



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Selling price • Verkoopprys
(GST excluded/AVB uitgesluit)

Local **50c** Plaaslik
Other countries 70c Buitelands
Post free • Posvry

VOL. 268

CAPE TOWN, 14 OCTOBER 1987

KAAPSTAD, 14 OKTOBER 1987

No. 10974

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2295. 14 October 1987

No. 2295. 14 Oktober 1987

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 geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 82 of 1987: Children's Status Act, 1987.

No. 82 van 1987: Wet op die Status van Kinders, 1987.

ACT

To amend the law relating to paternity, guardianship and the status of certain children; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 30 September 1987.)*

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

Presumption of paternity in respect of extra-marital children.

1. If in any legal proceedings at which it has been placed in issue whether any particular person is the father of an extra-marital child it is proved by way of a judicial admission or otherwise that he had sexual intercourse with the mother of that child at any time when that child could have been conceived, it shall, in the absence of evidence to the contrary, be presumed that he is the father of that child. 5

Presumption on refusal to submit to taking of blood samples.

2. If in any legal proceedings at which the paternity of any child has been placed in issue it is adduced in evidence or otherwise that any party to those proceedings, after he has been requested thereto by the other party to those proceedings, refuses to submit himself or, if he has parental authority over that child, to cause that child to be submitted to the taking of a blood sample in order to carry out scientific tests relating to the paternity of that child, it shall be presumed, until the contrary is proved, that any such refusal is aimed at concealing the truth concerning the paternity of that child. 10 15

Guardianship and custody of extra-marital children.

3. (1) If the mother of an extra-marital child is unmarried and a minor—

- (a) the guardianship of that child shall, unless a competent court directs otherwise, vest in the guardian of that mother;
- (b) the custody of that child shall, unless a competent court directs otherwise, vest in that mother. 25

(2) If the mother of an extra-marital child is under the age of 21 years but acquires the status of a major, the guardianship and custody of that child shall, unless a competent court directs otherwise, vest in that mother. 30

WET

Om die reg betreffende vaderskap, voogdy en die status van sekere kinders te wysig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 30 September 1987.)*

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

1. Indien daar by geregtelike verrigtinge waarby dit in geskil geplaas is of 'n bepaalde persoon die vader van 'n buite-egtelike kind is, by wyse van 'n geregtelike erkenning of andersins bewys word dat hy vleeslike gemeenskap met die moeder van daardie kind gehad het op 'n tydstip toe daardie kind verwek kon gewees het, word, by ontstentenis van getuienis tot die teendeel, vermoed dat hy die vader van daardie kind is.

Vermoede van vaderskap ten opsigte van buite-egtelike kinders.
- 10 2. Indien daar by geregtelike verrigtinge waarby die vaderskap van 'n kind in geskil geplaas is, by wyse van getuienis of andersins aangevoer word dat 'n party by daardie verrigtinge, nadat hy deur die ander party by daardie verrigtinge daartoe versoek is, weier om homself te onderwerp of, indien hy die ouerlike gesag oor daardie kind voer, om daardie kind te laat onderwerp aan die neem van 'n bloedmonster ten einde wetenskaplike toetse betreffende die vaderskap van daardie kind te doen, word vermoed, totdat die teendeel bewys word, dat so 'n weiering daarop gemik is om die waarheid aangaande die vaderskap van daardie kind te verberg.

Vermoede by weiering om aan neem van bloed-monsters te onderwerp.
- 25 3. (1) Indien die moeder van 'n buite-egtelike kind ongetroud en 'n minderjarige is—

Voogdy oor en bewaring van buite-egtelike kinders.

 - (a) berus die voogdy oor daardie kind, tensy 'n bevoegde hof anders gelas, by die voog van daardie moeder;
 - (b) berus die bewaring van daardie kind, tensy 'n bevoegde hof anders gelas, by daardie moeder.
- 30 (2) Indien die moeder van 'n buite-egtelike kind onder die ouderdom van 21 jaar is maar die status van 'n meerderjarige verkry, berus die voogdy oor en die bewaring van daardie kind, tensy 'n bevoegde hof anders gelas, by daardie moeder.

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CHILDREN'S STATUS ACT, 1987

Legitimation of
children by
subsequent
marriage.

4. Any child born of parents who marry each other at any time after his birth shall, even though his parents could not have legally married each other at the time of his conception or birth, as from the date of the marriage be in all respects the legitimate child of his parents.

5

Effects of artificial
insemination.

5. (1) (a) Whenever the gamete or gametes of any person other than a married woman or her husband have been used with the consent of both that woman and her husband for the artificial insemination of that woman, any child born of that woman as a result of such artificial insemination shall for all purposes be deemed to be the legitimate child of that woman and her husband as if the gamete or gametes of that woman or her husband were used for such artificial insemination. 10
- (b) For the purposes of paragraph (a) it shall be presumed, until the contrary is proved, that both the married woman and her husband have granted the relevant consent. 15
- (2) No right, duty or obligation shall arise between any child born as a result of the artificial insemination of a woman and any person whose gamete or gametes have been used for such artificial insemination and the blood relations of that person, except where— 20
- (a) that person is the woman who gave birth to that child; or
- (b) that person is the husband of such a woman at the time of such artificial insemination. 25
- (3) For the purposes of this section—
“artificial insemination”, in relation to a woman—
- (a) means the introduction by other than natural means of a male gamete or gametes into the internal reproductive organs of that woman; or 30
- (b) means the placing of the product of a union of a male and a female gamete or gametes which have been brought together outside the human body in the womb of that woman, 35
- for the purpose of human reproduction;
“gamete” means either of the two generative cells essential for human reproduction.

Status of
children of
voidable marriage.

6. The status of any child conceived or born of a voidable marriage shall not be affected by the annulment of that marriage by any competent court. 40

Safeguarding of
interests of
dependent and
minor children of
voidable marriage.

7. (1) No voidable marriage shall be annulled until the court concerned has enquired into and considered the safeguarding of the interests of any minor or dependent child of that marriage, and the provisions of section 6 of the Divorce Act, 1979 (Act No. 70 of 1979), and of section 4 of the Mediation in Certain Divorce Matters Act, 1987, shall *mutatis mutandis* apply in respect of any such child as if the proceedings in question were proceedings in a divorce action and the annulment of that marriage were the granting of a decree of divorce. 45 50

(2) The provisions of section 8 (1) and (2) of the Divorce Act, 1979, shall *mutatis mutandis* apply to the rescission or variation of a maintenance order or an order relating to the custody or guardianship of, or access to, a child, or the suspension of a maintenance order or an order relating to access to a child, made by virtue of the provisions of subsection (1). 55

(3) A reference in any law—

- (a) to a maintenance order or an order relating to the custody or guardianship of, or access to, a child under the Divorce Act, 1979, shall be construed as a reference also to a maintenance order or an order relating to the custody or guardianship of, or access to, a child under the said Act as applied by subsection (1); 60

WET OP DIE STATUS VAN KINDERS, 1987

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4. 'n Kind gebore uit ouers wat te eniger tyd na sy geboorte met mekaar in die huwelik tree, is, al kon sy ouers ten tyde van sy verwekking of geboorte nie wettig met mekaar trou nie, vanaf die datum van die huwelik in alle opsigte die wettige kind van sy

Wettiging van
kinders deur
daaropvolgende
huwelik.

5 ouers.

5. (1) (a) Wanneer die gameet of gamete van 'n ander persoon as 'n getroude vrou of haar eggenoot met sowel daardie vrou as haar eggenoot se toestemming vir die kunsmatige bevrugting van daardie vrou gebruik is, word 'n kind gebore uit daardie vrou as gevolg van sodanige kunsmatige bevrugting vir alle doeleindes geag die wettige kind van daardie vrou en haar eggenoot te wees asof die gameet of gamete van daardie vrou of haar eggenoot vir sodanige kunsmatige bevrugting gebruik is.

Gevolge van
kunsmatige bevrug-
ting.

(b) By die toepassing van paragraaf (a) word vermoed, tot dat die teendeel bewys word, dat sowel die getroude vrou as haar eggenoot die betrokke toestemming verleen het.

(2) Geen reg, plig of verpligting ontstaan tussen 'n kind gebore as gevolg van die kunsmatige bevrugting van 'n vrou en 'n persoon wie se gameet of gamete vir sodanige kunsmatige bevrugting gebruik is en die bloedverwante van daardie persoon nie, behalwe waar—

(a) daardie persoon die vrou is wat geboorte aan daardie kind geskenk het; of

(b) daardie persoon die eggenoot van so 'n vrou ten tyde van sodanige kunsmatige bevrugting is.

(3) By die toepassing van hierdie artikel beteken—

“gameet” enigeen van die twee geslagselle wat vir menslike voortplanting noodsaaklik is;

“kunsmatige bevrugting”, met betrekking tot 'n vrou—

(a) die invoering op 'n ander wyse as 'n natuurlike wyse van 'n manlike gameet of gamete in die inwendige voortplantingsorgane van daardie vrou; of

(b) die plasing van die produk van 'n samesmelting van 'n manlike en 'n vroulike gameet of gamete wat buite die menslike liggaam saamgevoeg is in die baarmoeder van daardie vrou,

vir die doel van menslike voortplanting.

6. Die status van 'n kind verwek of gebore uit 'n vernietigbare huwelik word nie geraak deur die nietigverklaring van daardie huwelik deur 'n bevoegde hof nie.

Status van
kinders uit
vernietigbare
huwelik.

7. (1) Geen vernietigbare huwelik word nietig verklaar alvorens die betrokke hof die beskerming van die belange van 'n minderjarige of afhanklike kind uit daardie huwelik ondersoek en oorweeg het nie, en die bepalings van artikel 6 van die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), en van artikel 4 van die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987, is *mutatis mutandis* ten opsigte van so 'n kind van toepassing asof die betrokke verrigtinge verrigtinge in 'n egskeidingsgeding en die nietigverklaring van daardie huwelik die verlening van 'n egskeidingsbevel was.

Beskerming van
belange van
afhanklike en
minderjarige kinders
uit vernietigbare
huwelik.

(2) Die bepalings van artikel 8 (1) en (2) van die Wet op Egskeiding, 1979, is *mutatis mutandis* van toepassing op die intrekking of wysiging van 'n onderhoudsbevel of 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind, of die opskorting van 'n onderhoudsbevel of 'n bevel met betrekking tot toegang tot 'n kind, uit hoofde van die bepalings van subartikel (1) gegee.

(3) 'n Verwysing in 'n wet—

(a) na 'n onderhoudsbevel of 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind kragtens die Wet op Egskeiding, 1979, word uitgelê as 'n verwysing ook na 'n onderhoudsbevel of 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind kragtens genoemde Wet soos deur subartikel (1) toegepas;

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- (b) to the rescission, suspension or variation of such order under the Divorce Act, 1979, shall be construed as a reference also to the rescission, suspension or variation of such order under the said Act as applied by subsection (2).

5

Short title.

8. This Act shall be called the Children's Status Act, 1987.

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- 5 (b) na die intrekking, opskorting of wysiging van sodanige bevel kragtens die Wet op Egskeiding, 1979, word uitgelê as 'n verwysing ook na die intrekking, opskorting of wysiging van sodanige bevel kragtens genoemde Wet soos deur subartikel (2) toegepas.

8. Hierdie Wet heet die Wet op die Status van Kinders, 1987. Kort titel.

