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HOUSE OF ASSEMBLY.

The following Bill, having been introduced into the House of Assembly, is published in accordance with Standing Order No. 164.

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

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VOLKSRAAD.

Die volgende Wetsontwerp, ingedien in die Volksraad, word gepubliseer ingevolge artikel 164 van die Reglement van Orde.

J. M. HUGO,
Klerk van die Volksraad.

VW. 7—'55: Wetsontwerp op Bewyslewing .. . BLADSY 3

BILL

To amend the law relating to the admissibility of documentary evidence.

(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:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) "document" includes any book, map, plan, drawing 5
or photograph; (i)
 - (ii) "statement" includes any representation of fact, 5
whether made in words or otherwise; (iii)
 - (iii) "Union" includes the territory of South-West Africa. 10
(ii)

Admissibility of documentary evidence as to facts in issue.

2. (1) In any legal proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact, provided— 15

(a) the person who made the statement either—

- (i) had personal knowledge of the matters dealt with in the statement; or
- (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with therein are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal 25
knowledge of those matters; and

(b) the person who made the statement is called as a witness in the proceedings unless he is dead or unfit by reason of his bodily or mental condition to attend as a witness, or unless he is outside the Union and it is 30
not reasonably practicable to secure his attendance, or unless all reasonable efforts to find him have been made without success.

(2) The Court may in any legal proceedings, if having regard to all the circumstances of the case it is satisfied that undue 35
delay or expense would otherwise be caused, admit such a statement as is referred to in sub-section (1) as evidence in those proceedings—

- (a) notwithstanding that the person who made the statement is available but is not called as a witness; or 40
- (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as the Court may approve. 45

(3) A statement in a document shall not, for the purposes of this section, be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the 50
accuracy of which he is responsible.

(4) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, 55
or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate of a registered medical practitioner, and where the proceedings are before a jury, the Court may in its discretion reject the

WETSONTWERP

Tot wysiging van die regsbepalings met betrekking tot die toelaatbaarheid van dokumentêre getuienis.

(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. In hierdie Wet, tensy uit die samehang anders blyk, Woordbepalings.
5 beteken—

- (i) „dokument” ook enige boek, kaart, plan, tekening of portret; (i)
- (ii) „Unie” ook die gebied Suidwes-Afrika; (iii)
- 10 (iii) „verklaring” ook enige feitlike voorstelling, hetsy in woorde of andersins gedoen. (ii)

2. (1) By 'n regsgeding waar regstreekse mondelinge getuienis van 'n feit toelaatbaar sou wees, is enige verklaring wat deur iemand in 'n dokument gemaak is en wat tot staving van daardie feit strek, by oorlegging van die oorspronklike dokument
15 toelaatbaar as getuienis van daardie feit, mits—

Toelaatbaarheid van dokumentêre getuienis in verband met bestrede feite.

(a) die persoon wat die verklaring gemaak het, òf—

- (i) persoonlike kennis gedra het van die aangeleenthede waaroor die verklaring gaan; òf
- 20 (ii) waar die betrokke dokument 'n aantekening is of deel van 'n aantekening uitmaak wat 'n lopende aantekening heet te wees, die verklaring (vir sover die aangeleenthede waaroor dit gaan nie binne sy persoonlike kennis is nie) gemaak het by die uitvoering van 'n plig om inligting aan te teken
- 25 wat aan hom verstrekk is deur iemand wat persoonlike kennis van daardie aangeleenthede gedra het of redelikerwys veronderstel kon geword het om persoonlike kennis daarvan te dra; en

(b) die persoon wat die verklaring gemaak het as 'n getuie in die geding opgeroep word, tensy hy oorlede is of vanweë sy liggaamlike of geestelike toestand onbekwaam is om as 'n getuie te verskyn, of tensy hy buite die Unie is en dit nie redelikerwys doenlik is om sy verskynning te verkry nie, of tensy alle redelike pogings om hom te vind vrugteloos geblyk het.

(2) Die hof kan by 'n regsgeding, indien hy met inagneming van al die omstandighede van die geval oortuig is dat daar anders buitensporige vertraging of onkoste veroorsaak sou word, 'n verklaring soos in subartikel (1) bedoel as getuienis by
40 daardie geding toelaat—

- (a) ondanks die feit dat die persoon wat die verklaring gemaak het, beskikbaar is, maar nie as 'n getuie opgeroep word nie; of
- 45 (b) al word die oorspronklike dokument nie oorgelê nie, indien in plaas daarvan 'n afskrif van die oorspronklike dokument of van die ter sake dienende deel daarvan oorgelê word wat op die wyse deur die hof goedgekeur as 'n ware afskrif gesertifiseer is.

(3) 'n Verklaring in 'n dokument word nie by die toepassing van hierdie artikel geag deur iemand gemaak te gewees het nie, tensy die dokument of die ter sake dienende deel daarvan deur hom eiehandig geskryf, gemaak of daargestel is of deur hom onderteken of geparafeer is of andersins skriftelik deur hom erken is as een vir die juistheid waarvan hy verantwoordelik is.

55 (4) Ten einde te beslis of 'n verklaring uit hoofde van die voorgaande bepalings as getuienis toelaatbaar is al dan nie, kan die hof enige redelike afleiding maak van die vorm of inhoud van die dokument waarin die verklaring vervat is of van enige ander omstandighede, en kan hy, by 'n beslissing oor die vraag
60 of iemand in staat is al dan nie om as 'n getuie te verskyn, op grond van die sertifikaat van 'n geregistreerde geneesheer handel, en waar die regsgeding voor 'n jurie dien, kan die hof na goed-

statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

Weight to be attached to evidence admissible under this Act.

3. (1) In estimating the weight, if any, to be attached to a statement admissible as evidence under this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the person who made the statement had any incentive to conceal or misrepresent facts. 5 10

(2) A statement admissible as evidence under this Act shall not, for the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, be treated as corroboration of evidence given by the person who made the statement. 15

Proof of instrument to validity of which attestation is necessary.

4. In any legal proceedings an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: Provided that nothing in this section contained shall apply to the proof of wills or other testamentary writings. 20

Presumptions as to documents twenty years old.

5. There shall, in any legal proceedings, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old. 25 30

Savings.

6. Nothing in this Act shall—

(a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or

(b) render admissible documentary evidence as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not been passed. 35

Application of Act.

7. This Act shall apply also in the territory of South-West Africa. 40

Short Title.

8. This Act shall be called the Evidence Act, 1955.

dunke die verklaring verwerp al word met betrekking daartoe aan die vereistes van hierdie artikel voldoen, indien dit om die een of ander rede ter wille van regverdigheid vir die hof onraadsaam blyk dat die verklaring toegelaat word.

- 5 3. (1) Ten einde die bewyskrag (as daar is) te bepaal wat toegewys moet word aan 'n verklaring wat ingevolge hierdie Wet as getuienis toelaatbaar is, moet rekening gehou word met al die omstandighede waaruit redelikerwys enige afleiding gemaak kan word met betrekking tot die juistheid van die verklaring of andersins, en insonderheid met die vraag of die verklaring gelyktydig met die gebeurtenis of bestaan van die aangegewe feite gemaak was al dan nie, en met die vraag of daar by die persoon wat die verklaring gemaak het enige dryfveer bestaan het al dan nie om die feite te verberg of verkeerd voor te stel.
- 10
- 15 (2) 'n Verklaring wat ingevolge hierdie Wet as getuienis toelaatbaar is, word nie vir die doeleindes van enige regsreël of reël van die regspraktyk wat die stawing van getuienis vereis of die wyse bepaal waarop in verband met ongestaafde getuienis gehandel moet word, as stawing van getuienis gegee deur die
- 20 persoon wat die verklaring gemaak het, beskou nie.

Waarde aan volgens hierdie Wet toelaatbare getuienis geheg te word.

4. By enige regsgeding kan 'n instrument vir die geldigheid waarvan attesting nodig is, in plaas van deur 'n attesterende getuie bewys te word, op die wyse bewys word waarop dit bewys sou kon word indien geen attesterende getuie in lewe was nie:
- 25 Met dien verstande dat die bepaling van hierdie artikel nie op die bewys van testamente of testamentêre geskrifte van toepassing is nie.

Bewys van instrument vir geldigheid waarvan attesting vereis word.

5. By enige regsgeding word in die geval van 'n dokument wat volgens bewys twintig jaar oud is of wat so oud heet te wees, enigiets vermoed wat onmiddellik voor die inwerkingtreding van hierdie Wet vermoed sou gewees het in die geval van 'n dokument van soortgelyke aard wat volgens bewys minstens dertig jaar oud was of wat geheet het so oud te wees.
- 30

Vermoedens in verband met dokumente wat twintig jaar oud is.

6. Geen bepaling van hierdie Wet—

Voorbehoude.

- 35 (a) maak inbreuk nie op die toelaatbaarheid van enige getuienis wat afgesien van die bepalinge van hierdie Wet toelaatbaar sou gewees het; of
- (b) maak dokumentêre getuienis aangaande enige verklaring rakende 'n aangeleentheid wat op afstamming betrekking het, toelaatbaar nie, indien daardie verklaring nie as getuienis toelaatbaar sou gewees het indien hierdie Wet nie aangeneem was nie.
- 40

7. Hierdie Wet is ook in die gebied Suidwes-Afrika van toepassing.

Toepassing van Wet.

- 45 8. Hierdie Wet heet die Wet op Bewyslewing, 1955.

Kort titel.