

BUITENGEWONE



EXTRAORDINARY

Staatskoerant

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DEPARTEMENT VAN JUSTISIE.

DEPARTMENT OF JUSTICE.

Onderstaande Wetsontwerp word ter algemene inligting publiseer.

The following Bill is published for general information.

WETSONTWERP

Om vir die afdwingbaarheid van strafbedinge, met inbegrip van bedinge wat op vooruitberamings van skade berus, en van verbeuringsbedinge voorsiening te maak.

(Deur die MINISTER VAN JUSTISIE ingedien te word.)

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

Strafbedinge weens kontrakbreuk is afdwingbaar.

1. (1) 'n Beding, hieronder 'n strafbeding genoem, waarby bepaal word dat iemand weens 'n doen of late in stryd met 'n kontraktuele verpligting, aanspreeklik is om ten bate van 'n ander persoon, hieronder 'n skuldeiser genoem, 'n geldsom te betaal of enigiets te lower of te presteer, hetsy by wyse van straf of as gelikwiderde skadevergoeding, kan, behoudens die bepalinge van hierdie Wet, in 'n bevoegde hof afdwing word. (2) 'n Bedrag vir die betaling of enigiets vir die lowering of prestering waarvan iemand aldus aanspreeklik mag word, word in hierdie Wet 'n strafbedrag genoem.

Verbod op kumulاسie van regsmiddels en beperking op verhaal van strafbedrae weens gebreke of versuim.

2. (1) 'n Skuldeiser is nie geregtig om ten opsigte van 'n doen of late wat die onderwerp van 'n strafbeding is, beide die strafbedrag en skadevergoeding, of, behalwe waar die betrokke kontrak uitdruklik aldus bepaal, skadevergoeding in plaas van die strafbedrag te verhaal nie. (2) Iemand wat gebrekkige of nie-tydige prestasie aanvaar of moet aanvaar, is nie geregtig om 'n strafbedrag weens die gebrek of versuim te verhaal nie, tensy die straf uitdruklik vir daardie gebrek of versuim beding is.

Vermindering van buitensporige strafbedrag.

3. Indien dit by die verhoor van 'n eis om 'n strafbedrag vir die hof blyk dat daardie bedrag buite verhouding is tot die nadeel deur die skuldeiser gely weens die doen of late ten opsigte waarvan die straf beding is, kan die hof die strafbedrag verminder in die mate wat hy onder die omstandighede billik ag: Met dien verstande dat die hof by die bepaling van die omvang van bedoelde nadeel nie slegs die skuldeiser se vermoënsbelange in ag neem nie, maar ook enige ander regmatige belang wat deur die betrokke doen of late geraak word.

Bepalings insake strafbedinge ook vir verbeuringsbedinge van toepassing.

4. 'n Beding waarby bepaal word dat waar 'n party by 'n ooreenkoms hom onder daarin gemelde omstandighede daaraan onttrek, 'n ander party daarby die reg verbeur om restitusie te eis ten opsigte van enigiets wat hy ingevolge die ooreenkoms gepresteer het, of ondanks die onttrekking aanspreeklik bly om enigiets daaronder te presteer, geld in die mate en onderworpe aan die voorwaardes in artikels een tot en met drie voorgeskryf, asof dit 'n strafbeding was.

Wet geld nie vir ooreenkoms wat aan Wet 36 van 1942 onderworpe is nie.

5. Die bepalinge in hierdie Wet vervat geld nie met betrekking tot 'n kontrak waarop die bepalinge van die Wet op Huurkoop, 1942, van toepassing is nie.

Kort titel.

6. Hierdie Wet heet die Wet op Strafbedinge, 1962.

BILL

To provide for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage, and of forfeiture clauses.

(To be introduced by the MINISTER OF JUSTICE.)

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

1. (1) A stipulation, hereinafter referred to as a penalty stipulation, whereby it is provided that any person shall, in respect of an act or omission in conflict with a contractual obligation, be liable to pay a sum of money or to deliver or perform anything for the benefit of any other person, hereinafter referred to as a creditor, either by way of a penalty or liquidated damages, shall, subject to the provisions of this Act, be capable of being enforced in any competent court. Stipulations for penalties in case of breach of contract to be enforceable.
- (2) Any sum of money for the payment of which or anything for the delivery or performance of which a person may so become liable, is in this Act referred to as a penalty.
2. (1) A creditor shall not be entitled to recover in respect of an act or omission which is the subject of a penalty stipulation, both the penalty and damages, or, except where the relevant contract expressly so provides, to recover damages in lieu of the penalty. Prohibition on cumulation of remedies and limitation on recovery of penalties in respect of defects or delay.
- (2) A person who accepts or is obliged to accept defective or non-timeous performance shall not be entitled to recover a penalty in respect of the defect or delay, unless the penalty was expressly stipulated for in respect of that defect or delay.
3. If upon the hearing of a claim for a penalty, it appears to the court that such penalty is out of proportion to the prejudice suffered by the creditor by reason of the act or omission in respect of which the penalty was stipulated, the court may reduce the penalty to such extent as it may consider equitable in the circumstances: Provided that in determining the extent of such prejudice the court shall take into consideration not only the creditor's proprietary interest, but every other rightful interest which may be affected by the act or omission in question. Reduction of excessive penalty.
4. A stipulation whereby it is provided that upon withdrawal from an agreement by a party thereto under circumstances specified therein, any other party thereto shall forfeit the right to claim restitution of anything performed by him in terms of the agreement, or shall, notwithstanding the withdrawal, remain liable for the performance of anything thereunder, shall have effect to the extent and subject to the conditions prescribed in sections one to three, inclusive, as if it were a penalty stipulation. Provisions as to penalty stipulations also apply in respect of forfeiture stipulations.
5. Nothing in this Act contained shall apply with reference to any contract to which the provisions of the Hire Purchase Act, 1942, apply. Act not applicable with reference to agreements subject to Act 36 of 1942.
6. This Act shall be called the Conventional Penalties Act, Short title.

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