40

Regulasies.

6. (1) Die Minister kan regulasies uitvaardig betreffende—

- (a) die vorm waarin 'n aansoek of magtiging ingevolge artikel twee gedoen of toegestaan moet word; 45
(b) die voorwaardes waarop 'n na-doodse ondersoek uitgevoer of weefsels van die liggaam van 'n lewende persoon of die lyk van 'n oorledene ingevolge hierdie Wet verwyder mag word;
(c) die voorlegging van verslae aan 'n vermelde gesag deur 'n geneesheer wat 'n na-doodse ondersoek uitgevoer of weefsels van die liggaam van 'n lewende persoon of die lyk van 'n oorledene ingevolge hierdie Wet verwyder het, en die tydperk waarbinne sulke verslae voorgelê moet word; 50 55
(d) die bewaring, gebruik of uitgifte van of die beskikking oor weefsels wat van die liggaam van 'n lewende persoon of die lyk van 'n oorledene verwyder is; en
(e) in die algemeen, enige aangeleentheid wat hy nodig of dienstig ag om voor te skryf vir die bereiking van die doeleindes van hierdie Wet. 60

(2) Enige kragtens sub-artikel (1) uitgevaardigde regulasies word binne veertien dae na afkondiging daarvan in beide Huise van die Parlement ter Tafel gelê indien die Parlement dan in gewone sitting is, of indien die Parlement nie dan in gewone sitting is nie, binne veertien dae na die aanvang van sy eersvolgende gewone sitting, en bly op genoemde Tafels vir minstens agt-en-twintig agtereenvolgende dae, en indien die Parlement geprorogeer word voordat die nodige agt-en-twintig dae verloop het, word sodanige regulasies weer soos voormeld binne veertien dae na die aanvang van sy eersvolgende gewone sitting ter Tafel gelê. 65 70

(3) Indien beide Huise van die Parlement by besluit wat gedurende dieselfde sitting geneem word (naamlik 'n sitting waarin sulke regulasies ooreenkomstig sub-artikel (2) in beide Huise van die Parlement ter Tafel gelê is) sulke regulasies of 'n bepaling daarvan afkeur, verval die regskrag van sulke regulasies of so 'n bepaling daarvan vir sover hulle aldus afge- 75

Act, consents in writing to the grant of such authority;
and

- 5 (d) the *post-mortem* examination of the body is necessary for the purpose of determining more precisely the cause of death or for any specified scientific purpose, or, as the case may be, the specified tissue is required for any therapeutic or scientific purpose.

3. If at least two medical practitioners certify in writing that in their opinion the removal of any specified tissue from the body of a living adult person will not prejudice that person in any way, and if that person consents thereto in writing, any medical practitioner (other than a medical practitioner who signed the certificate aforesaid) may, if that specified tissue is required for any therapeutic or scientific purpose, remove from the body of that person the tissue so specified: Provided that no such certificate as aforesaid shall be required for the removal from the body of any person of blood required for transfusion purposes.

Removal of
tissue from
living persons.

4. (1) An authorized institution may receive, acquire, preserve or use any tissue which has been lawfully removed from—

Acquisition,
preservation,
use and issue
of tissue by
authorized
institutions.

(a) the body of a deceased person under the provisions of this Act; or

(b) the body of a living person.

(2) An authorized institution may at any time issue any tissue in its possession to a medical practitioner for any therapeutic or scientific purpose.

5. Nothing in this Act contained shall render unlawful—

Savings.

(a) the preparation of the body of a deceased person for the purpose of embalming, whether or not such preparation involves the making of incisions for the purpose of drawing off blood and its replacement by any preservative, or the restoration of any disfigurement or mutilation of the body of a deceased person prior to its burial; or

(b) the removal from the body of any person with his consent or that of any other person who may in law consent on his behalf, of tissue in the interests of the health of such person and the preservation and use of such tissue for therapeutic or scientific purposes.

6. (1) The Minister may make regulations as to—

Regulations.

(a) the form in which any application shall be made or authority shall be given under section two;

(b) the conditions subject to which a *post-mortem* examination may be performed or tissue may be removed from the body of a living or a deceased person under this Act;

(c) the submission of reports to any specified authority by a medical practitioner who has performed a *post-mortem* examination or has removed any tissue from the body of a living or a deceased person under this Act, and the period within which such reports shall be submitted;

(d) the preservation, use, issue or disposal of any tissue removed from the body of a living or deceased person; and

(e) generally, any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Any regulations made under sub-section (1) shall be laid on the Tables of both Houses of Parliament within fourteen days after promulgation 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, and shall remain on the said Tables for at least twenty-eight consecutive days, and if Parliament is prorogued before the necessary twenty-eight days have elapsed, such regulations shall again be laid on the said Tables as aforesaid within fourteen days after the commencement of its next ensuing ordinary session.

(3) If both Houses of Parliament by resolution passed in the same session (being a session during which such regulations have been laid on the Tables of both Houses of Parliament in terms of sub-section (2)) disapprove of any such regulations or of any provision thereof, such regulations or such provision thereof shall thereafter cease to be of force and effect to the

keur word, dog sonder afbreuk te doen aan die geldigheid van enigiets wat ingevolge sulke regulasies of so 'n bepaling daarvan tot op die datum waarop die regsrag van sulke regulasies of so 'n bepaling daarvan aldus verval het, gedoen is, of aan enige reg, voorreg, verpligting of aanspreeklikheid wat op bedoelde datum reeds ingevolge sulke regulasies of so 'n bepaling daarvan verkry, opgeloopt of aangegaan is. 5

Strafbepalings.

7. Iemand wat—

(a) anders dan ooreenkomstig een of ander wetsbepaling of sonder die skriftelike magtiging van 'n magistraat ingevolge artikel twee, 'n na-doodse ondersoek op die lyk van 'n oorledene uitvoer of weefsels daarvan verwyder; of 10

(b) een of ander bepaling van 'n regulasie oortree of in gebreke bly om daaraan te voldoen, 15

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens honderd pond of gevangenisstraf vir 'n tydperk van hoogstens ses maande.

Kort titel.

8. Hierdie Wet heet die Wet op Na-doodse Ondersoeke en Verwydering van Menslike Weefsels, 1952. 20

extent to which they are so disapproved, but without prejudice to the validity of anything done in terms of such regulations or of such provision thereof up to the date upon which they so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such regulations or such provision thereof.

7. Any person who—

Penalties.

- 10 (a) performs a *post-mortem* examination of the body of a deceased person or removes any tissue therefrom otherwise than in accordance with any law or without the written authority of a magistrate under section two; or
- 15 (b) contravenes or fails to comply with any provision of any regulation,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months.

8. This Act shall be called the Post Mortem Examinations Short title.
20 and Removal of Human Tissues Act, 1952.